



Written by [Joe Wolverton, II, J.D.](#) on November 16, 2015

217th Anniversary of Signing of Kentucky Resolution of 1798: What We've Forgotten

On this day, November 16, 217 years ago, Governor James Garrard of Kentucky signed into law the first of two landmark pieces of legislation known to history as the Kentucky Resolutions.

The first bill was passed by the Kentucky state House on November 10, 1798 and by the Senate on November 13. The bill was then signed into law by Governor Garrard three days later.



As is widely known, the Kentucky Resolution of 1798 was authored by Thomas Jefferson (shown), while a companion measure introduced in the Virginia state assembly was written by his frequent collaborator, James Madison.

The measures were reactions by the two first-tier Founders to the enactment by President John Adams of the Alien and Sedition Acts during the summer of 1798.

Those pernicious pieces of legislation (four acts in all) granted the federal government new and expansive powers. The so-called Alien Acts were used by the president to declare foreign residents in the United States to be enemies of the state and to have them jailed and deported. The Sedition Acts, on the other hand, endowed the president with the power to outlaw and punish any criticism of the Adams administration considered by the executive branch to be "seditious."

The former "laws" obliterated due process while the latter violated the right of Americans to speak freely and to criticize the government, as protected by the First Amendment.

The summer before the passage of the Sedition Act, a strong-arm tactic taken by John Adams against a political adversary hit Thomas Jefferson very close to home: the prosecution of Samuel Jordan Cabell. It was one of the events that eventually compelled him to pen the principles of nullification in 1798.

Samuel Jordan Cabell was a congressman representing Thomas Jefferson's home district in Virginia. In May 1797 a grand jury returned a presentment of libel against Cabell (incidentally, as a delegate to the Virginia ratifying convention, Cabell voted against ratification of the Constitution). What was Cabell's crime? He sent a letter to constituents criticizing the administration of John Adams.

That's it. That was the sum of his seditious plot. A letter to voters in his district calling out some act of the president with which he disagreed.

For this effrontery to his authority, John Adams charged Cabell with "endeavoring at a time of real public danger to disseminate unfounded calumnies against the happy government of the United States."

That was Samuel Jordan Cabell's predicament — caught in the spokes of a federal conspiracy — until Thomas Jefferson learned of the grand jury's action. In response to the presentment handed down against his congressman, Jefferson anonymously (for even the author of the Declaration of



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Independence feared being found openly questioning the national government) petitioned the Virginia House of Delegates asking that the members of the grand jury be punished.

Upon learning of Jefferson's petition in defense of Cabell, James Monroe counseled his fellow Virginian that he would be better off making his request to Congress instead of the state government. Jefferson's response makes it clear what the Sage of Monticello thought of Monroe's understanding of the true seat of sovereignty. He knew that "the system of the General Government is to seize all doubtful ground." If the people were to sit still, would we lose everything, he warned.

Who did Jefferson believe had the right and the responsibility to protect citizens from federal abuse of power? The states. "It is of immense consequence that the States retain as complete authority as possible over their own citizens," he wrote.

From this masterfully crafted letter in response to Monroe, we see that before he penned his views on the proper constitutional relationship between state and national government in the Kentucky Resolutions, Jefferson understood, shared, and promoted the principle of state authority to check federal overreaching.

Within a month of Congress's passage of the Sedition Act, Jefferson had written the first draft of the Kentucky Resolution, declaring in its first paragraph:

That the several States composing, the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes — delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force.

Then, as he did in the Declaration of Independence, Jefferson lays out the manifold violations of the Constitution committed by the federal government.

Next, he proposed a sound solution to the tyranny:

Therefore this commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (*casus non fœderis*) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them.

Kentucky's state lawmakers and governor agreed. In fact, on November 7, 1798, Governor Garrard spoke to the members of the Kentucky Legislature, rehearsing to them the strident opposition to the Alien and Sedition Acts already enacted by many of the commonwealth's counties.

Garrard warned the representatives that Kentuckians were "utterly disaffected to the federal government." He said that Kentucky and all states retain the power to "applaud or to censure that government, when applause or censure becomes its due." He concluded his remarks by encouraging the state legislators to reaffirm their commitment to the union and to the Constitution by firmly renouncing



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“all unconstitutional laws and impolitic proceedings” of the federal government.

After reading the Kentucky and Virginia Resolutions, one wonders why in the last decade or so since the beginning of the undeclared but never ending “War on Terror,” has there been no wholesale multi-state repudiation of warrantless wiretapping, warrantless pat-downs at airports, warrantless death by drone, warrantless GPS tracking of cars, the near abolition of habeas corpus and codification of the indefinite detention of American citizens without due process of law.

Why have the states so completely and meekly abdicated their rightful position of power?

Why have they deserted their posts as sentinels set to watch for the approaching advance of federal absolutism?

Why do Americans look to Washington for cures to diseases bred by the swarms of would-be dictators that infest that former swamp?

Why do we sit idly by as congressmen, courts, and the president conspire to reduce our state governments to mere colonies of the federal empire?

Are state lawmakers and governors now so accustomed to their servitude that a benign stupor is their only reaction to the placement by the federal government of tighter and tighter chains around their necks?

Nullification, as defined by Jefferson in the Kentucky Resolution of 1798, is *the most powerful weapon against the federal assault on state sovereignty and individual liberty*. As Jefferson explained, states, as creators of the federal government, have the authority to nullify any act of the federal government that exceeds the constitutional boundaries of its delegated powers.

By applying the principles Jefferson expounded in that seminal document, states could simultaneously rebuild the walls of sovereignty once protected by the Constitution, in particular the 10th Amendment, and drive the forces of federal consolidation back to the banks of the Potomac.

Image: Thomas Jefferson



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