

# Jefferson's Draft

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[before 4 Oct. 1798]

1. Resolved that the several states composing the US. of America are not united on the principle of unlimited submission to their general government; but that, by a compact under the style & title of a Constitution for the US. 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, it's acts are unauthorized, void, & of no force.

that to this compact each state acceded as a state, and is an integral party, it's co-states forming, as to itself, the other party.

that the 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 it's discretion, & not the constitution the measure of it's 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 & measure of redress.

2. Resolved that, the Constitution of the US. having delegated to Congress a power to punish treason, counterfeiting the securities & current coin of the US. piracies & felonies committed on the high seas, and offences against the law of nations, & 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 US. by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people,' therefore, the act of Congress passed on the 14th day of July 1798. and intituled 'an Act in addition to the act intituled an Act for the punishment of certain crimes against the US.' as also the act passed by them on the      day of June 1798. intituled 'an Act to punish frauds committed on the bank of the US.' [and 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, & punish such other crimes is reserved, and of right appurts 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 US. 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 US. by the constitution, nor prohibited by it to the states, all lawful powers respecting the same did of right remain, & 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 abridgement by the US. of the freedom of

religious opinions and exercises, & retained to themselves the right of protecting the same, as this state, by a law passed on the general demand of it's citizens, had already protected them, from all human restraint or interference: And that in addition to this general principle & express declaration, another & 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 & under the same words the freedom of religion, of speech & of the press. insomuch that whatever violates either throws down the sanctuary which covers the others, and that[5] libels, falsehood and defamation equally with heresy & false religion are withheld from the cognisance of federal tribunals; that therefore the act of the Congress of the US. passed on the 14th. day of July 1798. entitled 'an act in addition to the act entitled an act for the punishment of certain crimes against the US.' 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; that no power over them has been delegated to the US. nor prohibited to the individual states distinct from their power over citizens: 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 US. by the constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people,' the act of the Congress of the US. passed on the 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 & 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 US. as is undertaken by the said act entitled 'an act concerning Aliens' is contrary to the constitution, one Amendment to which has provided that 'no person shall be deprived of liberty without due process of law.' and that another having provided that 'in all criminal prosecutions the accused shall enjoy the right to a public trial, by an impartial jury, to be informed of the nature & cause of the accusation to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, & to have the assistance of counsel for his defence' the same act undertaking to authorize the President to remove a person out of the US. who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without hearing witnesses in his favor, without defence, without counsel, is contrary to these provisions also of the constitution, is therefore not law, but utterly void & of no force.

that transferring the power of judging any person who is under the protection of the law, from the courts to the President of the US. as is undertaken by the same act concerning Aliens, is against the article of the constitution which provides that 'the judicial power of the US. shall be vested in courts the judges of which shall hold their offices during good behavior,' & that the sd 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 negative on all the Legislative powers.

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

8. Resolved that a committee of conference & correspondence be appointed, who shall have in charge to communicate the preceding resolutions to the legislatures of the several states, to assure them that this commonwealth continues in the same esteem for their friendship & union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, for specified national purposes, and particularly for those specified in their late federal compact, to be friendly to the peace, happiness and prosperity of all the states: that faithful to that compact, according to the plain intent & meaning in which it was understood & 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, & transfer them to a general & consolidated government, without regard to the special delegations & 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 it's co-states are, to submit to undelegated & 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 foederis] 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: that nevertheless this commonwealth, from motives of regard & respect for its co-states has wished to communicate with them on the subject; that with them alone it is proper to communicate, they alone being parties to the compact, & solely authorised to judge in the last resort of the powers exercised under it; Congress being not a party, but merely the creature of the compact, & subject, as to it's assumptions of power, to the final judgment of those by whom & for whose use itself and its powers were all created and modified: that if those

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 cognisable by them; that they may transfer it's cognisance to the President, or any other person, who may himself be the accuser, counsel, judge & jury, whose *suspicions* may be the evidence, his *order* the sentence, his officer the executioner, & his breast the sole record of the transaction: that a very numerous & valuable description of the inhabitants of these states being, by this precedent reduced as Outlaws to the absolute dominion of one man, and the barrier of the constitution thus swept away for us all, no rampart now remains against the passions and the power of a majority in Congress, to protect from a like exportation or other more grievous punishment, the Minority of the same body, the legislatures, judges, governors, & 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 views, 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 indeed 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 it's prey: that these & successive acts of the same character, unless arrested at the threshold necessarily drive these states into revolution and blood, and will furnish new calumnies against republican government, 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 & 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 further, our confidence may go: and let the honest advocate of confidence read the Alien & 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 & it's laws had pledged hospitality & 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 & substance of law & justice: in questions of power then, let no more be heard 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, authorised by the federal compact? and it doubts not that their sense will be so enounced as to prove their attachment unaltered to limited government whether general or particular; & that the rights & liberties of their co-states will be exposed to no dangers by remaining embarked in a common bottom with their own: that they will concur with this comm. in considering the said acts as so palpably against the constn as to amount to an undisguised declarn that that compact is not meant to be the measure of the powers of the genl. govm't, 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 & consolidating them in the hands of the genl govm't with a power assumed to bind the states (not merely in the 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 govmt we have chosen, & to live under one deriving it's powers from it's own will & not from our authority, and that the costates, recurring to their natural right in cases not made federal, will concur in declaring these acts void & of no force & will each take measures of it's own for providing that neither these acts nor any others of the genl. government not plainly & intentionally authorised by the constn shall be exercised within their respective territories.

9. That the said committee be authorised to communicate, by writing or personal conferences, at any times or places whatever, with any person or persons who may be appointed by any one or more of the co-states to correspond or confer with them; & that they lay their proceedings before the next session of assembly: that the members of the said committee, while acting within the state, have the same allowance as the members of the General assembly, and while acting without the commonwealth, the same as members of Congress: and that the Treasurer be authorised, on warrants from the Governor, to advance them monies on account for the said services