FREEDOM OF THE PRESS – THE PEOPLE'S RIGHT
SELECTED AUTHORITIES

I. LEGAL COMMENTARIES

Joseph Story
A Familiar Exposition of the Constitution of the United States
Regnery Gateway, Lake Bluff, Ill.: 1986.

§445. The next clause respects the liberty of speech, and of the press. That this amendment was intended to secure to **every citizen** an absolute right to speak, **or write, or print**, whatever he might please, without any responsibility, public or private, therefor, is a supposition too wild to be indulged by any reasonable man. That would be to allow **every citizen** a right to destroy, at his pleasure, the reputation, the peace, the property, and even the personal safety of every other citizen. A man might then, out of mere malice or revenge, accuse another of infamous crimes; might excite against him the indignation of all his fellow citizens by the most atrocious calumnies, might disturb, nay, overturn his domestic peace, and embitter his domestic affections; might inflict the most distressing punishments upon the weak, the timid, and the innocent; might prejudice all the civil, political, and private rights to another; and might stir up sedition, rebellion, and even treason, against the government itself, in the wantonness of his passions, or the corruptions of his heart. Civil society could not go on under such circumstances. Men would be obliged to resort to private vengeance to make up for the deficiencies of the law. It is plan, then, that this amendment imports no more, than that **every man** shall have a right to speak, **write and print his opinions upon any subject whatsoever**, **without any prior restraint**, so always that he does not injure any other person in his rights, property or personal reputation; and so always that he does not thereby disturb the public peace, or attempt to subvert the government. *It is in fact designed to guard against those* ***abuses of power, by which, in some foreign governments, men are not permitted to speak upon political subjects, or to write or publish anything without the express license of the government for that purpose***.

§446. A little attention to the history of other countries, in other ages, will teach us the vast importance of **this right**. It is notorious, that, even to this day, in some foreign countries, it is a crime to speak on any subject, religious, philosophical, or political, what is contrary to the **received opinions of the government**, or the institutions of the country, however laudable may be the design, and however virtuous may be the motive. Even **to animadvert upon the conduct of public men, of rules, or of representatives, in terms of the strictest truth** and courtesy, has been, and is, deemed a scandal upon the supposed sanctity of their stations and characters, subjecting the party to **grievous punishment**. In some countries, **no works can be printed at all**, whether of science, or literature, or philosophy, without the previous approbation of the government; and the press has been shackled and compelled to speak only in the timid language which the clinging courtier, or the capricious inquisitor, has been willing to license for publication. The Bible itself, the common inheritance, not merely of Christendom, but of the world, has been put exclusively under the control of the government; and has not been allowed to be seen, or heard, or read, except in a language unknown to the common

inhabitants of the country. To publish a translation in the vernacular tongue, has been in former times a flagrant offence.

§447…. **Every freeman** has an undoubted right to lay what sentiments he pleases before the public. To forbid this is to **destroy the freedom of the press**…. Thus, the will of **individuals** is still left free; the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left, the disseminating, or making public of bad sentiments, destructive of the ends of society is the crime, which society corrects. [Pp. 316-18, italic emphasis in original, bold emphasis added..]

Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia, St. George Tucker, Volume I, Appendix, Section 12 [No hard copy]

The second part of this clause provides, against any law, abridging the freedom of speech, or of the **press**.

It being one of the great, fundamental principles of the American governments, that the **people are the sovereign**, and those who administer the government their agents, and servants, not their kings and masters, it would have been a **political solecism to have permitted the smallest restraint upon the right of the people to enquire into, censure, approve, punish or reward their agents according to their merit, or demerit**. The constitution, therefore, secures to them the **unlimited right to do this, either by speaking, writing, printing, or by any other mode of publishing, which they may think proper**. This being the only mode by which the responsibility of the agents of the public can be secured, and practically enforced, the smallest infringement of the rights guaranteed by this article, must threaten the total subversion of the government. **For a representative democracy ceases to exist the moment that the public functionaries are by any means absolved from their responsibility to their constituents; and this happens whenever the constituent can be restrained in any manner from speaking, writing, or publishing his opinions upon any public measure, or upon the conduct of those who may advise or execute it.**

Our state bill of rights declares, that the freedom of the press is one of the great bulwarks of liberty, and can never he restrained but by despotic governments. The constitutions of most of the other states in the union contain articles to the same effect. When the constitution of the United States was adopted by the convention of Virginia, they inserted the following declaration in the instrument of ratification: "that among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained, or modified by any authority of the United States."

An ingenious foreigner seems to have been a good deal puzzled to discover the law which establishes the freedom of the press in England: after many vain researches, he concludes, (very rightly, as it relates to that government,) that the liberty of the press there, is grounded on its not being prohibited. But with us, there is a visible solid foundation to be met with in the constitutional declarations which we have noticed. The English doctrine, therefore, that the liberty of the press consists only in this, that there shall be no previous restraint laid upon the publication of any thing which any person may think proper, as was formerly the case in that country, is not applicable to the nature of our government, and still less to the express tenor of the constitution. That this necessary and invaluable liberty has been sometimes abused, and "carried to excess; that it has sometimes degenerated into licentiousness, is seen and lamented; but the remedy has not been discovered. Perhaps it is an evil inseparable from the good to which it is allied: perhaps it is a shoot which cannot be stripped from the stalk, without

wounding vitally the plant from which it is torn. However desirable those measures might be which correct without enslaving the press, they have never yet been devised in America."[2]

It may be asked; is there no protection for any man in America from the wanton, malicious, and unfounded attacks of envenomed calumny? Is there no security for his good name? Is there no value put upon reputation? No reparation for an injury done to it?

To this we may answer with confidence, that the judicial courts of the respective states are open to all persons alike, for the redress of injuries of this nature; there, no distinction is made between one individual and another; the farmer, and the man in authority, stand upon the same ground: both are equally entitled to redress for any false aspersion on their respective characters, nor is there any thing in our laws or constitution which abridges this right. But the genius of our government will not permit the federal legislature to interfere with the subject; and the federal courts are, I presume, equally restrained by the principles of the constitution, and the amendments which have since been adopted.

Such, I contend, is the true interpretation of the constitution of the United States: it has received a very different interpretation both in congress and in the federal courts. This will form a subject for a discussion on the freedom of the press, which the student will find more at large in another place. [Emphasis added.]

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[2] Letter from the American envoys to the French minister of foreign affairs. This nervous passage bespeaks its author; a gentleman who now fills the highest judicial office under the federal government. [Footnote original.]

II. BILL OF RIGHTS DEBATE

Congressional Speeches of James Madison Regarding the Bill of Rights

1) June 8, 1789

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed. **The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable. The people** shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances. The right of **the people** to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The rights of **the people** to be secured in their persons; their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual

limitations of such powers, or as inserted merely for greater caution. [1 Gales & Seaton [Annals] 451; emphasis added.]

2) August 15, 1789

I think the committee acted prudently in omitting to insert these words in the report they have brought forward; if unfortunately the attempt of proposing amendments should prove abortive, it will not arise from the want of a disposition in the friends of the constitution to do what is right with respect to securing the rights and privileges of the people of America; but from the difficulties arising from discussing and proposing abstract propositions, of which the judgment may not be convinced. I venture to say that if we confine ourselves to an enumeration of simple acknowledged principles, the ratification will meet with but little difficulty. Amendments of a doubtful nature will have a tendency to prejudice the whole system; the proposition now suggested, partakes highly of this nature; it is doubted by many gentlemen here; it has been objected to in intelligent publications throughout the union; it is doubted by many members of the state legislatures: In one sense this declaration is true; in many others it is certainly not true; in the sense in which it is true, we have asserted the right sufficiently in what we have done; if we mean nothing more than this, that the people have a right to express and communicate their sentiments and wishes, we have provided for it already. **The right of freedom of speech is secured; the liberty of the press is expressly declared to be beyond the reach of this government; the people may <u>therefore</u> publicly address their representatives; may privately advise them, or declare their sentiments by petition to the whole body; in all these ways they may communicate their will**. If gentlemen mean to go further, and to say that the people have a right to instruct their representatives in such a sense as that the delegates were obliged to conform to those instructions, the declaration is not true. Suppose they instruct a representative by his vote to violate the constitution, is he at liberty to obey such instructions? Suppose he is instructed to patronize certain measures, and from circumstances known to him, but not to his constituents, he is convinced that they will endanger the public good, is he obliged to sacrifice his own judgment to them? Is he absolutely bound to perform what he is instructed to do? Suppose he refuses, will his vote be the less valid, or the community be disengaged from that obedience which is due from the laws of the union? If his vote must inevitably have the same effect, what sort of a right is this in the constitution to instruct a representative who has a right to disregard the order, if he pleases? In this sense the right does not exist, in the other sense it does exist, and is provided largely for. [1 Gales & Seaton [Annals] 766-67; emphasis added.]

House of Representatives Reports on the Bill of Rights in the First Congress

Amendments Reported by the Select Committee, July 28, 1789

In the introductory paragraph before the words, "We the people" add, "Government being intended for the benefit of the people, and the rightful establishment thereof being derived from their authority alone."

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ART. 1, SEC. 9 — Between PAR. 2 and 3 insert, "No religion shall be established by law, nor shall the equal rights of conscience be infringed."

"The freedom of speech, and of the **press**, and the right of the people peaceably to assemble and consult for their common good, and to apply to the government for redress of grievances, shall not be infringed."

"A well regulated militia, composed of the body of the people, being the best security of a free State, the right of the people to keep and bear arms shall not be infringed, but no person religiously scrupulous shall be compelled to bear arms."

"No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law."

"No person shall be subject, except in case of impeachment, to more than one trial or one punishment for the same offence, nor shall be compelled to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

"The right of the people to be secure in their person, houses, papers and effects, shall not be violated by warrants issuing, without probable cause supported by oath or affirmation, and not particularly describing the places to be searched, and the persons or things to be seized."

"The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Amendments Passed by the House of Representatives August 24, 1789

ARTICLE THE FOURTH.

The Freedom of Speech, and of the **Press**, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievances, shall not be infringed.

III. STATE RATIFICATION DEBATE

1) "The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents" *Pennsylvania Packet and Daily Advertiser*, December 18, 1787

The convention met, and the same disposition was soon manifested in considering the proposed constitution, that had been exhibited in every other stage of the business. We were prohibited by an express vote of the convention, from taking any question on the separate articles of the plan, and reduced to the necessity of adopting or rejecting in toto. — Tis true the majority permitted us to debate on each article, but restrained us from proposing amendments. — They also determined not to permit us to enter on the minutes our reasons of dissent against any of the articles, nor even on the final question our reasons of dissent against the whole. Thus situated we entered on the examination of the proposed system of government, and found it to be such as we could not adopt, without, as we conceived, surrendering up your dearest rights. We offered our objections to the convention, and opposed those parts of the plan, which, in our opinion, would be injurious to you, in the best manner we were able; **and closed our arguments by offering the following propositions to the convention.**

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6. That **the people have a right** to the freedom of speech, of writing and publishing their sentiments, **therefore**, the **freedom of the press** shall not be restrained by any law of the United States. [Emphasis Added]

2) Debates of the Virginia Constitutional Convention, June 16, 1788

Speech of George Mason

Mr. GEORGE MASON. Mr. Chairman, gentlemen say there is no new power given by this clause. Is there any thing in this Constitution which secures to the states the powers which are said to be retained? Will powers remain to the states which are not expressly guarded and reserved? I will suppose a case. Gentlemen may call it an impossible case, and suppose that Congress will act with wisdom and integrity. Among the enumerated powers, Congress are to lay and collect taxes, duties, imposts, and excises, and to pay the debts, and to provide for the general welfare and common defence; and by that clause (so often called the sweeping clause) they are to make all laws necessary to execute those laws. Now, **suppose oppressions should arise under this government, and any writer should dare to stand forth, and expose to the community at large the abuses of those powers; could not Congress, under the idea of providing for the general welfare, and under their own construction, say that this was destroying the general peace, encouraging sedition, and poisoning the minds of the people? And could they not, in order to provide against this, lay a dangerous restriction**

On the press? Might they not even bring the trial of this restriction within the ten miles square, when there is no prohibition against it? Might they not thus destroy the trial by jury? Would they not extend their implication? It appears to me that they may and will. And shall the support of our rights depend on the bounty of men whose interest it may be to oppress us? That Congress should have power to provide for the general welfare of the Union, I grant. But I wish a clause in the Constitution, with respect to all powers which are not granted, that they are retained by the states. Otherwise, the power of providing for the general welfare may be perverted to its destruction. [3 Elliot's Debates 441-42, emphasis added]

Speech of Patrick Henry

A bill of rights may be summed up in a few words. What do they tell us? -- That our rights are reserved. Why not say so? Is it because it will consume too much paper? Gentlemen's reasoning against a bill of rights does not satisfy me. Without saying which has the right side, it remains doubtful. A bill of rights is a favorite thing with the Virginians and the people of the other states likewise. It may be their prejudice, hut the government ought to suit their geniuses; otherwise, its operation will be unhappy. A bill of rights, even if its necessity be doubtful, will exclude the possibility of dispute; and, with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of a fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution; for they have, with the most cautious and enlightened circumspection, guarded those indefeasible rights which ought ever to be held sacred! The officers of Congress may come upon you now, fortified with all the terrors of paramount federal authority. Excisemen may come in multitudes; for the limitation of their numbers no man knows. They may, unless the general government be restrained by a bill of rights, or some similar restriction, go into your cellars and rooms, and search, ransack, and measure, every thing you eat, drink, and wear. They ought to be restrained Within proper bounds. **With respect to the <u>freedom of the press</u>, I need say nothing; for it is hoped that the gentlemen who shall compose Congress will take care to infringe as little as possible the rights of human nature. This will result from their integrity. They should, from prudence, abstain from violating <u>the rights of their constituents</u>. They are not, however, expressly restrained. But whether they will intermeddle with that palladium of our liberties or not, I leave you to determine.** [3 Elliot's Debates 448-49, emphasis added]

Speech of Patrick Henry

What are they to say to their constituents when they go home? "We come here to tell you that liberty is in danger, and, though the majority is in favor of it, you ought not to submit." Can any man consider, without shuddering with horror, the awful consequences of such desperate conduct? I entreat men to consider and ponder what good citizenship requires of them. I conjure them to contemplate the consequences as to themselves as well as others. They themselves will be overwhelmed in the general disorder. I did not think that the proposition of the honorable gentleman near me (Mr. White) could have met with the treatment it has. The honorable gentleman says there are only three rights stipulated in it. I thought this error might have been accounted for at first; but after he read it, the continuance of the mistake has astonished me. He has wandered from the point. [Here he read Mr. Whitens proposition.] Where in this paper do you discover that the people of Virginia are tenacious of three rights only? **It declares that all power comes from the people, and whatever is not granted by them, remains with them; that among other things remaining with them, are liberty of the press, right of conscience, and some other essential rights**. Could you devise any express form of words, by which the rights contained in the bill of rights of Virginia could be better secured or more fully comprehended? What is the paper which he offers in the form of a bill of rights? Will that better secure our rights than a declaration like this? All rights are therein declared to be **completely vested in the people**, unless expressly given away. Can there be a more pointed or position reservation? [3 Elliot's Debates 597-98, emphasis added]

3) Amendments Proposed by the Virginia Convention – June 27, 1788

That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People in some such manner as the following;

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Sixteenth, That the people have a right to freedom of speech, and of writing and publishing their Sentiments; but the freedom of the press is one of the greatest bulwarks of liberty and ought not to be violated.

4) Ratification of the Constitution by the State of New York: July 26, 1788

WE the Delegates of the People of the State of New York, duly elected and Met in Convention, having maturely considered the Constitution for the United States of America, agreed to on the seventeenth day of September, in the year One thousand Seven hundred and Eighty seven, by the Convention then assembled at Philadelphia in the Common-wealth of Pennsylvania (a Copy whereof precedes these presents) and having also seriously and deliberately considered the present situation of the United States, Do declare and make known.

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That the People have a right peaceably to assemble together to consult for their common good, or to instruct their Representatives; and that every person has a right to Petition or apply to the Legislature for redress of Grievances. — That the **Freedom of the Press ought not to be violated or restrained.** [Emphasis added.]

5) North Carolina Convention

Editor's Note: The North Carolina Convention met from July 21 through August 4, 1788, but after debate agreed only to neither ratify or reject the Constitution, but did adopt a resolution containing a Declaration of Rights and a list of proposed Amendments to the Constitution on August 2, 1788. After the Constitution had been ratified by a sufficient number of states, the members of the convention reconvened and, apparently without further debate, ratified the Constitution November 21, 1789, and announced the Declaration below, which includes the resolution of August 2, 1788.

In Convention, August 1, 1788.

Resolved, That a Declaration of Rights, asserting and securing from encroachment the great Principles of civil and religious Liberty, and the unalienable Rights of the People, together with Amendments to the most ambiguous and exceptional Parts of the said Constitution of Government, ought to be laid before Congress, and the Convention of the States that shall or may be called for the Purpose of Amending the said Constitution, for their consideration, previous to the Ratification of the Constitution aforesaid, on the part of the State of North Carolina.

DECLARATION OF RIGHTS

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16th. That the people have a right to freedom of speech, and of **writing and publishing their**

sentiments; that the freedom of the press is one of the greatest **bulwarks of Liberty**, and ought not to be violated. [Emphasis added.]

Responses to the Kentucky and Virginia Resolutions

Commonwealth of Massachusetts Response to Virginia & Kentucky Resolutions

In Senate, February 9, 1799.

The legislature of Massachusetts, having taken into serious consideration the resolutions of the state of Virginia, passed the 21st day of December last, and communicated by his excellency the governor, relative to certain supposed infractions of the Constitution of the United States, by the government thereof; and being convinced that the Federal Constitution is calculated to promote the happiness, prosperity, and safety, of the people of these United States, and to maintain that union of the several states so essential to the welfare of the whole; and being bound by solemn oath to support and defend that Constitution,--feel it unnecessary to make any professions of their attachment to it, or of their firm determination to support it against every aggression, foreign or domestic.

But they deem it their duty solemnly to declare that, while they hold sacred the principle, that consent of the people is the only pure source of just and legitimate power, they cannot admit the right of the state legislatures to denounce the administration of that government to which the people themselves, by a solemn compact, have exclusively committed their national concerns. That, although a liberal and enlightened vigilance among the people is always to the cherished, yet an unreasonable jealousy of the men of their choice; and a recurrence to measures of extremity upon groundless or trivial pretexts, have a strong tendency to destroy all national liberty at home, and to deprive the United States of the most essential advantages in relations abroad. That this legislature are persuaded that the decision of all cases in law and equity arising under the Constitution of the United States, and the construction of all laws made in pursuance thereof, are exclusively vested by the people in the judicial courts of the United States.

That the people, in that solemn compact which is declared to be the supreme law of the land, have not constituted the state legislatures the judges of the acts or measures of the federal government, but have confided to them the power of proposing such amendments of the Constitution as shall appear to them necessary to the interests, or conformable to the wishes, of the people whom they represent.

That, by this construction of the Constitution, an amicable and dispassionate remedy is pointed out for any evil which experience may prove to exist, and the peace and prosperity of the United States may be preserved without interruption.

But, should the respectable state of Virginia persist in the assumption of the right to declare the acts of the national government unconstitutional, and should she oppose successfully her force and will to those of the nation, the Constitution would be reduced to a

mere cipher, to the form and pageantry of authority, without the energy of power; every act the federal government which thwarted the views or checked the ambitious projects of a particular state, or of its leading and influential members, would be the object of opposition and of remonstrance; while the people, convulsed and confused by the conflict between two hostile jurisdictions, enjoying the protection of neither, would be wearied into a submission to some bold leader, who would establish himself on the ruins of both.

The legislature of Massachusetts, although they do not themselves claim the right, nor admit the authority of any of the state governments, to decide upon the constitutionality of the acts of the federal government, still, lest their silence should be construed into disapprobation, or at best into a doubt as to the constitutionality of the acts referred to by the state of Virginia; and as the General Assembly of Virginia has called for an expression of their sentiments,--do explicitly declare, that they consider the acts of Congress, commonly called "the Alien and Sedition Acts," not only constitutional; but expedient and necessary: That the former act respects a description of persons whose rights were not particularly contemplated in the Constitution of the United States, who are entitled only to a temporary protection while they yield a temporary allegiance--a protection which ought to be withdrawn whenever they become "dangerous to the public safety," or are found guilty of "treasonable machination" against the government: That Congress, having been especially intrusted by the people with the general defence of the nation, had not only the right, but were bound, to protect it against internal as well as external foes: That the United States, at the time of passing the Act concerning Aliens, were threatened with actual invasion; had been driven, by the unjust and ambitious conduct of the French government, into warlike preparations, expensive and burdensome; and had then, within the bosom of the country, thousands of aliens, who, we doubt not, were ready to coöperate in an external attack.

It cannot be seriously believed that the United States should have waited till the poniard had in fact been plunged. The removal of aliens is the usual preliminary of hostility, and is justified by the invariable usages of nations. Actual hostility had unhappily long been experienced, and a formal declaration of it the government had reason daily to expect. The law, therefore, was just and salutary; and no officer could with so much propriety be intrusted with the execution of it, as the one in whom the Constitution has reposed the executive power of the United States.

The Sedition Act, so called, is, in the opinion of this legislature, equally defensible. The General Assembly of Virginia, in their resolve under consideration, observe, that when that state, by its Convention, ratified the Federal Constitution, it expressly declared, "that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States," and, from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, with other states, recommended an amendment for that purpose; which amendment was, in due time, annexed to the Constitution; but they did not surely expect that the proceedings of their state Convention were to explain the amendment adopted by the Union. The words of that

amendment, on this subject, are, "Congress shall make no law abridging the freedom of speech or of the press."

The act complained of is no abridgment of the freedom of either. The genuine liberty of speech and the press is the liberty to utter and publish the truth; but **the constitutional right of the citizen to utter and publish the truth is not to be confounded with the licentiousness, in speaking and writing, that is only employed in propagating falsehood and slander. This freedom of the press has been explicitly secured by most, if not all the state constitutions; and of this provision there has been generally but one construction among enlightened men--that it is a security for the rational use, and not the abuse of the press**; of which the courts of law, the juries and people will judge this right is not infringed, but confirmed and established, by the late act of Congress. [4 Elliot's Debates 533-35, emphasis added.]

Madison's Report on the Virginia Resolutions

In the United States, the case is altogether different. **The people**, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in the United States, **the great and essential rights of the people are secured against legislative as well as executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt,** not only from previous restraint of the executive, as in Great Britain, but from legislative restraint also; and this exemption, to be effectual, must be an exemption, not only from the previous inspection of licensers, but from the Subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot, in this point of view, be the standard of its freedom in the United States.

But there is another view under which it may be necessary to consider this subject. It may be alleged that, although the security for the freedom of the press be different in Great Britain and in this country,--being a legal security only in the former, and a constitutional security in the latter,--and although there may be a further difference, in an extension of the freedom of the press, here, beyond an exemption from previous restraint, to an exemption from subsequent penalties also,--yet the actual legal freedom of the press, under the common law, must determine the degree of freedom which is meant by the terms, and which is constitutionally secured against both previous and subsequent restraints.

The committee are not unaware of the difficulty of all general questions, which may turn on the proper boundary between the liberty and licentiousness of the press. They will leave it, therefore, for consideration only, how far the difference between the nature of the British government, and the nature of the American government, and the practice under the

latter, may show the degree of rigor in the former to be inapplicable to, and not obligatory in, the latter.

The nature of governments elective, limited, and responsible, in all their branches, may well be supposed to require a greater freedom of animadversion, than might be tolerated by the genius of such a government as that of Great Britain. In the latter, it is a maxim, that the king--an hereditary, not a responsible magistrate--can do no wrong; and that the legislature, which, in two thirds of its composition, is also hereditary, not responsible, can do what it pleases. In the United States, the executive magistrates are not held to be infallible, nor the legislatures to be omnipotent; and both, being elective, are both responsible. Is it not natural and necessary, under such different circumstances, that a different degree of freedom in the use of the press should be contemplated?

Is not such an inference favored by what is observable in Great Britain itself? Notwithstanding the general doctrine of the common law, on the subject of the press, and the occasional punishment of those who use it with a freedom offensive to the government, it is well known that, with respect to the responsible measures of the government, where the reasons operating here become applicable there, the freedom exercised by the press, and protected by public opinion, far exceeds the limits prescribed by the ordinary rules of law. The ministry, who are responsible to impeachment, are at all times a animadverted on, by the press, with peculiar freedom; and during the elections for the House of Commons, the other responsible part of the government, the press is employed with as little reserve towards the candidates.

The practice in America must be entitled to much more respect. In every state, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men, of every description, which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this foundation it yet stands; and it will not be a breach, either of truth or of candor, to say that **no persons or presses are in the habit of more unrestrained animadversions on the proceedings and functionaries of the state governments, than the persons and presses most zealous in vindicating the act of Congress for punishing similar animadversions on the government of the United States.**

The last remark will not be understood as claiming for the state governments an immunity greater than they have heretofore enjoyed. Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press. It has accordingly been decided, by the practice of the states, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigor of those yielding the proper fruits. And can the wisdom of this policy be doubted by any one who reflects that to the press alone; checkered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression; who reflects that to the same beneficent source the United States owe much of the lights which

conducted them to the rank of a free and independent nation and which have improved their political system into a shape so auspicious to their happiness? Had Sedition Acts, forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press, might not the United States have been languishing, at this day, under the infirmities of a sickly Confederation? Might they not, possibly, be miserable colonies, groaning under a foreign yoke?

To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the universal expositor of American terms, which may be the same with those contained in that law. The freedom of conscience, and of religion, is found in the same instrument which asserts the freedom of the press. It will never be admitted that the meaning of the former, in the common law of England, is to limit their meaning in the United States.

Whatever weight may be allowed to these considerations, the committee do not, however, by any means intend to rest the question on them. They contend that the article of the amendment, instead of supposing in Congress a power that might be exercised over the press, provided its freedom was not abridged, meant a positive denial to Congress of any power whatever on the subject.

To demonstrate that this was the true object of the article, it will be sufficient to recall the circumstances which led to it, and to refer to the explanation accompanying the article.

When the Constitution was under the discussions which preceded its ratification, it is well known that great apprehensions were expressed by many, lest the omission of some positive exception, from the powers delegated, of certain rights, and of the freedom of the press particularly, might expose them to danger of being drawn, by construction, within some of the powers vested in Congress; more especially of the power to make all laws necessary and proper for carrying their other powers into execution. In reply to this objection, it was invariably urged to be a fundamental and characteristic principle of the Constitution, that all powers not given by it were reserved; that no powers were given beyond those enumerated in the Constitution, and such as were fairly incident to them; that the power over the rights in question, and particularly over the press, was neither among the enumerated powers, nor incident to any of them: and consequently that an exercise of any such power would be manifest usurpation. It is painful to remark how much the arguments now employed in behalf of the Sedition Act, are at variance with the reasoning which then justified the Constitution, and invited its ratification.

From this posture of the subject resulted the interesting question, in so many of the Conventions, whether the doubts and dangers ascribed to the Constitution should be removed by any amendments previous to the ratification, or be postponed, in confidence that, as far as they might be proper, they would be introduced in the form provided by the Constitution. The

latter course was adopted; and in most of the states, ratifications were followed by the propositions and instructions for rendering the Constitution more explicit, and more safe to the rights not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. The firm and very pointed manner in which it is asserted in the proceedings of the Convention of this state will hereafter be seen.

In pursuance of the wishes thus expressed, the first Congress that assembled under the Constitution proposed certain amendments, which have since, by the necessary ratifications, been made a part of it; among which amendments is the article containing, among other prohibitions on the Congress, an express declaration that they should make no law abridging the freedom of the press. Without tracing farther the evidence on this subject, it would seem scarcely possible to doubt that no power whatever over the press was supposed to be delegated by the Constitution, as it originally stood, and that the amendment was intended as a positive and absolute reservation of it.

But the evidence is still stronger. The proposition of amendments made by Congress is introduced in the following terms:--

"The conventions of a number of the states having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government will best insure the beneficent ends of its institutions."

Here is the most satisfactory and authentic proof that the several amendments proposed were to be considered as either declaratory or restrictive, and, whether the one or the other, as corresponding with the desire expressed by a number of the states, and as extending the ground of public confidence in the government.

Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of Congress, the amendment could neither be said to correspond with the desire expressed by a number of the states, nor be calculated to extend the ground of public confidence in the government.

Nay, more; the construction employed to justify the Sedition Act would exhibit a phenomenon without a parallel in the political world. It would exhibit a number of respectable states, as denying, first, that any power over the press was delegated by the Constitution; as proposing, next, that an amendment to it should explicitly declare that no such power was delegated; and, finally, as concurring in an amendment actually recognizing or delegating such a power.

Is, then, the federal government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?

The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden, by a declaratory amendment to the Constitution,--the answer must be, that the federal government is destitute of all such authority.

And might it not be asked, in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the Constitution, than that it should he left to a vague and violent construction, whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration?

Might it not be likewise asked, whether the anxious circumspection which dictated so many peculiar limitations on the general authority would be unlikely to exempt the press altogether from that authority? The peculiar magnitude of some of the powers necessarily committed to the federal government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the peculiar difficulty of circulating an adequate knowledge of them through any other channel; --will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, altogether, account for the policy of binding the hands of the federal government from touching the channel which alone can give efficacy to its responsibility to its constituents, and of leaving those who administer it to a remedy, for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties, and their properties?

But the question does not turn either on the wisdom of the Constitution or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument, by which it has appeared that a power over the press is clearly excluded from the number of powers delegated to the federal government.

3. And, in the opinion of the committee, well may it be said, as the resolution concludes with saying, that the unconstitutional power exercised over the press by the Sedition Act ought, "more than any other, to produce universal alarm; because **it is leveled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.**"

Without scrutinizing minutely into all the provisions of the Sedition Act, it will be sufficient to cite so much of section 2d as follows:-"And be it further enacted, that if any shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing, any false, scandalous, and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, with an intent to defame the said government, or either house of the said Congress, or the President, or to bring

them or either of them into contempt or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, &c.,--then such persons, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

On this part of the act, the following observations present themselves:--

1. The Constitution supposes that the President, the Congress, and each of its Houses, may not discharge their trusts, either from defect of judgment or other causes. Hence they are all made responsible to their constituents, at the returning periods of elections; and the President, who is singly intrusted with very great powers, is, as a further guard, subjected to an intermediate impeachment.

2. Should it happen, as the Constitution supposes it may happen, that either of these branches of the government may not have duly discharged its trust, it is natural and proper, that, according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.

3. Whether it has, in any case, happened that the proceedings of either or all of those branches evince such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.

4. Whenever it may have actually happened that proceedings of this sort are chargeable on all or either of the branches of the government, **it is the duty, as well as the right, of intelligent and faithful citizens to discuss and promulgate them freely – as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the Constitution. And it cannot be avoided that those who are to apply the remedy must feel, in some degree, a contempt or hatred against the transgressing party.**

5. As the act was passed on July 14, 1798, and is to be in force until March 3, 1801, it was of course that, during its continuance, two elections of the entire House of Representatives, an election of a part of the Senate, and an election of a President, were to take place.

6. That, consequently, during all these elections,--intended, by the Constitution, to preserve the purity or to purge the faults of the administration, -- the great remedial rights of the people were to be exercised, and the responsibility of their public agents to he screened, under the penalties of this act.

May it not be asked of every intelligent friend to the liberties of his country, whether the power exercised in such an act as this ought not to produce great and universal alarm?

Whether a rigid execution of such an act, in time past, would not have **repressed that information and communication among the people which is indispensable to the just exercise of their electoral rights?** And whether such an act, if made perpetual, and enforced with rigor, would not, in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it?

In answer to such questions, it has been pleaded that the writings and publications forbidden by the act are those only which are false and malicious, and intended to defame; and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected.

To those who concurred in the act, under the extraordinary belief that the option lay between the passing of such an act, and leaving in force the common law of libels, which punishes truth equally with falsehood, and submits fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the corporal punishment, which the common law also leaves to the discretion of the court. This merit of intention, however, would have been greater, if the several mitigations had not been limited to so short a period; and the apparent inconsistency would have been avoided, between justifying the act, at one time, by contrasting it with the rigors of the common law otherwise in force; and at another time, by appealing to the nature of the crisis, as requiring the temporary rigor exerted by the act.

But, whatever may have been the meritorious intentions of all or any who contributed to the Sedition Act, a very few reflections will prove that its baleful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.

In the first place, where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, in meeting a prosecution from the government with the full and formal proof necessary in a court of law.

But in the next place, it must be obvious to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinion, and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law.

Again: it is no less obvious that the intent to defame, or bring into contempt, or disrepute, or hatred,--which is made a condition of the offence created by the act,--cannot prevent its pernicious influence on the freedom of the press. For, omitting the inquiry, how far the malice of the intent is an inference of the law from the mere publication, **it is manifestly**

impossible to punish the intent to bring those who administer the government into disrepute or contempt, without striking at the right of freely discussing public characters and measures; because those who engage in such discussions must expect and intend to excite these unfavorable sentiments, so far as they may be thought to be deserved. To prohibit the intent to excite those unfavorable sentiments against those who administer the government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it, by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press as may expose them to contempt, or disrepute, or hatred, where they may deserve it, that, in exact proportion as they may deserve to be exposed, will bathe certainty and criminality of the intent to expose them, and the vigilance of prosecuting and punishing it; nor a doubt that a government thus intrenched in penal statutes against the just and natural effects of a culpable administration, will easily evade the responsibility which is essential to a faithful discharge of its duty.

Let it be recollected, lastly, that the right of electing the members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively. It has been seen that a number of important elections will take place while the act is in force although it should not be continued beyond the term to which it is limited. Should there happen, then, as is extremely probable in relation to some one or other of the branches of the government, to be competitions between those who are, and those who are not, members of the government, what will be the situations of the competitors? Not equal; because the characters of the former will be covered by the Sedition Act from animadversions exposing them to disrepute among the people, whilst the latter may be exposed to the contempt and hatred of the people without a violation of the act. **What will be the situation of the people? Not free; because they will be compelled to make their election between competitors whose pretensions they are not permitted by the act equally to examine, to discuss, and to ascertain.** And from both these situations will not those in power derive an undue advantage for continuing themselves in it; which, by impairing the right of election, endangers the blessings of the government founded on it?

It is with justice, therefore, that the General Assembly have affirmed, in the resolution, as well that **the right of freely examining public characters and measures, and of communication thereon, is the only effectual guardian of every other right, as that this particular right is levelled at by the power exercised in the Sedition Act.**

The resolution next in order is as follows:--

"That this state having, by its Convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, 'the liberty of **conscience** and of the **press** cannot be cancelled, abridged, restrained, or modified, by any authority of the United States;' and, from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other states, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which maybe fatal to the other."

To place this resolution in its just light, it will be necessary to recur to the act of ratification by Virginia, which stands in the ensuing form:--

"We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon,--DO, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby remains with them, and at their will. That, therefore, no right of any denomination can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or the House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States."

Here is an express and solemn declaration by the Convention of the state, that they ratified the Constitution in the sense that no right of any denomination can be cancelled, abridged, restrained, or modified, by the government of the United States, or any part of it, except in those instances in which power is given by the Constitution; and in the sense, particularly, "that among other essential rights, the liberty of conscience and freedom of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States."

Words could not well express, in a fuller or more forcible manner, the understanding of the Convention, that the liberty of conscience and freedom of the press were equally and completely exempted from all authority whatever of the United States.

Under an anxiety to guard more effectually these rights against every possible danger, the Convention, after ratifying the Constitution, proceeded to prefix to certain amendments

proposed by them, a declaration of rights, in which are two articles providing, the one for the liberty of conscience, the other for the freedom of speech and of the press.

Similar recommendations having proceeded from a number of other states; and Congress, as has been seen, having, in consequence thereof, and with a view to extend the ground of public confidence, proposed among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press; and Virginia having concurred in the ratifications which made them a part of the Constitution,--it will remain with a candid public to decide whether it would not mark an inconsistency and degeneracy, **if an indifference were now shown to a palpable violation of one of those rights--the freedom of the press**; and to a precedent, therein, which may be fatal to the other--the free exercise of religion.

That the precedent established by the violation of the former of these rights may, as is affirmed by the resolution, be fatal to the latter, appears to be demonstrable by a comparison of the grounds on which they respectively rest, and from the scope of reasoning by which the power of the former has been vindicated.

First, Both of these rights, the liberty of conscience, and of the press, rest equally on the original ground of not being delegated by the Constitution, and consequently withheld from the government. Any construction, therefore that would attack this original security for the one, must have the like effect on the other.

Secondly, They are both equally secured by the supplement to the Constitution being both included in the same amendment, made at the same time and by the same authority. Any construction or argument, then, which would turn the amendment into a grant or acknowledgment of power, with respect to the press, might be equally applied to the freedom of religion.

Thirdly, If it be admitted that the extent of the freedom of the press, secured by the amendment, is to be measured by the common law on this subject, the same authority may be resorted to for the standard which is to fix the extent of the "free exercise of religion." It cannot be necessary to say what this standard would--whether the common law be taken solely as the unwritten, or as varied by the written law of England.

Fourthly, If the words and phrases in the amendment are to be considered as chosen with a studied discrimination, which yields an argument for a power over the press, under the limitation that its freedom be not abridged, the same argument results from the same consideration, for a power over the exercise of religion, under the limitation that its freedom be not prohibited.

For, if Congress may regulate the freedom of the press, provided they do not abridge it, because it is said only, "they shall not abridge it," and is not said "they shall make no law

respecting it," the analogy of reasoning is conclusive, that Congress may regulate, and even abridge, the free exercise of religion, provided they do not prohibit it; because it is said only, "they shall not prohibit it;" and is not said, "they shall make no law respecting, or no law abridging it."

The General Assembly were governed by the clearest reason, then, in **considering the Sedition Act, which legislates on the freedom of the press, as establishing a precedent that may be fatal to the liberty of conscience; and it will be the duty of all, in proportion as they value the security of the latter, to take the alarm at every encroachment on the former.**

The two concluding resolutions only remain to be examined. They are in the words following:--

"That the good people of this commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other states, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness,--the General Assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur With this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken, by each, for coöperating with this states in maintaining, unimpaired, the authorities, rights, and liberties, reserved to the states respectively, or to the people.

"That the governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the legislature thereof; and that a copy be furnished to each of the senators and representatives representing this state in the Congress of the United States."

The fairness and regularity of the course of proceeding here pursued, have not protected it against objections even from sources too respectable to be disregarded.

It has been said that it belongs to the judiciary of the United States, and not the state legislatures, to declare the meaning of the Federal Constitution.

But a declaration that proceedings of the federal government are not warranted by the Constitution, is a novelty neither among the citizens nor among the legislatures of the states; nor are the citizens or the legislature of Virginia singular in the example of it.

Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the federal government, or whether made before or after judicial decisions thereon, be deemed, in any point of view, an assumption of the office of the judge. The declarations in such cases are expressions of opinion, unaccompanied with any other effect

than what they may produce on opinion, by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force, The former may lead to a change in the legislative expression of the general will--possibly to a change in the opinion of the judiciary; the latter enforces the general will, whilst that will and that opinion continue unchanged.

And if there be no impropriety in declaring the unconstitutionality of proceedings in the federal government, where can there be the impropriety of communicating the declaration to other states, and inviting their concurrence in a like declaration? What is allowable for one, must be allowable for all; and **a free communication among the states, where the Constitution imposes no restraint, is as allowable among the state governments as among other public bodies or private citizens.** This consideration derives a weight that cannot be denied to it, from the relation of the state legislatures to the federal legislature as the immediate constituents of one of its branches.

The legislatures of the states have a right also to originate amendments to the Constitution, by a concurrence of two thirds of the whole number, in applications to Congress for the purpose. When new states are to be formed by a junction of two or more states, or parts of states, the legislatures of the states concerned are, as well as Congress, to concur in the measure. The states have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases a communication among them results from the object which is common to them.

It is lastly to be seen, whether the confidence expressed by the Constitution, that the necessary and proper measures would be taken by the other states for coöperating with Virginia in maintaining the rights **reserved to the states**, or **to the people**, be in any degree liable to the objections raised against it.

If it be liable to objections, it must be because either the object or the means are objectionable.

The object, being to maintain what the Constitution has ordained, is in itself a laudable object.

The means are expressed in the terms "the necessary and proper measures." A proper object was to be pursued by the means both necessary and proper.

To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and, for this purpose, either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the terms could refer.

In the example, given by the state, of declaring the Alien and Sedition Acts to be unconstitutional, and of communicating the declaration to other states, no trace of improper means has appeared. And if the other states had concurred in making a like declaration, supported, too, by the numerous applications flowing immediately from the people, it can scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

It is no less certain that other means might have been employed which are strictly within the limits of the Constitution. The legislatures of the states might have made a direct representation to Congress, with a view to obtain a rescinding of the two offensive acts; or they might have represented to their respective senators in Congress their wish that two thirds thereof would propose an explanatory amendment to the Constitution; or two thirds of themselves, if such had been their opinion, might, by an application to Congress, have obtained a convention for the same object.

These several means, though not equally eligible in themselves, nor probably to the states, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, (the first and most obvious proceeding on the subject,) did not undertake to point out to the other states a choice among the further measures that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other, however, which may be of too much importance not to be added. It cannot be forgotten that, among the arguments addressed to those who apprehended danger to liberty from the establishment of the general government over so great a country, the appeal was emphatically made to the intermediate existence of the state governments between the people and that government; to the vigilance with which they would descry the first symptoms of usurpation, and to the promptitude with which they would sound the alarm to the public. This argument was probably not without its effect; and if it was a proper one then to recommend the establishment of a constitution, it must be a proper one now to assist in its interpretation.

The only part of the two concluding resolutions that remains to be noticed, is the repetition, in the first, of that warm affection to the Union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this state. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion can only be left to their own recollection of the part which this state has borne in the establishment of our national independence, or the establishment of our national Constitution, and in maintaining under

it the authority and laws of the Union, without a single exception of internal resistance or commotion. By recurring to the facts, they will be able to convince themselves that the representatives of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism, than their own conscientiousness, and the justice of an enlightened public; who will perceive in the resolutions themselves the strongest evidence of attachment both to the Constitution and the Union, since it is only by maintaining the different governments, and the departments within their respective limits, that the blessings of either can be perpetuated.

The extensive view of the subject, thus taken by the committee, has led them to report to the house, as the result of the whole, the following resolution:--

Resolved, That the General Assembly, having carefully and respectfully attended to the proceedings of a number of the states, in answer to the resolutions of December 21, 1798, and having accurately and fully reëxamined and reconsidered the latter, find it to be their indispensable duty to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their PROTEST against Alien and Sedition Acts, as palpable and alarming infractions of the Constitution. [4 Elliot's Debates 569-80, emphasis added.]