

Launching the New Ship of State, 1789–1800

Hamilton was honest as a man, but, as a politician, believed in the necessity of either force or corruption to govern men.

Thomas Jefferson, 1811

[Jefferson is] a man of profound ambition and violent passions.

Alexander Hamilton, 1792

Prologue: When Washington took the presidential oath at New York, the temporary capital, he was determined to get the ship of state off on an even keel. He therefore “packed” the new offices with federalists, as the supporters of the Constitution were called. The one conspicuous exception was the secretary of state, Thomas Jefferson. As a vigilant champion of states’ rights, he was an antifederalist, or a foe of a powerful central government. One result was an inevitable clash between him and Secretary of the Treasury Alexander Hamilton, a staunch federalist, over foreign affairs and fiscal policy. From these heated differences there emerged, about 1793, two political parties: the Hamiltonian Federalists and the Jeffersonian Democratic-Republicans. Jefferson naturally opposed the Hamiltonian plans for assuming the state debts, establishing the Bank of the United States, and levying an excise tax on whiskey. In his eyes, all these schemes would increase the power of the federal octopus, encroach on states’ rights, promote corruption, and enrich the ruling class at the expense of the common folk.

A. Conflict in the Infant Republic

I. The Senate Snubs George Washington (1789)

The new Constitution empowered the president to “make treaties” with “the advice and consent of the Senate.” Early in his administration Washington, accompanied

¹E. S. Maclay, ed., *Journal of William Maclay* (New York: D. Appleton and Company, 1890), pp. 131–132.

by Secretary of War Henry Knox, appeared before the then-tiny group of senators to explain an Indian treaty. The deliberations proceeded so haltingly in the president's awesome presence that Senator William Maclay finally supported a motion to refer the papers to a committee. Washington was visibly annoyed. Tradition has him saying, as he left the chamber, that he would "be damned" if he ever came back again, but he did return—once. No president since has attempted to discuss treaties personally with the entire Senate. In reading the following extract from Senator Maclay's diary, bear in mind that the author was an ardent republican who resented Washington's aristocratic airs and who privately wished that the general "were in heaven" and not "brought forward as the constant cover to every unconstitutional and irrepublican act." As this diary entry begins, Maclay has just spoken for deferment. Why did this type of personal conferring with the senators fail?

As I sat down, the President of the United States started up in a violent fret. "This defeats every purpose of my coming here" were the first words that he said. He then went on that he had brought his Secretary of War with him to give every necessary information; that the Secretary knew all about the business; and yet he [Washington] was delayed and could not go on with the matter. He cooled, however, by degrees. Said he had no objection to putting off this matter until Monday, but declared he did not understand the matter of commitment [referral]. He might be delayed; he could not tell how long.

He rose a second time, and said he had no objection to postponement until Monday at ten o'clock. By the looks of the Senate this seemed agreed to. A pause for some time ensued. We waited for him to withdraw. He did so with a discontented air. Had it been any other man than the man whom I wish to regard as the first character in the world, I would have said, with sullen dignity.

I cannot now be mistaken. The President wishes to tread on the necks of the Senate. Commitment will bring the matter to discussion, at least in the committee, where he is not present. He wishes us to see with the eyes and hear with the ears of his Secretary [of War] only. The Secretary to advance the premises, the President to draw the conclusions, and to bear down our deliberations with his personal authority and presence. Form only will be left to us. This will not do with Americans. But let the matter work; it will soon cure itself.

August 24th, Monday.—The Senate met. The President of the United States soon took his seat, and the business began. The President wore a different aspect from what he did Saturday. He was placid and serene, and manifested a spirit of accommodation; declared his consent that his questions should be amended.

2. Alexander Hamilton Versus Thomas Jefferson on Popular Rule (1780s–1820s)

President Washington's aristocratic and monarchical appearance may have offended Senator Maclay, who became a follower of Thomas Jefferson, but it did not

²Excerpts found for the most part in S. K. Padover, ed., *The Mind of Alexander Hamilton* (New York: Harper & Row, 1958); R. B. Morris, ed., *The Basic Ideas of Alexander Hamilton* (1957); S. K. Padover, ed., *Thomas Jefferson on Democracy* (New York and London: D. Appleton-Century Company, 1939).

disturb Secretary of the Treasury Hamilton. The youthful financier, though born in humble circumstances, had developed a profound distrust of common people. In contrast, Jefferson, a Virginia planter-aristocrat, championed the common folk. Faith in the informed masses became the cornerstone of Jefferson's Democratic-Republican party; distrust of the masses and the cultivation of special interests became the cornerstone of Hamilton's Federalist party. Following are the conflicting opinions of the two great leaders over a period of years. The initial quotations from Hamilton formed a part of his five-hour speech before the Constitutional Convention in Philadelphia (see p. 176). To what extent were Hamilton and Jefferson both right in the light of subsequent history? Who, on balance, was the more sound? Note that Jefferson, particularly, was prone to exaggerate, and that some of these observations were written privately and in the heat of bitter partisan struggles.

Hamilton

All communities divide themselves into the few and the many. The first are the rich and well born; the other, the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second; and as they cannot receive any advantage by a change, they therefore will ever maintain good government.

Can a democratic assembly, who annually [through annual elections] revolve in the mass of the people, be supposed steadily to pursue the public good? Nothing but a permanent body can check the imprudence of democracy. Their turbulent and uncontrollable disposition requires checks. (1787)

Take mankind in general, they are vicious—their passions may be operated upon. . . . Take mankind as they are, and what are they governed by? Their passions. There may be in every government a few choice spirits, who may act from more worthy motives.

Jefferson

Those who labor in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue. (1784)

Men . . . are naturally divided into two parties. Those who fear and distrust the people. . . . Those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest and safe . . . depository of the public interest. (1824)

The mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God. (1826)

Every government degenerates when trusted to the rulers . . . alone. The people themselves are its only safe depositories. (1787)

I have such reliance on the good sense of the body of the people and the honesty of their leaders that I am not afraid of their letting things go wrong to any length in any cause. (1788)

Hamilton

One great error is that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest; and it will be the duty of a wise government to avail itself of those passions, in order to make them subservient to the public good. (1787)

Your people, sir, is a great beast. (According to legend, c. 1792)

I have an indifferent [low] opinion of the honesty of this country, and ill forebodings as to its future system. (1783)

I said that I was affectionately attached to the republican theory. . . . I add that I have strong hopes of the success of that theory; but, in candor, I ought also to add that I am far from being without doubts. I consider its success as yet a problem. (1792)

Jefferson

Whenever the people are well-informed, they can be trusted with their own government; whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights. (1789)

I am not among those who fear the people. They, and not the rich, are our dependence for continued freedom. (1816)

I have great confidence in the common sense of mankind in general. (1800)

My most earnest wish is to see the republican element of popular control pushed to the maximum of its practicable exercise. I shall then believe that our government may be pure and perpetual. (1816)

3. The Clash over States' Rights (1780s–1820s)

Hamilton, distrusting and fearing the states, strove to build up a powerful central government at their expense. Jefferson, distrusting and fearing a potent central government, strove to safeguard states' rights at its expense. Which of the two men was closer to the truth in the light of subsequent history, particularly in the matter of grassroots supervision of government?

Hamilton

A firm Union will be of the utmost moment to the peace and liberty of the states, as a barrier against domestic faction and insurrection. (1787)

A state government will ever be the rival power of the general government. (1787)

Jefferson

I am not a friend to a very energetic government. It is always oppressive. It places the governors indeed more at their ease, at the expense of the people. (1787)

If ever this vast country is brought under a single government, it will be one of the most extensive corruption. (1822)

³See the works of Padover and Morris previously cited in note 2, p. 189.

Hamilton

As to the destruction of state governments, the great and real anxiety is to be able to preserve the national [government] from the too potent and counteracting influence of those governments. . . . As to the state governments, the prevailing bias of my judgment is that if they can be circumscribed within bounds consistent with the preservation of the national government, they will prove useful and salutary.

If the states were all of the size of Connecticut, Maryland, or New Jersey, I should decidedly regard the local governments as both safe and useful. As the thing now is, however, I acknowledge the most serious apprehensions that the government of the United States will not be able to maintain itself against their influence. I see that influence already penetrating into the national councils and preventing their direction.

Hence, a disposition on my part towards a liberal construction of the powers of the national government, and to erect every fence to guard it from depredations which is, in my opinion, consistent with constitutional propriety. As to any combination to prostrate the state governments, I disavow and deny it. (1792)

Jefferson

Our country is too large to have all its affairs directed by a single government. Public servants, at such a distance and from under the eye of their constituents, must, from the circumstance of distance, be unable to administer and overlook all the details necessary for the good government of the citizens; and the same circumstance, by rendering detection impossible to their constituents, will invite the public agents to corruption, plunder, and waste.

What an augmentation of the field for jobbing, speculating, plundering, office-building, and office-hunting would be produced by an assumption of all the state powers into the hands of the general government. The true theory of our Constitution [strict construction] is surely the wisest and best—that the states are independent as to everything within themselves, and united as to everything respecting foreign nations. Let the general government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations, except as to commerce, which the merchants will manage the better, the more they are left free to manage themselves. And our general government may be reduced to a very simple organization and a very unexpensive one: a few plain duties to be performed by a few servants. (1800)

4. The Spectrum of Disagreement (1780s–1820s)

At the rear entrance of Jefferson's imposing Virginia home, Monticello, busts of Hamilton and Jefferson stood opposite each other. The guide used to tell tourists that Jefferson placed them there because the two men had opposed each other in life, and they might as well stand opposite each other in death. In the following quotations, what do they agree on, what are their most fundamental disagreements, and how fair are they in assessing each other?

¹See the works of Padover and Morris previously cited in note 2, p. 189.

Hamilton

A national debt, if it is not excessive, will be to us a national blessing. (1781)

If all the public creditors receive their dues from one source . . . their interest will be the same. And having the same interests, they will unite in support of the fiscal arrangements of the government. (c. 1791)

Real liberty is neither found in despotism or the extremes of democracy, but in moderate governments. (1787)

Beware, my dear sir, of magnifying a riot into an insurrection, by employing in the first instance an inadequate force. 'Tis better far to err on the other side. Whenever the government appears in arms, it ought to appear like a Hercules, and inspire respect by the display of strength. (1799)

I believe the British government forms the best model the world ever produced, and such has been its progress in the minds of the many that this truth gradually gains ground. (1787)

It must be by this time evident to all men of reflection . . . that it [Articles of Confederation] is a system so radically vicious and unsound as to admit not of amendment but by an entire change in its leading features and characters. (1787)

Let me observe that an Executive is less dangerous to the liberties of the people when in office during life than for seven years. (1787)

Jefferson

. . . No man is more ardently intent to see the public debt soon and sacredly paid off than I am. This exactly marks the difference between Colonel Hamilton's views and mine, that I would wish the debt paid tomorrow; he wishes it never to be paid, but always to be a thing wherewith to corrupt and manage the legislature [Congress]. (1792)

. . . Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. (1787)

. . . A little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical. . . . It is a medicine necessary for the sound health of government. (1787)

. . . It is her [England's] government which is so corrupt, and which has destroyed the nation—it was certainly the most corrupt and unprincipled government on earth. (1810)

But with all the imperfections of our present government [Articles of Confederation], it is without comparison the best existing or that ever did exist. . . . Indeed, I think all the good of this new Constitution might have been couched in three or four new articles, to be added to the good, old, and venerable fabric. . . . (1787)

I disapproved, also, the perpetual re-eligibility of the President. (1789)

Hamilton

Standing armies are dangerous to liberty. (1787)

[Jefferson is] an atheist in religion and a fanatic in politics. (1800)

It was not long before I discovered he [Washington] was neither remarkable for delicacy nor good temper. . . .

The General [Washington] is a very honest man. His competitors have slender abilities, and less integrity. His popularity has often been essential to the safety of America. . . . These considerations have influenced my past conduct respecting him and will influence my future. (1781)

That gentleman [Jefferson] whom I once *very much esteemed*, but who does not permit me to retain that sentiment for him, is certainly a man of sublimated and paradoxical imagination, entertaining and propagating opinions inconsistent with dignified and orderly government. (1792)

Jefferson

A naval force can never endanger our liberties, nor occasion bloodshed; a land force would do both. (1786)

I am a Christian, in the only sense in which he [Jesus] wished anyone to be: sincerely attached to his doctrines, in preference to all others. (1803)

His [Washington's] integrity was most pure, his justice the most inflexible I have ever known. . . . He was, indeed, in every sense of the words, a wise, a good, and a great man. His temper was naturally irritable and high toned; but reflection and resolution had obtained a firm and habitual ascendancy over it. If ever, however, it broke its bonds, he was most tremendous in his wrath. (1814)

Hamilton was indeed a singular character. Of acute understanding, disinterested, honest, and honorable in all private transactions, amiable in society, and duly valuing virtue in private life, yet so bewitched and perverted by the British example as to be under thorough conviction that corruption was essential to the government of a nation. (1818)

B. State Debts and the National Bank

1. Jefferson Duped (?) by Hamilton (1790)

The brilliant young Secretary Hamilton, in his First Report on the Public Credit, proposed to couple the national debt with an assumption of state debts amounting to \$21.5 million. His argument was that the states had incurred these burdens while fighting for independence, and hence the obligation was shared by all. One of his main purposes was to weaken states' rights and strengthen the federal government by tying the states financially to the federal chariot. Those states staggering under large unpaid debts, chiefly in New England, applauded the scheme: those in better fi-

¹A. A. Lipscomb, ed., *The Writings of Thomas Jefferson* (Washington, D.C.: Thomas Jefferson Memorial Association, 1904), vol. 1, pp. 273–276.

nancial shape, chiefly in the South, condemned it. The resulting stalemate was broken by a compromise allegedly engineered by Hamilton and Jefferson together. Jefferson, who had recently come to New York after a five-year sojourn in France as minister, here recounts the story from contemporary notes and the vantage point of 1818. Was he fair in his analysis of Hamilton's motives? What was the significance of the early talk of secession? Why should southern congressmen have been parties to this logrolling operation?

This [funding] game was over, and another was on the carpet at the moment of my arrival; and to this I was most ignorantly and innocently made to hold the candle. This fiscal manoeuvre is well known by the name of the Assumption.

Independently of the debts of Congress, the states had during the war contracted separate and heavy debts; . . . and the more debt Hamilton could rake up, the more plunder for his mercenaries. This money, whether wisely or foolishly spent, was pretended to have been spent for general purposes, and ought, therefore, to be paid from the general purse.

But it was objected that nobody knew what these debts were, what their amount, or what their proofs. No matter; we will guess them to be twenty millions. But of these twenty millions, we do not know how much should be reimbursed to one state, or how much to another. No matter; we will guess. And so another scramble was set on foot among the several states, and some got much, some little, some nothing. But the main object was obtained: the phalanx of the Treasury was reinforced by additional recruits [bureaucrats].

This measure produced the most bitter and angry contest ever known in Congress, before or since the Union of the states. I arrived [in New York] in the midst of it. But a stranger to the ground, a stranger to the actors on it, so long absent as to have lost all familiarity with the subject, and as yet unaware of its object, I took no concern in it.

The great and trying question [of assumption], however, was lost in the House of Representatives [31 to 29]. So high were the feuds excited by this subject that on its rejection business was suspended. Congress met and adjourned from day to day without doing anything, the parties being too much out of temper to do business together. The Eastern [New England] members particularly, who, with Smith from South Carolina, were the principal gamblers in these scenes, threatened a secession and dissolution.

Hamilton was in despair. As I was going to the President's one day, I met him in the street. He walked me backwards and forwards before the President's door for half an hour. He painted pathetically the temper into which the legislature had been wrought; the disgust of those who were called the creditor states; the danger of the secession of their members, and the separation of the states. He observed that the members of the Administration ought to act in concert; that though this question was not of my [State] Department, yet a common duty should make it a common concern; that the President was the center on which all administrative questions ultimately rested; and that all of us should rally around him, and support, with joint efforts, measures approved by him; and that the question having been lost by a small majority only, it was probable that an appeal from me to the judgment and discretion of some of my friends might effect a change in

the vote, and the machine of government, now suspended, might be again set into motion.

I told him that I was really a stranger to the whole subject; that not having yet informed myself of the system of finances adopted, I knew not how far this was a necessary sequence; that undoubtedly, if its rejection endangered a dissolution of our Union at this incipient stage, I should deem that the most unfortunate of all consequences, to avert which all partial and temporary evils should be yielded. I proposed to him, however, to dine with me the next day, and I would invite another friend or two, bring them into conference together, and I thought it impossible that reasonable men, consulting together coolly, could fail, by some mutual sacrifices of opinion, to form a compromise which was to save the Union.

The discussion took place. I could take no part in it but an exhortatory one, because I was a stranger to the circumstances which should govern it. But it was finally agreed that, whatever importance had been attached to the rejection of this proposition, the preservation of the Union and of concord among the states was more important, and that therefore it would be better that the vote of rejection should be rescinded, to effect which some members should change their votes. But it was observed that this pill would be peculiarly bitter to the Southern states, and that some concomitant measure should be adopted, to sweeten it a little to them.

There had before been propositions to fix the [permanent] seat of government either at Philadelphia, or at Georgetown on the Potomac; and it was thought that by giving it to Philadelphia for ten years, and to Georgetown permanently afterwards, this might, as an anodyne, calm in some degree the ferment which might be excited by the other measure alone. So two of the Potomac members (White and Lee, but White with a revulsion of stomach almost convulsive) agreed to change their votes, and Hamilton undertook to carry the other point. In doing this, the influence he had established over the Eastern members, with the agency of Robert Morris with those of the Middle states, effected his side of the engagement.

And so the Assumption was passed, and twenty millions of stock divided among favored states, and thrown in as a pabulum to the stock-jobbing herd. This added to the number of votaries to the Treasury, and made its chief the master of every vote in the legislature which might give to the government the direction suited to his political views.

I know well . . . that nothing like a majority in Congress had yielded to this corruption. Far from it. But a division . . . had already taken place . . . between the parties styled republican and federal.

2. *Hamilton Defends Assumption (1792)*

The scheme for assuming the state debts, proposed formally by Hamilton early in 1790, was not passed by Congress until nearly seven months later—again with the votes of certain members who stood to gain personally. During this delay a brisk

²H. C. Lodge, ed., *The Works of Alexander Hamilton* (Boston and New York: Houghton, Mifflin and Company, 1904), vol. 2, pp. 468–470 (August 18, 1792).

speculation in the depreciated state securities occurred, largely among northern financiers. Hamilton, in this private memorandum for Washington, denies that there was anything sinister in such purchases. What was his strongest argument? Who took advantage of whom?

... Is a government to bend the general maxims of policy and to mold its measures according to the accidental course of private speculations? Is it to do this, or omit that, in cases of great national importance, because one set of individuals may gain, another lose, from unequal opportunities of information, from unequal degrees of resource, craft, confidence, or enterprise?

Moreover, there is much exaggeration in stating the manner of the alienation of the debt. The principal speculations in state debts, whatever may be pretended, certainly began after the promulgation of the plan for assuming by the report of the Secretary of the Treasury to the House of Representatives. The resources of individuals in this country are too limited to have admitted of much progress in purchases before the knowledge of that plan was diffused throughout the country. After that, purchasers and sellers were upon equal ground. If the purchasers speculated upon the sellers, in many instances the sellers speculated upon the purchasers. Each made his calculation of chances, and founded upon it an exchange of money for certificates. It has turned out generally that the buyer had the best of the bargain, but the seller got the value of his commodity according to his estimate of it, and probably in a great number of instances more. This shall be explained.

It happened that Mr. Madison, and some other distinguished characters of the South, started in opposition to the assumption. The high opinion entertained of them made it be taken for granted in that quarter that the opposition would be successful. The securities quickly rose, by means of purchases, beyond their former prices. It was imagined that they would soon return to their old station by a rejection of the proposition for assuming. And the certificate holders were eager to part with them at their current prices, calculating on a loss to the purchasers from their future fall. This representation is not conjectural; it is founded on information from respectable and intelligent Southern characters, and may be ascertained by inquiry.

Hence it happened that the inhabitants of the Southern states sustained a considerable loss by the opposition to the assumption from Southern gentlemen, and their too great confidence in the efficacy of that opposition.

Further, a great part of the debt which has been purchased by the Northern and Southern citizens has been at higher prices—in numerous instances beyond the true value. In the late delirium of speculation large sums were purchased at 25 percent above par and upward.

The Southern people, upon the whole, have not parted with their property for nothing. They parted with it voluntarily, in most cases, upon fair terms, without surprise or deception—in many cases for more than its value. 'Tis their own fault if the purchase money has not been beneficial to them; and, the presumption is, it has been so in a material degree.

3. Jefferson Versus Hamilton on the Bank (1791)

There were only three banks in the entire country when Hamilton, in 1790, proposed the Bank of the United States as the keystone of his financial edifice. Modeled on the Bank of England and located in Philadelphia, it would be capitalized at \$10 million, one-fifth of which might be held by the federal government. As a private concern under strict government supervision, it would be useful to the Treasury in issuing notes, safeguarding surplus tax money, and facilitating numerous public financial transactions. Before signing such a bank bill, Washington solicited the views of his cabinet members. The opinions of Jefferson, given below, elicited a rebuttal from Hamilton, also given below. Note that Jefferson, the strict constructionist of the Constitution, based his case on the Tenth Amendment in the Bill of Rights, about to be ratified. Hamilton, the loose constructionist of the Constitution, based his views on the implied powers in Article I, Section VIII, paragraph 18, which stipulates that Congress is empowered "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Which of the two men seems to be on sounder ground in interpreting "necessary"?

Jefferson

February 15, 1791

I consider the foundation of the Constitution as laid on this ground—that *all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, or to the people* (12th [10th] amend.). To take a single step beyond the boundaries thus specifically drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States by the Constitution.

The second general phrase is "to make all laws *necessary* and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not *necessary*, and

Hamilton

February 23, 1791

If the *end* be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that *end*, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority.

There is also this further criterion, which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any state or of any individual? If it does not, there is a strong presumption in favor of its constitutionality. . . .

... "Necessary" often means no more than needful, requisite, incidental, useful, or conducive to. . . . [A] restrictive interpretation of the word "necessary" is also contrary to this sound maxim of construction: namely,

³H. C. Lodge, ed., *The Works of Alexander Hamilton* (1904), vol. 3, pp. 458, 452, 455, 485–486; P. L. Ford, ed., *The Writings of Thomas Jefferson* (New York: G. P. Putnam's Sons, 1895), vol. 5, pp. 285, 287.

Jefferson

consequently not authorized by this phrase.

It has been much urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true; yet the Constitution allows only the means which are "necessary," not those which are merely "convenient," for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it [the latitude] will go to every one; for there is not one [power] which ingenuity may not torture into a convenience, in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers [of the states], and reduce the whole to one power. . . .

Hamilton

that the powers contained in a constitution . . . ought to be construed liberally in advancement of the public good.

A hope is entertained that it has, by this time, been made to appear to the satisfaction of the President, that a bank has a natural relation to the power of collecting taxes—to that of regulating trade—to that of providing for the common defense—and that, as the bill under consideration contemplates the government in the light of a joint proprietor of the stock of the bank, it brings the case within the provision of the clause of the Constitution which immediately respects [relates to] the property of the United States. [Evidently Art. IV, Sec. III, para. 2: "The Congress shall have power to . . . make all needful rules and regulations respecting the territory or other property belonging to the United States. . . ."]

C. Overawing the Whiskey Boys

1. Hamilton Upholds Law Enforcement (1794)

Secretary Hamilton's excise tax on whiskey hit the impoverished Pennsylvania frontiersmen especially hard. Their roads were so poor that they could profitably transport their corn and rye to market only in liquid concentrate form. If sued by the government, they were forced to incur the heavy expense of traveling three hundred miles and undergoing trial before strange judges and jurors. Numerous other grievances caused the Whiskey Boys to form armed mobs that intimidated would-be taxpayers or roughly handled the federal tax collectors. Some agents were tarred, feathered, and beaten; the home of one was burned. An outraged Hamilton, prejudiced against those who "babble republicanism," set forth these views in the press over the pen name "Tully." What are the strengths and weaknesses of his argument?

Let us see then what is this question. It is plainly this: Shall the majority govern or be governed? Shall the nation rule or be ruled? Shall the general will prevail, or the will of a faction? Shall there be government or no government? It is impossible

¹H. C. Lodge, ed., *The Works of Alexander Hamilton* (1904), vol. 6, pp. 414–416 (August 26, 1794).

to deny that this is the true and the whole question. No art, no sophistry can involve it in the least obscurity.

The Constitution *you* have ordained for yourselves and your posterity contains this express clause: “The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States.” You have, then, by a solemn and deliberate act, the most important and sacred that a nation can perform, pronounced and decreed that your representatives in Congress shall have power to lay excises. You have done nothing since to reverse or impair that decree.

Your representatives in Congress, pursuant to the commission derived from you, and with a full knowledge of the public exigencies, have laid an excise. At three succeeding sessions they have revised that act, and have as often, with a degree of unanimity not common, and after the best opportunities of knowing your sense, renewed their sanction to it. You have acquiesced in it; it has gone into general operation; and *you* have actually paid more than a million of dollars on account of it.

But the four western counties of Pennsylvania undertake to rejudge and reverse your decrees. You have said, “The Congress shall have power to lay excises.” They say, “The Congress shall not have this power,” or—what is equivalent—“they shall not exercise it”: for a power that may not be exercised is a nullity. Your representatives have said, and four times repeated it, “An excise on distilled spirits shall be collected.” They say, “It shall not be collected. We will punish, expel, and banish the officers who shall attempt the collection. We will do the same by every other person who shall dare to comply with your decree expressed in the constitutional charter, and with that of your representatives expressed in the laws. The sovereignty shall not reside with you, but with us. If you presume to dispute the point by force, we are ready to measure swords with you, and if unequal ourselves to the contest, we will call in the aid of a foreign nation [Britain]. We will league ourselves with a foreign power.”

2. Jefferson Deplores Undue Force (1794)

Hamilton was accused of deliberately aggravating the Whiskey Rebellion so that he might strengthen the prestige of the new government with an overpowering show of might. At all events, he marched out to the disaffected region with an army of some thirteen thousand militiamen. Resistance evaporated before such a force. Jefferson was appalled that these extravagant measures should have been taken against “occasional riots,” and charged that Hamilton was merely pursuing his “favorite purpose of strengthening government and increasing public debt,” all under “the sanction of a name [Washington] which has done too much good not to be sufficient to cover harm also.” From his luxurious home, Monticello, Jefferson wrote indignantly as follows to James Madison, his friend and neighbor. Six years later these same backcountry rebels, who had incurred Hamilton’s upper-class scorn, helped elect Jefferson president. Hamilton’s show of sledgehammer force no doubt helped the prestige of the national government, but in the light of Jefferson’s letter, how did the government probably hurt itself?

²P. L. Ford, *The Writings of Thomas Jefferson* (New York: G. P. Putnam’s Sons, 1895), vol. 6, pp. 518–519 (December 28, 1794).

The excise law is an infernal one. The first error was to admit it by the Constitution; the second, to act on that admission; the third and last will be to make it the instrument of dismembering the Union, and setting us all afloat to choose which part of it we will adhere to.

The information of our militia, returned from the westward, is uniform, that though the people there let them pass quietly, they were objects of their laughter, not of their fear; that a thousand men could have cut off their whole force in a thousand places of the Allegheny; that their detestation of the excise law is universal, and has now associated to it a detestation of the government; and that separation, which perhaps was a very distant and problematical event, is now near, and certain, and determined in the mind of every man.

I expected to have seen justification of arming one part of the society against another; of declaring a civil war the moment before the meeting of that body [Congress] which has the sole right of declaring war; of being so patient of the kicks and scoffs of our [British] enemies,* and rising at a feather against our friends; of adding a million to the public debts and deriding us with recommendations to pay it if we can, etc., etc.

D. The Birth of a Neutrality Policy

I. The French Revolution: Conflicting Views (1790s)

Hamilton and Jefferson, disagreeing as they did on many issues, naturally took opposite sides on the French Revolution. The philosophical Virginian, ever dedicated to liberty, rejoiced over the liberation of oppressed humanity. The practical-minded New Yorker, concerned about property, was profoundly shocked by the bloody excesses. Why did Hamilton reject the parallel to the American Revolution? Why was Jefferson so deeply concerned?

Hamilton

In France, he [Jefferson] saw government only on the side of its abuses. He drank freely of the French philosophy, in religion, in science, in politics. He came from France in the moment of a fermentation which he had a share in exciting, and in the passions and feelings of which he shared, both from temperament and situation. . . . He

Jefferson

But it is a fact, in spite of the mildness of their governors, the [French] people are ground to powder by the vices of the form of government. Of twenty millions of people supposed to be in France, I am of opinion there are nineteen millions more wretched, more accursed in every circumstance of human existence than the most con-

*A reference to British seizures of American ships prior to Jay's Treaty.

¹Convenient compilations of quotations are found in S. K. Padover, ed., *The Mind of Alexander Hamilton* (New York: Harper & Row, 1958) and *Thomas Jefferson on Democracy* (New York and London: D. Appleton-Century Company, 1939).

Hamilton

came electrified with attachment to France, and with the project of knitting together the two countries in the closest political bands. (1792)

... The cause of France is compared with that of America during its late revolution. Would to heaven that the comparison were just. Would to heaven we could discern in the mirror of French affairs the same humanity, the same decorum, the same gravity, the same order, the same dignity, the same solemnity, which distinguished the cause of the American Revolution. Clouds and darkness would not then rest upon the issue as they now do. I own I do not like the comparison. (1793?)

... There was a time when all men in this country entertained the same favorable view of the French Revolution. At the present time, they all still unite in the wish that the troubles of France may terminate in the establishment of a free and good government; and dispassionate, well-informed men must equally unite in the doubt whether this be likely to take place under the auspices of those who now govern... that country. But agreeing in these two points, there is a great and serious diversity of opinion as to the real merits and probable issue of the French Revolution. (1794)

None can deny that the cause of France has been stained by excesses and extravagances for which it is not easy, if possible, to find a parallel in the history of human affairs, and from which reason and humanity recoil. . . . (1794)

Jefferson

spicuously wretched individual of the whole United States. (1785)

You will have heard, before this reaches you, of the peril into which the French Revolution is brought by the flight of their King. Such are the fruits of that form of government which heaps importance on idiots, and of which the Tories of the present day are trying to preach into our favor. I still hope the French Revolution will issue happily. I feel that the permanence of our own leans in some degree on that; and that a failure there would be a powerful argument to prove there must be a failure here. (1791)

In the struggle which was necessary, many guilty persons fell without the forms of trial, and with them some innocent. These I deplore as much as anybody, and shall deplore some of them to the day of my death. But I deplore them as I should have done had they fallen in battle. . . . But time and truth will rescue and embalm their very liberty for which they would never have hesitated to offer up their lives. The liberty of the whole earth was depending on the issue of the contest, and was ever such a prize won with so little innocent blood? (1793)

My own affections have been deeply wounded by some of the martyrs to this cause, but rather than it should have failed I would have seen half the earth desolated; were there but an Adam and an Eve left in every country, and left free, it would be better than it now is. (1793)

2. A Jeffersonian Condemns Neutrality (1793)

The treaty of alliance with France in 1778 bound the United States “forever” to help defend the French West Indies. Britain’s entrance into the War of the French Revolution in 1793 consequently threatened to involve the American people. Both Hamilton and Jefferson agreed (for once) on the wisdom of a neutrality proclamation. President Washington thereupon issued a stern admonition reminding Americans of their “duty” to be “friendly and impartial” toward both Britain and France. But many Jeffersonians, including the anonymous author of the following open letter to Washington, emitted pained outcries. What was the author’s most serious grievance against the president, and the reason for it? Did moral considerations compel a policy of favoritism to France?

In countries where the people have little or no share in the government (as in Great Britain, for instance), it is not uncommon for the executive to act in direct opposition to the will of the nation. It is to be hoped that the practice of aping the absurd and tyrannical systems of Britain, though already carried to an alarming extent in this country, will never proceed so far as to induce our executive to try the vain experiment of officially opposing the national will. . . .

Had you, sir, before you ventured to issue a proclamation which appears to have given much uneasiness, consulted the general sentiments of your fellow citizens, you would have found them, from one extremity of the Union to the other, firmly attached to the cause of France. You would not have found them disposed to consider it as a “duty” to forget their debt of gratitude to the French nation; or to view with unconcern the magnanimous efforts of a faithful ally to baffle the infernal projects of those despots who have confederated for the purpose of crushing her infant liberty. Neither would you have found them so far divested of the feelings of men as to treat with “impartiality,” and equal “friendship,” those tigers who so lately deluged our country with the blood of thousands, and the men who generously flew to her rescue and became her deliverers.

No, sir—had even no written treaty existed between France and the United States, still would the strongest ties of amity have united the people of both nations; still would the republican citizens of America have regarded Frenchmen, contending for liberty, as their brethren; still would they have sympathized with them in their misfortunes, and have exulted in their success. . . .

It ought never to be forgotten by our magistrates that popular opinion is the basis of our government; and that when any public measure is not well understood, it would be by no means degrading to the authors of that measure, however exalted their station, to explain. Let me entreat you, sir, to deal candidly with the people; and, without loss of time, to remove their anxiety by informing them whether it is intended that the treaties with France are to be observed or not.

I am aware, sir, that some court satellites may have deceived you with respect to the sentiments of your fellow citizens. The first magistrate of a country, whether he be called a king or a president, seldom knows the real state of the nation, particularly if he be so much buoyed up by official importance as to think it beneath his

²*National Gazette* (Philadelphia), June 5, 1793.

dignity to mix occasionally with the people. Let me caution you, sir, to beware that you do not view the state of the public mind, at this critical moment, through a fallacious medium. Let not the little buzz of the aristocratic few and their contemptible minions, of speculators, Tories, and British emissaries, be mistaken for the exalted and general voice of the American people. The spirit of 1776 is again roused; and soon shall the mushroom-lordlings of the day, the enemies of American as well as French liberty, be taught that American Whigs of 1776 will not suffer French patriots of 1792 to be vilified with impunity by the common enemies of both.

E. The Controversial Jay Treaty

I. Virginians Oppose John Jay's Appointment (1794)

After British cruisers suddenly seized scores of American food ships bound for the French West Indies, a crisis developed. President Washington, desperately seeking to avoid hostilities, decided to send to London a pro-British Federalist, John Jay, in a last-gasp effort to preserve peace. Pro-French Jeffersonians reacted angrily, notably in this "Address to the People of the United States" from the Democratic Society in Wythe County, Virginia. Were these Jeffersonians pro-French, pro-British, or merely partisan?

While with anxious expectation we contemplate the affairs of Europe, it will be criminal to forget our own country. A session of Congress having just passed, the first in which the people were equally represented, it is a fit time to take a retrospective view of the proceedings of government. We have watched each motion of those in power, but are sorry we cannot exclaim, "Well done, thou good and faithful servant." We have seen the nation insulted, our rights violated, our commerce ruined—and what has been the conduct of government? Under the corrupt influence of the [Hamiltonian] paper system, it has uniformly crouched to Britain; while on the contrary our allies, the French, to whom we owe our political existence, have been treated unfriendly; denied any advantages from their treaties with us; their minister abused; and those individuals among us who desired to aid their arms, prosecuted as traitors—blush, Americans, for the conduct of your government.

Citizens! Shall we Americans who have kindled the spark of liberty stand aloof and see it extinguished when burning a bright flame in France, which hath caught it from us? Do you not see, if despots prevail, you must have a despot like the rest of the nations? If all tyrants unite against free people, should not all free people unite against tyrants? Yes! Let us unite with France and stand or fall together.

We lament that a man who hath so long possessed the public confidence as the head of the Executive Department [Washington] hath possessed it, should put it to so severe a trial as he hath by a late appointment [of Jay]. The Constitution hath been trampled on, and your rights have no security. . . .

¹*Independent Chronicle* (Boston), August 11, 1794.

Fellow citizens!

We hope the misconduct of the Executive may have proceeded from bad advice; but we can only look to the immediate cause of the mischief. To us it seems a radical change of measures is necessary. How shall this be effected? Citizens! It is to be effected by a change of men. Deny the continuance of your confidence to such members of the legislative body as have an interest distinct from that of the people.

2. *Hamilton Attacks Jay's Attackers (1795)*

The Federalist diplomat John Jay, who held few high cards, finally signed a treaty in London in 1794 that was keenly disappointing. Although the British belatedly agreed to evacuate the half-dozen frontier trading posts on American soil and grant certain trade concessions, they gave no satisfaction regarding the impressment of American seamen, the future seizure of ships, and the alleged inciting of the Indians of the Northwest. But to a financially shaky America, a humiliating treaty was still better than a devastating war, and Federalists defended the pact with vigor. After he was bloodily stoned from a New York platform, Alexander Hamilton contributed a series of articles to the press, from which the following excerpt is taken. How did the democratic process operate then, as compared with now?

Before the treaty was known, attempts were made to prepossess the public mind against it. It was absurdly asserted that it was not expected by the people that Mr. Jay was to make any treaty; as if he had been sent, not to accommodate differences by negotiation and agreement, but to dictate to Great Britain the terms of an unconditional submission.

Before it was published at large, a sketch, calculated to produce false impressions, was handed out to the public, through a medium noted for hostility to the administration of the government. Emissaries flew through the country, spreading alarm and discontent; the leaders of [Jeffersonian] clubs were everywhere active to seize the passions of the people, and preoccupy their judgments against the treaty.

At Boston it was published one day, and the next a town-meeting was convened to condemn it; without ever being read, without any serious discussion, sentence was pronounced against it.

Will any man seriously believe that in so short a time an instrument of this nature could have been tolerably understood by the greater part of those who were thus induced to a condemnation of it? Can the result be considered as anything more than a sudden ebullition of popular passion, excited by the artifices of a party which had adroitly seized a favorable moment to furorize the public opinion? This spirit of precipitation, and the intemperance which accompanied it, prevented the body of the merchants and the greater part of the most considerate citizens from attending the meeting, and left those who met, wholly under the guidance of a set of men who, with two or three exceptions, have been the uniform opposers of the government.

²H. C. Lodge, ed., *The Works of Alexander Hamilton* (1904), vol. 5, pp. 195–197.

The intelligence of this event had no sooner reached New York than the leaders of the clubs were seen haranguing in every corner of the city, to stir up our citizens into an imitation of the example of the meeting at Boston. An invitation to meet at the city hall quickly followed, not to consider or discuss the merits of the treaty, but to unite with the meeting at Boston to address the President against its ratification.

This was immediately succeeded by a hand-bill, full of invectives against the treaty, as absurd as they were inflammatory, and manifestly designed to induce the citizens to surrender their reason to the empire of their passions.

In vain did a respectable meeting of the merchants endeavor, by their advice, to moderate the violence of these views, and to promote a spirit favorable to a fair discussion of the treaty; in vain did a respectable majority of the citizens of every description attend for that purpose. The leaders of the clubs resisted all discussion, and their followers, by their clamors and vociferations, rendered it impracticable, notwithstanding the wish of a manifest majority of the citizens convened upon the occasion.

Can we believe that the leaders were really sincere in the objections they made to a discussion, or that the great and mixed mass of citizens then assembled had so thoroughly mastered the merits of the treaty as that they might not have been enlightened by such a discussion?

It cannot be doubted that the real motive to the opposition was the fear of a discussion; the desire of excluding light; the adherence to a plan of surprise and deception. Nor need we desire any fuller proof of the spirit of party which has stimulated the opposition to the treaty than is to be found in the circumstances of that opposition.

F. The Retirement of Washington

I. A President Bids Farewell (1796)

Weary of body and outraged by political abuse, Washington announced his decision to retire in his Farewell Address, which he simply gave as a gratuitous “scoop” to a Philadelphia newspaper. At first a nonpartisan but now a Federalist, he had leaned heavily on Hamilton’s collaboration in its composition. The bulk of the address deals with domestic difficulties, but the part relating to foreign affairs is best known. The document was clearly partisan. It served as the opening gun in the forthcoming presidential campaign of 1796 by indirectly defending Jay’s Treaty and by directly alerting the public to flagrant French intrigue in the nation’s capital. Many Jeffersonian Democratic-Republicans, recognizing the attack on them, condemned the document. Why was it to the advantage of America to remain aloof? Did Washington reject all alliances in all circumstances?

¹J. D. Richardson, ed., *Messages and Papers of the Presidents* (1896), vol. 1, pp. 221–223.

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct. And can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. . . .

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular nations and passionate attachments for others should be excluded, and that, in place of them, just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. . . .

The nation prompted by ill will and resentment sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject. . . .

So, likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification. . . .

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak toward a great and powerful nation dooms the former to be the satellite of the latter.

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens) the jealousy of a free people ought to be *constantly* awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. . . .

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little *political* connection as possible. So far as we have already formed engagements [French treaty], let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests which to us have none, or a very remote, relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel.

Why forgo the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it. For let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs that honesty is always the best policy. I repeat, therefore, let those engagements be observed in their genuine sense. But in my opinion it is unnecessary and would be unwise to extend them.

Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand, neither seeking nor granting exclusive favors or preference; . . . constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

2. Editor Benjamin Franklin Bache Berates Washington (1797)

Benjamin Franklin Bache, grandson of "Old Ben," was a newspaper editor notorious for his malicious attacks on the Federalists in general and on Washington in particular. He published the following tirade when the president retired, but fortunately his sentiments were not shared by the vast majority of Washington's appreciative countrymen. In retaliation, Federalist rowdies wrecked the office of the Philadelphia Aurora and manhandled editor Bache. How much of this incendiary editorial is anti-Federalist partisanship, and how much is pure libel?*

"Lord, now lettest thou thy servant depart in peace, for mine eyes have seen thy salvation," was the pious ejaculation of a man who beheld a flood of happiness rushing upon mankind [Simeon, who had just seen Jesus]. If ever there was a time that would license the reiteration of the exclamation, that time is now arrived. For the man who is the source of all the misfortunes of our country is this day reduced to a level with his fellow citizens, and is no longer possessed of power to multiply evils upon the United States.

²*Philadelphia Aurora*, March 6, 1797, in Allan Nevins, ed., *American Press Opinion* (Boston and New York: D. C. Heath and Company, 1928), pp. 21–22.

*Benjamin Franklin Bache was nicknamed "Lightning Rod, Junior," an obvious reference to his inventive grandfather and to his own high-voltage journalism.

If ever there was a period for rejoicing, this is the moment. Every heart in unison with the freedom and happiness of the people ought to beat high with exultation that the name of Washington, from this day, ceases to give a currency to political iniquity and to legalize corruption. A new era is opening upon us—a new era which promises much to the people. For public measures must now stand upon their own merits, and nefarious projects can no longer be supported by a name.

When a retrospect is taken of the Washington administration for eight years, it is a subject of the greatest astonishment that a single individual should have canceled the principles of republicanism in an enlightened people, and should have carried his designs against the public liberty so far as to have put in jeopardy its very existence. Such, however, are the facts, and with these staring us in the face, this day ought to be a jubilee in the United States.

3. Editor William Cobbett Blasts Bache (1797)

Newspaper editor William Cobbett, a violent pro-Federalist, was the Federalist answer to Benjamin Franklin Bache. An English émigré who was so pro-British that he insolently displayed portraits of George III in his bookshop window, he was threatened with tar and feathers by the Philadelphia mob. Here he pays his editorial disrespects to his rival Bache. Note his explanation of Bache's hostility to Washington. What aspects of this type of journalism may no longer be found, and why?

This atrocious wretch (worthy descendant of old Ben) knows that all men of any understanding set him down as an abandoned liar, as a tool, and a hireling; and he is content that they should do so. He does not want to be thought anything else. . . . As this *Gazette* is honored with many readers in foreign countries, it may not be improper to give them some little account of this miscreant.

If they have read the old hypocrite Franklin's will, they must have observed that part of his library, with some other things, are left to a certain grandson; this is the very identical Market Street scoundrel. He spent several years in hunting offices under the federal government, and being constantly rejected, he at last became its most bitter foe. Hence his abuse of General Washington, whom, at the time he was soliciting a place, he panegyricized up to the third heaven.

He was born for a hireling, and therefore when he found he could not obtain employ in one quarter, he sought it in another. The first effect of his paw being greased appeared soon after [the French envoy] Genet's arrival, and he has from that time to this been as faithful to the cutthroats of Paris as ever dog was to his master.

He is an ill-looking devil. His eyes never get above your knees. He is of a sallow complexion, hollow-cheeked, dead-eyed, and has a *tout ensemble* [general effect] just like that of a fellow who has been about a week or ten days on a gibbet.

³*Porcupine's Gazette* (Philadelphia), November 15, 1797, in William Cobbett, *Porcupine's Works* . . . (1801), vol. 7, pp. 294–295.

G. The Alien and Sedition Hysteria

I. Timothy Pickering Upholds the Repressive Laws (1798)

Angered by Jay's pro-British treaty, the French seized scores of American ships, thereby paving the way for the undeclared naval war of 1798–1800, during the presidency of John Adams. The pro-British Federalists, riding the wave of anti-French hysteria, undertook to curb and gag the pro-French Jeffersonians by passing the Alien and Sedition Acts of 1798. The Alien Act empowered the president to deport undesirable aliens (largely Irish and French refugees); the Sedition Act prescribed fines and imprisonment for false maligning of federal officials. Timothy Pickering, secretary of state under President Adams, offered the following spirited defense of the Alien and Sedition Acts. What were his views regarding (a) inferior rights of aliens and (b) the similarity between abusing free speech and committing murder?

The Alien Law has been bitterly inveighed against as a direct attack upon our liberties, when in fact it affects only foreigners who are conspiring against us, and has no relation whatever to an American citizen. It gives authority to the First Magistrate [President] of the Union to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of our territory.

It is only necessary to ask whether, without such a power vested in some department, any government ever did, or ever can, long protect itself. The objects of this act are strangers merely, persons not adopted and naturalized—a description of men who have no lot nor interest with us, and who even manifest a disposition the most hostile to this country, while it affords them an asylum and protection. It is absurd to say that, in providing by law for their removal, the Constitution is violated. For he must be ignorant indeed who does not know that the Constitution was established for the protection and security of American citizens, and not of intriguing foreigners.

The Sedition Act has likewise been shamefully misrepresented as an attack upon the freedom of speech and of the press. But we find, on the contrary, that it prescribes a punishment only for those pests of society and disturbers of order and tranquillity “who write, print, utter, or publish any false, scandalous, and malicious writings against the government of the United States, or either house of the Congress of the United States, or the President, with intent to defame, or bring them into contempt or disrepute, or to excite against them the hatred of the good people of the United States; or to stir up sedition, or to abet the hostile designs of any foreign nation.”

What honest man can justly be alarmed at such a law, or can wish unlimited permission to be given for the publication of malicious falsehoods, and with intentions the most base? They who complain of legal provisions for punishing intentional defamation and lies as bridling the liberty of speech and of the press, may, with equal propriety, complain against laws made for punishing assault and murder,

¹C. W. Upham, *Life of Timothy Pickering* (1873), vol. 3, pp. 475–476.

as restraints upon the freedom of men's actions. Because we have the right to speak and publish our opinions, it does not necessarily follow that we may exercise it in uttering false and malicious slanders against our neighbor or our government, any more than we may under cover of freedom of action knock down the first man we meet, and exempt ourselves from punishment by pleading that we are free agents. We may indeed use our tongues, employ our pens, and carry our cudgels or our muskets whenever we please. But, at the same time, we must be accountable and punishable for making such "improper use of either as to injure others in their characters, their persons, or their property."

2. *The Virginia Legislature Protests (1798)*

The Federalist Sedition Act was plainly a violation of the free-speech and free-press guarantees of the Constitution (First Amendment, Bill of Rights). But the Federalist Supreme Court was not yet declaring acts of Congress unconstitutional. When Jeffersonians branded the Sedition Act the "gag law," one Federalist editor replied: "Nothing can so completely gag a Jeffersonian Democrat as to restrain him from lying. If you forbid his lying, you forbid his speaking." A score or so of Jeffersonian editors were arrested, including the unbridled Benjamin Franklin Bache (see pp. 208–209), who died before his trial. Vice President Jefferson and James Madison (who was then in private life) both feared that the Sedition Act would terrorize the Jeffersonian Democratic-Republican party into silence and destroy it. Madison, working secretly with Jefferson, drafted the following resolutions, which were approved by the Virginia legislature. Note especially the views on the "compact theory," the First Amendment, and the proposed method of voiding the Alien and Sedition Acts. Do they seem unreasonable?

[Resolved,] 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 does 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 [Constitution] 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 does 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, . . . so as to

²Jonathan Elliot, *The Debates . . . on the Adoption of the Federal Constitution* (Philadelphia: J. B. Lippincott, 1836), vol. 4, pp. 528–529.

consolidate the states, by degrees, into one sovereignty, the obvious tendency and inevitable result 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 does 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 nowhere 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 leveled against the 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 [of 1788] which ratified the federal Constitution, expressly declared that, among other essential rights, “the liberty of conscience and the press cannot be canceled, 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 [the First] was, in due time, annexed to the Constitution, it would mark a reproachful inconsistency and criminal degeneracy if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

That the good people of the 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 does 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 cooperating with this state in maintaining unimpaired the authorities, rights, and liberties reserved to the states respectively, or to the people.

3. Rhode Island Rebuffs Virginia’s Plea (1799)

The appeal of Virginia to her sister states for support fell on barren ground. A half-dozen or so northern state legislatures, with varying degrees of heat, registered dissent, particularly in the Federalist centers. Do the following Rhode Island resolutions propose a sounder solution of the constitutional problem than those of Virginia?

1. *Resolved*, That, in the opinion of this legislature, the second section of the third article of the Constitution of the United States, in these words, to wit, “The ju-

³Jonathan Elliot, *The Debates . . . on the Adoption of the Federal Constitution* (1836), vol. 4, p. 533.

dicial power shall extend to all cases arising under the laws of the United States," vests in the federal courts exclusively, and in the Supreme Court of the United States ultimately, the authority of deciding on the constitutionality of any act or law of the Congress of the United States.

2. *Resolved*, That for any state legislature to assume that authority would be—

1st. Blending together legislative and judicial powers;

2nd. Hazarding an interruption of the peace of the states by civil discord, in case of a diversity of opinions among the state legislatures; each state having, in that case, no resort for vindicating its own opinions but the strength of its own arm;

3rd. Submitting most important questions of law to less competent tribunals [legislatures]; and,

4th. An infraction of the Constitution of the United States, expressed in plain terms.

3. *Resolved*, That, although, for the above reasons, this legislature, in their public capacity, do not feel themselves authorized to consider and decide on the constitutionality of the Sedition and Alien laws (so called), yet they are called upon, by the exigency of this occasion, to declare that, in their private opinions, these laws are within the powers delegated to Congress, and promotive of the welfare of the United States.

4. *Resolved*, That the governor communicate these resolutions to the supreme executive of the state of Virginia, and at the same time express to him that this legislature cannot contemplate without extreme concern and regret the many evil and fatal consequences which may flow from the very unwarrantable resolutions aforesaid. . . .

[Vice President Jefferson, again collaborating secretly with James Madison, prepared two sets of resolutions that were adopted in 1798 and 1799 by the Kentucky legislature. Jefferson kept his authorship secret for twenty-three years, partly because it was improper for the vice president to be engaged in such activity, and partly because he feared Federalist prosecution for sedition. The second set of Kentucky resolutions reaffirmed the Virginia resolutions in protesting against violations of the Constitution, but went further in baldly approving nullification by the "sovereign" states as follows: "That a nullification, by those sovereignties, of all unauthorized acts done under color of that instrument [the Constitution] is the rightful remedy: That this commonwealth does, under the most deliberate reconsideration, declare, that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution; and . . . in momentous regulations like the present . . . it would consider a silent acquiescence as highly criminal."]

Thought Propokers

1. Which principles of Jefferson, the founder of the Democratic-Republican party, are upheld by Democrats today, and which are not? Which principles of Hamilton, the godfather of the present Republican party, are upheld by Republicans today, and which are not? Explain.
2. How credible is the testimony of a man like Jefferson, a bitter foe of Hamilton, as revised more than a quarter of a century after the event?

3. Hamilton had written in 1783, "The rights of government are as essential to be defended as the rights of individuals. The security of the one is inseparable from that of the other." Based on Hamilton's handling of the Whiskey Rebellion of 1794, comment on his statement.
4. Has the federal government become more or less Hamiltonian during the past two centuries?
5. In defending the bloody excesses of the French Revolution, Jefferson argued in effect that the end justified the means. Comment. After reviewing Franco-American relations during these years, assess Washington's observation that when a nation develops too great a fondness for another, it is in some degree its slave.
6. Massachusetts senator Henry Cabot Lodge once remarked that politics should stop at the water's edge. Comment with reference to foreign affairs in the 1790s.
7. Was Washington's Farewell Address necessary? What have been its most misunderstood parts, and why? Was it designed as a prescription for all future years? Which parts are still valid, and which are not?
8. Can the Alien and Sedition Acts be justified, especially in view of the excesses of editors Bache and Cobbett? Assuming that free speech ought to be curbed, who should do the curbing? Why is free speech necessary for the workings of a free government? It has been said that many a minority has become a majority because its foes were unwise enough to persecute it. Comment with reference to the Jeffersonian Democratic-Republicans of 1798.