"We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution."

~ *Preamble to the Ohio Constitution*

This publication produced by

The Ohio Liberty Council

(740) 837-4593

The Ohio Constitution

Preamble, bill of rights and other excerpts; with commentary by Maurice Thompson of the 1851 Center for Constitutional Law.

Plus the Virginia and Kentucky resolutions of 1798 with commentary by Thomas Woods.

Ohioans who seek to protect their individual rights have largely overlooked a critical tool: the Ohio Constitution. Ohio's Constitution provides greater protection for individual rights than the federal Constitution. "Indeed, unlike the federal Bill of Rights, the Ohio Constitution begins with its own Bill of Rights, thereby emphasizing the prominence our Constitution affords to the protection of individual rights."

Contents

A History Rooted in Limited Government..................3

The Ohio Constitution..16

The States' Rights Tradition Nobody Knows............34

The Virginia Resolution of 1798.................................46

The Kentucky Resolution of 1799...............................50

The Proceedings of the Ohio Legislature in 1820
Against the Bank of the United States........................61

A History Rooted in Limited Government

by Maurice A. Thompson[1]

In May of 1850, 108 men from across the state gathered to rewrite Ohio's original constitution, adopted in 1802. This conglomerate of 37 lawyers, 35 farmers, ten editors, eight merchants, seven medical doctors, and the remainder comprised of blacksmiths, surveyors, and millers, set out with a specific purpose: "keep the power in the hands of the legislature, and then tie its hands."[2] To do this, the delegates to the 1850-1851 constitutional convention authored constitutional provisions that left behind a "self-acting Constitution."[3]

The Ohio Constitution is special because it was passed in an era where the people of Ohio believed in individual

[1] The Author is the Executive Director of the 1851 Center for Constitutional Law, a public interest law firm dedicated to protecting the constitutional rights of Ohioans, and limited government. www.OhioConstitution.org

[2] Isaac Franklin Patterson, *The Constitutions of Ohio* 17-20 (The Arthur H. Clark Co 1912). This text is considered the authoritative guide to this history of Ohio Constitutions, both by Ohio Courts and by legal search engines such as *Westlaw* (noting that "no longer could corporate and special interests raid the state treasury under the guise of securing loans and aids," nor could any man "forcibly take tribute from his fellow citizens.").

[3] Id., at 21 (noting that "the people had learned that the legislature could not always be trusted).

rights and resented the authority that attempted to interfere with such rights," and "had no use for any central authority."[4] This period in the state's history has a familiar tenor: it coincided with the average citizen's growing awareness of "the mad rush to rob the state treasury and heap up debts to be paid by generations yet unborn,"[5] and recognition that the legislature had become "the pliant tool of individual greed."[6] Much like today, this "mad rush" and "individual greed" involved bailouts and gifts to private corporations that claimed to be necessary to our way of life, particularly railroad and canal corporations.

In 1850, to put an end to such things, Ohioans called a constitutional convention.

The Purpose of a State Constitution

Controversy over government's abuse of its eminent domain power illustrates how a state constitution can offer an expanded protection of liberty. Nothing highlights the above phenomenon better than the respective stories of Suzette Kelo and Joe Horney. Ms. Kelo's own city, New

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[4] Isaac Franklin Patterson, *The Constitutions of Ohio* 17-20 (The Arthur H. Clark Co 1912). This text is considered the authoritative guide to this history of Ohio Constitutions, both by Ohio Courts and by legal search engines such as *Westlaw*.
[5] Id., p. 19.
[6] Id., p. 20.

London, Connecticut, sought to take her home from her and give it to a private developer, with a rationale of higher tax revenue.

Ms. Kelo fought back, and in 2005, her case reached the United States Supreme Court. The Court infamously held, by a 5-4 majority, that the taking of Ms. Kelo's property was for a "public purpose," because that term was to be defined broadly, so as to accord deference to the city, and because the meaning of the Fifth Amendment, which required that government could only take property if for a "public use," had eroded over time. This ruling required federal courts to permit municipalities to seize homes for private development.

Just one year later, a similar situation developed in Ohio. A private developer and the city of Norwood threatened to seize properties from homeowners who refused to sell their houses. Joe Horney and his neighbors objected, and took the case to the Ohio Supreme Court.

Though Suzette Kelo lost her home, Joe Horney did not. The Ohio Constitution made the difference: the Ohio Supreme Court ruled that eminent domain cannot be used for economic development because the Ohio Constitution protects property rights more than the United States Constitution. Specifically, the Court acknowledged that "in addressing the meaning of the public use clause in

Ohio's Constitution, we are not bound to follow the United States Supreme Court's determinations of the scope of the Public Use Clause in the federal Constitution, and we decline to find that the Takings Clause in Ohio's Constitution has the sweeping breadth that the Supreme Court attributed to the United State's Constitution's Takings Clause."[7] These seminal statements illustrate that, irrespective of what may happen outside of its borders, Ohio will remain a state that is uniquely suited not only protect, but to expand individual rights and liberties.

In fact, the United States Supreme Court has repeatedly reminded state courts that they are free to construe their state constitutions so as to provide different, and broader, protections of individual liberties than those offered by the federal Constitution.[8] The Supreme Court has further declared that "state courts' interpretations of state

[7] *Norwood v. Horney* (2006), 110 Ohio St.3d 353, 2006-Ohio-3799.

[8] *Arnold v. Cleveland*, (1993), 67 Ohio St.3d 35, 616 N.E.2d 163, citing, *e.g.,* City of Mesquite v. Aladdin's Castle, Inc. (1982), 455 U.S. 283, 293, 102 S.Ct. 1070, 1077, 71 L.Ed.2d 152, 162 (" * * * [A] state court is entirely free to read its own State's constitution more broadly than this Court reads the Federal Constitution, or to reject the mode of analysis used by this Court in favor of a different analysis of its corresponding constitutional guarantee."); and California v. Greenwood (1988), 486 U.S. 35, 43, 108 S.Ct. 1625, 1630, 100 L.Ed.2d 30, 39 ("Individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution."). See, also, Pruneyard Shopping Ctr. v. Robins (1980), 447 U.S. 74, 81, 100 S.Ct. 2035, 2040, 64 L.Ed.2d 741, 752.

constitutions are to be accepted as final, as long as the state court plainly states that its decision is based on independent and adequate state grounds."[9]

This deference echoes the philosophy of federalism. That is, the federal Constitution was intended to limit the scope and influence of federal government,[10] leaving Ohio courts free to interpret the Ohio Constitution without adherence or deference to federal court decisions -- *the United States Constitution provides a floor, not a ceiling, for individual rights enjoyed by state citizens*.[11] Put another way, "states may not deny individuals or groups the minimum level of protections mandated by the federal Constitution. However, there is no prohibition against granting individuals or groups greater or broader protections."[12]

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[9] *Arnold v. Cleveland*, (1993), 67 Ohio St.3d 35, 616 N.E.2d 163, citing Michigan v. Long (1983), 463 U.S. 1032, 1041, 103 S.Ct. 3469, 3476-3477, 77 L.Ed.2d 1201, 1214-1215.

[10] *Arnold,* supra. citing Debolt v. Ohio Life Ins. & Trust Co. (1853), 1 Ohio St. 563.

[11] PruneYard Shopping Ctr. v. Robbins (1980), 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741; State v. Brown (1992), 63 Ohio St.3d 349, 588 N.E.2d 113.

[12] *Arnold,* supra. ([W]e believe that the Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.")

During the New Deal era, President Franklin Roosevelt packed federal courts with judges who would rubber-stamp government intervention, and successfully dissuaded dissenting judges through his infamous threat to pack the Supreme Court. Accordingly, federal courts receded from their duty to fully protect constitutional rights.

Ohio responded by using its own Constitution to protect rights that had been disregarded by federal courts. In 1941 (in the wake of New Deal jurisprudence at the federal level), the Supreme Court of Ohio promised to use the Ohio Constitution to repel the federal trend towards unlimited government power:

The guaranties of sections 1, 2, and 19 of the Bill of Rights in the Constitution of Ohio are similar to those contained in the amendment to the federal Constitution referred to [in the 14th Amendment]. If in the midst of current trends toward regimentation of persons and property, this long history of parallelism seems threatened by a narrowing federal interpretation of federal guaranties, it is well to remember that Ohio is a sovereign state and that the fundamental guaranties of the Ohio Bill of Rights have undiminished vitality. Decision here may be and is bottomed on those guaranties.[13]

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[13] *Direct Plumbing Supply v. City of Dayton* (1941), 138 Ohio St. 540, 38

To protect liberty in the coming years, Ohioans may once again benefit from a devotion to the study and application of the Ohio Constitution.

The Preamble

The preamble to the Ohio Constitution expresses the defining principle of limited government: Our freedoms are inherent in our existence as human beings. This view is consistent with the Lockean theory of rights that is typically accepted as underpinning the foundations of American government. Even the Ohio Supreme Court recently acknowledged that the Ohio Constitution contains "Lockean notions."

Locke strongly influenced political thought in the American colonies, particularly among revolutionists. Thomas Jefferson eloquently encapsulated Locke's ideas in the Declaration of Independence when he wrote: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

N.E.2d 70, 137 A.L.R. 1058, 21 O.O. 422, citing *Wilson v. City of Zanesville*, supra; *Steele, Hopkins & Meredith Co. v. Miller*, 92 Ohio St. 115, 110 N.E. 648, at p. 651.

In Locke's theory, might did not make right. Natural rights belonged to all people simply because they were human beings. Under the Lockean view, our rights are bestowed upon us by our creator; not from the legislative, executive, or judicial branches. Those branches of government were established to protect freedom. "In a state of nature-- that is, in the situation in which humanity finds itself, when there is no government-- all men are equal," wrote Locke. Not equal in every respect, of course, for people have different talents, characters, and experiences, but equal in the "right that every man hath to his natural freedom, without being subjected to the will or authority of any other man." Since all are by right "equal and independent," it follows that "no one ought to harm another in his life, health, liberty, or possessions." After all, men gave up the state of nature, and entered into societies, so that their united strength could secure peace and defend property.

Section 1, Article I. The Liberty Clause

That the framers of Ohio's 1851 Constitution shared Lockean views is evident from Section 1, Article I, the first right in Ohio's Bill of Rights. When the settlers of the Northwest Territory formed our state government, with the lessons of the American Revolution still fresh in their minds, they delegated a very limited set of powers to the

General Assembly, and incorporated a Bill of Rights into the constitution to make sure that the state government would not disregard human rights as the British Parliament had done. Section 1, Article I is the Ohio Constitution's point of departure in expressing these human rights. It serves as a powerful articulation of those rights, outlining the inviolability of liberty and property in a manner more akin to the Declaration of Independence than to the federal Constitution. In fact, this "Liberty Clause" has no counterpart in the federal Constitution. It is, or at least rightfully should be, "the starting point for all questions of individual rights in Ohio."

Section 20, Article I. Residual and Undelegated Rights

Just as the Ohio Constitution's Bill of Rights begins with a sweeping statement of general liberty, it ends with one. The Founders' placement of Section 20, Article I into the 1851 Constitution fundamentally evidences their commitment to the idea that the Ohio Constitution was devised to protect liberty. The clause draws on the wisdom of James Madison, who drafted Section 20's federal counterpart, the 9th Amendment:

Section 20 effectively serves Ohio as the functional equivalent of both the Ninth and Tenth Amendments to the federal constitution—it expands individual rights, while

limiting government conduct to delegated activities only. In this sense, Section 20, in conjunction with the Liberty Clause of Section 1, create a presumptive sphere of individual liberty, and a presumptive limitation on governmental authority.

Greater Protections than the U.S. Constitution

When it comes time to limit government, the text of the Ohio Constitution reflects the intentions of its 1851 ratifiers, in that its limitations on government power far exceed those contained in the U.S. Constitution.

While the Preamble to the U.S. Constitution embodies a delegation of authority from "we the people" to the federal government, Section 2, Article I of the Ohio Constitution maintains "all political power is inherent in the people. . . and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary."

Whereas after our federal government passes a statute, the people are typically left with only political checks, in the Ohio Constitution, Ohioans "reserve the power to adopt or reject any law . . . and independent of the General Assembly, to propose amendments to the constitution and to adopt or reject the same at the polls" (Section 1, Article II).

Whereas our federal government doles out special favors

as a matter of course, the Ohio Constitution prohibits such things, with affirmations that "no special privileges or immunities shall ever be granted" (Section 2, Article I); "all laws, of a general nature, shall have uniform operation throughout the state" (Section 26, Article II); and "no bill shall contain more than one subject" (Section 15(D), Article II).

While our federal government has seen fit to "bail out" private banks and automakers with impunity, rendering taxpayers involuntary shareholders in the process, the Ohio Constitution maintains that "[t]he credit of the state shall not in any manner be given or loaned to, or in aid of, any individual, association, or corporation whatever" (Section 4, Article VII); and "the state shall never assume the debts of any county, city, town, or township, or of any corporation whatever" (Section 5, Article VIII).

Whereas federal legislation of several thousand pages is often ushered through Congress within hours of the addition of considerable amendments, leaving many representatives to vote without having read the bill, the Ohio Constitution demands that "[e]very bill shall be considered by each house on three different days" (Section 15(C), Article II).

Whereas undisciplined federal government spending results in debt that many believe will saddle their

grandchildren, the Ohio Constitution provides that while "the state may contract debts. . . the aggregate amount of such debts, direct or contingent. . . shall never exceed $750,000" (Section 1, Article VIII). And while the federal government attempts to pay these debts through the casual enlistment of its central bank's often-voracious increases in the money supply, the Ohio Constitution forbids such an outright arrangement: "[n]o act of the General Assembly, authorizing association with banking powers, shall take effect until it shall be submitted to the people" (Section 7, Article XIII).

While there is no limitation on the rate to which the federal government may tax, or the purpose for which that tax may be used, the Ohio Constitution requires that property taxes be based on "true value," and be capped at the rate of one percent of that true value, unless otherwise voted by the people themselves (Section 2, Article XII). Meanwhile, as federal payroll taxes are applied toward any end whatsoever, the Ohio Constitution states "every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied" (Section 5, Article XII).

While federal courts have rendered the Fifth Amendment's Takings Clause an inconsistent protection at best, and perhaps a nullity at worst, the Ohio Constitution still maintains that "[p]rivate property shall ever be held

inviolate. . ." (Section 19, Article I). Further, Ohio Courts recognize the broader language of Section 19, and therefore prohibit the taking of private property for anything other than "public use," in the strictest sense of that term.

Finally, none of these textual protections of liberty are meaningful if Ohio's courts ignore them. To guard against such a result, the Ohio Constitution provides a check - - an educated populace may remove judges who defy its plain meaning: the chief justices and justice of the Supreme Court, the judges of the courts of appeals, and the judges of the courts of common pleas "shall be elected" (Section 6(A)(1), (2), and (3), Article IV). This amounts to yet another contrast with the U.S. Constitution, where there is little recourse against lifetime-appointed judges who defy the plain meaning of that Constitution's textual guarantees.

However, this contrast, like all of the others, only maintains vitality to the extent that Ohioans read, understand, and apply the meaning of this Constitution, and then vigilantly hold their government accountable.

The Ohio Constitution

Preamble, Bill of Rights, and Other Excerpts

For the full text of the Ohio Constitution visit www.legislature.state.oh.us/constitution.cfm

Preamble We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

Article 1 - Bill of Rights

§ 01 Inalienable Rights (1851)

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

§ 02 Right to alter, reform, or abolish government, and repeal special privileges (1851)

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

§ 03 Right to assemble (1851)

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

§ 04 Bearing arms; standing armies; military powers (1851)

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

§ 05 Trial by jury (1851, amended 1912)

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

(As amended September 3, 1912.)

§ 06 Slavery and involuntary servitude (1851)

There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

§ 07 Rights of conscience; education; the necessity of religion and knowledge (1851)

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own

conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

§ **08** Writ of habeas corpus (1851)

The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

§ **09** Bail; cruel and unusual punishments

All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person

poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

(As amended January 1, 1998.)

§ **10** Trial for crimes; witness (1851; amended 1912)
Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury

and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(As amended September 3, 1912.)

§ **10a** Rights of victims of crime

Victims of criminal offenses shall be accorded fairness,

dignity, and respect in the criminal justice process, and, as the general assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process. This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this constitution, and does not create any cause of action for compensation or damages against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(Adopted November 8, 1994)

§ 11 Freedom of speech; of the press; of libels (1851)

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

§ **12** Transportation, etc. for crime (1851)
No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

§ **13** Quartering troops (1851)
No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

§ **14** Search warrants and general warrants (1851)
The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

§ **15** No imprisonment for debt (1851)
No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

§ **16** Redress in courts (1851, amended 1912)
All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the

state, in such courts and in such manner, as may be provided by law.

(As amended September 3, 1912.)

§ **17** Hereditary privileges, etc. (1851)
No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this state.

§ **18** Suspension of laws (1851)
No power of suspending laws shall ever be exercised, except by the general assembly.

§ **19** Inviolability of private property (1851)
Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

§ **19a** Damages for wrongful death (1912)
The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or

default of another, shall not be limited by law.

(Adopted September 3, 1912.)

§ **20** Powers reserved to the people (1851)

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

Article II – Legislative

§ **01a** The initiative

The first aforestated power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition.

§ **01b** Initiative, continued

When at any time, not less than ten days prior to the

commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent

to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in 1a and 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the

electors shall be subject to the veto of the governor.

§ 01c The referendum

The second aforestated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If,

however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

§ 15 How bill shall be passed

(A) The general assembly shall enact no law except by bill, and no bill shall be passed without the concurrence of a majority of the members elected to each house. Bills may originate in either house, but may be altered, amended, or rejected in the other.

(B) The style of the laws of this state shall be, "be it enacted by the general assembly of the state of Ohio."

(C) Every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement, and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. No bill may be passed until the bill has been reproduced and distributed to members of the house in which it is pending and every amendment been made available upon a member's request.

(D) No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the

section or sections amended shall be repealed.

(E) Every bill which has passed both houses of the general assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for passage have been met and shall be presented forthwith to the governor for his approval.

(F) Every joint resolution which has been adopted in both houses of the general assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for adoption have been met and shall forthwith be filed with the secretary of state.

§ **26** What laws to have a uniform operation

All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

Article IV - Judicial

§ **06** Election of judges; compensation

(A)(1) The chief justice and the justices of the Supreme Court shall be elected by the electors of the state at large, for terms of not less than six years.

(2) The judges of the courts of appeals shall be elected by

the electors of their respective appellate districts, for terms of not less than six years.

(3) The judges of the courts of common pleas and the divisions thereof shall be elected by the electors of the counties, districts, or, as may be provided by law, other subdivisions, in which their respective courts are located, for terms of not less than six years, and each judge of a court of common pleas or division thereof shall reside during his term of office in the county, district, or subdivision in which his court is located.

Article XII – Finance and Taxation

§ 02 Limitation on tax rate; exemption

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are

surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

§ **05** Levying of taxes

No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.

Article VIII – Public Debt and Public Works

§ **01** Public debt

The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise

provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

§ **04** Credit of state; the state shall not become joint owner or stockholder

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

§ **05** No assumption of debts by the state

The state shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war.

Article XIII – Corporations

§ **07** Associations with banking power

No act of the General Assembly, authorizing associations with banking powers, shall take effect until it shall be

submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election.

The States' Rights Tradition Nobody Knows

by Thomas E. Woods, Jr.

In 1798, the legislatures of Virginia and Kentucky approved resolutions that affirmed the states' right to resist federal encroachments on their powers. If the federal government has the exclusive right to judge the extent of its own powers, warned the resolutions' authors (James Madison and Thomas Jefferson, respectively), it will continue to grow – regardless of elections, the separation of powers, and other much-touted limits on government power. The Virginia Resolutions spoke of the states' right to "interpose" between the federal government and the people of the state; the Kentucky Resolutions (in a 1799 follow-up to the original resolutions) used the term "nullification" – the states, they said, could nullify unconstitutional federal laws.[1]

These ideas became known as the "Principles of '98." Their subsequent impact on American history, according to the standard narrative, was pretty much confined to South Carolina's nullification of the tariffs of 1828 and 1832. That is demonstrably false, as I shall show below. But it isn't just that these ideas are neglected in the usual telling; as I discovered not long ago, these principles are positively *despised* by neoconservatives like Max Boot and

the leftists at the *New York Times* (or do I repeat myself?). Neither one, in their reviews of The Politically Incorrect Guide to American History, so much as mentioned Jefferson's name in connection with the Principles of '98. It is hard to view such an omission as anything but deliberate. To mention Jefferson's name is to lend legitimacy to ideas that nationalists of left and right alike detest, so they simply leave him out of the picture.

Jefferson once wrote, "When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated." To resist this centralizing trend, the sage of Monticello was convinced, the states needed some kind of corporate defense mechanism.

Our betters have already told us that the only reason anyone might wish to vindicate the cause of states' rights is for the purpose of defending slavery or upholding some lesser form of local oppression. What follows is the tip of the iceberg of the history that, by what I shall assume is an entirely well-meaning and innocent oversight, these great scholars of American history consistently fail to acknowledge.

The Embargo of 1807–1809

In retaliation against British and French depredations against American neutral rights on the seas, the federal government under Thomas Jefferson in late 1807 declared an embargo, according to which no American ship could depart for any foreign port anywhere in the world. (The rationale was that trade with the U.S. was a key ingredient in British and French prosperity, and thus that economic pressure might persuade them to change their policies.) The U.S. Navy was granted the power to stop and search any ship within U.S. jurisdiction if its officers had "reason to suspect" the ship was violating the embargo. Likewise, customs officials were "authorized to detain any vessel… whenever in their opinions the intention is to violate or evade any provisions of the acts laying an embargo." Such standards fell far short of the "probable cause" requirement that generally governed the issuing of warrants for searches.

New England was especially hard hit by the embargo because so many of its people were employed either directly in foreign commerce or in proximate fields, and it was there that opposition to the policy was concentrated. In 1808 a federal district court, in the case of *United States v. The William*, ruled the embargo constitutional. The Massachusetts legislature begged to differ. Both houses

declared the embargo acts to be "in many particulars, unjust, oppressive, and unconstitutional." "While this State maintains its sovereignty and independence, all the citizens can find protection against outrage and injustice in the strong arm of the State government," they said. The embargo, furthermore, was "not legally binding on the citizens of this State."

In the midst of the crisis, a New York congressman, giving his explicit sanction to the Virginia and Kentucky Resolutions, said, "Why should not Massachusetts take the same stand, when she thinks herself about to be destroyed?" "If any State Legislature had believed the Act to be unconstitutional," asked a Connecticut congressman, "would it not have been their duty not to comply?" He added that the state legislatures, "whose members are sworn to support the Constitution, may refuse assistance, aid or cooperation" if they regarded an act as unconstitutional, and so could state officials.

Connecticut governor Jonathan Trumbull shared these views. "Whenever our national legislature is led to overleap the prescribed bounds of their constitutional powers, on the State Legislatures, in great emergencies, devolves the arduous task – it is their right – it becomes their duty, to interpose their protecting shield between the right and liberty of the people, and the assumed power of the

General Government." Connecticut's General Assembly passed a resolution that, among other things, directed all executive officials in the State not to afford "any official aid or co-operation in the execution of the act aforesaid."

The General Assembly furthermore declared: "Resolved, that to preserve the Union, and support the Constitution of the United States, it becomes the duty of the Legislatures of the States, in such a crisis of affairs, vigilantly to watch over, and vigorously to maintain, the powers not delegated to the United States, but reserved to the States respectively, or to the people; and that a due regard to this duty, will not permit this Assembly to assist, or concur in giving effect to the aforesaid unconstitutional act, passed, to enforce the embargo."

Rhode Island, when the embargo was at its end, declared that her legislature possessed the duty "to interpose for the purpose of protecting [the people of Rhode Island] from the ruinous inflictions of usurped and unconstitutional power."

Interposition – the language of the Principles of '98.

The War of 1812

During the War of 1812, Massachusetts and Connecticut were ordered to call out their respective militias for the purpose of defending the coast. The call derived from the

federal government's authority to call the state militias into service "to execute the Laws of the Union, suppress Insurrections and repel invasions."

Massachusetts Governor Caleb Strong, however, maintained that the states reserved the power to determine whether any of these three conditions held. At Strong's request, the Massachusetts Supreme Court offered its opinion. That court agreed with the governor: "As this power is not delegated to the United States by the Federal Constitution, nor prohibited by it to the states, it is reserved to the states, respectively; and from the nature of the power, it must be exercised by those with whom the states have respectively entrusted the chief command of the militia."

Connecticut followed suit:

> It must not be forgotten, that the state of Connecticut is a FREE SOVEREIGN and INDEPENDENT state; that the United States are a *confederacy* of states; that we are a confederated and not a consolidated republic. The governor of this state is under a high and solemn obligation, "*to maintain the lawful rights and privileges thereof, as a sovereign, free and independent state*," as he is "*to support the constitution of the United States*," and the

obligation to support the latter, imposes an additional obligation to support the former.

Thus if the militia were called out for any purpose but those listed in the Constitution, it "would be not only the height of injustice to the militia…but a violation of the constitution and laws of this state, and of the United States." The president had no authority to call upon the militia of Connecticut "to assist in carrying on an offensive war" (some New Englanders were convinced that the war was aimed primarily at the annexation of Canada). Connecticut would not comply with the federal order until New England should be threatened "by an actual invasion of any portion of our territory."

From a political point of view, the War of 1812 would wind up essentially a draw, and the Treaty of Ghent signed in December 1814 reestablished the *status quo ante bellum*. From a military point of view, though, it was a British rout. As a result, Congress seriously entertained the prospect of military conscription.

Here is where Daniel Webster, so often a villain in American history, emerges as positively heroic. With his usual eloquence he spoke out against military conscription as incompatible with both the Constitution and the principles of a free society. "Where is it written in the

Constitution," he asked, "in what article or section is it contained, that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it?" (Predictable quarters can now be expected to call Daniel Webster – than whom there was no greater or more eloquent defender of the federal Union – an unpatriotic, America-hating leftist.)

What did Webster think should be done if the conscription bill should pass? In that case, he said, it would be "the solemn duty of the State Governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power." Interposition – the language, once again, of the great resolutions of ’98.

In December 1813 a new and more obnoxious embargo than that of 1807-1809 was instituted. The Massachusetts legislature found itself inundated with petitions and statements of grievances. A special committee, headed by William Lloyd, was established to devise a response to the situation. The Massachusetts General Court approved the committee’s report early the following year. It read, in part:

> A power to regulate commerce is abused, when employed to destroy it; and a manifest and voluntary abuse of power sanctions the right of resistance, as much as a direct and

> palpable usurpation. The sovereignty reserved to the states, was reserved to protect the citizens from acts of violence by the United States, as well as for purposes of domestic regulation. We spurn the idea that the free, sovereign and independent State of Massachusetts is reduced to a mere municipal corporation, without power to protect its people, and to defend them from oppression, from whatever quarter it comes. Whenever the national compact is violated, and the citizens of this State are oppressed by cruel and unauthorized laws, this Legislature is bound to interpose its power, and wrest from the oppressor its victim.

Need we point out yet again the language of the Principles of '98?

Fugitive Slave Laws

At a time when the federal government was using its police powers to enforce the capture of runaway slaves, it was the state governments, expressly recalling the Principles of '98, that determined to resist. (See Mark Thornton on how the federal government socialized the costs of slaveholding.) Although the Constitution did, unfortunately, contain a

clause calling for the return of runaways, some Northern states resorted to the argument that that document spelled out no particular enforcement mechanism behind that requirement.

In addition, the Fugitive Slave Act of 1850 was especially obnoxious and repugnant. It placed all fugitive slave cases under federal jurisdiction. Fugitives were denied jury trials and the right to testify in their own defense. Special commissioners were empowered to determine the guilt or innocence of the accused, and according to the terms of the act were to be paid $10 if they found the accused fugitive guilty and only $5 if they found him innocent. Still more obnoxious features included the right to force bystanders to participate in the capture of a fugitive and stiff penalties for sheltering or obstructing the capture of a fugitive.

Several Northern states simply refused to comply. Especially interesting is this 1859 statement of the Wisconsin Supreme Court – taken, in parts word for word, from the Kentucky Resolutions of 1798:

> Resolved, That the government formed by the Constitution of the United States was not the exclusive or final judge of the extent of the powers delegated to itself; but that, as in all other cases of compact among parties

having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

Resolved, that the principle and construction contended for by the party which now rules in the councils of the nation, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism, since the *discretion* of those who administer the government, and not the *Constitution*, would be the measure of their powers; that the several states which formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infractions; and that a positive defiance of those sovereignties, of all unauthorized acts done or attempted to be done under color of that instrument, is the rightful remedy.

Many more examples of the ongoing relevance of the Principles of '98 could be cited. In the midst of a dispute with the federal government over the Second Bank of the United States, the Ohio legislature voted to affirm the

Principles of ’98. In 1825, Kentucky’s governor said: "When the general government encroaches upon the rights of the State, is it a safe principle to admit that a portion of the encroaching power shall have the right to determine finally whether an encroachment has been made or not? In fact, most of the encroachments made by the general government flow through the Supreme Court itself, the very tribunal which claims to be the final arbiter of all such disputes. What chance for justice have the States when the usurpers of their rights are made their judges? Just as much as individuals when judged by their oppressors. It is therefore believed to be the right, as it may hereafter become the duty of the State governments, to protect themselves from encroachments, and their citizens from oppression, by refusing obedience to the unconstitutional mandates of the federal judges."

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The Virginia Resolution of 1798

Resolved, That the General Assembly of Virginia, doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this state, against every aggression, either foreign or domestic; and that they will support the government of the United States in all measures warranted by the former.

That this assembly most solemnly declares a warm attachment to the union of the states, to maintain which it pledges its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them, can alone secure its existence and the public happiness.

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the

right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights and liberties, appertaining to them.

That the General Assembly doth also express its deep regret, that a spirit has, in sundry instances, been manifested by the federal government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that implications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of power in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the states, by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States, into an absolute, or, at best, a mixed monarchy.

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the "Alien and Sedition Acts," passed at the last session of Congress; the first of which exercises a power no where delegated

to the federal government, and which by uniting legislative and judicial powers to those of executive, subverts the general principles of free government; as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto,— a power which more than any other, ought to produce universal alarm, because it is levelled 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.

That this state having, by its Convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, "the liberty of conscience and 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 reproachable 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 may be fatal to the other.

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 to 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 state, 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 Kentucky Resolution of 1799 (abridged)

1. *Resolved*, That the several states composing the United States of America are not united on the principle of unlimited submission to their general government; but… 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; that to this compact each state acceded as a state, and is an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, *each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.*

2. *Resolved*, That the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes, whatsoever; and it being true, as a general

principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people,"—therefore,…(all other their acts which assume to create, define, or punish crimes other than those so enumerated in the Constitution,) are altogether void, and of no force; and that the power to create, define, and punish, such other crimes is reserved, and of right appertains, solely and exclusively, to the respective states, each within its own territory.

3. *Resolved*, That it is true, as a general principle, and is also expressly declared by one of the amendments to the Constitution, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;" and that, no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the states, or the people; that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech, and of the press, may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from

their use, should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgment, by the United States, of the freedom of religious principles and exercises, and retained to themselves the right of protecting the same, as this, stated by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference; and that, in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding, in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violated either throws down the sanctuary which covers the others,—and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That therefore the act of Congress of the United States, passed on the 14th of July, 1798, entitled "An Act in Addition to the Act entitled 'An Act for the Punishment of certain Crimes against the United States,'" which does abridge the freedom of the press, is not law, but is altogether void, and of no force.

4. *Resolved*, That alien friends are under the jurisdiction and protection of the laws of the state wherein they are;…the act of the Congress of the United States, passed on the 22d day of July, 1798, entitled "An Act concerning Aliens," which assumes powers over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

5. *Resolved*. That, in addition to the general principle, as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution, has declared, "that the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808." That this commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them, when migrated, is equivalent to a prohibition of their migration, and is, therefore, contrary to the said provision of the Constitution, and *void*.

6. *Resolved*, That the imprisonment of a person under the protection of the laws of this commonwealth, on his failure to obey the simple order of the President to depart

out of the United States, as is undertaken by the said act entitled, "An Act concerning Aliens," is contrary to the Constitution, one amendment in which has provided, that "no person shall be deprived of liberty without due progress of law;" and that another having provided, "that, in all criminal prosecutions, the accused shall enjoy the right of a public trial by an impartial jury, to be informed as to the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defence," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, without defence, without counsel—contrary to these provisions also of the Constitution—is therefore not law, but utterly void, and of no force.

That transferring the power of judging any person who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in the courts, the judges of which shall hold their offices during good behavior,"

and that the said act is void for that reason also; and it is further to be noted that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative on all legislative powers.

7. *Resolved*, That the construction applied by the general government…to those parts of the Constitution of the United States which delegate to Congress power to lay and collect taxes, duties, imposts, excises; to pay the debts, and provide for the common defence and general welfare, of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or any department thereof, goes to the destruction of all limits prescribed to their powers by the Constitution; that words meant by the instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part to be taken as to destroy the whole residue of the instrument; that the proceedings of the general government, under color of those articles, will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8. *Resolved*, That the preceding resolutions be transmitted to the senators and representatives in Congress from this commonwealth,...and to use their best endeavors to procure,…a repeal of the aforesaid unconstitutional and obnoxious acts.

9. *Resolved*, lastly,…that, faithful to that [late federal] compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation; that it does also believe, that, to take from the states all the powers of self-government and transfer them to a general and consolidated government, without regard to the special government, and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states; and that, 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, if the acts before specified should stand, these conclusions would flow from them—that the general government may place any act they think proper on the list of crimes, and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them; that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the

sentence, his officer the executioner, and his breast the sole record of the transaction; that a very numerous and valuable description of the inhabitants of these states, being, by this precedent, reduced, as outlaws, to absolute dominion of one man, and the barriers of the Constitution thus swept from us all, no rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation, or other grievous punishment, the minority of the same body, the legislatures, judges, governors, and counsellors of the states, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the states and people, or who for other causes, good or bad, may be obnoxious to the view, or marked by the suspicions, of the President, or be thought dangerous to his or their elections, or other interests, public or personal; that the friendless alien has been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather has already followed; for already has a Sedition Act marked him as a prey: That these and successive acts of the same character, unless arrested on the threshold, may tend to drive these states into revolution and blood, and will furnish new calumnies against republican governments, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron; that it would be a

dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights; that confidence is every where the parent of despotism; free government is founded in jealousy, and not in confidence; it is jealousy, and not confidence, which prescribes limited constitutions to bind down those whom we are obliged to trust with power; that our Constitution has accordingly fixed the limits to which, and no farther, our confidence may go; and let the honest advocate of confidence read the Alien and Sedition Acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits; let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted, over the friendly strangers, to whom the mild spirit of our country and its laws had pledged hospitality and protection; that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice.

In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution. That this commonwealth does therefore call on its co-states for an expression of

their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the federal compact. And it doubts not that their sense will be so announced as to prove their attachment to limited government, whether general or particular, and that the rights and liberties of their co-states will be exposed to no dangers by remaining embarked on a common bottom with their own; but they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these states of all powers whatsoever. That they will view this as seizing the rights of the states, and consolidating them in the hands of the general government, with a power assumed to bind the states, not merely in cases made federal, but in all cases whatsoever, by laws made, not with their consent, but by others against their consent; that this would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority; and that the co-states, recurring to their natural rights not made federal, will concur in declaring these void and of no force, and will each unite with this commonwealth in requesting their

repeal at the next session of Congress.

The Proceedings of the Ohio Legislature in 1820 Against the Bank of the United States

Resolved by the General Assembly of the State of Ohio, That in respect to the powers of the governments of the several States which compose the American Union, and the powers of the Federal Government, this General Assembly do recognize and approve the doctrines asserted by the Legislatures of Virginia and Kentucky, in their resolutions of November and December, 1798, and January 1800 – and do consider that their principles have been recognized and adopted by a majority of the America people.

On this subject, the Report which precedes the Resolutions, contains the following words: "The States and the People recognized and affirmed the Doctrines of Kentucky and Virginia, by effecting a total change in the administration of the Federal Government. In the pardon of Calendar, convicted under the Sedition Law, and in the remittance of his fine, the new Administration unequivocally recognized the decision and the authority of the States and of the people. Thus has the question whether the Federal Courts are the sole expositors of the Constitution of the United States, in the last resort or whether the States "as in all other cases of compact among

parties having no common judge," have an equal right to interpret that Constitution for themselves, where their sovereign rights are involved, been decided against the pretension of the federal judges by the people themselves, the true source of legitimate power."

Resolutions against the Jurisdiction of the United States Court in the case of the Bank, and all cases involving political rights; and against the powers of the General Government, establishing the Bank in these words:

Resolved further, That this General Assembly do protest against the doctrines of the Federal Circuit Court, sitting in this State, avowed and maintained in their proceedings against the officers of the State, upon account of their official Acts, as being in direct violation of the 11th amendment to the Constitution of the United States.

Resolved *further*, That this General Assembly do protest against the doctrine that the political rights of the separate States that compose the American Union, and their powers as sovereign states, may be settled and determined in the Supreme Court of the United States, so as to conclude and bind them in cases contrived between individuals, and where are, no one of them, parties direct.