

**TO RULE ONESELF
IN ANTEBELLUM AMERICA**

**THE CONCEPT OF SELF-GOVERNMENT
FROM REVOLUTION TO SECESSION**

IN THREE VOLUMES

1: *WHO SHALL RULE*

GROWTH AND GOVERNANCE

GOVERNING IMPASSE

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MAKING A DECLARATION

Within months after the Washington Administration was launched the Cabinet was caught up in a battle over fiscal policy that came to highlight the fractious rather than harmonious nature of the new government. Alexander Hamilton, Washington's Secretary of the Treasury, announced an ambitious plan for establishing the authority of the new government in managing the nation's finances that he said would stabilize the currency and restore the credit of the nation after more than a decade of deterioration. To achieve this Hamilton had offered a reading of the Constitution that stressed "implied powers" over "delegated powers". The idea of a charter to specify relations between those who ruled and those who were ruled had been elevated to a new status under the empirical political theories of the seventeenth and eighteenth century. Endorsing a modern constitutional form was easier than writing the document. The idea of "implied powers" versus "delegated powers" had concerned the Philadelphia Convention because the previous Articles of Confederation, which stressed delegated authority, had proven to be unworkable. The language of the new document alternated between broad and specific, and it was unlikely that this was simply an accident on the part of the framers. Loose language was as frightening as strict language. With the former the limits were hard to discern and with the latter they were hard to avoid. The natural fear was that language that was too loose could ultimately strip the individual of all his rights and make him once again dependent on those two ruled. Hamilton's fiscal reforms launched just such a debate (perhaps intentionally so to establish if possible the boundaries under which the New Administration could operate.

When Hamilton's Plan on Public Credit (to be discussed later) was put before the Congress, Hamilton found himself pitted against James Madison, his old ally during the ratification proceedings (Hamilton seldom attended the Philadelphia Convention) who was by his stature among the most powerful voices in the House of Representatives. Thomas Jefferson, the Secretary of State, brokered a deal between Hamilton and Madison, an odd deal by any measure. In exchange for southern support of the public credit plan, the Administration would agree to build the Capitol on land along the Potomac between Maryland and Virginia. Washington, who had demonstrated his skills to lead rather than to analyze and sought to avoid further disharmony, asked Jefferson, often Hamilton's adversary in the Cabinet, to write an opinion addressing any constitutional issues raised by the deal. It is the reasoning behind Jefferson's opinion

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that interests me at this point because it will serve as well as any other statement I've read as the theme for this study.

It must be understood that Assumption, as the public credit plan was known, was highly unpopular in certain quarters, and the relocation of the Capital was unpopular in certain quarters, although different. Strict constructionists, as those favoring a near-literal reading of the Constitution were called, opposed assumption; New Yorkers, where Capital was then, plus Philadelphians, who were more or less, promised the Capital after 1793, opposed its relocation to the Potomac and next door to Virginia. Let me note to insure clarity that when Jefferson wrote his opinion, the Congress (specifically the House) had not passed assumption but it had passed the relocation bill (although the deal, as such was still not public). The Washington Administration was not being treated kindly on either score and would be further skewered once assumption was passed (which occurred two weeks after Jefferson's opinion), and therefore the President wanted assurances that reasonable constitutional defense could be mounted. Two points that will come to trouble America deeply for the next 70 years will occupy Jefferson's thinking during these off-record negotiations and Cabinet discussions. At first he tried to remain aloof but also worried that because these issues struck at the core of the dilemma for the new government – what did the Constitution say and how could the agitation be contained to prevent disunion – required engagement. Only two years into the new government Jefferson among others saw the saw to essentially “save the Union”.¹

It is the opening paragraph that I wish to underscore. In writing to the President, Jefferson distinguished between types of governing: “Every man, and every body of men on earth, possesses the righ[t] of self-government: they receive it with their being from the hand of nature. Individuals exercise it by their single will; collections of men, by that of their majority; for the law of the *majority* is the natural law of every society of men.”² I have long been fascinated by the dual distinction between ruling oneself and being ruled as a part of a collectivity but without losing one's power for self-rule. When men transacted business, they made those transactions “a part of the natural right of self-government”. It was a statement that most Americans would understand and applaud. There was no doubt where authority originated and how it was to be shared. It did not say in so many words the individual was supreme, always standing over and

¹See Julian Boyd's discussion based upon exchange of correspondence and newspaper reporting in *The Papers of Thomas Jefferson*, Volume 17 (Princeton, NJ: Princeton University Press, 1965), 163-170.

²“Jefferson's Opinion on the Constitutionality of the Residence Bill” enclosed in letter “Jefferson to Washington, July 15, 1790” in Julian P. Boyd, ed., *Papers of Thomas Jefferson*, 17:195. Italicized majority in reprint of document. Madison wrote a concurring opinion with the date, 14 July 1790, (pp.199-201), one day before Jefferson's opinion reached the President..

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above any instituted or formalized government. Either singly or collectively individuals were acting. Governance arose out of those actions. Government as such acquired no independent existence beyond what individuals collectively sought to accomplish. It would be absurd to assume that duly constituted structures called governments did not come into existence because of collective actions taken by individuals acting in their own self-interests. Even when government came into existence, it did so because individuals presumed that collective action was preferable to individual action. And conversely, if they chose not to take collective action, then the matter remained with individuals for their own actions.

The specific issue was whether the majority vote in Congress to relocate the Capital was sufficient. The bulk of Jefferson's opinion dealt with the various clauses and provisions concerning the authority of Congress to set the time and place to convene or to adjourn. It was highly technical and legalistic and also involved separation of powers among the three branches.³ Without trying to judge the merits of Jefferson's opinion or his ability as a constitutional authority (Madison's opinion was somewhat more direct and comprehensible), the Constitution, which was designed to stipulate the permissible collective actions to be taken by individuals incorporated as governments, was flawed. Although Jefferson was not in the country when the Constitution was written and ratified, he was well aware of the arguments that had been used against it. "Flawed" barely described the animosity and fear that certain ratifiers felt toward a document that was a threat to their liberties, not a protector of them. Within the ratifying conventions disagreements over language and intent were not resolved because the document as presented could not be amended. Hence, even though the Constitution was approved, the voices of opposition were not quieted, and assumption combined with relocation allowed the Constitution's opponents to occupy the stage once more.

At this juncture I introduce the passage from Thomas Jefferson's opinion to establish a baseline for what will become a continuing and animated debate over being governed and by whom. All might agree that the right to govern originated with the individual. That affirmation does not avoid debate but provokes it. Even though the location of the capital was a minor "constitutional" crisis (compared to what was ahead), the rhetoric

³In the notes Boyd pointed out that Jefferson initially wrote every collection of men and then substituted society for collection. But collection, it seems to me, is what works in the world that Jefferson and his contemporaries were trying to shape and influence. In thinking about a collection of men versus a society of men, I find collection is less rigid, formal or permanent. In surrendering self rule for collective rule, individuals who cherished the idea of self rule could never know how much their retained powers might be threatened by formally instituted governments or their delegated powers might be abused. It was a gamble, and to think of a collection of men rather than a society of men might have inspired slightly less fear. One attribute of the Jeffersonian world to come to terms with was how plastic and malleable the Jeffersonian world could be. Fixity was suspect, especially in collective political action.

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that the crisis generated will become part and parcel of a contested political landscape down to the present day. How much latitude should a self-governing individual be allowed or how much latitude should the collectivity be allowed? In the household in which I grew up, I heard on side of the debate in the form of “Pulling oneself up by one’s bootstraps”. To my parents and their kin the gospel was found in the first half of Jefferson’s opening statement about the single and the collective wills and not so much in the second half. Government was the work of the devil, although they had benefited in many ways because America had a national government far stronger in the first half of the twentieth century than in the first half of the nineteenth century. It was not a conundrum to them although any attempt to raise the matter showed how much it was a conundrum. Even the Great Depression did not alter their “bootstrap” conviction. If anything it only reinforced their anti-government outlook, notwithstanding the benefits including jobs with the Works Progress Administration that the New Deal provided. Their dislike and distrust of government, the New Deal, Franklin D. Roosevelt and by all means the Democratic Party never receded over their very long lives. In my own adult life, as I began to investigate the history of the concept of self-government in America, I could not help but think that the appeal of the “bootstrap” model to my parents and my relatives and many of their friends, even in a world that was more complex, was its simplicity. Trying to explain why a more active government could improve their opportunities – making them freer while abridging some of their power of self rule – ran into the inevitable roadblock that confronted the early founders – what proof was there that collective actions produced better results than individual actions. What they thought they understand and what many Americans in the antebellum period came to think they understood was the danger to liberty and progress was not with individuals acting on their own but the misconstructions arising from individuals acting collectively.

The corpus of writings about colonial and revolutionary is huge, and since I have no desire to compose a bibliographic essay on what preceded the effort to launch a new nation, I will offer some general observations to set the stage for the post-Constitution period. When I think about America’s colonial era, I am heavily influenced by my own research in the colonial history of Latin America. The British colonial experience began a century after Spain and Portugal had ruled the New World and followed a different path. The phrase that I learned many decades ago to describe British colonial administration was *benign neglect* – Britain’s neglectful approach to colonial rule was a positive thing for the colonies because they had to assume a larger governing role than might have been possible or necessary under a more intrusive colonial ruler. In short, the colonies had more than a century and a half of experience in dealing with political

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affairs at the local and colonial levels that served them well when the era of benign neglect came to an end. Within the American political consciousness, certain ideas about ruling and being ruled had taken root, and while the colonials and later the independents disagreed about many details, they shared a common heritage based upon experience and custom that embraced a form of “self rule”. Working out the details only became important once the colonies sought their independent. Up to that point political theorizing in the colonies had more to do with dissent within the British system to correct the abuses and less to do with creating a new nation. The former would make a contribution to the latter, but the latter would most definitely have to explore new theoretical and empirical ground.

For many who have studied the colonial and post-colonial eras benign neglect is an inadequate metaphor. Not all was benign nor neglectful. It serves as an interesting foil, however, because it draws a clear distinction between the Hispanic and British colonial experiences. The Hispanic approach in contrast to the British approach was to rule from the imperial to the local level with individual interests subject to the guidance and stipulation of the monarchy. From the ancients forward the place of the individual in any ruling scheme posed significant problems. The individual seemed to be unique and may well been endowed with the capacity to govern without the need for an overarching authority. In the real world, of course, the individual was more often subject to rulers rather than ruling according to their innate abilities. In the period of European expansion into and settlement of the New World, the debate over the place of the individual in both the natural and civil orders had re-emerged, and the colonizing experiences further highlighted the tensions that the debates engendered. From the Hispanic side, while certain writers and thinkers elevated the role of the individual within the political context, they never completely liberated him or her. Even after 300 years of “modernizing” from the Renaissance through the Enlightenment, the Hispanic political model remained oriented toward the ruler ruling. The British model, whether by design or accident, had moved toward a less exalted status for the ruler. It became not a matter of if the ruler would share with the ruled but rather how much. Almost a half century ago Louis Hartz in a controversial but intriguing book called *The Founding of New Societies* proposed the fragment hypothesis. The liberalizing spirit (Hartz’s interpretation) evident in British society in the seventeenth century at the time of the settling of the English colonies in North America on territory still claimed by Spain crossed the ocean with the settlers. It arrived as a fragment of the British social order (the transplantation of the social order in its entirety was impossible), and then in combination with demands made by the New World the fragment unfolded outside the whole from whence it came to create a new and different entity, an entity that captured

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and expanded that liberalizing spirit. Thus, in curious way the benign neglect and the colonial fragment hypotheses join forces to create a society that came to value a larger role for the individual in managing the affairs of government and levers of power. The American social order regardless of region was not by any means a full-blown democratic, egalitarian structure that Americans came to trumpet in the nineteenth century. The seeds for the existence or the perception of the existence of such a society most certainly had their sowing in the colonial era. The way I have suggested is only broadly sketched, and other ways have been proposed not with dissimilar results. However, the canvas as painted it must show that North American colonies under British rule accepted some presumptions about the place of the individual in the act of governing that had not shown up before except perhaps in mind of the speculator or philosopher. In Hartz's view the Latin American fragment, pulled out from a different social order that was deeply authoritarian and hierarchical with strong ties between church and state, was feudal rather than liberal. (This characterization appeared in Hartz's "Introduction".) Although Richard Morse, who actually authored the essay on Latin America in *The Founding of New Societies*, preferred the term patrimonial. He took exception to Hartz's mechanistic framework of a fragment evolving or unfolding apart from and therefore different from the whole society to which it belonged almost without serious interruption, and yet in the end he portrayed the Hispanic unfolding in terms that suggested Spanish and to a lesser degree Portuguese colonists brought certain ideas and institutions that had to be adjusted to the social, political and religious landscape they found. Patrimonial is not feudal (by definition), but the result in either case was that ruling would be imposed, not ignored. Even the barest knowledge of post-independence history in Latin America underscores how different the path was for the new Latin American nations compared to the United States. Independent Latin America, richly endowed with resources and ideas, wrestled with many of the same questions of sovereignty and rule that United States did, but it did so within a context in which the individual as a self-ruling element lacked any legitimacy.⁴

By the middle of the eighteenth century after 150 years since the founding of Virginia, the American colonies had entered a mature phase. Their inhabitants had acquired

⁴Louis Hartz, ed. *The Founding of New Societies, Studies in the History of the United States, Latin America, South Africa, Canada, and Australia* (New York: Harcourt, Brace & World, Inc, 1964). Hartz laid out the unfolding of the liberal and other fragments in Chapter 2. As critics pointed out, Hartz's idea was more compelling than the evidence. The fragment thesis remains, though, an interesting lens through which to think about the differences between how British America and Latin America moved from colonies to nations. The liberal fragment, as it evolved in the United States, is covered in Chapter 4, and the feudal/patrimonial fragment, as it evolved in Latin America, is covered in Chapter 5. It is important to point out that the ideology of revolution was a much larger issue in the 1960s than it is today. Hartz was trying to offer a framework in which the *absence* of revolution in the United States could be explained.

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certain habits and customs that dictated how they perceived their roles within the imperial system. And the imperial system was undergoing some less than popular changes. Running an empire was expensive, and through new and revised regulations, the colonies would assume a larger burden in helping to defend and maintain the Empire. That was viewed unfavorably in the colonies because it could mean more taxes and restrictions after a long period of what might be described of under regulation. The idea behind benign neglect was that the colonies had never endured heavy imperial burdens, and when the home government began to introduce reforms that would alter the distribution the costs and obligations within the imperial system the colonies cried foul, even though in the view of some scholars the redistribution did not add materially to the overall colonial burden. As the outcry against the reformulation grew and became the topic of many pamphlets and tracts written for and by the colonists themselves, the force of the argument against the reforms was as much about the pending threats to liberty, as the colonists defined the concept, as to the actual impositions that flowed from the changes. The colonists had developed a sense of what the norm should be, and the reforms altered that norm both for now and for the future. In a curious parallel the Iberian colonies were also undergoing a reformulation of relations between the colonies and the home governments. Overall, while some regulations were eased or erased, the result was to centralize further political authority. In the Spanish colonies, for example, powerful royal appointees called *intendentes* replaced other royal appointees, *corregidores* and *alcaldes*, with aim of making the administrative structure more responsive to the aims and needs of the monarchy. Even in Brazil, the only Portuguese colony, a new bureaucracy had been implanted. There were complaints, but the Iberians colonists generally lacked any institutional channel independent of the government through which to mobilize and coordinate their protests. We must also recognize that because the Iberian colonies had been ruled directly (although not always effectively) under royal mandate for two and a half centuries, any outcry would be muted out of a deeper loyalty to the Crown as well as a longer experience of being the ruled rather than the ruling. The parallel is that the British government was pursuing a similar goal of centralizing and consolidating authority that was less draconian than the Spanish plan but draconian enough to the British colonial subjects. For these subjects altering the balance of power within the colonial system was not only a political threat but also an economic threat. In a way that was less apparent in Iberian colonies, both as a matter of law and action, the British colonists had linked their property and wealth to their political institutions. Rendering those institutions less independent under the proposed reforms was ultimately a threat to their economic wellbeing.

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The disquiet over changing imperial rules did not result immediately in calls for and actions in behalf of severing ties with the Mother Country. Since the middle of the seventeenth century, political theorists allowed for unseating any ruler who violated his compact with the citizenry, but terminating the compact was not to be taken lightly. We need to be clear about empiricists like Thomas Hobbes and John Locke on the institution of government. They relocated the source of authority – the power to govern derived from those being governed and not from those who were governing – but in so doing, they did not declare the end of government. Even after Hobbes, dismayed by the instability of the English political system, embraced the concept of sovereignty that originated with the individual and had to be transferred to a governing entity by a compact between the individual and that entity, which the individual could terminate if the entity defiled the compact, even after all that, Hobbes tended to favor a strong central government like a monarch because individuals were a capricious, uninformed and even dangerous lot when put in charge of their own sovereignty. Hobbes's effort was not to remove government but rather to make government accountable and perhaps to make it more responsible. Nevertheless, the door, which Hobbes and those who followed him pushed through with different versions of how the compact should be designed along with remedies for some obvious pitfalls, was already ajar by the middle of the seventeenth century. Something known as the English dissenting tradition had already contributed a slew of ideas, many of which were viewed within the established social order as radical and unworkable, that raised the inevitable question whether any government could be trusted, no matter how air-tight the compact was. To be sure, this was a small segment of the English population, but their iconoclastic approach had many adherents among the dissatisfied and the disadvantaged. The dissenting tradition even had adherents among the English settlers. Consider this one example – a very small slice indeed – of William Harris, an early landowner and settler in Roger Williams's new colony, Rhode Island, and a publicly-declared anarchist. Harris had little use for Williams's careful balancing of citizens' rights and citizens' duties, code for limiting an individual freedom in behalf of a stable civil society. Harris's banner more likely read "No lords, no masters", and in a letter to the citizens of the town of Providence Williams stated his fear that when people like Harris accepted only their conscious as their guide they effectively negated the rule of law and benefit of order.⁵

⁵Details in Charles Andrews, *The Colonial Period of American History*, 4 volumes (New Haven, CT: Yale University Press, 1938), 2:21. Andrews described Harris as an "arch-individualist" and a party to the "Generalist doctrine of unrestrained individualism". Terms individualist and individualism become a part of the American vocabulary in the nineteenth century but probably not so in the seventeenth century. No doubt, Harris had an individualistic outlook by believing societies could work perfectly well without formal governmental institutions, at least those with which he had some familiarity, and in the absence of government "individual sovereignty" would reign. That, to say the least, did not please everyone, to wit Roger Williams, who believed that left to their own devices individuals would simply self-destruct.

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After centuries of government, often tyrannical and evil, the absence of government, as exemplified in “no lords, no masters”, could also raise the anguish level. The pre-Revolutionary era had its own “hotheads” who saw no redeeming value in remaining in the Empire, and although they would eventually win the argument, they had to allow the majority (it would appear since no polls existed) the time to come to terms with desirability and necessity of tossing over an insidious monarch and corrupt administration. The moderates and conservatives, not the radicals, drove the process toward and set the agenda for independence, and yet the language of the less restrained would insinuate its way into the public conversation. In part the transformation in American thinking about choosing independence can be followed in the many pamphlets, treatises and sermons written after 1750 and collected by Bernard Bailyn. In his study *The Ideological Origins of the American Revolution*, he wrote that “American writers were profoundly reasonable people. Their pamphlets convey scorn, anger, and indignation; but rarely blind hate, rarely panic fear.” Didactic rather than imaginative, direct rather than metaphoric, the “reader is led through arguments, not images. The pamphlets aim to persuade.”⁶ There was little doubt in the minds of writers who leaned toward independence that it was America’s destiny to use its resources and experiences to establish (to steal from John Adams) “the wisest and happiest government that human wisdom can contrive.”⁷ “Pursuit of happiness” will become a staple in American political language, although few will stop to define how that pursuit was to be managed and what it was to achieve. In the American mind, the yoke of corruption and oppression once lifted would allow a citizenry endowed with noble instincts and honest ambitions to lay down the blueprint for the best of civil societies.

The Declaration of Independence (1776) is the most popular document in American historical archives, even more popular (if less important) than the Constitution. The popularity of Declaration rests with its format. In a few paragraphs, written for effect, the Declaration provided a rationale for severing ties. As such it was not a document that laid out the new path ahead but rather justified the need for a new path. The hard document to write will be the instrument by which to organize a government, and once written, it will have a troubled history. The Declaration, on the other, citing English theory, history and precedence, had a single purpose: to declare “enough is enough” and this was why. Americans may well have understood the language and intent of the

⁶Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: The Belknap Press of Harvard University Press, 1992), 18–19. The pamphlets themselves were published as *Pamphlets of the American Revolution*, 2 volumes (Cambridge, MA: Harvard University Press, 1965).

⁷Quoted in Bailyn, *Ideological Origins*, 273.

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Declaration, but that did not necessarily render them fearless in the face of an uncertain future. What would come next? This was the first such venture under guidelines that were written and argued about but never tested. The great political thinkers of the late seventeenth century and the eighteenth century were reading the past in order to devise a better scheme for making government work. Not all Americans thought relations between Great Britain and the colonies had devolved to the point that only a rupture remained. The defenders of the Empire, however, was a shrinking body. Even so, the dissenters, probably a majority – polling did not exist – needed to be reassured.

It was the ambivalence about independence that Thomas Paine addressed early on in *Common Sense*. Paine, an Englishman who had arrived in the colonies just two years before the Declaration, held very strong views about society and government. Society was prized; government was not. Government “even in its best state is but a necessary evil, in its worst state an intolerable one; for when we suffer, or are exposed to the same miseries by a government, which we might expect in a country without government, our calamities is heightened by reflecting that we furnish the means by which we suffer!” A government that embodied the principles of “least expense and greatest benefit” was preferable to all others. Paine told Americans that if they were resisting independence because they believed that the “old regime” was nobler than its recent behavior had demonstrated, they harbored an illusion; and if they were resisting because they lacked a plan to replace what they were giving up, they should think simple:

Here then is the origin and rise of government; namely, a mode rendered necessary by the inability of moral virtue to govern the world; here too is the design and end of government, viz., freedom and security. And however our eyes may be dazzled with snow, or our ears deceived by sound; however prejudice may warp our wills, or interest darken our understanding, the simple voice of nature and of reason will say, it is right.

I draw my idea of the form of government from a principle in nature, which no art can overturn, viz., that the more simple any thing is, the less liable it is to be disordered, and the easier repaired when disordered.⁸

Keep it simple: the simpler it is the less likely it will fall into disrepair and the easier it is to repair if it does.

⁸Thomas Paine, *Common Sense* (Philadelphia: W. and T. Bradford, 1791). Unpaginated. Downloaded from <http://www.earlyamerica.com/earlyamerica/milestones/commonsense/text.html>

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In the year leading up to the Declaration of Independence Pauline Maier and other historians believe that much can be learned about the scope and direction of the independence movement from activities in the colonies and in the towns of the colonies. The act of “declaring” was well established within English political history. A important act was the Declaration of Rights that accompanied the transfer of authority from James II to William of Orange during the so-called Glorious Revolution of 1688. Colonials debating the issue of independence frequently cited the Declaration of Rights. Declarations came in different forms and applied to various circumstances. Maier provides an illuminating discussion of the long history of “declaring” and then turns to an analysis of colonial, county, municipal and other declarations. She compiled a Log of Declarations between April and July, 1776, and then provided examples of the texts of the declarations. Nine of the 13 colonies made declarations as well as scores of local bodies, official and quasi-official, a majority of which were towns in Massachusetts. Many regions were not represented at all, and some were overly represented. Still, as Maier concludes, these actions indicate a citizenry becoming more and more involved in the process that pointed toward, not away from independence. There was no single pigeonhole into which these declarations fit. Some were technical in the sense that they offered emendations to earlier declarations. Other came close to sedition and treason, which were punishable by death and forfeiture of property. (The forfeiture of property was a major concern of many small property owners.) Her summing up is worth quoting:

The many American who debated Independence did not need Thomas Jefferson to remind them that the “whole point” of the controversy that absorbed their lives lay not in the ending of an old regime but the founding of the better one, or that their future would be bound up with that powerful but ambiguous word, equality...Americans had to do more than demonstrate that the British Crown had forced them to the measure. They needed to overcome fear and the sense of loss, to link their cause with a purpose beyond survival alone, to raise the vision of a better future....⁹

Certain words and phrases caught my eye as I read through the selected declarations in Appendix of Maier’s *American Scriptures*. They are not unique to these documents, but rather they entailed a pattern of thought or more precisely of emotion that characterized the essential difference between the “new” world and the “old” world. In spite of misgivings and uncertainties the colonists who wrote these declarations and debated

⁹Maier, *American Scripture*, chapter 2, pp. 95–96.

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their contents as well as the citizens who voted their support or at least voiced their support foresaw, indeed forecast, greater happiness than in the future than in the past. To some such optimism smacked of sentimentality and irrationality and had no place in what was essentially a political struggle about the exercise and distribution of authority. From Natick, Massachusetts, after a sobering presentation of why the Mother Country had proven itself incapable of being a just and prudent governor the declaration ended with the assertion that independence will more speedily restore the values and principles that once guided this “happy land”.¹⁰ In Topsfield, Massachusetts, citizens declared we once “looked on ourselves happy in being subjects of the King” and in fact counted “ourselves happy when in the strictest union and connection with out parent State.” But alas, what was the source of happiness has become the source of injuriousness. Thus, the implication being, only independence could restore what was lost.¹¹ In Virginia where sentiments like happiness may have been accorded more acceptability the Declaration from Buckingham County asserted that the remedy for the assorted abuses suffered by the citizens of the colonies was the institution of a “free and happy Constitution” that will help to create a government that is the “most free, happy and permanent” that was within the power of individuals to organize. Indeed happy and happiness appear twice more in the Declaration with reference to what citizens can expect with the coming of independence.¹² Finally, from South Carolina the Empire had been a source of “greatest happiness”, but “by their wanton and undeserved persecutions” the British government has broken that bond irretrievably. With the bond broken the only course by which South Carolinians could find once again “future happiness and safety”, “honour, safety and happiness”, “the rights and happiness of the whole”, or “liberty and happiness” was through independence.¹³ Other words could also be highlighted, but, as can be seen in these few examples, the sentiment of happiness will come to occupy a central place in the hierarchy of sentiments among Americans.

Many historians have retraced the steps that moved Thomas Jefferson from a marginal player on the rebellion stage to a leading role that came with authorship (in the main at least) of the Declaration of Independence in the summer of 1776. Jefferson has always agitated historians and continues to do so – America’s own sphinx, to paraphrase the

¹⁰Maier, *American Scripture*, 232–233.

¹¹Maier, *American Scripture*, 233–234.

¹²Maier, *American Scripture*, 226–229.

¹³Maier, *American Scripture*, 229–230. Two of the declarations, one from Maryland and another from Massachusetts, did not contain happy, happiness, etc, (so far as I could determine), although the Maryland Declaration did refer to the unhappy dispute between Great Britain and the United Colonies.

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title of Joseph Ellis's prize-winning character study of Thomas Jefferson. Ellis's *American Sphinx* appeared in the same year (1997) as Maier's *American Scripture*, and while the two scholars possessed admiration for each other's work, they do not agree about Jefferson's role or influence. Maier had once "nominated" Jefferson as America's most overrated historical figure, and yet her treatment of Jefferson is critical but fair.¹⁴ This is not just quibbling, which historians do a lot of. Jefferson, as a historical figure, can inspire and frustrate. He penned the Declaration but borrowed heavily from others, especially in composing the Declaration's most important Preamble. John Adams's intellect is often portrayed as superior to Jefferson's, and certainly Adams must be credited with some important revisions to Jefferson's various drafts, and yet Adams could never have composed a "declaration" with the appeal of Jefferson's Declaration. Adams hardly imbibed the optimism that underlay Jefferson's intellectual world. He favored independence from Great Britain on grounds that differed from Jefferson. By his reasoning the colonial assemblies were absolutely sovereign with respect to their own domestic affairs. Parliament in effect had no authority to impose taxes and regulations over internal matters because under the founding charters the settlers only allegiance was to the King, not the Parliament. He was more enraged over the intrusion of Parliament than the alleged abuses under George III. He defended the British political system, although he was convinced that by understanding the evolution of the system Americans could improve upon it and adapt it to their needs. Many Americans, some very prominent, translated his admiration for the British system into admiration for monarchy, a charge that neither he nor his heirs could ever completely shed. His general skepticism about the capacity of the individual to manage his life without impeding on the happiness of others made him an advocate of a properly-ordered social system that underscored the value of governing. Wood is favorably disposed toward Adams because over time Adams's more "realistic" appraisal of the difficulties and uncertainties of building a nation around the unpredictability of the individual has proven prescient.¹⁵ Jefferson claimed to speak for the people in a way that Adams could not or would not; therefore the outcome that he sought was a happy alignment of the individual within a grand design that would reward the virtuous no matter the rank. Inequality was everywhere but to the extent that individuals were free, unrestrained as it were, to pursue their "happiness" the inequalities would be erased. Jefferson, who will show himself to be a hard-headed politician, was at heart a dreamer. His dreaming, however,

¹⁴Joseph Ellis, *American Sphinx, The Character of Thomas Jefferson* (New York: Alfred J. Knopf, 1997).

¹⁵This is no more than a brief introduction to Adams and his ideas about society and government. His presidency and the opposition that it provoked among the Jeffersonians will be treated in greater detail later. See Wood's Chapter 6 on Adams, appropriately entitled "The Relevance and Irrelevance of John Adams," in *Revolutionary Characters, What Made the Founder Different* (New York: The Penguin Press, (2006), in particular pp. 175-176, 180-185, 197.

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contained a major flaw. He dreamed of individual achievement while owning slaves and defending slavery. Even in his own lifetime he was the object of criticism on how the Declaration was written and what was manifestly left out. In a letter written late in life, two months before his death in 1825 to fellow Virginian, Henry Lee, Jefferson reiterated then what he had said at other times: he did not write the Declaration “to find out new principles, or new arguments, never before thought of...; but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand that we are compelled to take.” The process of editing and revising the Declaration had left Jefferson disturbed and sullen, and a consequence, which Jefferson freely admitted to during the drafting and later, was a document less radical than his had proposed in his own original draft. He had produced in effect a collective document for action, not a singular treatise on government.¹⁶ So, as with Ellis and Maier, the sphinx or the lightweight, Jefferson under the microscope does not always fare well.

My computer word counter says that the copy of the Declaration of Independence that I downloaded from the Internet has 1,327 words (excluding the title and signers). If that is not a precise figure, it is close enough. One can speculate without too much exaggeration that millions of words have appeared about the author(s), the text, the significance and a multitude of other related topics. And yet there remains a remarkable amount of mystery not only as to how the document came about but why it came about. Since the Declaration was approved 4 July 1776 many including contemporaries of Jefferson and his associates have asked, to cite a well-known ad, where’s the beef? Even after parsing the Declaration word by word over several different versions and trying to track down all possible influences and connections it can still be argued (as historians have amply shown) that several interpretations are plausible. And no interpretation is unassailable. If the so-called Preamble of the Declaration, those memorable and stirring words and phrases in the first two paragraphs, are put aside for the moment in order to focus on the grievances, the nuts and bolts of why independence was necessary, one is hard pressed to document the tyranny and abuse as stated, and the way in which they are stated is important. As Maier points out, some alleged grievances may have occurred on a limited basis many decades before and some may have occurred also on a limited basis in recent years. But many allegations cannot now and could not then be pinpointed with precision. It was almost as if grievances in the

¹⁶Wood, *Revolutionary Characters*, 101, citing Merrill Peterson, ed., *Thomas Jefferson: Writings* (New York: Library of America, 1984), 1501. For a wider context in which to understand these events, see Wood’s *magnus opus*, *The Creation of the American Republic, 1776–1789* (Chapel Hill, NC: The University of North Carolina Press, 1969), which laid out the twists and turns, ideological and political, that the new nation confronted between the Declaration of Independence and the Constitution.

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Declaration as well as in local declarations, preambles to constitutions being written by the “new states” and other pronouncements were meant to show how bad it will become inside the Empire, not how bad it had actually been. It was the perception of a fear of the future under continued British rule rather than an assessment of the present. Almost uniformly these documents alluded to a benign past relationship, which Great Britain had been revising for decades. Gordon Wood’s essay “Rhetoric and Reality in the American revolution” published in 1966 offered such a perspective.¹⁷ As Americans looked ahead at what might happen, they could easily manipulate what was happening and had been happening to reinforce their fears. To be sure, in the quarter century before independence, Great Britain had tightened the colonial administrative screws, much as Spain and Portugal were trying to do. Financing empires had grown expensive, and the enactment of colonial policies that would require colonial societies to foot more of the bill for their own defense and administration were not well received. In the Iberian Empires the reactions will be different because being ruled was more widely accepted in Iberian colonies than in American English colonies. Such changes, it seems to me, do not have to become tyrannical and abusive to register negatively within a colonial mentality that had grown accustomed to latitude and discretion. I’m not a disciple of historical inevitability (a matter of hindsight, not foresight), but I can observe that if policies changes whether minor or major continued in the direction and at the pace of the decade prior to the opening of the Second Continental Congress into the spring of 1776 – that was the “perceived” fear, was it not – any reconciliation was at best a low probability. Moderates in the Continental Congress may have held out hope that the military skirmishes in combination with public protests would make reconciliation more palatable. No such luck. A future inside the Empire no matter how beneficial and fraternal the ties had been did not look promising. The Continental Congress had moved more slowly than some, like John Adams who wrote his wife in snarly language that the fleetest would have to wait on the dullest and slowest, would have preferred But the fleetest perceptions counted for more than infractions and for the less fleet infractions did not justify the perceptions. In both cases the outcome of a declaration was uncertain. The fleetest did not always agree either. Adams did not particularly consider George III a tyrant, which in the language of Jefferson’s Declaration he was duly portrayed, but he was not so put off by this to take the time to make a case for revisions.¹⁸ He was a busy man, to be sure, but he was also willing to let whatever momentum could be derived from portrayal of a tyrant to help drive the process.

¹⁷Wood, “Rhetoric and Reality in the American Revolution,” *William and Mary Quarterly*, (January, 1966).

¹⁸John Adams to Abigail, 17 June 1775, in Edmund Burnett, *Letters of Members of the Continental Congress* (Washington, 1921–23), 1:132, cited in Maier, *American Scripture*, 17.

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As crucial as the grievances were to justify independence, the preamble – those first two paragraphs – has fired the imagination of Americans. Nearly every phrase or sentence has been studied and sourced, and while Jefferson’s originality has been questioned, the composition – the way in which the preamble was put together – is what ultimately matters. Could it have been more original or better composed – probably – but in the form that the Continental Congress approved in early July, 1776, it worked. The so-called “fair draft” that the Committee of Five approved has disappeared. Historians have recreated from the official copy and other sources what might have been the fair copy. It would appear that the Continental Congress made numerous changes to the grievance section but few changes to the preamble. It may not have mattered much to Americans what the grievances, real or perceived, were. If they were ready to rebel or leaning in that direction what mattered was the symbolic language of the Preamble. They understood in general terms that individual held inherent rights including the power to dismiss rulers and their agents who compromised their rights. They understood that governments were creations of individuals and had no independent authority beyond what individual stipulated. Colonial assemblies and municipal authorities had not assumed a governing role by declarations or constitutions. They had assumed a governing role through interactions with settlers. Royal authority existed at the top of the colonial political structure but was virtually absent at the lower levels. What mattered most to settlers, who might have a natural inclination to be deferential to public authority, was that such authority was only legitimate when it advanced their interests, not constrain them. By the time of the Continental Congress the alleged constraints struck at the heart of the ideal by which Americans defined their existence. The Continental Congress may have worried about the language of the grievances, but for those American who had made up their minds or were close to doing so, it was probably that most famous of Jefferson’s phrases – “life, liberty and the pursuit of happiness” – that they wanted to preserve.

The inspiration for Jefferson’s phrase is said to be “life, liberty and property” attributed to the English thinker and writer, John Locke. But if one were to search for the precise origin of that famous phrase in Locke’s writings, it does not exist. The section in the *Second Treatise of Civil Government* from which the ideas contained in the above phrase were drawn appears as follows:

But though this be a state of liberty, yet it is not a state of license: though man in that state have an uncontroulable [sic] liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare

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preservation calls for it. The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's. Every one, as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.¹⁹

There is no doubt that the message in “life, liberty and property” can be dug out of the above quote but not necessarily with the simplicity that characterizes the more famous abbreviated form. One’s immediate observations is that the original Lockean statement concerning what natural rights an individual possesses and can defend against usurpers and tyrants requires a deeper reading. In one sentence the individual had a natural right to defend “life, health, liberty, or possessions” and in another sentence the individual has no right to take away “life, health, limb, or goods of another.” (See above quote.) The “wise maker” was instrumental in establishing this natural order in which individuals have rights but also obligations. One can enjoy the state of liberty so long as the state of liberty did not become a license for liberty. Sound ideas, to be sure, in light of the growing belief that authority to govern derived from individuals rather than rulers. The shift required a forceful reassurance that individuals could act responsibly with their newly acquired freedom. That reassurance was thus: “being furnished with like facilities, sharing all in one community of nature” would serve as the necessary restraint on destructive behavior toward each other. It must be remembered that Locke and others who were thinking about the English Civil War and the Declaration of Rights that ended the reign of James II were offering their ideas as a reaffirmation of ancient rights and liberties that successive monarchs had eroded, even though the act of reaffirmation rested a different foundation.

¹⁹John Locke, *Second Treatise of Civil Government*, on-line, chapter 2, section 6.

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Jefferson's substitution of "pursuit of happiness" for property had a more inspiring appeal that the populous could relate to because it optimistically pointed ahead. Happiness in one its contemporary usage can cause eyes to roll. It seems imprecise and squishy (although, as I write this, Happiness Studies are making a big splash in the American Academy). But happiness was a part of the political vocabulary of the eighteenth century. Indeed John Locke used the phrase happiness and security to set out the goals of a well-ordered civil society. I've already noted the presence of happiness usually in combination with some term of being secure in the other declarations. Alexander Pope, a deist like Jefferson, composed in rhyming verse his *Essay on Man* in Four Epistles, the fourth of which was about "Happiness". Jefferson's Library may have had two publications of Pope's complete works, which included the *Essay on Man*, although without examining the books I do not know to what extent Jefferson studied Pope. Scholars have recognized lines from Section VII, Epistle IV (the final section of the poem), that may have inspired Jefferson. The lines read:

Slave to no sect, who takes no private road,
But looks through Nature up to Nature's God. [underlining mine]

Comparable sentiments found in the very first paragraph of the Preamble after the dissolving of political bands: "...to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them...", [underlining mine] followed by the requirement to state the cause. The couplet containing the lines quoted above (from Pope) extols the virtuous man, who did not try to separate himself from Nature and God but

Pursues that chain which links the'immense design,
Joins Heav'n and earth, and mortal and divine.

Americans were simply assuming a "separate and equal station" among the powers on the Earth to which they were entitled under the Laws of Nature and God.

Pope's opening lines provide a context for exploring man's struggle for and with happiness:

Oh Happiness! our being's end and aim!
Good, Pleasure, Ease, Content! whate'er thy name,
That something still which prompts th'eternal sigh,

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For which we bear to live, or dare to die;
Which still so near us, yet beyond us lies,
O'erlook'd, seen double, by the fool and wise:

No matter our attitude toward “the pursuit of happiness” (the title incidentally of numerous works including a fine novel by the late Thomas Rogers [1968]) it was a part of the eighteenth-century political discourse. Pope himself, after three Epistles in which he dealt with the fruitlessness of life, virtue and vice, the unbreakable link between man and nature, man’s reason and passion, human chaos and design and balance he evoked an ultimate embrace of a happy outcome. The first three Epistles contain lines familiar to many: “Hope springs eternal in the human breast;” [Epistle I] or “Two Principles in human nature reign;/Self-love, to urge, and Reason, to restrain;” [Epistle II] or “For forms of government let fools contest;/Whate'er is best administer'd is best:” [Epistle III].²⁰

Finding Happiness was a pursuit that tested man in every way imaginable. But the tone was one of hope, and the tone among Americans like Jefferson who took up the question of happiness was often hopeful. God’s laws were meant to be general, not specific, and order was the first law.

Some are and must greater than the rest,
More rich, more wise, but who infers from hence
That such are happier, shocks all common sense.

While Fortune may dispose of her gifts, Heaven will keep Happiness among mankind in balance.

Know all the good that individuals find,
Or God and Nature meant to mere mankind,
Reason’s whole pleasure, all the joys of sense,
Lie in three words--Health, Peace, and Competence.

Living a virtuous life must be the goal, and living such a life was more simple than elaborate.

There in the rich, the honour’d, famed, and great,

²⁰I downloaded a copy from Poets’ Corner at <http://theotherpages.org/poems/pope-i.html>. Regrettably the lines were not numbered.

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See the false scale of Happiness complete!

It was expected in the grand scheme (a master plan among Deists) that embracing virtue yield happiness:

Know then this truth (enough for man to know),
'Virtue alone is happiness below.'
The only point where human bliss stands still,
And tastes the good without the fall to ill;

In this immense design God's love was from whole to part and Man's love was the opposite, from part to whole. Man's love for himself was not to be feared within the grand design by which Man and God were to seek union.

Self-love thus push'd to social, to Divine,
Gives thee to make thy neighbor's blessing thine.
Is this too little for the boundless heart?
Extend it, let thy enemies have part:
Grasp the whole world of reason, life, and sense,
In one close system of benevolence:

Pope ended with the triumph of the pursuit of a virtuous and happy life:

That Reason, Passion, answer one great aim:
That true Self-love and Social are the same;
That virtue only makes our bliss below,
And all our knowledge, *ourselves to know*.²¹

The plea at the end in behalf of self-love concerned a fundamental question: would not one's love for one's own desires in order to achieve happiness – an matter that Pope addresses throughout the poem – lead him to inflict injury or harm on the happiness of

²¹The quotes appear in The Argument, Epistle II (twice) Epistle VI, VII. Available at the Poets' Corner, <http://theotherpages.org/poems/pope-i.html>. The distinguished colonial scholar, Jack P. Greene, has published a book with the title, *Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture* (Chapel Hill, NC: The University of North Carolina Press, 1988), that invokes the image of happiness in a different way. These were pursuits concerned with economic and social development in New England and in the Chesapeake with the aim of showing that development in the latter was more representative (and more successful) than that in the former. This is an argument over which best represented the British colonial model, which is not at stake in the discussion above. However, Greene did find the Chesapeake model to be more capitalistic and individualistic and therefore directly related to what came in America after the Revolution.

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others without rules and regulations to prevent it? Ultimately for Pope (and for Jefferson) the individual embracing a virtuous life within a grand design was achievable. Behind Jefferson's use of the phrase "pursuit of happiness", which was not, I believe (like Maier), strictly a substitution for property, more was at stake.

Jefferson was not the only prominent American who elevated the individual to a level where government, long regarded as essential to social stability and personal wellbeing (to wit, John Adams) was deliberately shrunk and downsized. It also generated further controversy about Jefferson because his notions of how government should be constructed in light of the pursuit for happiness rather than order seemed to be derivative. One of Jefferson's colleagues, a revered colleague, George Mason, was writing the Declaration of Rights for the Virginia (Constitutional) Convention at the same time that Jefferson was given his assignment. Mason was a member of the drafting committee, but because the other members were "useless" he authored the first draft. The very first declaration will be immediately recognizable:

That all Men are born equally free and independent, and have certain inherent natural Rights, of which they can not by any Compact, deprive or divest their Posterity; among which are the Enjoyment of Life and Liberty, with the Means of acquiring and possessing Property, and pursuing and obtaining Happiness and Safety.

The Committee did not alter the above declaration but the Convention did. The alterations in Mason's draft may appear minor: "of which" is followed by "when they enter into a state of society" before "they cannot"; "among which are" was dropped for "namely". The first alteration, at the behest of Edmund Pendleton, the President of the Fifth Revolutionary Convention and another renowned Virginia, was the weightier of the two. Without specifying that these rights inhered at the time that the society (civil or social order) was created, any and all human beings including slaves could be treated as equal and entitled to the same rights. Clearly in mid-eighteenth-century Virginia, slaves were not equal with whites, nor were they entitled to the same rights. Since they did not participate in creating a society, they were excluded (along with women and Indians). "Namely" seemed more limiting in terms of how many natural rights existed. The amended declaration became Article 1 of the Virginia Declaration of Rights.

Maier believes that Jefferson "meant to say more economically and movingly what Mason stated with some awkwardness and at considerably greater length." Perhaps.

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There is a flow that Jefferson's language that was missing in Mason. There is also more to Mason's first Article. Compare the above with Jefferson's lines:

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness....

To begin with, the two documents served different goals. The Virginia Convention was designing an instrument of government to which they intended to add a Bill of Rights, specifically to protect the citizen against government, whereas Jefferson was declaring a public stance for independence from England after which the Continental Congress, if it so wished, would prepare a constitution. A Bill of Rights and a Declaration of Independence may have to cover some of the same ground, but they would still be dealing with very different outcomes. Thus, Article 1 in the Virginia Bill of Rights and the Preamble of the Declaration worked some of the common ground. Under Mason's pen the "Means of acquiring and possessing Property" was an inherent, natural right as was "pursuing and obtaining Happiness and Safety". As written, was the acquisition of property to be treated differently from the pursuit of happiness? Maier suggests that since property was a specific thing and "can be sold and is therefore alienable," it was not meant as a substitute for happiness. (Recall that the sentence that precedes "life, liberty and the pursuit of happiness" contains the words "inalienable rights", and that is why Maier makes the point about alienable versus inalienable.) Happiness like life and liberty was made up of "different stuff" and could not be alienated.²² Jefferson apparently knew about Mason's First Article; telling Richard Lee he incorporated the essence of it into his first draft of the Declaration because it served his purpose. By enlarging it, however, he altered the vision for America, not by diminishing the importance of property but elevating the pursuit to a level grander or nobler than ownership. Locke's triad was refashioned to reflect an eighteenth-century outlook.

Ellis interpreted Jefferson's actions in more pragmatic terms. Jefferson understood the dilemma facing slave-owning Virginians and Southerners over the phrase "all men were created equal" and therefore substituted "pursuit" for "property" to hide the inconsistency between liberty and slavery and to allow Jefferson to emerge as a proponent and defender of a liberal, individualistic and even capitalistic model.²³

²²Maier, *American Scripture*, 127, 134.

²³Ellis, *American Sphinx*, 56–59. Ellis makes a good case that what was on Jefferson's mind, as he wrestled with the writing of the Declaration after 12 June 1776, was not so much the Lockean or Scottish forms but events in Virginia where Jefferson may have preferred to be because he had helped to prepare several drafts of a constitution for Virginia.

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Several other declarations from Mason's original draft were changed by the Committee or the Convention. What became Article 2 in the Virginia Declaration originally read:

“That Power is, by God and Nature, vested in, and consequently derived from the People; that Magistrates are their Trustees and Servants, and at all times amenable to them”;

and the revision read:

“That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.”

“God and Nature” were replaced by “all”, far less specific. Pope can be cited, of course, but perhaps more importantly Jefferson retained the God and Nature motif. It would seem that since it appear in Mason's draft, Pope's usage or at least his reference to God and Nature, was know to Mason Some have postulated that Mason, a practicing Episcopalian, the dominant faith in Virginia, had leanings toward Deism, like many of his fellow Virginians, but others have stoutly dismissed this. In any event, rights were inherent (without mentioning any source) in the people, and magistrates must submit to that principle.

When we turn to Mason's third declaration, we note that it dealt with the all-important question of government. It was the government that was at the root of the crisis in the colonies. In the first instance, what may seem self-evident, government had a purpose. It was “instituted” for “the common benefit, and security of the people, in Mason's version to which was added protection. Although “benefit” could imply a larger arena of action on the part of the government, the emphasis in both Mason and Jefferson was securing individual rights. Common benefit (common must also modify protection and security) implied the possibility of government assuming a positive role (aiding citizens) as well as a negative role (guarding citizens). Mason, again in language that invoked Deist ideals, linked benefit, protection and security to the “people, nation or community” that flowing out when a pebble (wrote Pope) was dropped into water to embrace the individual at the center and all mankind at the edge. A government so instituted of all the various forms of government was the best for “producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration.” And even when the so-called “best government” (no specific name given it) failed, it can be reformed, altered or abolished. [See the passage below.]

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That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; of all the various modes and forms of government that is best, which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration; and that, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

Again, Jefferson in presenting a similar case shortened and refined Mason's declaration. He simplified what government were instituted for – to secure rights – and then addressed the action necessary when those rights were invaded rather secured to which he added in instituting a new government a form should be chosen that will, “most likely” provide for man's “Safety and Happiness”. [See passage below.]

That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

The essential difference between the Virginia Declaration and the Declaration of Independence showed up in the 13 other articles that dealt with what form the government of Virginia should take and what rights the people had under this form whereas the Declaration of Independence was a statement expressing under what terms the colonies could rebel after which they would then create a government that met the objectives set forth in the opening paragraphs. The words of Jefferson hinted at how the government should be shaped, but they were mainly concerned with why action was necessary. It was the theoretical construct of Mason that Jefferson found useful.²⁴

There was little in Jefferson's thinking up to this point that suggested he found much happiness in allowing a ruler to dictate his pursuits. If Pope were read even casually, there was little to recommend that virtue and government had little in common.

²⁴Both Declaration of Rights (all three versions plus some remarks by Pendleton and others) and the Declaration of Independence can be downloaded from the Internet.

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Happiness by eighteenth-century models existed beyond the reach of government. Government could deny happiness, but the only way in which it could enhance it was to play guardian, to make secure for the individual the pursuit of happiness. In her discussion of the happiness issue, she refers in a footnote to Ronald Hamowy essay on the Declaration of Independence. He gives the phrase a broader interpretation that the mandate is for government to stay out of the way or in his words to provide “a framework in which each individual may pursue his own happiness as he individually sees fit.” What followed the “Pursuit of Happiness” was an imperative for government: “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” The key phrase is “deriving their just powers because if government had basically a negative role of protecting and securing and nothing else than Hamowy’s “let them be” has some validity.²⁵ I would reiterate from the opening discussion on Jefferson’s distinction between individual self-rule and collective self-rule, government had not been totally banished, either under the Declaration or the Constitution or for that matter in Mason’s Virginia or Pope’s ideal, but the model for government will be sharply contested and constantly disputed. The path to happiness by which virtue will reign was intriguing and challenging.

The Continental Congress began debating Jefferson’s draft of the Declaration on or about the 3rd of July, and after editing and rewriting, mainly sections concerned with grievances against the King, the Congress approved it on the 4th, and about a month later all the members signed the parchment that the Declaration was written on. Preceding the debate on 3 July, the Congress had debated and approved a resolution by the Virginian, Richard Henry Lee, that declared in part that “these United Colonies are and of right ought to be free and independent states” on 1 and 2 July. When the Congress approved his resolution, it had for all intents and purposes declared independence.²⁶ The Declaration of Independence that followed was a formal but necessary step because under prevailing theory the dissenters had to lay out and make public a bill of particulars (whether or not by this time Americas needed to be reminded of the particulars).

²⁵Maier cites Hamowy in footnote 79, page 270. Hamowy’s essay is entitled “Declaration of Independence,” in Jack P. Greene, ed., *Encyclopedia of American Political History, Studies of the Principle Movements and Ideas*, 3 volumes (New York: Charles Scribner’s Sons, 1984), 1:559–560. Hamowy has a strong libertarian outlook, and while I will not invoke that term because I share his views, that as the Jeffersonian political ideals began to take shape in America over the next half century the power of the individual to determine his own path became the basic, if not fundamental preoccupation.

²⁶See Ellis’s discussion in *American Sphinx*, 48–49.

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When the Second Continental Congress convened in May 1775, relations had deteriorated not improved. In fact in the months leading up the Second Continental Congress New England had gone to war with the British military stationed in the provinces. Two months before Patrick Henry had delivered his fiery “Give Me Liberty or Give Me Death” speech before the House of Burgesses. Henry apologized in the opening lines for disagreeing with some of his colleagues, but he showed no hesitation in stating his views. The freedom of debate was the only way, he said, to arrive at an understanding of the truth. If he did not speak out it would be treason toward his country and disloyalty toward his God. Men naturally “indulge in illusions of hope.” But his principle guide, experience, left him no choice but to distrust the British government. It was intent on using force to subjugate, and no other reading can be given.

We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne!

The colonies had no other choice but to fight because the British intended to fight to impose their rule. He prophesied that the uprising heretofore would be met with increasing force (General Thomas Gage was about to receive instructions from the British Colonial Office to use all force necessary). He dismissed the notion that the colonies were too weak against a superior force. When will the colonies ever be stronger, he asked. Never, he answered, in part because the colonies had a “just” God at their back.

Sir, we are not weak if we make a proper use of those means which the God of nature hath placed in our power. The millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us. Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will raise up friends to fight our battles for us. The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave.

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After giving praise to God (Henry believed Deism was superior to Christianity because it lacks all “those invented and torturing articles that shock our reason or injure our humanity...Its creed is pure, and sublimely simple. It believes in God, and there it rests.”), Henry introduced one of those memorable phrases into the American political lexicon: “Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!”²⁷

For the next year before the actual Declaration was approved (1776) and against a backdrop of more military encounters and preparations (George Washington was named Commander of the Continental Forces) the momentum behind separation was building. Henry’s speech may have had an impact on public opinion after it was published in January 1776. His reference to the illusion of hope that Great Britain would change its ways may have struck a cord among those who had vacillated over separation. Whatever the state of public opinion (hard to measure given the times) the Second Continental Congress could not act on a Declaration until delegates had been instructed to do so. The Congress enjoyed no autonomy of its own. A year would pass before the point was reached where the instructions to the delegations on separation allowed Congress officially to act, even though in the meantime some colonial assemblies had issued declarations that amounted to separations.

²⁷For “Give Me Liberty” go to <http://www.americanrhetoric.com/speeches/patrickhenrygivemeliberty.html> and for essay on deism go to http://www.sullivan-county.com/news/deist1999/paine_deism.htm.

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THAT BEST MODE FOR GOVERNING

Our preoccupation with trying to pinpoint the sources and the intentions of the Declaration of Independence can overshadow a far greater political problem – what should follow the dissolution of the ties to the British Crown and Parliament. When I was an undergraduate, the period between the Revolution and the Constitution (say, 1781–1788) was described as the Critical Period in United States History. I was taught that the national government under American’s first constitution, The Articles of Confederation, created such a wobbly system that the nation’s stability and survivability were in doubt. A new constitution was ultimately agreed to, and the period between the ratification of the Articles (1781) and the ratification of the Constitution of the United States (1788) stood out as a close call. Subsequent research disputed the “critical” interpretation. It was a period of uncertainty, as political leaders struggled with the mechanics of a national government that owed its existence to the newly-independent states. No united colonial government had existed before the assemblage of “First” Continental Congress that convened on 5 September and met until 26 October 1774 with 12 colonies in attendance. Prior to that, protests over British policies were organized within individual colonies, although those policies might apply to all colonies and the protests might be loosely connected. In 1772, for example, Committees of Correspondence were organized in Massachusetts to convey information about colonial affairs to towns and their citizens, and in 1773 Virginia followed suit with its own committees and a standing committee in the Virginia House of Burgesses instructed to communicate with other watchdog committees. By 1774 all but two colonies had a committee system in place. Massachusetts was punished for its Tea Party (1773) by the enactment of the Coercive Acts (1774), directed mainly at the colony’s recalcitrant government, but out of fear and loyalty other colonies protested not only the Coercive Acts but the Quartering Act and other policies changes. There were calls for an intercolonial body to act in behalf of all the colonies against the intrusions by the Mother Country. The First Continental Congress was so organized.

The Delegates to the Continental Congress were appointed by colonial assemblies and took their instructions from those bodies. Each colonial delegation (four to five delegates on average per colony) had to agree on a position before a vote was cast in behalf of the entire delegation, and since delegations were made up of radicals like Henry to conservatives like Joseph Galloway (PA) debates leading up to votes could be contentious. When radicals pushed through the Suffolk Resolves that called for disobedience, the conservatives responded with a plan to preserve the union between the colonies and the Mother Country, although it was defeated by a single vote. (Later it

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was actually expunged from the official record.) The work of the Continental Congress did not produce a governing document for all the colonies (nor was it intended to), but it did authorize the creation of a “Continental Association” with branches in each province to enforce in effect a boycott against trade with the British Isles. The Congress adjourned with the proviso that it would reassemble six months later if the abuses and illegalities continued.

A protest with certain punitive actions against Great Britain had been approved, but the creation of a true colonial government with its own governing charter to which the provinces would give their allegiance was not yet in evidence. The delegates had generally but not unanimously endorsed ideas arising from a model known as the Dominion Theory. James Wilson (PA), Thomas Jefferson and John Adams had all written or voiced opinions that lent themselves to this theory. Briefly stated, it declared that the provinces, separate “realms” if you will, owed their allegiance not to Parliament since it only spoke for the citizens it represented, but to the King, who was expected through his liberality to rule over the various realms on the basis on their interests. Royal authority could extend to the provinces, to be exercised by the monarch, but parliamentary authority by which such legislation as the Coercive Acts had come into existence was null and void. At this stage, after a decade in which colonists had expressed their disapproval of or support for British rule, the essential dispute was with Parliament, not George III, although voices within the colonies were prepared to dump George as well.

Once the Congress declared, as frustrating as that process had been, it then came face-to-face with the question of governance under a united banner. The Continental Congress had originally assembled in order for the colonies to take a united stand against further intrusions by royal authorities and to coordinate whatever opposition might be appropriate. After the Declaration of Independence its role changed. Did the colonies now independent states intend to weld themselves into a nation, and if they did, what was the plan? The term American was and is used as if a nation was assumed or even in place, but in fact “Americans” of the Revolutionary Era had given little thought to the idea of how a nation might evolve from 13 independent states. Whatever form it should take, argues Gordon Wood in his magistral *Creation of the American Republic*, it was assumed that a “national government” could not seriously threaten the sovereignty of the states. Wood cited phrases like a “league of friendship”, a “Treaty of Confederation”, or a “council of nations” to described how Americans envisioned a union of sovereign states. During the War for Independence even without a “national constitution” Wood believes that the Continental Congress proved to be a powerful

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body – creating a continental currency, establishing military and commercial codes and negotiations foreign treaties – and yet few Americans considered the 13 states turning themselves into “a single republic, one community with one pervasive public interest.”²⁸ A message that emerges from Wood’s detailed account of political events between the Declaration and the Constitution is that many Americans were deeply suspicious of a powerful central government even though certain matters may have required a stronger central government than existed under the Articles. After all, a national government inspired the same fears as monarchy in conjunction with a parliament had for the colonists. But in the mind of some more radical advocates of independence there was not much difference between the monarch and the parliament. Both were to be feared because they operated from the premise of centralizing authority, and the centralizing of authority was what led to the Declaration of Independence. Severing ties was probably more thoroughly discussed among the power elite and may well have been more thoroughly understood among the general populous than the more technical discussion about how to organize the government, distribute the powers and launch a nation. The establishment of republics through compacts appealed to many eighteenth-century political thinkers, but a nagging question was how large. Specifically, the newly formed republics, e.g. states, seemed manageable, but an overarching national republic raised some troubling issues that had not yet been fully worked out within the prevailing political theories. The very act of centralizing or consolidating authority reminded activists of what had been and not what should be.²⁹

The Articles of Confederation and Perpetual Union was submitted to the states in 1777 and finally approved in 1781 On 15 November 1777 the delegates to the Second Continental Congress under whose auspices the Articles were written voted to distribute copies of the Articles to the states for their approval. On 9 July 1778 delegates from eight states that had ratified the Articles signed the “official” copy of Articles followed by two more states whose delegates were absent on the aforementioned day. By February 1779 delegates from two more states had signed. Maryland was the last to sign (1781) because of a dispute over western land claims. A total of 48 signed the Articles, but because of the length of time in debating and ratifying the Articles many of those involved in the original drafting were no longer in Congress, and many of those actually signed the Articles were newcomers. It is not clear, though, that the newcomers were any less suspicious of central government than their predecessors. Some of the signers will

²⁸Wood, *Creation of the American Republic*, 354–356.

²⁹Wood cites Montesquieu’s maxim concerning small, homogenous societies and sustainable republican governments and then discusses this maxim within the American context. *Creation of the American Republic*, 356–359.

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favor the movement to replace the Articles, and some will oppose the movement and the Constitution. Only five signers of the Articles will later sign the Constitution. Under the Articles the new “central” government had limited independent authority. Since states rather than citizens approved the Articles, their sovereignty was not seriously threatened by the Articles. As states assumed their independence under new charters and without any overarching political structure, they resembled small, autonomous, independent sovereign nations, which agreed to a modest plan for defense against Britain. In the Continental Congress itself when debates about confederation began in 1776 and 1777, the most contentious point was how much central government was needed. John Dickinson of Pennsylvania was largely responsible for the draft of the document to create a Confederation that was under debate, but, according to Wood, the likelihood of his version ever passing was small from the outset of the debate in 1776. Edward Rutledge from South Carolina probably expressed the sentiments of many delegates, especially those from small states – give the new government those powers that were absolutely necessary and no more.³⁰ Many American were not engaged in a war to end British tyranny in order to implement their own version. In waging the war the “national government” as personified in the Continental Congress had accrued more power because the exigencies of warfare demanded such than might have been duly granted.³¹ The undertaking of temporary tasks in behalf of the war was more acceptable than the granting of permanent powers to be exercised once the war had ended.

The title of the Articles made clear that the document concerned the states establishing a “perpetual Union” rather than the people doing so. At the same time, Article I declared that this Confederacy shall be called “The United States of America.” Article II stated without equivocation that each state “retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right “not “expressly delegated” to the Congress under the Articles. More to the point, Article III declared that the states have entered into “a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare”. They bound themselves “to assist each other” against any attack “on account of religion, sovereignty, trade, or any other pretense whatsoever.” As members of the union, free inhabitants (paupers, vagabonds and fugitives excepted) of each state were “entitled to all privileges and immunities of free citizens in several states”, a provision that allowed citizens to move to or do business in other states. Membership in the Congress was solely a state matter. Article V stipulated that delegates were to be appointed annually in manner determined

³⁰Wood, *Creation of the American Republic*, 358–359.

³¹Wood, *Creation of the American Republic*, 357–358.

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by state legislatures, and no person could be a delegate “for more than three years in any six years.” In spite of the fact that a state (based on size) could have as many as seven delegates, each delegation, e. g. each state, had one vote. Delegation had to reach an agreement before a vote, and that did not always prove easy. Article IX, the longest of the articles, laid out what duties the government under the Confederacy could perform. Much of it concerned matters of diplomacy, security and defense, the primary motivations for the creation of the league. The Article spelled out how disputes among the states should be settled, and when they could not be, the Congress would make a determination. It also granted the Confederacy other powers over value of coinage, weights and measures, Indian trade, postage and mail and control of military. The Confederacy, however, had no separate executive branch, although it was empowered to appoint a Committee of the States with a delegate from each state and with one of those delegates to serve as the presiding officer to handle affairs during any recess of the Congress. The Confederacy was not powerless, but it was not powerful. Its authority in areas of security, diplomacy and military was fairly broad. Some such appeared in Article IX, but it was most clearly spelled out in Article VI with a series of No's: “No two or more States shall enter into any treaty...,” or “No State shall lay any imposts or duties...,” for example. There was no standing military except vessels “deemed necessary” by the Confederacy to defend the nation and its trade, but “every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered [sic]...” In the domestic area the authority of the Confederacy was limited. In the crucial area of finance the new government was virtually powerless (Article 8). All expenses incurred by the Congress were to be paid out of a common treasury, “which shall be supplied by the several States in proportion to the value of all land within each State...” and “...taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States....” A contentious issue that delayed ratification was a provision in Article IX concerning disputed land claims between two or more states. to the Congress. Of course, the Articles spoke of the supremacy of the Confederacy in specific instances – “Every State shall abide by the determination of the United States in congress...” – and yet when in disagreement with an action of the Congress a state could not only withhold its vote but also more importantly its funds.³²

Even though ratification was delayed until 1781 the Congress operated under the Article between the submission of the Articles in 1777 and final ratification. And disputes within the Congress were frequent and disruptive even in the midst of a war over which

³²The Articles of Confederation can be downloaded from numerous web sites. I have used <http://www.usconstitution.net/articles.html>.

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the Congress had supreme authority. There was no doubt where the originating authority lay and how it was transposed. Once the war had ended and the Congress under the Articles was increasingly concerned with peacetime issues, the debate over governance grew more intense. Both the Declaration and the Articles had laid the foundation for a nation, but nation was defined by what was acceptable to the states. Their sovereignty was derived from the people in contrast to the national government whose sovereignty was derived from the governments of the states. What made matters worse in the 1780s was that some states were revising their constitutions in such a way as to radicalize further the sovereign relations between citizens and their governments and to make consolidated power as represented in a national model even more suspect. We spoke of ourselves as a nation, having defeated the British and approved the Articles, but a sense of nationhood was hard to install. By and large Americans were more loyal to and comfortable with their states. The outline of a national political structure came into being with the Articles and not much more. The Confederacy has been studied from many different angles, highlighting both triumphs and failures, but the divisiveness over financial and diplomatic/military questions generated fear that the union would not survive. Some Americans were prepared to let the union dissolve if any attempt was made to replace an utterly loose coalition of states with something more consolidated and centralized. After a war against monarchy and parliamentary government the liberty that they had sought to secure would be lost if nation came to mean anything more than occasional and begrudging cooperation. "Civil liberty," wrote one contemporary, became "a power existing in the people at large, at any time, for any cause, or for no cause but their own sovereign pleasure, to alter or annihilate both the mode and the essence of any former government, and adopt a new one in its stead." In citing this remark Gordon Wood added it made "revolution perpetual and civil disorder legitimate."³³ Certain events, however, like Shays's Rebellion, a series of uprising in Massachusetts (1787) led in part by a debt-ridden western farmer, Daniel Shays, brought into focus the question of whether or not governance at the national or the state level was sufficient to prevent independence from devolving into permanent chaos and thereby destroying individual liberty. Although still a minority (no quantifiable data), the voices for reform among both the prominent and the ordinary could not be ignored.

A lingering dispute between Maryland and Virginia over Potomac commerce led to the call for a commercial convention by Virginia to meet in September 1786 at Annapolis (MD) to try to find a way to settle such interstate disputes since the Articles offered few remedies. Charles Pinckney (SC) had several months earlier introduced in Congress a resolution to strengthen the power of the Confederacy to deal with domestic and

³³Wood, *Creation of the American Republic*, 362.

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international commerce and to force states to pay their allotments, but the Congress, doubting that the required unanimous approval would ever be granted, decided not to submit Pinckney's Resolution to the states. The Annapolis Convention picked up where the Pinckney debate had ended.³⁴ The Annapolis Convention was sparsely attended, although one of its most vocal members, Alexander Hamilton (NY), headed a committee that addressed a report to the states on interstate and international commerce and invited them to another convention scheduled for the following May 1787 in Philadelphia. It was not lost on the proponents of the Articles and a weak central government that this was occurring outside the legitimate structure of the Confederation government and therefore was illegal and had no standing. By and large they tried to ignore these activities.

Unlike the Annapolis Convention the Philadelphia Convention was well-attended with delegates from every state but Rhode Island. In May 1787, when it opened, 55 were in attendance and in September, when it adjourned, 39 signed the final document.³⁵ Of the 16 not among the signatories at least 11 actually left the Convention and of those 11 as many as 5 left because the Convention had, in their opinion, exceeded its authority – to revise not to replace the Articles. (The other major reason for leaving was illness.) Several other non-signatories remained but refused to sign because they disagreed with the finished product. Edmund Randolph, Virginia's Governor and later Washington Attorney-General thought the "checks and balances" were inadequate, although he helped to lead the fight for ratification in the Virginia Convention. George Mason, another prominent Virginian, joined Patrick Henry in opposing the Constitution because it lacked a bill of rights to protect both states and individuals and did not ban slave importations immediately. Eventually he used his influence to win support for the Bill of Rights. Elbridge Gerry (MA) also refused to sign because it lacked a Bill of Rights but supported its ratification. Two New Yorkers, Robert Yates and John Lansing, jr., two Marylanders, Luther Martin and John Francis Mercer, and perhaps one or two others quit solely on the grounds that the proceedings would lead to a strong central government, which they opposed. The argument has been put forth that given the departures the Convention was composed in the main of delegates who were like-minded about the need to replace the Articles. Hence, the debates – some of which were quite fierce – were less theoretical and philosophical and more on how to structure and

³⁴The subject has been treated in a long list of monographs and essays including the aforementioned *Creature of the American Republic*. With reference to the financial mess, defenders of the Confederacy often point out that states were willing to assume the debt contracted by the Continental Congress, but that opponents of the Confederacy did not want to let go of the one issue that they could use to try to effect a change.

³⁵The Convention was to open on 14 May, but a quorum was not in attendance until 25 May. The Convention ended on 17 September. There was a brief recess in August while a draft of the Constitution was being drawn up.

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to empower a new national government. They disagreed about allotting representatives, empowering the executive negating state laws or levying taxes, but being in general agreement about stronger national authority, they did not often engage in debates about the origin of sovereignty, individual rights, the relationship between freedom and restraint and social justice. Debating these issues might have produced a different outcome, but how different is pure speculation. What seemingly united the proponents of a new national government was a conviction that a loose confederation of disharmonious states posed more risk to people's aspirations than a federation in which a national political authority shared governance in order to achieve greater stability, even even if such consolidation or centralization aroused cries of tyranny. The tyranny of absolute state supremacy was as dangerous as the tyranny of absolute central authority. The trick was to create a dual system in which both entities enjoyed sovereign power to protect individual liberty and to advance individual happiness. The framers , at least those who signed, wanted a governing system that was more stable, supple and secure than represented by the Confederacy but not a system that threatened the existence of the states.

The framers worked throughout the summer of 1787 to fashion this new document through a series of compromises about the various branches, the checks and balances accorded them and the powers both inherent and explicit that would allow the national government to impose its will on those areas where state sovereignty was an obstacle to union. They submitted their handiwork to the states in the fall. As distrustful of the states as many of the framers were, the mechanism for approval bypassed the state legislatures in favor of ratifying conventions. Under this arrangement in accord with some eighteenth-century constitutional theories the people within each state selected delegates to a convention to debate and to ratify or not the new document. If ratified, the people in effect would transfer directly a portion of their sovereignty to the national government, as many had done in their own states where constitutions were written, revised and ratified. State legislatures, which ratified the Articles, had no official role in the ratification of the Constitution (except that members of the legislatures were powerful figures who may have served as delegates to the ratifying conventions or had influence over the delegates).³⁶ Think of a pie of governance from which the people cut a slice for the national government and another slice for the state government, and what was not sliced remained with the people. Both slices came from the same pie, may or

³⁶It was entirely legitimate for states, which had experience with constitution-writing during the Revolution and after to use their legislative authority, as expressed through appointed delegates, to prepare a document like the Articles that detailed what areas the states would cooperate in. From the outset the Constitution was different, even though some of its adherents kept referring to it as an improvement on the Articles.

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may not be equal in size, but owed their existence to the people who made the pie and not to any slice cut from the pie.

When the Convention organized, William Jackson won appointment as the convention secretary. He was not a delegate and could not sign the final draft. (He later became Washington's private secretary.) As secretary he was ordered to destroy the daily journal of the deliberations of the delegates except for tabulations of the votes on the proposals that became the "Articles and Sections" of the Constitution. James Madison (VA) kept extensive notes on the deliberations, and these notes were not published until the middle of the nineteenth century. Madison fully intended that they should be published, not in the rough shorthand that he used during the deliberations but in a readable narrative that he wrote at night during the convention and revised in the half century after the convention. Other documents concerning the deliberations have survived in the personal papers and recollections of the delegates themselves. Without a daily transcript, however, the record consists of recollections and reconstructions by the members themselves. It is difficult to judge how meticulous the delegates were in debating the language of the constitution. The idea of stating in a document what the powers and procedures should be had strong appeal in the eighteenth century, but setting down in words what they should be was a difficult assignment in spite of the experience that some delegates had in helping to write state constitutions or the Articles. (Remember trying to write constitutions and by-laws for high school clubs.)

We often refer to the "founders" and the "framers" as if we know who they were. Nowadays very few of the convention participants are recognizable. Washington, Madison and Franklin were in attendance but Adams, Jefferson and Henry were not. Many delegates, however, were prominent citizens in their own states – officeholders, merchants, lawyers (the majority), landowners and educators – and were conversant with the issues surrounding the call for a constitutional convention. Many of them also were well-to-do, and this has led to some disparagement of their accomplishments because they were more interested in protecting their wealth and property than in advancing republican or democratic principles.³⁷ Whatever their motivations, the delegates, once Washington had been elected President of the Convention, immediately tackled the fundamental question of what form a new national government should have. That it should be stronger was not the question. All agreed that the new government had to be stronger in those areas where a national sovereignty was required if the union was to survive and thrive. Determining its powers was in itself troublesome, but erecting the

³⁷The most famous of these interpretations was Charles Beard's *An Economic Interpretation of the Constitution of the United States* (New York: The Macmillan Company, 1913).

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machinery for its operation proved to be more troublesome. The delegates may have shared a common nationalist viewpoint, but they also came from states of varying sizes and differing interests that had to be accommodated even among the nationalists. The delegates did not share see eye-to-eye on the relations among the states. Under the Articles all states were treated equally – one state, one vote – but that had become precisely the problem in trying to administer the government of the nation. The large states at the Philadelphia Convention tended to favor a structure based on size of population whereas the small states feared that such a structure would make them pawns of the large states. A resolution was eventually found – known as the Connecticut Compromise – but some harsh exchanges occurred among the delegates that almost brought the proceedings to an end. The Compromise has been heralded as a hallmark of the founders’ ingenuity to forge agreements over controversial points, and within the context of the proceedings, close to dissolution, that was important. But how the national government was to be structured vis-a-vis the states became a bone of contention almost immediately and remained so.

On 29 May the Virginia Plan was introduced, and by 11 June the list included the Pinckney Plan (for Charles Pinckney, SC), the New Jersey Plan and the Hamilton Plan (for Alexander Hamilton, NY). The Virginia Plan became the basis for discussion, although much of the Plan was never instituted. It was seen, quite appropriately, as the plan of the big states, and after Edmund Randolph had introduced it on behalf of the Virginia delegation and its principal author, Madison, the small states began to caucus in order to prevent its enactment. The Virginia Plan created a bicameral legislature, an upper and lower house. Representation in the lower house would be proportional so that states with bigger populations got more representatives than states with small population. The upper house in turn would be selected by the lower house from a list of nominees submitted by the state legislatures. An executive to carry out the will of the National Legislature would be chosen by the two houses. It also called for an independent judiciary and a Council of Revision, composed of the executive and some members of the judiciary, to examine all legislation (national and state) for its compatibility with the national compact. Actions taken by state governments that impinged upon national jurisdiction could be negated but only after the Council had determined their incompatibility. Terms limits applied to members of both houses and the executive. Judges served on good behavior. There were at least three versions of the Virginia Plan (in 15 sections), and by the time that Version C was under consideration

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the length of the terms was specified: for the lower house three years, for the executive seven years and for the upper house “a term sufficient to insure their independency....”³⁸

The South Carolinian, Charles Pinckney almost immediately introduced his own plan, which Madison noted but did not provide a copy, which was found much later in the personal archives of another delegate. In terms of structure it was not much different from the Virginia Plan. It included a bicameral national legislature with a “House of Delegates” elected on the basis of population and a Senate to be chosen by the House of Delegates from among themselves or at large. It also called for an executive and a council. More than half of the 25 points concerned powers and procedures which the Virginia Plan did not treat extensively. Pinckney’s plan for four senatorial districts across 13 states was different from the Virginia Plan and somewhat radical for disregarding state boundaries. While his plan was not adopted, features of it were incorporated into other plans and some made it into the final charter.³⁹

Criticism of the Virginia Plan became heated in a debate on 9 June, and when it resumed on 11 June Roger Sherman, a much-respected delegate from Connecticut, offered a new proposal to try to bridge the gap between the big and small states. Favoring a bicameral legislature he proposed “the proportion of suffrage in the first branch [House of Representatives] should be according to the respective numbers of free inhabitants; and that in the second branch, or Senate, each State should have one vote and no more.” Of course, every American should be familiar with this idea for it was eventually written into the Constitution. But Sherman failed to win support for his proposition at this time, and the wrangling continued.

A few days later after the small states met in caucus to respond directly to the Virginia Plan, the New Jersey Plan was introduced by William Paterson. It more or less continued the current legislative structure, although the Congress had greater powers, could set up an executive with multiple persons who could appoint judges and was declared supreme authority over states in those areas where it was delegated authority. It was rejected but the small states had made their case and could not be expected to accede to the demands of the big states, an assumption that the Virginians had incorrectly made.

³⁸Versions can be downloaded from http://avalon.law.yale.edu/18th_century/vatexta.asp. Changing “a” after text to “b” or “c” will access the other versions. The revisions included filling blanks substituting different words, but the basic features of “a” remained in subsequent versions.

³⁹Also available at http://avalon.law.yale.edu/18th_century/pinckney.asp.

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What followed was perhaps the most radical plan and yet a well-thought-out plan from Alexander Hamilton. It came to be known as the British Plan because while it lacked a monarch it resembled the British system. It had a bicameral legislature with an Assembly elected by the people and a Senate appointed by “electors” for life. The same electors would choose a Governor who would also serve for life. Judges were granted life-time appointments. The Governor’s veto was absolute and, the most sweeping change, the national legislature appointed state governors and the national government could veto any state legislation. The plan was soundly rejected, and Hamilton left the Convention. He will return to serve on the committee charged with presenting a final draft later in the summer, but he exerted virtually no influence on the proceedings until the final weeks.

By the end of June fears abounded that the Convention could not finesse the issue of big versus small. If the large states wanted proportional representation, which would give them far greater numbers and voices in a national legislature than the small states, then they would have to accommodate the small states’ demand that a second branch should be based on equality representation, not apportioned representation. The Virginia Plan, which was the plan under consideration (other plans having been proposed had not supplanted the Virginia Plan) and it called for a first branch elected proportionally and a second branch elected by the first branch from nominees by the state legislatures. Neither the total number or the breakdown by states was stipulated in any of the versions of the Virginia Plan. Further, since the first branch chose the second branch the influence of the large states would be just as pre-eminent in the second as in the first. During debate on the Virginia Plan Roger Sherman’s (CT) stipulation that the second branch have equal representation had been heard and dropped. Thus, when Luther Martin (MD), a strong if not fanatical defender of a new government based on equal representation (as was the case under the Articles) took the floor in late June in the midst of these querulous times, his remarks had the effect of focusing attention on the question at hand. Martin was described by another delegate, who wrote brief sketches of all the participants, as having in his possession of “a good deal of information, but...has a very bad delivery, and so extremely prolix, that he never speaks without tiring the patience of all who hear him”. His intent was to speak in favor of the New Jersey Plan, and he did, but in doing so, almost inadvertently, he revived interest in the Sherman proposal by how he characterized his support for New Jersey. Recall that New Jersey retained the legislative structure of the Articles. What seemingly presented an opportunity to an exhausted and contentious “house” was when Martin remarked that the structure of the House of Representative, based on population, was secure, and then

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he added the Senate must be based on equal suffrage.⁴⁰ It is often written that as a result of the debate on 27 and 28 June, after several weeks of fiery exchanges, threats to walk out and appeals from the likes of Benjamin Franklin to lower the temperature in order to save the Convention, the merging of the Virginia and New Jersey Plans became a possibility. There was nothing in the New Jersey Plan about a bicameral legislature, but in the acknowledgement that one house could represent the people an opponent of the Virginia Plan had stepped back from total opposition to a proportional assembly. But – and there was a but – the second branch must be based on equal representation. Such apportionment for the second house was unacceptable to many adherents of the Virginia Plan, but a new line had been drawn in the proverbial sand that was more manageable than the original line.

A “Grand Committee” (11 members) was appointed and initially it was concerned with the “first branch” (the house or the assembly) and how taxation should be apportioned among the states. The Committee of Eleven set the total number at 65, and that was the number being debated on 10 July. Both Ellsworth and Sherman (CT) argued the number was too large. Ellsworth claimed that the greater the number of representatives the slower the business of the legislature, condition that characterized most state legislatures. Sherman proposed a reduction to 50 from 65 on the grounds that time and expense will make it hard to persuade people to serve and the greater the number the harder to find willing participants. Gerry (MA) retaliated that the larger the assembly the less likely for corruption. Mason (VA) urged doubling the number because a small number meant that each member must represent a large area and the larger the area the less the representative can know about the local interests and needs. On a motion to double the number, the vote was nine to two against, Virginia and Delaware voting aye. On the motion to accept the apportionment (among the states to total 65) the vote was nine to two, nays cast by South Carolina and Georgia.⁴¹ Jacob Broom (DE) who seldom spoke stated that since the small states had supported the apportionment as recommended for the first branch, he did not believe that the Convention could now ignore the proposal for an equal voice in a second branch. In addition, members continued to debate apportionment, in particular the need for a census to determine population (and wealth because of the tax implications) and the inclusion or exclusion

⁴⁰William Pierce, “Character Sketches of Delegates to the Federal Convention,” in *The Records of the Federal Convention of 1787*, Max Ferrand, comp, 4 volumes (New Haven, CT: Yale University Press, 1911), 3:Appendix CXIX, 93. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁴¹Important to remember that states had more than one delegate but only one vote. The delegates had to agree to cast an aye or a nay, and if they couldn't the vote was considered divided and not counted. The total will never exceed 12 because Rhode Island did not attend.

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of “the inhabitants of other description” (slaves) as well as how to adjust the apportionment in the event of any new states were admitted. A strong fear existed that new western states (perhaps 14 out of the Northwest Territories) would outnumber the original “Atlantic” states, and to allay that fear some proposed that the number of new states and representatives should never be allowed to exceed the number for the original states. A census was approved but the Convention then adjourned. On the following day Mason again took up the census/apportionment issue by saying he accepted the ratios as passed the day before in which the North, as it should, had the predominate population and the greater representation. If the predominance should cease (South was predicted by some to grow faster than the North) would the North, he asked, try to hold to its dominance and if it did, how was the South to redress its grievance? The Constitution must contain a provision that would prevent the North, by restricting the admission of western states or in some other way, to maintain its dominance, or he could not support the effort. Nothing less than “human nature” was the culprit. Mason’s comments, as summarized by Madison, declared that it was “the nature of man” to “preponderate hereafter when the reason no longer continued.” To give up power once attained was not what man was conditioned to do. The corruptibility of man by power will be enduring theme in American political history.⁴² Following Mason’s remarks the debate turned to whether the three-fifths clause for slaves in determining representation should be scrapped in favor of treating whites and blacks as equals for such purposes. Pierce Butler (SC) posited that slaves of S. Carola were as “productive & valuable as that of freeman in Massts., that as wealth was the great means of of defense and utility to the Nation they are equally valuable to it...” Further, he argued, equal representation for whites and blacks should be granted because government “was instituted principally for the protection of property, and was itself to be supported by property” to which both slaves and freemen contributed. Mason disagreed, not with the demand that slaves/blacks be included in the calculation for representation but in the assertion that they were equal to whites. The Convention voted seven to three with Delaware, South Carolina and Georgia voting in favor of the Butler motion.⁴³ And the debate about whether or not to fix the manner for reapportionment within the Constitution continued for the rest of the day. As technical and geeky as this debate may sound, the way in which people were counted had a bearing on how other matters such as taxation might be decided. On 12 July, after a series of votes the previous day and on that day, the

⁴²Proceedings & Remarks, Official Journal & Madison’s Notes, in Ferrand, comp., *Records*, 10 July 1787, 1:563-571, 11 July 1787, 1:575-579. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁴³Proceedings & Remarks, Official Journal & Madison’s Notes, in Ferrand, comp., *Records*, 11 July 1787, 1:580-587. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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Convention agreed to a census (first within six years and then every ten years) and direct taxation proportional to representation in Congress based on one of white and three-fifths of black by a vote of six to two with two states divided.⁴⁴

Despite a palpable mistrust between the North and the South, a projected fear of the East toward the West (no states were ready for admission) and several references to the depravity of man, especially in his political capacity, the Convention had reached a basis for creating the first branch of a legislative system. On 13 July the Convention agreed to delay consideration of the origination of all money bills in the “first branch” and to take up the proposal for a second branch of the National Legislature in which each state had an equal vote. In fact, though, the rest of the day was consumed in further debate about the first branch, apportionment, slavery, taxation and nefarious intentions on the part of some individuals and regions.⁴⁵

On 14 July Martin (MD) moved to take a vote on the whole report by the Committee of Eleven when Gerry (MA) asked the Convention to delay such consideration in order to consider the implicit danger posed by western states and proposed a motion actually to restrict the number of representatives from any new states entering the union from ever exceeding the number of representatives of the original thirteen was moved and defeated by a close vote of five nays and four ayes with one state divided. The Convention returned to the committee report, which Sherman (CT) said, after so much deliberation and revision should not be tinkered with and should be voted on in its entirety. Martin who chaired the committee, said he did not like the idea of a bicameral legislature nor the inequality of votes in the first branch, but it was time to do something even if on a trial basis. The equality of votes – each state had one vote in the second branch – bothered several including James Wilson (PA), one of the best educated among the participants, having been trained in Scotland before immigrating, who thought that not basing membership on population was to say in effect to the people that you can’t be trusted with a representative system. Wilson showed himself throughout the proceedings to have a firm belief in the capacity of the individual to decide, more so than many of the natives who spoke a similar language. Pinckney (SC) proposed a different configuration, which Wilson actually seconded: the second branch should consist of 36 members with no state to have fewer than one member and no state have have more

⁴⁴Proceedings & Remarks, Official Journal & Madison’s Notes, in Ferrand, comp., *Records*, 12 July 1787, 1:592 &1:596. New York and New Hampshire did not vote, Massachusetts & South Carolina were divided and Delaware & New Jersey voted nay. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁴⁵Proceedings & Remarks, Official Journal & Madison’s Notes, in Ferrand, comp., *Records*, 11 July 1787, 1:598-606. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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than five. The small states objected and the large states showed only lukewarm interest. Caleb Strong (MA) sounded the familiar warning that unless accommodation was found around the report of the Committee the Union as such will soon dissolve. Since it was clear that the small states would never cede, then the large states to preserve any chance of success would have to agree. Madison (VA) refused to compromise (at this point) because replacing equality of representation for proportional representation augured ill for the system and the future. “In all cases where the Genl Govern. is to act on the people, let the people be represented and the votes be proportional.” If the General Government was to act on the states, then “let the States be represented & the votes be equal.” This would be a compromise for which Madison could find no grounds. He asked for a single example of where the General Government did not by its actions affect the people individually. He portended mischief for the whole system. And it would only become worse as new states were admitted. Wilson (PA) agreed to the extent that if the error of equal representation were such that it could be corrected in time let it stand; but since it was a fundamental and would no doubt become a “perpetual” error, it should be negated. The complaint with the Confederacy was not that it governed too much but too little, and that was largely a result of equal representation among the states. It created inertia. Both Sherman (CT) and his colleague, Oliver Ellsworth (CT) asked Wilson to document his assertion. Pinckney’s proposal was then voted down six to four with most small states opposed and most large states in favor, although there were exceptions. The Convention then adjourned⁴⁶.

On the following day, 15 July, the Convention voted on the second branch which passed five to four: Connecticut, New Jersey, Delaware, Maryland and North Carolina voted aye; Pennsylvania, Virginia, South Carolina and George voted nay; Massachusetts was divided; New Hampshire (still not in attendance) and New York did not vote. The Convention then proceeded to vote on other parts of the Report, some approved and some not. Before adjournment, however, Edmund Randolph (VA) used language that might be construed as a threat. He declared that the vote on the second branch “embarrassed the business [of the Convention] extremely. All the powers given in the Report from the Comme of the whole were founded on the supposition that a Proportional representation was to prevail in both branches of the legislature.”⁴⁷

⁴⁶I have followed Madison’s Notes on these proceedings in Ferrand, comp., *Records*, 14 July 1787, 2:2-11. Rufus King (MA) expressed his mortification that Massachusetts had divided. That plus the absence of another big state helped win the day for the small states. King Memorandum, 15 July 1787 in Ferrand, comp., *Records*, 2:12. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁴⁷Proceedings & Randolph Remarks, Madison’s Notes, in Ferrand, comp., *Records*, 16 July 1787, 2:17-18. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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Several days earlier on 10 July Randolph had proposed some ideas through which the large and small states might reach conciliation. To save the concept of proportionality in the second branch he suggested legislative actions that might allow for a vote based on equal representation (i.e., one state, one vote) rather than proportional representation. They included commercial regulations on vessels, duties, rivers and ports, police powers on subduing rebellions, establishment of post offices, admission of new states, executive appointments and choice of a seat of government. In all other matters, “the right of suffrage [will] be proportioned according to an equitable rule of representation.” Randolph then named several areas in which a vote greater than a “mere majority” by the second branch could be required: choosing their own form of republican government, appealing to reverse any veto of state legislation by the national government and citizen appeals against impartial or unjust state laws. In other words some questions that might reach the second branch were of such import relative to the “articles of the Union” that a simple majority was inappropriate.⁴⁸ By any reading this was a complicated arrangement that would provoke endless debate at a time in the proceedings when more than one delegate spoke of the need to simplify. If proportionality were to be abandoned in the second branch, granting each state a vote was the simplest approach.⁴⁹

There is no evidence that Randolph’s proposal ever came up for debate in the days leading up to the vote to replace proportional representation with equal representation. In alleging bad faith on the part of the small states in his post-vote remarks, he implied that conciliatory measures were under consideration that very morning when the small states decided to push for a vote. He did not say what the measures, although he may have been referring to his own plan for conciliation. Randolph and his allies tended to view the vote as one-sided. While the large states had tried to be fair toward the small states in establishing proportional representation in the first branch, the small states had not shown the same openness in trying to find a form of equal representation that could incorporate proportionality. He also noted that New York, another large state, was not in attendance, and if it had been, he presumed a different outcome (a tie vote and therefore a defeat). He then urged adjournment to allow the small states time to consult and consider the impact of their demand for a full concession by the large states. After some discussion about what form of adjournment he had in mind, temporary or permanent, he

⁴⁸Randolph, “Suggestion for Conciliating the Small States,” communicate 10 July (in Madison Papers, 12:60), in Ferrand, comp., *Records*, 3:Appendix, LVIII, 55-56. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁴⁹Proceedings & Randolph Remarks, Madison’s Notes, in Ferrand, comp., *Records*, 16 July 1787, 2:17-18. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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clarified his comment that adjournment should be until tomorrow morning. He left little doubt that unless the small states held back, the large states might have to take some action to protect their interests without specifying what that action might be. The Convention did then adjourn.⁵⁰

It is worth noting that on the day of Randolph's speech George Washington (VA) wrote Alexander Hamilton (NY) that since he had departed (as had the other two New York delegates), matters had gotten worse: "I *almost* [sic] despair of seeing a favourable issue to the proceedings of the Convention, and do therefore repent having had any agency in the business." Washington identified the culprits: "The Men who oppose a strong & energetic government are, in my opinion, narrow minded politicians, or are under the influence of local views." Their refusal to accede was based upon their assertion that the people were opposed, but that was, in Washington's opinion, the "ostensible" reason, not the "real" reason. Ostensible because he thought that if the question were put to the people as to what was form of government was best they would show only "mauger [sic] opposition" to a new national government. He then regretted Hamilton's absence and wished his return to confront the opposition.⁵¹

We often marvel at the capacity of the framers to reach compromises on contentious issues. Big-states versus small-states was contentious, occupying nearly half of the Convention's time in session, and it was not settled in the manner we often think of as compromises. There was no evidence that people sat around a table in search of a solution that all parties could ultimately endorse. As the Convention moved toward a vote on one branch with proportional representative and the other branch with equal

⁵⁰Proceedings & Randolph Remarks, Madison's Notes, in Ferrand, comp., *Records*, 16 July 1787, 2:17-18. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>. More than once after this vote Randolph raised the point that the large had compromised and the small had not. Notably, as the Convention considered the document prepared by the Committee of Detail, on 11 August Randolph, unhappy about and unreconciled to a provision that allowed money bills to originate in both branches (originally just the House to which the authority will be returned, argued that he had not allowed for such power in the Senate even before it was organized around equal proportion and was further against it now because the people will understand the Senate "as the more aristocratic body, and will expect that the usual guards agst its influence be provided...." and finally called upon the small states "to concur in the measure [restoring to House], as the condition by which alone the compromise had entitled them to an equality in the Senate." 2:262-263. On the motion to reconsider the vote was 9 to 1 (Maryland voting nay) and one divided state (South Carolina). 2:263. Two days later the amended version (of Article 4, Section 5 in the draft) was voted down 7 to 4, but so too was the Committee version 8 to 3. Several days later while debating another amended version of the Randolph motion Madison commented that even though the change was argued as a *quid-pro-quo* the large had not voted (against) as if they did not expect such. 2:277.

⁵¹Letter, Washington to Hamilton, 10 July 1787, in Ferrand, comp., *Records*, 3:Appendix, LIX, 56-57.. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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representation it was said more than once that all this had been thrashed out in various committees and there was no other alternative. It was presented by Roger Sherman himself as the only option even though four large states did not vote for it. There are some interesting “if’s” – if New York had been in attendance or if Massachusetts had not divided – well, if’s do not count in historical reconstruction. That Randolph and others felt betrayed because they had assumed a different outcome – one that would preserve proportionality all the way through because that was what republican government required and what the Virginia Plan was premised on. His modest threat to take some action, presumably to correct or punish, although what that might entail was unclear. The spokesmen for the opposition, like Luther Martin, took a stronger stand. Martin disliked the compromise, but while endorsing it mildly, he stated publicly that it might be better for the small states to opt out of the union and go their own way. (He will eventually walk out.) In any event this is a strange compromise in which one party to the compromise did not vote approval.⁵²

With the most contentious issue settled, the Convention took up the details of how a new government should be constituted. On 26 July the Convention adjourned for 10 days so that a five-member Committee of Detail to prepare a draft of a constitution. On 6 August the Convention reconvened to consider the work of the Committee of Detail, and after emendations and revisions were incorporated during the next month the Convention appointed a Committee on Style and Arrangement on 8 September to which Hamilton and Madison were both appointed. But another committee member, Gouverneur Morris (PA), almost single-handedly produced the final document including composing the Preamble. The Convention received the Committee’s document on 12 September, spent another week cleaning up details and adjourned on 17 September after having recommended the Constitution to the states for ratification.

Much of the Convention’s time in the first two months was devoted to the standoff between the large-states and the small-states. Eventually the Convention had to deal with what sovereignty would the new national government enjoy and by what authority. In concert with eighteenth-century ideas about balancing and checking the scope and authority of a central government. What emerged in the weeks following the July vote was a bicameral legislature in which senators (two from each state) were appointed by state legislatures for terms three times the length of the representatives. An independent executive chosen indirectly by electors, also appointed by state legislatures, had some important links with the Senate and the Senate only regarding treaties and appointments.

⁵²Without pushing the story too far ahead, let me suggest that the reader keep in mind the objections by opponents to equal representation because they will show up in future political battles.

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If the House with short terms and frequent elections embraced proportional representation and popular rule, the Senate was almost the opposite. A judiciary was also called for, and the linkage between the Senate and the executive was only deepened because the President appointed and the Senate confirmed. In the minds of some framers this nexus seemed to defile the concept of checks and balances rather than adapting it. The check was against too much popular rule, and the balance favored the conservative, property-owning, privileged class. No state government at the time quite resembled the complicated structure that the framers devised, and certainly the federal system under the Articles was a paragon of simplicity compared to the proposed federal system under the Constitution.

Delegation of powers may have further tested the framer's ingenuity. How much power the central government – suspect in any event because it was a central government – may have mattered more. However the structure was designed, if the government had few powers it could do less harm than if it had many powers. Many members of the Convention, even those who had fought over the second branch, were inclined to grant more authority to the new central government. Even William Patterson, author of the New Jersey Plan and a defender of the structure of the government under the Articles saw justification for increasing central authority and limiting state authority. Few framers were prepared to push what some of the more notable nationalists might have wanted, a super government that would strengthen the bonds of union and ride herd on state governments. A phrase often used was that the new government was to retain the powers granted under the Articles and to enlarge to the extent that was necessary to resolve some critical flaws. The opening lines of the Virginia Plan both revealed the problem and the need facing the framers. “Resolved that the Articles of Confederation ought to be corrected and enlarged, as to accomplish the objects proposed by their institution, namely common defence, security of liberty and general welfare.”⁵³ (An expanded version of this goal appeared in the Preamble of the Constitution.) It would be safe to say for the majority of the framers “building upon” the powers delegated under the Articles was preferable to scrapping them for a different set of powers and prerogatives.

The inability of the Confederation government to raise its own revenue without unanimous approval by the states had been a compelling reason for the revision of the Articles. How, then, under a new constitution was revenue and taxation to be addressed? In the Virginia Plan said nothing directly about revenue and taxation except for a rather

⁵³See various versions (A, B, C) available on-line at http://avalon.law.yale.edu/18th_century/vatexta.asp, followed by [/vatextb.asp](#) & [/vatextc.asp](#).

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oblique reference that “the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different case.”⁵⁴ Large states were thought to be wealthier states, and any predilection to tax them more heavily was precluded (as it was for the small states) by linking suffrage to contribution. (This had been part of the debate over the Virginia Plan and its rivals.) When Committee of Detail presented its draft (6 August) Article 4 (IV), Section 5 concerning the structure and authority declared that “All bills for raising or appropriating money, and for fixing salaries...shall originate in the House of Representative, and shall not be altered or amended by the Senate.” Further on in Article 7, Section 1 the draft proposed: “The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises....” Finally in Article 7, Section 3 the linkage between suffrage and contribution was made clearer: “The proportion of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants...including those bound to servitude...and three fifths of all other persons”, the number to be determined by subsequent censuses.⁵⁵

Revenues could be raised in two ways. The first was direct taxation, but, if chosen, it could not adversely disadvantage one state over another. The second source was indirect taxation because taxes were levied on commercial transactions that did not affect everyone directly. In the debates that took place after the presentation of the draft on revenues and taxes the application of indirect taxes sparked more disagreement than applying direct taxes. As the section on direct taxation was written, it must have been clear to most members that agreeing on a direct tax that would meet the test of proportionality (especially with respect to how the proceeds were accounted for) would be difficult, and, therefore, the direct taxing power would seldom be invoked. Indirect taxes, however, affected the commerce in and among the states. James McHenry (MD) in consultation with his colleagues wanted even more protection for the states and in particular small states. In a memorandum he stipulated two sections that had to be changed: Section 5, Article 4 (origination of money bills) and Section 6, Article 7. Because the Senate was seen as the refuge for the small states it must be allowed to originate and alter money bills. And respect to navigation acts (regulation and taxation of commerce) the clause had to be revised to read that no acts could be passed without consent of “two-thirds of the representation from each state” rather than, as stated in the

⁵⁴Available on-line at http://avalon.law.yale.edu/18th_century/vatexta.asp.

⁵⁵I cite Madison’s copy of the draft in his Notes, in Ferrand, comp., *Records*, 6 August 1787, 2:178, 181, 182-183. “Other” became the term members used to designate slaves. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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draft, “of two thirds of the members present in each House.” These were concerns that others had as well, and it will take some time to find acceptable language to satisfy those who continued to fear too much government that might intrude upon a state’s economic interests and those who feared too little government that would harm the economic interests of all states.⁵⁶ When the debate on the draft opened the next day, not specifically on the money provision, it aroused comments on personal liberty, freeholders’ rights, common people and aristocracies’ footholds.⁵⁷ On 8 August Article 4, Section 5 – origination of money bills – was under debate. It was proposed that it be stricken or modified to which Mason (VA) responded that this had been debated endlessly and to scrap it would be “to unhinge the compromise of which it [was?] made a part.” While he approved of the Senate, he also recognized its defects: senators had long terms and few members, in effect a potential aristocracy, and therefore “The purse strings should never be put in its hands.” Prominent members disagreed Madison and Wilson (PA) said it should be stricken, while Ellsworth (CT) thought it was of little consequence and agreed with Mason that it was part of a deal between small and large states. It was stricken by a vote of 7 to 4 with New Hampshire, Massachusetts, Connecticut and North Carolina in the nay column.⁵⁸ On 13 August a revision of Section 5 was introduced. The first clause was similar to the draft version except it referred to bills for purposes of revenue instead of any and all bills that might have some connection with money, but the second clause was rewritten to permit the Senate a role to the extent of voting for or against but not altering the House bill. They were defeated by notable margins with the debates a replay of earlier ones.⁵⁹ Several days later the Convention got to Section 1 of Article 7, duties and imposts on imports and exports. Duties on imports was not as controversial as duties on exports. Immediately Mason proposed that no tax or duty could be imposed by the national legislature on any article exported by any state. His concern was that the South, which he called the

⁵⁶McHenry Memorandum, in Ferrand, comp., *Records*, 6 August 1787, 2:190-192. McHenry also noted that his colleague, John Francis Mercer, who eventually walked out of the Convention, had a list of delegates. Next to their names he had marked a “for”. When asked him what the mark meant, Mercer replied “for a king.” When asked how he knew, he simply responded in McHenry’s words “the thing is so.” Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁵⁷Proceedings, Madison’s Notes in Ferrand, comp., *Records*, 7 August 1787, 2:196-206. One of the recurrent themes was that people who were not freeholders needed guidance in how to vote, what candidates to trust. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁵⁸Proceedings, Madison’s Notes in Ferrand, comp., *Records*, 8 August 1787, 2:223-225. Almost immediately it was indicated that Section 5, just stricken, would be reintroduced in some other form. As the Convention moved on to other Articles, references to the stricken clause were frequent. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁵⁹Proceedings, Madison’s Notes in Ferrand, comp., *Records*, 13 August 1787, 2:273-280. Mason’s remarks 2:274. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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“staples states” would suffer on export duties to a degree that northern states would not. Among those responding was his colleague, Madison, who said that the power to tax exports was proper in itself and under certain circumstances such a duty might be beneficial. Since the Section as written did not specify imports and export, it was decided to approve the Section and to take up the matter of export duties in a special section.⁶⁰

In an effort to dispose of unsettled issues the Committee of Eleven received a new list of questions to be reported on including matters relating to Public Creditors and Public Creditors. Specifically, the Committee should stipulate that moneys needed to maintain credit and service creditors should not be diverted to other purposes. So seriously was this taken by Gerry (MA) and Rutledge (SC) that they proposed a special committee to study the question including the advisability of the national government assuming all state on the grounds that these debts were contracted “in the common defense.” After some wrangling a committee to study assumption was created by a narrow vote.⁶¹

The Committee of Eleven announced on 21 August it had a report to make. One item in the report concerned debts. It said that the national legislature would have the power to discharge all debts incurred by the Congress and by the states in the late war “for the common defence and general welfare.” Debate was postponed. The Convention then proceeded to debate Section 3, Article 7, on suffrage and taxation, which was approved 10 to 1 with Delaware the only nay. This was said to be a crucial part of the alleged compromise between the large states and the small states, although neither side was happy with how Section 3 read.⁶²

Having disposed of Section 3 the convention took up Section 4. Although the Section had to do with taxing exports it caused a debate about taxing trade between states. A decision was finally reached on taxing exports, and it was decided in the negative even though such luminaries as John Dickenson (DE) and Madison argued that forbidding duties on exports “forever” was dangerous: “As we ought to be governed by national

⁶⁰Proceedings, Journal & Madison Notes in Ferrand, comp., *Records*, 16 August 1787, 2:304, 305-308. Maryland voted not to defer question, and Gerry (MA) voted against Section 1 as an individual but Massachusetts voted in favor. The debate at this point also considered other money questions such as coinage, paper money & bills of credit, but I have not included them in this survey. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁶¹Proceedings, Madison’s Notes, in Ferrand, comp., *Records*, 18 August 1787, 2:322. The vote on what had been and still was a testy issue was close: 6 to 4 with 1 division. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁶²Proceedings, Madison’s Notes, in Ferrand, comp., *Records*, 21 August 1787, 2:356-357. Attempts were made to add further clauses but were laid aside. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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and permanent views, it is a sufficient argument for giving ye powers over exports that a tax, tho' it may not be expedient at present, may be so hereafter." [What had been crossed out was "for the general good of the Union".] He concluded that what was proper regulation for imports – "revenue--domestic manufacturers--and procuring equitable regulation from other nations – was proper for exports as well.⁶³ By 7 to 4 (New Hampshire, New Jersey, Pennsylvania and Delaware= nay) exports were exempt.

As soon as the export clause was settled the remaining clause importations of slaves had to be considered. Section 4 of Article 7 also included a clause that stated no duty can be levied on "the migration or importation of which persons as the several States shall think proper to admit; nor shall migration or importation be prohibited." Luther Martin (MD) proposed that the provision be modified either by prohibiting importation of slaves or by taxing them. His argument was that since five slaves will count as three freemen for purposes of representation, the incentive will be to import as many slaves as possible. Further, he said, "slaves weakened one part of the Union which the other parts were bound to protect", and that made the privilege of importing them untenable. Finally, it was dishonorable to the "American character" because the importation of slaves (no duties or restrictions yet) violated the spirit of the Declaration of Independence. John Rutledge (SC) responded that this should not be an issue. There was no fear of insurrection, "Religion and humanity had nothing to do" with it and since the "governing principles with Nations" had to do with Interest and interest alone, the North must "consult" their interest" to see that the increase in slaves will mean an increase in trade. Agreeing with Rutledge Oliver Ellsworth (CT) declared that a state should be allowed to "import what it pleases. The Morality or wisdom of slavery are considered belonging to the States themselves." Alluding to tides lift all boats he reminded the Convention that the "old confederation" had not meddled with this and neither should the new one. No action was recorded.⁶⁴

On the following day (22 August) it was decided to hand over to a Committee of Eleven the two remaining clauses in Section 4 and Section 5 and 6 in Article 7.⁶⁵ On the

⁶³Dickenson & Madison Remarks, Madison's Notes, in Ferrand, comp., *Records*, 21 August 1787, 2:361. Madison's amendment to allow for a two-thirds vote in each House instead of total prohibition, failed 6 to 5, 2:363-364. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁶⁴Proceedings & Various Remarks, Madison's Notes, in Ferrand, comp., *Records*, 21 August 1787, 2:363-365. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁶⁵Proceedings, Journal, Madison's Notes, in Ferrand, comp., *Records*, 22 August 1787, 2:366, 369-374. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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following day the Convention took up more recommendations of the Committee of Eleven to which was assigned a laundry list of unfinished business. A long debate on the militia plus related items ensued before the Convention turned to Section 1, Article 7. It was proposed and approved that it should read “The Legislature *shall* fulfil the engagements and discharge the debts of the U S, & shall have the power to lay & collect taxes duties imposts & excises.” An attempt to amend it was defeated. Language concerning assumption was no where to be found. If assumption were intended it was hidden (not even inherent). Pierce Butler (SC) was so dissatisfied, stating it might well compel payment to “the Blood-suckers who speculated on the distresses of other, as to those who had fought & bled for their country”, he gave notice he would file for reconsideration.⁶⁶

On 24 August the Committee of Eleven assigned review of Article 7 reported. It recommended that Section 4 be stricken with the following substitution, the so-called 1800 proviso concerning slave imports. Section 4 of Article 7, as reported by the Committee was amended to provide that persons who migrated or were imported could not be prohibited before 1800 but imports could be taxed at a rate not exceeding the average of the duties on all imports. It also recommended that Section 5 (no capitation tax) be retained and Section 6 (no navigation acts) be dropped. Butler then moved that Section 1 be reconsidered (approved by 7 to 2).⁶⁷ The Convention then scheduled debate on the following day.

On the next day the Convention first debated Section 1, Article 7. Mason thought the language will provoke even more speculation. He was sympathetic to the original creditors, although he distinguished between those to committed fraud against the original bondholders and those who legitimately purchased bonds in the open market. Gerry responded that the public had received value and therefore should pay someone. (Gerry also declared without much empathy the soldiers should have seen it coming) Randolph then introduced a motion to postpone the adoption of the clause under consideration and accept instead: “All debts contracted & engagements entered into, by or under the authority of Congs. shall be as valid agt the U. States under this constitution as under the Confederation.” After further debate on language and whether

⁶⁶Proceedings, Madison’s Notes, in Ferrand, comp., *Records*, 23 August 1787, 2:382, 384-392. The vote tally not given. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁶⁷Proceedings, Journal & Madison’s Notes, in Ferrand, comp., *Records*, 24 August 1787, 2:396, 400. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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any action was needed, the Convention approved Randolph's substitution by 10 to 1 (Pennsylvania voting nay).⁶⁸

The next item was Section 4 (slave imports and duties). An amendment was proposed to change the date to 1808. Madison expressed dismay. For the freedom to continue to import slaves for 20 more and the mischief that will bring meant more dishonor to the "National character than to say nothing about it in the Constitution." By 7 to 4 with nays from New Jersey, Pennsylvania, Delaware and Virginia the change in year was approved. A vote then recurred on the substitute wording by the same margin and the same nays. Objections to the idea that Section 4 allowed persons who were imported as slaves to be treated as any commodity continued to be raised. In response it was said that if importation of slaves were permitted without duties, then slave importers would be receiving special bounty. Nathaniel Gorham [Ghorum in Madison's Notes] (MA) also suggested that those opposed to the impost should consider it a disincentive to continue to import slaves rather than as a moral question about people being treated as property. What was finally agreed to was a tax not to exceed \$10 per person.⁶⁹ What became one of the most controversial provisions of the Constitution had been approved by a vote that included both northern and southern delegations.

Two other matters were disposed of with reference to the Committee of Eleven. Section 5 was kept and Section 6 was postponed.⁷⁰ In addition Section 1 was still under review. On 31 August the Convention accepted "all duties, impost & excises, laid by the Legislature should be uniform throughout the U. S." as part of Section 1.⁷¹ A new Committee of Eleven was appointed to dispose of the unfinished business, and on 4 September the Committee reported on the unfinished business. A new version of the first clause of Section 1 was presented. It simply read that "The Legislature shall have the power to lay and collect taxes duties imposts & excises, to pay the debts and provide

⁶⁸Proceedings, Madison's Notes, in Ferrand, comp., *Records*, 25 August 1787, 2:412-414.. Sherman (CT) thought it necessary to improve the language but lost 10 to 1. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁶⁹Proceedings, Madison's Notes in Ferrand, comp., *Records*, 25 August 1787, 2:415-417. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁷⁰Proceedings, Madison's Notes in Ferrand, comp., *Records*, 25 August 1787, 2:417. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁷¹Proceedings, Madison's Notes, in Ferrand, comp., *Records*, 31 August 1787, 2:480-481. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

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for the common defence & general welfare of the U. S.”⁷² That was to be followed by “all duties, imposts....” noted above. Taxation was a messy and contentious issue as illustrated in the various renderings of Section 1, Article 7. (This will become the first clause in Section 8, Article I of the final version of the Federal Constitution.) What the national government could do was impose direct taxes so long as they accommodated proportionality and levy indirect taxes such as duties to pay any indebtedness and to provide for the defense and welfare of the nation. The language did not prove magical.

When Virginia Governor Edmund Randolph, who announced he could not endorse the Constitution without amendments, made his case in a letter [10 October 1787] to the Virginia House of Burgesses. His support, he said, depended on clearing away the imprecise language: “all ambiguities of expression [were to be] precisely explained”. “Americus” (pseudonym for John Stevens, jr., who supported Ratification) mockingly responded to Randolph’s concern, several months later [21 January 1788] in a letter published in the *Daily Advertiser*, as state ratifying conventions were at work: “if the late Convention could not avoid ambiguities, after four months application to this business, what reason have we to expect that a subsequent Convention will succeed any better.” In any event, continued “Americus”, what is often clear enough in the text itself is made ambiguous by the words that people use to comment on the text. No amount of fiddling with language will do away with that problem. (Were Randolph and others purposely trying to muddy the waters?) “Americus” was optimistic that over time the truly ambiguous passages will be rectified, but other less ambiguous and potentially disputed passages could remain.⁷³ Language, as the Convention debates underscore so fully, was a daily battle, and even when agreement was reached, participant in subsequent debates might disagree over what had just been agreed to. Pinning down the language may have been more the goal of those (often from small states) who did not favor an expansive national government, but the battle over language – how to say it – was also the result of writing a document by convention or committee. I suspect, although I cannot prove, that delegates had to learn to live with a certain amount of exasperation over wording. For example, the word shall was considered by some as too mandatory – it might hamper the legislature because the clause could not be enforced as the word demanded. And when the document reached the ratifying conventions, the debate over language commenced once again. The

⁷²Proceedings, Madison’s Notes, in Ferrand, comp., *Records*, 4 September 1787, 2:497. Available on-line at <http://memory.loc.gov/ammem/amlaw/lwfr.html>.

⁷³Bernard Bailyn, ed., *The Debate on the Constitution. Federalist and Antifederalist Speeches, Articles, and Letters During the Struggle over Ratification*, 4 volumes (New York: The Library of America, 1993), 1:610 & 2:58–59.

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delegation of power to the new government was a widespread and crucial concern, but the language that was used to describe or apply the power also had to be settled upon.

What exactly did the framers understand the Constitution to be? By the time of the Convention various terms and phrases to describe a political agreement had entered the vocabulary. They were used interchangeably but upon closer examination of their provenance and evolution they could mean different things in subtle ways. The list includes covenant, charter, compact, contract, combination, constitution, patent, frame, organic acts and fundamental laws. I will not try to define all these terms with respect to their similarities and differences. Both the Articles of Confederation and the Constitution were (and still are) referred to as compacts in the sense that more than a few, more like a group or community, reach an agreement to undertake something that will affect them all. The word's root meaning, according to Donald Lutz, "was knitting together or bringing the component parts closely and firmly into a whole." Whereas contracts usually entailed legal obligations among several or a few people, compacts entailed agreements among members of communities to create entities to serve their communal interests. Covenant differed from compacts in that they ordinarily involved the sanctioning by higher authority like a monarch or a council. John Locke used compact instead of contract, although he was and is described as a "contract theorist". What binds the two along with other terms is that consent on the part of the people severally or in communities is required or granted. The idea of consent is basic to many of these political terms. Lutz makes the point that the original state constitutions starting in 1776 were more like organic laws (a term that will become frequent in the debate in the decades leading up to the Civil War) because they broke little new ground on terms of theory about sovereignty and governance but rather they tended to summarize and codify what had transpired in the colonial era. (This could also qualify them to be called compacts.) Charters generally entailed grants of privileges or recognition of rights – in Lutz language, "To say that something was chartered was to say it was founded, privileged, or protected." To say something was constituted – "to establish, ordain, or appoint in legal form and status" – was to say more. Constituting as opposed to chartering recognized something grander in design and effect. Monarchs or ecclesiastics represented constituted authority, although those subjected to that authority had little or no voice in how it was constituted. But since to constitute involved constituents beyond those doing the constituting the idea that constituents, united by some common interest, could themselves constitute "legal form and status" under a constitution began to take shape. And as it evolved, it tended, perhaps because of past experiences with constituted authorities, to embrace limitation along side of the right to enact. In the fullest sense constitutions embrace how a community assembled its laws, customs and institutions in

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order to create an instrument by which to be governed. In the American experience, then, one can say that the constitutions that evolved from the Declaration in 1776 “derived their elements from compacts, covenants, and charters, as well as from frames, fundamentals, and ordinances.”⁷⁴

In general what constitutions had come to mean was a document that described how people defined themselves as a political community, organized their institutions and procedures, allotted political powers and obligations, negotiated conflicts and disputes, determined citizenship and participation and stated both the scope and the limit of authority. But was the Constitution a social compact? In Chapter 6 of *The Social Contract and Discourses* by Jean-Jacques Rousseau, posited that the only means available to individuals to preserve themselves was through “the formation, by aggregation, of a sum of forces great enough to overcome resistance. These they have to bring into play by means of a single motive power, and cause to act in concert.” Having come together, however, put the liberty of each individual at risk, and yet without aggregating his own self-preservation was at stake. The answer, according to Rousseau, was to find a way to associate that also protected the individual and his property – “while uniting himself with all, may still obey himself alone, and remain as free as ever.” The idea of a social compact was intended to provide a solution. When each person and all his powers made common cause under the “supreme direction of the general will, in our corporate capacity,” each member was received as “an indivisible part of the whole.” This person, contracting with other persons, aimed to create “a moral and collective body”, and, in so doing, they established a republic or a body politic. Collectively they were people and severally they were citizens “sharing in sovereign power.” When the compact failed to work, it could be dissolved. What exactly made the compact work? That each person entered into a contract with every other person by which they create a “general will” under which each person was received “as an indivisible part of the whole.” The individual will put aside his ego, which under primitive conditions had caused him so much trouble, to allow the general will made up of all the contracting parties to act, and unlike Locke Rousseau argued that to keep the contract pure individuals now citizens had to take part in making the laws and managing the institutions by which they were governed. The contract called for an exchange of absolute liberty for benefit derived from an association that treated everyone as contracting member. Government was an intermediary between the body politic, which was the sovereign and the subjects who agreed to the contract. In Rousseau’s mind the idea of fixing a constitution or a government once and for all was impossible. the people

⁷⁴See Donald Lutz, *The Origins of American Constitutionalism* (Baton Rouge, LA: Louisiana State University Press,), 16-22.

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in their capacity as sovereigns would have to meet periodically to review and rewrite the constitution by which the government functioned.⁷⁵

Rousseau wrote after Thomas Hobbes and John Locke had also offered their versions of social contracts. There were differences. Hobbes saw individuals without ceding their rights to join a society living in anarchy and even saw societies without sovereign leaders falling into anarchy as well. Self-interested individuals gained by replacing the state of nature with the state of society, and the self-interested societies gained by investing a leader with the power to enforce the laws that grow out of the social compact. Locke, on the other hand, began at the same place as Hobbes but ended up with a more benign social order. For Locke individuals created a social compact to protect life, liberty and property and if government established to enforce the compact served the interests of its citizens, the common good would be advanced and individuals would benefit. Both Hobbes and Locke allowed for the dissolution of the compact when individuals saw their interests being ignored or perverted. The difference with Rousseau was fundamental. Hobbes and Locke pursued a social compact in order to create a society that would rule, although there was more participation by the contractors in Locke's parliamentary government than in Hobbes's monarchical system. Rousseau, however, had little faith or trust in a social order. Societies were almost naturally prone to corruption and tyranny, and, therefore, the general will can only work properly if a social order was kept in a state of flux and reinvention. What the contractors shared in common was the assumption that individuals surrendered their sovereignty in return for a mutual benefit of protection and advancement, and where they differed had to do with their own political theory of how to make the social compact work.

The Constitutional Convention had produced a constitution by which, if ratified, the people of the United States had constituted a government. But was it a social compact? In the previous discussion about the writing of the Constitution little was said about individual natural rights or the transfer of those rights to a new sovereign authority except in a general but vague references to justice, tranquility, national defense, common good and blessing of liberty. The corruptibility of man came up with reference to money, holding office and voting but usually in the context of do's and don't's about how to arrange the government. Most of the debate was about relations between a single national government and several state governments, about checks and balances within the national system and who could hold office, vote or be a citizen. The United States Constitution did not, as one would expect in a social compact, "explicitly espouse any

⁷⁵Taken mainly from Chapter 6, "The Social Compact", in *The Social Contract and Discourses*, G. D. H. Cole, trans. (Toronto: J. M. Dent and Sons, [1762], 1923). Available on-line at <http://www.constitution.org/jjr/socon.htm>.

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political theory,” writes Louis Henkin. It was not that Americans were lacking such compacts. Its most popular document, The Declaration of Independence, espoused a political theory as did the Virginia Bill of Rights and several state declarations and constitutions. These are not idle musings because one of the difficulties after the Constitution was ratified was to build respect for the document itself; it was disliked and mistrusted almost from the outset. The Declaration, on the other hand was widely admired and quoted. It was the Declaration that proclaimed that the right to self-determination was so clearly a truth that it was self-evident (“We hold these truths to be self-evident...”etc.) While we recognize these principles as the bedrock of the American system, indeed our constitutional system, they are not expressed in the Constitution itself. Albeit briefly, the Declaration propounded a political theory, that is, a rationale for the origin of rights and their defense, but that was where the Declaration stopped. As social-compact theorists had argued, the people had the power to dissolve a tyrannical system in order to repossess their natural rights and to reassert what Rousseau called the “general will” to defend those rights. (Rousseau assumed this would happen periodically, an assumption that Jefferson understood when he apparently endorsed a bit of a revolution every twenty years [to be discussed later].) There was some sticky business in terms of whose will was being generalized because the people had not asked in any formal sense to express their views. This was not being done so much behind their backs as over their heads. The fact remained, however, that an action had been justified and taken to dissolve one association without spelling out exactly what the new association would be for the people at large. If the movie had ended there, we would not have known much about what came next. What came next was colonies trying to define their new associations as states, and eventually the states tried to define a league of friendship among themselves in which little was said about the social compact. Finally, the time arrived to replace that covenant among the states with a new covenant that significantly altered the arrangement but without reconsidering or restating the principles of the compact. Only in the Constitution’s Preamble – a single sentence of 52 words – do we find any language that might bear upon rights and protections that related to the establishment of a compact. It was, Henkin speculates, the Constitution was more than an instrument for creating a governing entity, and thereby implicitly had the force of a social contract.⁷⁶

By his reasoning the Constitution was something fundamentally different from the Articles. The Articles, he posits, was comparable to a “treaty establishing a federation of states” and “not a constitution for a government...” They did not enunciate any theory

⁷⁶Henkin, “The United States Constitution as Social Compact,” *Proceedings of the American Philosophical Society...*, 131 (1987), 261-262.

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of government. On that point many would agree with Henkin. By discarding the treaty-approach and undertaking a larger task of drafting a overarching constitution – “do ordain and establish this Constitution for the United States of America.” – the framers raised the bar. Henkin cautions, however, that this came in stages. Initially it was “to be ‘a more perfect union,’ not a full fledged government in the spirit of the Declaration, designed and instituted ‘to secure these rights.’ The task of securing the rights of individuals was to remain the responsibility of the governments of the individual states. For their purposes – to form a more perfect union – the Framers saw no need to articulate any theory of government...” Hence, rights were already secured in the constitutions of the states, and under the same rationale a bill of rights was not needed (even though several prominent delegates like George Mason (VA) refused to support the Constitution for this reason). Once the framers reversed themselves on the attachment of a bill of rights, the Constitution assumed a different character. With those amendments, the first ten or The Bill of Rights, two years later the Constitution became a social compact – “an authentic expression of the principles of American Constitutionalism articulated in the Declaration of Independence and the state constitutions of the time,” writes Henkin. The use of “We the People” in the Preamble raised the sticky business of the general will (None of the theorists were very clear about how exactly what steps should be taken by the people to establish the general will.) Henkin notes only a small slice of the population selected the delegates to the Convention and equally small slice ratified the Constitution, and in some instances by narrow and questionable margins This did not fit well with Jefferson’s “consent of the governed” from the Declaration. Most Americans were left out of the constitutional proceedings, and yet they were being governed without their inalienable rights being recognized. (“We the People” does not appear in the text, only in the Preamble.) In fact no where in the Constitution was there any mention securing natural rights, which again Jefferson declared to be the purpose of government. That the Constitution was not conceived as a social compact but had over time evolved into one meant in the abstract that the simple phrase “We the People” came to embrace the Jeffersonian language from the Declaration of Independence of what people must do to set governance on the right course. Henkin points out that from the outset Americans and specifically judges wanted somehow to draw the protection or embrace of natural rights from the Constitution and were warned to “stick to the text”.⁷⁷ And yet the Constitution has become more than it was intended to be. Henkin is critical of what he calls “ancestor worship” which in effect denies that we come to terms with a 200-year-old document as applied to contemporary usages. What we have come to regard as our social compact is between

⁷⁷Henkin, “Constitution as Social Compact,” *Proceedings, American Philosophical Society...*, 131 (1987), 263, 265-266.

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the people and the government and not with a judiciary that is simply one branch.⁷⁸ I cite Henkin, not to enter the debate over original text versus dynamic expression with respect to the Constitution, but to underscore the essential problem with the writing and the ratifying of the document. What was written and ratified (without the Bill of Rights) stood primarily as a way “to form a more perfect Union” and offered no elaboration on securing inalienable rights. The Declaration postulated that a body politic could not be established without the consent of the governed, and the framers believed that they were securing those liberties by asking the people on a representative basis to consent to their work. Exactly what the framers produced and under what authorization they produced it was hardly debated by the Convention but will certainly be debated during Ratification.

Americans made known their opinions about the Constitution in a variety of forums, and if I could boil down all arguments for and against I would say (others might not) that at bottom was the issue of enlarging government beyond what was permitted or desirable. To seek the best government was not necessarily to seek more government. Whether by ambiguous language or delegated authority Americans could read into the document the potential for as much mischief as they allowed themselves to conjure up. Having had a longer and closer association with provincial/state governments citizens assumed, correctly or not, that they had more influence over their own elected or appointed officials than they could possibly have over a more distant and remote national government that was not beholden to any one state or for that matter to the collection of states. The concentration of authority in the hands of a new centralized entity even with its tripartite arrangement and system and balances could, as the colonies had discovered through the machinations of the Monarchy and the Parliament, open the door to such erosion of personal liberty that sovereign citizens would effectively be enslaved. The degree of erosion and enslavement was hotly contested, but as Gordon Wood reminded us in a famous essay, rhetoric could overpower reality. Two examples will suffice. A frequently-expressed fear during the ratification debates was that with a stronger national government – everyone recognized that the new Constitution had created a stronger national government – the risk increased that the several states under the guise of a national crisis could “gang up” on a state that stood in opposition a prevailing trend. Without a veto the victimized state was helpless. Further the power to tax was also cited as a potential area of conflict. Under the Articles twice the government failed to win unanimous approval to pay off some of the war debts inherited from the Continental Congress. Since the states actually raised the money to pay the bills, all had to agree. Under the Constitution, since the national government had the powers to tax and appropriate independent of the state governments, citizens of state

⁷⁸Henkin, “Constitution as Social Compact,” *Proceedings, American Philosophical Society...*, 131 (1987), 268-269.

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A, who opposed a tax, would have to pay it, if the majority in Congress approved it. On neither of these points were the supporters of the Constitution prepared to concede. They were unapologetic for making the national government independent of the state governments in certain areas. If a nation were to be built, it had to have the power to override local or parochial interests that might stand in the way of nation-building. Moreover, such fears were exaggerated because the national House like state assemblies was made up of elected representatives who would be guided by the will of the people who elected them. To the same degree that state representatives paid heed to their constituents – a plus in the eyes of those who favored a decentralized system – national representatives would also have to pay attention to what their constituents would accept. The thrust of the dissent against the national government was, once in place it would be harder to control, to hold to the language of the Constitution by which it was created and to ensure the sovereignty of the states or their citizens.

The opponents of the Constitution were dubbed Antifederalists whereas the proponents were called Federalists. In the minds of the Antifederalists, they were the true advocates of a federal system that flowed from the transfers of sovereignty from the individual to the state and from the state to the nation. The Federalists more appropriately should be tagged for what they were – consolidationists. In light of the history of government over centuries, any consolidation posed a relentless risk to the individual's natural rights unless the powers to be consolidated were limited and then spelled out in unambiguous language. The new constitution failed on both counts. It had too much delegated authority and in addition gained more authority because the language allowed for inherent, e. g. unspecified, powers. If revisions to the Articles were needed to deal with some specific defects, then amend the Articles with respect to those particular defects. Consider what Sam Adams, a firebrand in the years leading up to the War, wrote to Richard Henry Lee (of Virginia) 3 December 1787:

And can this National Legislature be competent to make Laws for the *free* internal Government of one People, living in Climates so remote and whole “Habits & particular Interests” are probably always will be so different....Hence then may we not look for Discontent, Mistrust, Disaffection to Government and infrequent Insurrections, which will require standing Armies to suppress them in one Place & another where they may happen to arise. Or if Laws could be made, adapted to the local Habits Feelings, Views & Interests of those distinct Parts, would they not cause Jealousies or Partiality in Government which would excite Envy and other malignant Passions productive of Wars and fighting.

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Strong language meant to provoke fear. No doubt that Adams's linking the potential threat of a new central government to overriding local "habits and interests" with the result of great instability hit all the right notes for some, perhaps for many Americans. What followed this rather inflammatory prose was something of greater interest to me.

But should we continue distinct sovereign States, confederated for the Purposes of mutual Safety and Happiness, each contributing to the federal Head such a Part of its Sovereignty as would render the Government fully adequate to those purposes and *no more*, the People would govern themselves more easily, the Laws of each State being well adapted to its own Genius & Circumstances, and the Liberties of the United States would be more secure.... [underlining mine]⁷⁹

The more formal government a society erected, the more self-rule was threatened. The offshoot of the concept of individuals endowed with the natural right to govern was that they could also benignly rule themselves, manage their lives and pursue happiness in the absence of complicated governmental systems. The new national government (more so than any state government) would deny individuals their rightful endowment. It would seem that Americans like Sam Adams did not buy into the Hobbesian-anarchy or the Lockean-stability models in which too much self-rule (not the collectivity) led to mob rule. This sounded more like Rousseau, or at least an American version of such. Adams may have been mouthing off (again), but he pinpointed the issue at the core of what became the debate about governance in America. That an individual could govern himself outside of the formally "constituted" government with perfect ease and manifest confidence was inferred in the eighteenth-century "pursuit of happiness" and yet although it was never publicly addressed in the Constitutional Convention it was raised in the ratifying conventions and anchored many of disputes that rocked the new administration from the start.

The supporters of the Constitution had their fears as well. They were the reverse of the Antifederalists. They were more Hobbesian or Lockean than Rousseauian but with reservations. They understood how dangerous rogue rulers and government could be, but they accepted the possibility that charters by which governments were organized could be written in a manner to provide the necessary protections against abuse and usurpation and more importantly to create a political environment in which individuals

⁷⁹Bailyn, ed., *The Debate on the Constitution*, 1:446-447.

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as free citizens could prosper. Although unprepared to accept Alexander Hamilton's more Hobbesian model with a very strong executive at the top to hold everyone in line to insure that the common good (whatever that was) could override the tendency of individuals or collections of individuals to undermine the social order – self-interest was destructive, not proscriptive – the framers seemingly (they never actually say) embraced a model that added strength to the central government at some necessary expense to the state governments without replacing those governments or further curtailing individual freedoms. This was just as hard to explain as it was to spell out in precise language. And while the framers defended themselves honorably during the ratifying conventions, they were easy targets for those who saw only trickery and deceit in how the document was written let alone in how the convention misused its mandate. As so often happens in political reform, the new is more complicated to explain than the old is to defend. In a long letter (24 October 1787) to Thomas Jefferson, who had not participated in the constitutional convention because he was ambassador to France, James Madison made an interesting observation about the relationship among the three parties, nation, state and individual. He distinguished between voluntary and compulsive obedience to federal law in the Confederacy. He did not believe that the states would voluntarily obey the laws; nor did he believe that they could be compelled under the arrangement whereby the general government was the creation of the states. Hence an “alternative” course: “a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and the proportion of representation.”⁸⁰ Madison along with many other framers had grave doubts that a truly effective nation could be fashioned out of the Articles, and while they may have shared deep affections (like the Antifederalists) for the states from which they hailed, they were driven by convictions that a nation instead of panoply of sovereign states that might or might not cooperate needed to be able to stand on its own and act accordingly.⁸¹

The Constitution's supporters eventually found a strategy to overcome the opposition that initially enjoyed certain advantages. On the one hand, they sharpened their message; on the other, they organized a campaign. While the opponents may have had a more straightforward message, they were because of their political predilections less likely to try to strategize in a way that would let them control the ratification process. Ratification was among the first major political campaigns wages in America, and the Federalists proved more adept than the Antifederalists. The message of the Federalists

⁸⁰Bailyn, ed., *The Debate on the Constitution*, 1:193.

⁸¹It is true of course that Madison by originally proposing a truly national legislature with representation based on population distribution and not state boundaries did not endear himself to the advocates of the states.

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was simplified and standardized. In essence, political concerns that required collective action or could be dealt with more effectively in a collective model will free individuals to concentrate on what they can do best – managing their property and securing their family. This was more positive than message of the Antifederalists who were handicapped not only because they had to elevate the fear level but also because they had to defend the states whose stewardship was under attack. Being on the defense was not as easy taking the offense. Gordon Wood makes the crucial observations that as the Federalist tackled the issues and debated the points, they began to understand that the old English dissenting tradition that cast the ruler and the ruled in a permanent struggle for control and domination was out date, even though the Antifederalists continued to hold to the tradition and could score points in the debates by emphasizing the long-established view of “contending interests” between the two parties. The Federalists were more willing, based on experience with state and national governments since the Revolution, to downplay if not refute the proposition that government and liberty were perpetual natural enemies. As the people had organized their civil bodies, they were discovering that government in and of itself was not diametrically opposed to the enjoyment and the extension of personal liberty. A national government properly accountable and carefully designed would not represent a danger to liberty but would act as a compliment.⁸² When John Marshall spoke to the Virginia ratifying convention on the establishment of federal courts – in a lawyerly fashion he posed question after question to which he then provided an answer that favored a federal judiciary – he asserted at the end that the new system will not lead to any greater mischief than now motivated citizens to make claims against others in state courts. Why should we expect that a citizen could successfully use the federal judiciary to litigate an unjust claim that would be denied in a state court? “Those who know human nature, as black as it is, must know, that mankind are too well attached to their interest to run such a risk.” What would the new government gain by sanctioning or encouraging such behavior? If the “Government of Virginia” had no motive for condoning bad behavior, why should the new federal government be any different? By Marshall’s reckoning, “The Federal Government has no other motive, and has every reason of doing right, which the Members of our [Virginia] State Legislature have.” Again, posing a question, Marshall asked “Will a man on the Eastern Shore, be sent to be tried in Kentucky; or a man from Kentucky be brought to the Eastern Shore to have his trial?” His answer was

⁸²Wood, *Creation of the American Republic*, chapter 8 (519–564) entitled “The Federalist Persuasion” laid out the strategy of the Federalists under sections with titles such “The Repudiation of 1776”, “The Alliance of Power and Liberty”, and “The checking and Balancing of Power”. He closed the chapter with the assessment that during the debates the Federalists came to the conclusion that the Constitution represented a new and unique charter that clarified the relations between the individual and his government in a manner that both secured and enhanced the liberty of the individual. (See pp. 544 & 564) Was this another way of saying that the Constitution could be interpreted as a form of a compact.

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straightforward and unambiguous: “A Government by doing this would destroy itself....” In brief Marshall and others were willing to make the case that while governments demanded constant attention, they were not inherently evil. They could and this new government in particular will improve the lot of the citizenry.⁸³

Some advocates of the new constitution warned against too much praise and optimism because the act of governing was a complicated matter. James Madison told the Virginia convention that citizens must not be lulled into thinking that the general government created by the new constitution would exhibit only “exalted integrity and sublime virtue”. After all good government depended not only on well-designed charters but also upon a citizenry that will have the “virtue and intelligence to select men of virtue and wisdom” to lead the government. Without such leaders “no theoretical checks, no form of government, can render us secure.”⁸⁴ An important caveat, to be sure, that may have gotten lost in the growing enthusiasm for the new charter but will re-emerge forcefully in the very first decade under the new “General Government”. Ratification was not a foregone conclusion, message and strategy showed positive results earlier than expected. By the end of 1787, just weeks after states began meeting in ratifying conventions, three states voted to ratify. The momentum appeared to favor the Federalists, although it would take six more months (until June 1788) to round up the six remaining states to ratify in order to reach the required nine. The eighth state to ratify was South Carolina on 23 May 1788 with a majority that far exceeded expectations. The South Carolina Legislature had authorized a ratifying convention by only one vote, but the delegates in attendance proved less intimidated by the new charter than the legislature that appointed them. The convention ratified by a vote of 149 to 73. The significance of this did escape David Ramsey a member of the convention. Ramsey was a prominent supporter and a well-known orator. Born in Pennsylvania, he became a physician under the tutelage of Benjamin Rush. He moved to South Carolina in 1774 where he remained until his death (by a shooting) in 1815. Four days after the ratification vote he gave an “oration” in praise of the action that would warm the hearts of any modern-day spinmeisters. His oration focused not on past “national distresses” that resulted from “young politicians” during “the tumult of war” hastily erecting a general government that eventually aroused “the spirit of the country” to act but on the future that the people could expect. It would make us into one strong nation despite our differences in climate, outlook and experiences that will make us happy at home and respected abroad; it will provide for a navy (important to a port

⁸³Bailyn, ed., *The Debate on the Constitution*, 2:740–741. Speech given on 20 June 1788.

⁸⁴Quoted in Wood, *Creation of the American Republic*, 544.

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like Charlestown), discourage foreign meddling, lead to internal improvements and advancements, cause the indebted who will no longer be forced to “double exertions” to pay off their debts, encourage both farming and manufacturing, enhance property values and open trade; and finally to create a national character that was truly American, shed of its European trappings. He closed with a ringing endorsement that once and for all that under this new constitution America will “confute the assertions of those who maintain ‘that there are incurable evils inherent in every form of republican government.’” To his credit, Ramsey ended the oration on a cautionary note, not unlike what Madison and others had warned. “No form of government can make a vicious and ignorant people happy.” He urged all to promote unceasingly the acquisition of virtue and knowledge in order to assure that the new government will function as it was intended.⁸⁵ In an ironic twist, of course, as America entered this wondrous age it will not be the “vicious and ignorant” but the educated and experienced who will place the experiment in jeopardy.

Despite the brilliance of their oratory and strategy, the “consolidationists” had to finesse a fundamental question: how will a dual-track transfer of sovereignty instead of a vertically-stacked transfer actually work? No matter how many assurances the Federalists gave, the uncertainty persisted that the new government could evolve into a tyrannical institution at the very worst and could engender a continuing conflict between the general government and the state governments. It is not that the Antifederalists failed to raise the issue, it is rather that the Federalists never allowed it to dominate the debate. Almost all the ratifying conventions considered the need to amend the new charter in order to make it more palatable. Generally the amenders wanted to reign in the central government by stipulating what it could not do. That was ultimately what the Bill of Rights did. It is often forgotten that the Bill of Rights concerned the national government not the state governments whose charters were generally viewed as appropriately constrained with respect to the powers that they were granted. The framers succeeded in painting a favorable picture for the nation’s prospects under the Constitution, and even though they and their allies dismissed the need for amendments even before the government had been launched, they eventually had to come to terms with the fact that there was not just the Antifederalist opposition to the Constitution but also a distrust from those in the middle who more or less favored a new instrument of government in place of the Articles and yet worried that the limitations on the potential intrusion by the new national government were not sufficiently strong. The idea of amending the Constitution was considered as no more than a palliative by the most

⁸⁵Bailyn, ed., *The Debate on the Constitution*, 2:506–513.

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ardent opponents of the Constitution but for the worriers, not so dedicated enemies of the Constitution, the idea allayed some fears. The hope was that by stipulating powers that the general government did not possess or could not construe as possessing under the welfare clause, the governing system would function as many Americans envisioned that it should: the new federal government would enjoy increased powers to deal with matters of national significance without undue inference from state entities, but – an important but – the existing state governments would continue to manage those domestic and local affairs for which they were best suited. Americans had not given up on their states or the governmental agencies that defined the states, but they were prepared with more moderate expectations than some Federalists displayed to empower a general government for the purpose of ending the obstructions that had appeared under the Articles and could diminish their future opportunities. So even before the first government was in place, the Consolidationists, the Federalists agreed to propose a set of amendment not unlike what several framers, northerners and southerners, had tried to urge without success on the Convention. Within a decade after the amendments were approved, the new government will become riven with disagreements over the application and expansion of federal power along the very lines, which the opponents to the Constitution had warned about and the Bill of Rights was supposed to protect against.

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SHAPING THE NEW GOVERNMENT TO DIFFERING EXPECTATIONS

It was a known fact that George Washington had agreed to serve as the first President. That also swung over some doubters. Washington (and John Adams, vice-president,) assumed office in the spring of 1789 after the Electors, as stipulated in the Constitution, had met and voted. Although not universally admired, no other American commanded as much respect for his service during the American Revolution and the Constitutional Convention as Washington. He let it be known in his inaugural address that he would push for amendments, and by December 1791 10 of the 12 original amendments had been added to the Constitution. The two amendments not adopted concerned the allocation of representatives among the states – a bone of contention during the Constitutional Convention as well as the ratifying conventions – and the manner in which congressional compensation could be altered. An enormous amount of history has been written about the origin and significance of the other 10 amendments. Because they were added to the Constitution they were meant to stipulate what the new national government could not do, and that basically remained the case until the Civil War. Only the first amendment specifically stated, however, that “Congress shall make no law....” The ninth and tenth amendments stipulated that all rights not delegated to the national government remained with the people or the states. The language of some amendments was debated more extensively in the Congress than others. Since several states had included lists of amendments that their ratifying conventions had passed, ample discussion of what was needed had already preceded the introduction of the amendments in Congress. Still in both camps – the Federalists and the Antifederalists – the amendments were viewed as unnecessary and irrelevant. The Antifederalist, who had only a small representation in the Congress, agreed with the Federalists that what was not delegated need not be stipulated as not being delegated, but they continued to argue as they had in the ratifying conventions that the Constitution as written was dangerous with or without the amendments. From an historical perspective the amendments represented a negative action in terms of how a government established in accord with the charter can behave. The charter itself specified what powers were delegated by the people whereas the amendments spelled out what the people did not delegate either explicitly or (perhaps more importantly) implicitly. In the decades following ratification of the Constitution the dual perspective of a positive versus a negative approach to government underlay the debates over what citizens expected or should expect from government.

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When the first administration under the Federal Constitution was launched, what was the state of the nation? What was the basic profile of the American Republic? The first official census in 1790 revealed that the nation had about four million inhabitants. As a result of the Treaty of Paris (1783) that ended hostilities between Great Britain and the United States, all the territory between the Great Lakes and the Gulf and east of the Mississippi River was ceded to the United States. That did not include Florida, and some areas within the ceded western territories were in dispute. At the outbreak of the American Revolution the colonies essentially ruled a region from New Hampshire to Georgia, about 2,000 miles, and from the coast to the interior for several hundred miles. Much of the territory beyond the line of the actual western settlement was contested by the individual colonies. Eventually, first under the Confederation and later under the Federal governments, the land disputes were settled, the newly designated public lands were opened to settlement and the Congress passed a series of land acts to encourage the westward movement. Depending on how the line was drawn separating North and South some figures showed that about half the population of the original 13 states lived in the South and the remainder was split between the Middle States and New England. Other figures on regional populations broke it down into thirds: Northern Atlantic, Middle Atlantic and Southern Atlantic. Virginia had the largest population (ca 750,000) and Delaware the smallest (ca 60,000). Massachusetts was second but still had only two-thirds the population of Virginia. Only about 5 or 5.5 percent of the population lived in towns and cities (2,500 inhabitants plus) so that the vast majority lived in what can be called rural areas. The port cities had the largest urban populations: Philadelphia was first with 43,000 inhabitants, followed by New York (33,100), Boston (18,000), Charlestown (16,400) and Baltimore (13,000). According to the 1790 census about one-fifth of the total population (four million) were classified as non-white (mainly black slaves). More than 90 percent of the non-white population lived in the South, and because so many non-whites lived there the South had 40 percent fewer whites than the North. Although fertility rates can only be estimated indirectly from other sources, Americans were more fecund than Europeans by a large margin. One estimate is that American women who bore children were married before age 20 and had on average seven children. Some dispute these estimates, but the fact remains that conditions (widely dispersed population that suffered from few major epidemics or famines) favored a widening of birth rates over death rates, and that allowed the population to grow internally. Immigration accounted for only a small fraction (tens of thousands) of the expanding population, although during the course of the first half of the nineteenth century that will change. Life expectancy for native-born white males around 1790 was in the low 50s. For women it may have been in the mid-40s, the difference arising

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perhaps from the fact that women experienced so many pregnancies. Comparisons of white males in Great Britain and the United States suggest that Americans lived longer by six to 10 years than Britons. By the end of the eighteenth century births per thousand reached around 55 and death dropped to 22 per thousand with a difference of 27 per thousand, all of which meant population growth on an annual basis of between 3 and 4 percent a year. What was needed to survive and to reproduce was readily available in late eighteenth-century United States. The figures just cited are subject to debate among population historians, but whatever the precise numbers may be, they all point to a growing and thriving society.⁸⁶

The economic profile of the new nation was also impressive. Agriculture was the principal business, and it took several different forms. It included the somewhat romantic “yeoman” farmers who plowed and reaped in order to satisfy their needs. They were more likely to live in remote areas where access to markets was limited. On the other extreme were the large southern plantations, heavily dependent on slave labor and domestic and international trade, to insure financial viability. In between were the majority of America’s agriculturalists whose operations increasingly relied upon access to local, regional and even international markets. For more than a century before 1790 the self-sufficient household was giving way to more diverse modes. In her path-breaking study on consumption Carole Shammas wrote that colonial buying patterns in both plantation and non-plantation agricultural systems were linked to “international trade networks”. Her analysis of eighteenth-century data indicates that as much as 30 percent “of *per-capita* income in a given colony was spent on goods imported from outside the colony,” and as much as 75 percent “of these goods would be classified as consumer commodities...Great quantities of sugar, rum, tea, textiles, clothing, and in some places, grain flooded in.” As odd as it may sound to the contemporary ear, a robust trade within the colonies and between the colonies and other Atlantic economies consisted of groceries like sugar and sugar by-products, caffeine and other drinks and of course tobacco and of many semi-durables such as textiles, both clothing and bedding, pottery, tableware, glassware and paper. And of particular interest is that colonial consumers did not have to spend more to buy imported goods because across the Atlantic World, as production revved up in the eighteenth century, prices dropped.

⁸⁶Population data available at various internet sites. I have made no attempt to resolve disputes among scholars since I am primarily interested in providing a demographic snapshot.

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The economic expansion in the United States was linked to and fed by economic changes elsewhere in the New World.⁸⁷

Shammas directly addresses the rural life with respect to consumption patterns. Rural dwellers in eighteenth-century America did not have to spend their days cultivating and fabricating in order to survive. They had what she called Sears-like outlets to sell them groceries and semi-durables. And if such outlets did not exist, there were peddlers and small shops ready to serve them. For rural producers this meant that they could devote their time, energy and capital to raising products that they could sell in the marketplace. The urban centers came to depend on the agricultural areas for the produce that their inhabitants needed as well as providing the interface between distant and local markets. These are preindustrial economies to the degree that the power-driven machinery that helped to launch the Industrial Revolution was still down the road, in the future, but even ahead of that development a revolution of sorts was occurring in that specialization was changing the way in which both rural and urban inhabitants organized their lives. John Coatsworth has offered some estimates for National Income in Great Britain, United States, Brazil and Mexico, and what they show is that total National Income or National Income *Per Capita* was more than twice as high in the United States as in Brazil and Mexico and about half as high as in Great Britain. Total National Income may have exceeded \$850 million (converted to 1950 dollars) in the United States compared to \$2,094 million in Great Britain with the per capita breakdown at \$165 in the United States and \$196 in Great Britain. Great Britain was probably the most developed economy in the world, and the United States was not far behind. This needs to be understood in the context of the absence of mineral wealth. Mexico was the major silver producer in the world, and yet for a variety of reasons its huge silver reserves did little to advance its economic development.⁸⁸ Economic growth in the United States before the nineteenth century was accomplished in what we might call an old-fashioned mode of producing and trading consumer goods and agricultural staples. With a young, healthy work force that could produce as well as consume the economy was on a path that improved overall prosperity. One should not conclude that everyone enjoyed the same economic benefits. Professor Shammas has also examined income distribution from the late eighteenth century through the twentieth century, and has offered some

⁸⁷Carole Shammas, *The Pre-Industrial Consumer in England and America* (Oxford: Clarendon Press, 1990), 292-293, 295-296. Semi-durables were exemplified in lighter textiles like cottons rather than heavy woolens.

⁸⁸John Coatsworth, "Obstacles to Economic Growth in Nineteenth-Century Mexico," *American Historical Review*, 83:1 (1978), Table 1, p. 82; Richard Garner with Spiro Stefanou, *Economic Growth and Change in Bourbon Mexico* (Gainesville, FL: University of Florida Presses, 1993) for analysis of various growth factors..

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figures that the top 5 percent owned about 63 percent of the wealth at the time of the Revolution. At the 5-percent level the nation over time actually saw positive changes in wealth distribution as the number may have dropped from 63 percent to 40 percent. The highest 1 percent showed little change as it held 28 percent in 1774 and 25 percent in 1953. By another measure, distribution by households, defined as free adult men and unmarried women, 5 percent owned 41 percent in 1771 and over the next 200 years it rose to a range of 49 to 57 percent.⁸⁹ That the nation as a whole was doing well economically did not mean that every free citizen or household enjoyed the same share of the total wealth. America had its hierarchy, although that hierarchy was never seen as permanent and unchanging and probably as less of an impediment than elsewhere.

I have said little about race thus far. It was an issue during the Revolution and the Ratification, but it never came to dominate the political debates. Race involved two racial groups: indigenous Americans to which the Spaniards had attached the name Indians, and Africans who were sold in the English colonies (and other colonies) as slaves. Indigenous Americans had established themselves across the territories that became the 13 colonies. At the time that British colonization started the East Coast of North America had several tens of thousands of inhabitants scattered in small tribal nation from Maine to Florida. Relations between the European settlers and the indigenous inhabitants passed through several phases, from admiration of their culture to condemnation of their obstruction. Slowly, they were pushed off their tribal lands into new areas beyond the constantly advancing frontier boundary, even as some prominent eighteenth-century Americans came to recognize them as sovereign nations with which the United States should negotiate treaties over the transfers of their lands. By and large, though, concern for the plight of the Indians was an afterthought. The average colonist showed little reluctance in trying to dispossess the Indians of their lands, especially if they were valuable agricultural acreage. In short the Europeans and the Indians maintained frosty relations and at times engaged in hostile relations. It is safe to say that the presence of tribal nations represented a significant obstruction from time to time but not much more. In my own family history the yore was that ancestors moved to Western Pennsylvania during the late eighteenth century among Indians who still lived in the vicinity. In fact it was always told that ours was the first “white” family to settle on these lands. Hostile threats and an occasional dustup were also part of the family lore. Having heard the stories as many times as I have and not having much interest in pursuing them, I can only say that based on studies of eighteenth-century Pennsylvania

⁸⁹Carole Shammas, “A New Look at Long-Term Trends in Wealth Inequality in the United States,” *American Historical Review*, 98:2 (1993), Table 2, page 420 and Table 3, page 424. Other scholars have offered up different estimates. My aim is not to settle on a set of numbers but rather to suggest some positive trends in income and wealth distributions.

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history most of the original native Americans living in western Pennsylvania had been decimated by disease and war. The Northwest Territories as well as some territories in the South became hotbeds of disputes and battles between the new government and the scattered native nations which made an effort to reorganize to forestall further incursions by white settlers. In the late decades of the eighteenth century, however, along the western Pennsylvanian border halfway between Pittsburgh and Erie where part of my family settled (on land acquired through warrants granted by Pennsylvania for services rendered) dustups with Indians was probably a misnomer.⁹⁰ One of the recurring themes in the stories I heard, however, was the land belonged to white men, and one of the recurring themes in Native American-White American relations was the land belonged to white men. Whether by treaty or war, Native Americans were driven from lands that White Americans wanted and eventually were confined to lands that had little to do with their history or their culture.

The African question compared to the Native question will eventually become a more explosive issue, although at the time of Washington's inaugural a detente of sorts existed. For a few Americans the existence and the future of slavery should have been included in the debates over the Declaration and the Constitution. For them, many of whom were Quakers, slavery was incompatible with the pronouncements on inalienable rights and individual liberties. But they were a minority that could be ignored. Among the slaveholders and in the slaveholding regions talk about the end of slavery was more open and less censored than it would become. For a portion of America preserving slavery just seemed like a bad idea if not an immoral one. Africans unlike Indians lived among the citizens, approximately 700,000 to 800,000, according to the 1790 census, in a population of nearly four million or about 20 percent. Not all were slaves, but the vast majority were. Slaves were counted in the census even if they lacked citizenship as result of the deliberations over representation in the House of Representative. Those who were offended by slavery in the first place were even more outraged that the convention first considered this provision and then passed it. The trade-off was that defenders of slavery were willing to end slave imports in 20 years to avoid a showdown that might have led to greater restrictions on if not a total abolition of slavery that the more ardent opponents of slavery might have won. While the word slave or slavery

⁹⁰See http://www.legis.state.pa.us/wu01/vc/visitor_info/pa_history/1.htm. There was certainly ample hostility between the Indians and the Americans in the Northwest Territories, heavily involving the Shawnees who had returned to their homelands after being driven out by the Iroquois (New York) in the middle of the seventeenth century. There were also other tribes or remnants of tribes in the vicinity, among them Delawares, Iroquois and Senecas. Tensions between white and natives settlements were high before and during the Revolution around Pittsburgh. After the Revolution most of the conflict had moved west into the Ohio Valley and the Northwest Territories away from the Pennsylvania border. Extensive information available on-line at <http://www.accessgenealogy.com/native/pennsylvania/> and <http://www.tolatsga.org/shaw.html>.

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never appeared (the euphemism was “other persons”) in the Constitution three-fifth clause signaled to many that the Constitution sanctioned slavery. It is easy to line up the apologists for and the opponents of slavery, but it much harder to characterize where the majority of Americans stood.

All across the New World the enslavement of Africans arose out of a need for labor, but after millions of slaves had been imported, the importing societies faced inevitably the question of how and whether to incorporate slaves into the social systems of which they were a part. Everywhere in the New World slaves constituted property, and yet everyone could see that even though slaves were treated as property, they were indeed human. They were different from their masters in terms of rank and privilege, but they were also different in terms of other types of property with which everyone was familiar. Thus, all legal codes covering slavery contained contradictions. Even though codes denied slaves basic freedoms and rights, they often stipulated treatment that implied that slaves enjoyed a status different from property. All of this was further complicated by the fact that slaves could be freed, and once freed they had to assume a place in society. Determining that place proved to be problematic. In Latin American systems, manumitted slaves may have had an advantage, at least in the abstract. Given its Old World roots where anyone legally could be enslaved slavery occupied a rung in the social hierarchy – albeit the lowest. In theory this meant that when slaves were freed they moved out of a slot where few if any rights and privileges existed into slots where they were more abundant (this depended of course on the particular slot). Color became an issue in Latin America because miscegenation was widespread, and the emerging hierarchy took into account the color of the citizen. Almost all slaves were Africans (a few Indians were illegally enslaved), and yet their former status did not necessarily determine their manumitted status. Latin American race historians have long argued about the hierarchy that attempted to embrace Africans, Indians, Europeans and mixed bloods actually functioned, but however the system functioned it was different from the system in America. In a sense Hispanic slave systems had an open-ended feature. In British America even though social rankings existed they did not include slavery. Slavery did not exist in England, and by introducing slave labor restricted to Africans colonial governments had to find a way to accommodate a status that did not legally exist. The answer was to restrict slavery to one racial group and then to deny that group status. It is not clear how fully British settlers had developed or embraced this idea, but it become clear over time that it served a purpose of accommodating the need for labor while denying the need for citizenship. Under these conditions a close-ended system emerged. Since manumission was difficult if not forbidden and enslavement was extended in perpetuity (from the original through all descendants) Americans had come

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to view slavery as existing outside of the functioning social order. Moreover, while some miscegenation took place, racial attitudes determined that anyone with a taint of blackness was subject to continued enslavement or re-enslavement. Being a mixed-blood was not necessarily helpful in changing one's status. As Washington launched his new administration after what amounted to a limited and narrow debate during the American Revolution and the writing and ratifying of the Constitution Americans were joined, perhaps unwittingly, to an idea that a system of labor concentrated in one region and in one agricultural sector provided virtually no exit from slavery and no accommodation of slaves or ex-slaves, darker or lighter, into the larger society. Of crucial importance was the fact that laws governing this construct were written and enforced by the states with no federal interference or oversight. Since everyone who reads this already knows that a civil war will be fought over slavery, a remark such as the seeds for disaster had been sown seems gratuitous.⁹¹

Is cautious optimism too strong to describe the mood of American around 1790? Unresolved issues inherited from the Revolutionary and Confederation periods remained but may under a new Constitution and an admired leader be resolved. It was the sense of moving ahead that may have inspired confidence. The national government on which a portion of the population pinned their hopes seemed to have fallen into the right hands. The President, his Cabinet and the Congressional leadership were men who had worked together in difficult times during the Revolution, the Confederacy and the recent Convention. They were known quantities, so to speak. What the Nationalist/Federalist contingent, who now occupied many of the most important offices, had feared was that ill-defined lines of authority would ultimately impede the nation's progress, and much of the "public relations" campaign (including the Federalist Papers) aimed at explaining how a properly organized national government would overcome these deficiencies without sacrificing the basic liberties that Americans had come to cherish. When the constitution convention began and later when the ratifying conventions began, the chances that the framers would prevail was a toss-up. But they had made their case for moving ahead with a new charter designed as much to invoke a more secure and productive future as to allay fears about changing course. Whether surprising or not, the moving ahead entailed a course change that brought Washington as much grief as he could ever have predicted. It is known that those who united in support of the Constitution had some fundamental differences about what was intended

⁹¹My discussion of comparative slavery in the New World across several centuries is meant to highlight some broad themes and is based upon reading the scholarly research published in the United States and Latin America. I will make no effort here to list all the readings (many of which were assigned in a Comparative Slavery Seminar that I once taught) but will be happy to communicate with those who may be interested in pursuing this topic.

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by the Constitution and was expected from the government under the Constitution, but in the same spirit they had navigated the shoals of constitution-writing they would navigate the shoals of governing. The fissure that opened up over what was intended and what was mandated among the very people who had proposed the need for change only grew wider until disunion was threatened and new political parties, unforeseen by the framers, divided those who had once managed despite philosophical differences to find common cause.

The fireworks began when Alexander Hamilton, a man whose ego knew no bounds, was named Secretary of the Treasury. He shared the Cabinet (not actually provided for in the Constitution) with Thomas Jefferson, Secretary of State, Edmund Randolph, Attorney-General and Henry Knox, Secretary of War. Later Samuel Osgood was appointed as PostMaster-General.⁹² Treasury was approved third after State and Justice, although it was thought to be the most urgent. It had a large staff including a comptroller, auditor, treasurer, register and an secretary (Section 1, Chapter 12), and besides the technical business of keeping accounts and paying bills the Secretary was charged with the duty “to digest and prepare plans for the improvement and management of the revenue, and for the support of public credit”(Section 2, Chapter 12).⁹³ The first four appointees has long experience in government and were well known to the President. Hamilton, Knox and Randolph had served under Washington during the Revolution, and Washington and Jefferson, different temperaments to be sure, had longstanding Virginia connections. Hamilton campaigned for the Treasury Secretaryship, and while a controversial figure because of his advocacy of a strong national government, he was nonetheless highly regarded for his knowledge of public finance. Robert Morris who may have been the “dean” among those who studied public finance urged Washington to appoint Hamilton not only because he was smart but also because he was ready with a plan. Once appointed, he was less deferential than other Cabinet officers in setting a course of action for his department. Even if Hamilton had been less aggressive, he could not have missed the fact that in its First Session Congress made public finance a high-priority item. The second and third acts approved by Congress on 4 and 20 July 1789 (three

⁹²The Constitution said that the President may require opinions in writing from principle officers of executives departments, and from that it was decided that the President had the power to name a Cabinet to carry out duties assigned to the Executive. State (originally called Foreign Affairs) was approved by Congress in July, 1789; War, August 1789; Treasury and Justice, September 1789; and Post Office February, 1792. Navy was added under Washington’s successor, John Adams, in April, 1798, and no other Cabinet posts were added until the middle of the nineteenth century. For Washington to operate through a Cabinet of departmental heads was in keeping with how he had performed as Commander-in-Chief. Since the Constitution only made reference to reporting written reports, The specific legislation for the creation of the Cabinet posts can be accessed at <http://memory.loc.gov/> under *Statutes at Large* (1st Congress, 1st Session, Chapter 4 for State, Chapter 7 for War, Chapter 12 for Treasury and Chapter 20 for Justice. Appointment of Attorney-General part of the Judiciary Act.)

⁹³*Statutes at Large*, p. 65. Available on-line at [http://memory.loc.gov.](http://memory.loc.gov/)

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months after convening) were a tariff (later repealed and replaced) on specific imported merchandise and on tonnage.⁹⁴ They were followed by a third act (31 July), setting up districts for the collection of duties (in considerable detail) and by a fourth act (5 August), calling for continuing a commission to settle accounts between the federal government and the states.⁹⁵ Although known to have misgivings about the Constitution (he was more fearful than others of popular rule), he called himself a republican and he had shown intelligence and zeal in allying himself with the Federalists to ratify the Constitution. As a member of the First Administration, he was committed to making the new government work.

According to his most recent biographer, Ron Chernow, Hamilton's friends warned him about assuming the Secretaryship because financing the new government had been among the most contentious issues at the Constitutional Convention, which he seldom attended, and he could because of his outspokenness become a "lightning rod" for those who opposed any fiscal program that relied on the British model with which he had already expressed sympathy.⁹⁶ Hamilton, well aware of his unpopularity in some quarters (especially the South which also distrusted him because he opposed slavery), but he was alleged to have responded to his friends that this was the job in which he could make his best contribution. There was little doubt that Hamilton wanted the Constitution to succeed as a replacement for the chaos under the Articles of Confederation, and, based upon the proposals that he made, there was little doubt either that he would read the Constitution as broadly as possible to achieve them. Chernow observes that while an admirer of the British system, Hamilton (also well read in French financial history) fully intended to create an American model that was even more robust than the British model. "Hamilton wanted to use Britain methods to defeat Britain economically."⁹⁷ His friends were correct, however. Even though he succeeded in pushing through an increasingly skeptical Congress most of his program he became one of the most despised public figures. One charge that haunted the Hamiltonian and

⁹⁴*Statutes at Large*, Chapters 2 & 3, pp. 2-28. Available on-line at <http://memory.loc.gov>.

⁹⁵*Statutes at Large*, Chapters 5 & 6, pp. 29-49. Available on-line at <http://memory.loc.gov>. Also acts covering lighthouses, buoys and public piers, trade with Indians and coasting trade were passed before adjournment at the end of September. Some of these acts were repealed and replaced, but the point to be made is that legislation concerning matters relating to the Treasury occupied much of the attention of the opening session of the 1st Congress.

⁹⁶The makeup of the First Congress certainly favored the Administration. Ten participants from the Constitutional Convention were in attendance in the Senate (23), and a much smaller number of eight in the House (56). More importantly, in the elections for the House and the appointments to the Senate the Nationalists (Federalists) had a substantial majority. The discontent emerged from House where about two dozen representatives opposed the Nationalists, although they were not necessarily Anti-Federalists. They tended to favor a strict reading of the Constitution and its powers.

⁹⁷Chernow, *Alexander Hamilton* (New York: Penguin Press, 2004), 287, 296.

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tarnished his legacy was the manner in which Treasury Secretary had designed his program. It was intended to serve the interests of the elite and did so in a way that ultimately led to corrupt deals between the government and private citizens. Indeed, corruption became an issue that helped to drive a wedge in the unity government that Washington tried to establish and perpetuate. Hamilton surely deserved credit for the bold plan that addressed a serious issue of guaranteeing sound currency and credit, but in choosing such a bold plan he handed the opposition a set of issues that it would insure its political triumph. One can look back in admiration of Hamilton's foresight and courage, but one must also recognize that the nation at large did not share that view. More to the point, the controversy surrounding Hamilton's program had a long-term effect. Whether or not it was sound, necessary or effective, it helped to cement a permanent fissure in America over the role of government in America. Fifty years later members who supported public programs underwritten by federal funds would be branded pejoratively as reincarnated "Alexander Hamiltons" during Congressional debates. For Hamilton and his allies government was absolutely essential, not only to restrain unpredictable human behavior but also to direct the economy and the nation in a direction that would be productive of wealth and security. For them too much liberty – basically a society of self-governing individuals – was inherently unstable and destructive.⁹⁸ That did not fit well with another approach will come to prevail.

Hamilton's first Report on Credit consisted of two parts known as Funding and Assumption. In his Report Hamilton placed the total outstanding governmental debt at about \$78 million, although later recalculations boosted it to over \$80 million. The least disputed was the foreign debt (unpaid loans from foreign nation) at about \$12 million. Indebtedness of the federal and state governments was harder to determine with any accuracy. Hamilton reported the former at about \$41 million, although it was probably closer to \$45 million, and the latter at about \$19 million, although it was probably in excess of \$20 million.⁹⁹ The total with upward adjustment was somewhere around \$80 million. That was the amount that Hamilton said had to be funded in order to stabilize credit and to restore confidence. Few objected to paying the foreign portion at face value as a necessary step to ease the fears of foreign creditors after a decade of missteps. Establishing credit was not the issue. Assuming domestic debt at face value after years in which speculators and bankers had paid little to obtain the devalued notes, not all of which had been issued by the national government, lacked credibility. Funding the

⁹⁸For a highly readable portrait of Alexander Hamilton, see Gordon Wood, *Revolutionary Characters, What Made the Founders Different* (New York: The Penguin Press, 2006), 121–140.

⁹⁹The governments were generally in default on these debts with respect to both principal and interest. In figuring the size of the debt Hamilton had included accrued interest, at least in most cases.

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federal debt at some value was not hard to accept; assuming all debt at face value signaled a firestorm. After that numerous objections were raised over Hamilton's plan. Funding and assumption had come up, it will be recalled, at the Constitutional Convention, and even without full-scale assumption, the idea of paying holders of notes dollar for dollar while the original holders had been paid pennies on the dollar led to some sharp exchanges. The Convention decided not to make funding and assumption a part of the Constitution and to leave to the government under the guideline provided to resolve the issue. The guidelines were sparse, but given the difficulty of raising federal revenue, by direct taxation in particular, the Congressional debate also had to consider how to pay for it. In the eyes of the opponents of the Constitution, it didn't take long for the national government to embark upon a program, suspect in and of itself, that would mean national taxes. And taxes paid by all freemen to support a slice of the population with an unsavory reputation. Even more grating was that if all debts were assumed, the interest (4 to 6 percent on domestic notes and 4 to 5 percent on foreign notes) in arrears would also be paid. Thus, the total bill would easily reach \$100 million, a truly monstrous debt compared to the a current national debt, which some regarded as monstrous, at half that level.

In actuality Hamilton had no intention of shelling out \$100 million. Raising that amount of money in a nation that had fought a war over modest colonial taxation would be lunacy. Instead, and the reason why paying the interest in arrears was because Hamilton intended to exchange the notes outstanding for new notes at what he hoped would be favorable interest rates. For the current bond holders what would motivate them to accept the deal was the rate would be no lower than that on the virtually worthless paper that they held.

While Hamilton was clearly ahead of many of his countrymen with respect to the intricacies of government finances, he also understood the political challenges ahead of him. He did not back away from the overall strategy, but he was willing to modify some details relative to funding and assuming the debts. He was also aware that if he accepted the rate of interest of 6 percent stated on many state bonds he would have trouble raising the money to pay the interest let alone pay down the debt. So he offered domestic bond holders several options in order to reduce what the government would be obliged to pay each year in interest to bondholders.¹⁰⁰

¹⁰⁰Chernow has the best recent summation of Hamilton's program for funding and assumption in *Alexander Hamilton*, 297-301. The actual legislation can be found at *Statutes at Large*, 2nd Session, 1st Congress, Chapter 34, 138-144.

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Even as Hamilton tried to finesse the expected opposition with some alternative approaches, he still faced withering criticism inside the Cabinet and the Congress. For this essay I do not feel compelled to address every argument for and against the plan. The context for how the debate unfolded is worth thinking about briefly. The foreign debt did not stir much dispute. The domestic debt was more disputed because it touched many American citizens more directly than any foreign debt. It apparently struck ordinary citizens and their political leaders alike as unfair to reward speculators (who were no more loved in the eighteenth century than in the twentieth century) for the gamble that they took. Part of the opposition arose because many of Hamilton's foes believed that he had implemented a plan that would benefit him personally as well as his many well-to-do friends. Not much evidence that Hamilton expected to benefit personally. With respect to his friends, some indeed had speculated in debt paper and would gain from full funding, but from Hamilton's point of view the strategy was necessary not because of how his friends might benefit but because establishing the full faith and credit was needed in order to make the well-to-do allies of the government whose financial record was less than stellar. The second part of the Report on Credit – assumption of state debt by the national government – did little to boost his public image. In addition to the same complaint about rewarding speculators there was the additional complaint that since some states had paid off their past debts they would in effect be punished for accepting their proper responsibilities. Funding foreign and national debts with federal revenues raised few constitutional objections, but assuming and funding state debts did raise constitutional questions. The authority in the first instance was clear but in the second instance not at all. Finally underlying all the skirmishing over credit was the obvious matter of how once all the debt had been subsumed, as Hamilton proposed, the federal government would generate the revenue to pay the annual interest or pay down the principal. Hamilton was aware of these concerns, and he proposed that a sinking fund be created to systematically reduce the national debt. But his opponents were impressed because they feared that import duties, the main revenue source, would be inadequate and therefore new national taxes would have to be approved. In the six-month debate that ensued (between January and July, 1790) opponents failed in an effort to reward the original bondholder but succeeded in stopping state-debt assumption.

Having assumed office in September 1789 Hamilton immediately set about to organize his department and to arrange for loans to cover contingent expenses. Toward the end of the previous session (21 September) the House asked Secretary to prepare a plan on the public credit, and at the beginning of the Second Session (9 January 1790) the House

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had a message from the Secretary that he was ready¹⁰¹ (Not surprising in that he had been working on it in advance.) Debate was put off for a fortnight, and when it opened(28 January) Fisher Ames (P-MA) wished for a delay. Why? The failure to discriminate among the note holders (which Ames had originally favored but had changed his mind) had generated such “a spirit of havoc, speculation, and ruin” in various states that his soul rose “indignant at the avaricious and immoral turpitude which so vile a conduct displays. He reported that three ships had left New York (where the government then sat) “freighted for speculation; they are intended to purchase up the State and other securities in the hands of the uninformed, though honest citizens....” In addition, he thought that the states should be consulted on such a policy, an idea that drew some opposition because it impinged on the prerogatives of the national government¹⁰² After debating the merits of an extension, the House voted to delay the debate for a week. Shortly thereafter James Madison introduced an amendment to discriminate between the current and the original note holders. A long debate ensued including Andrew Moore’s (A-VA) request for no action on Hamilton’s plan. Despite the fact that many who had spoken as if they represented the public’s view, he said, that view was unknown with any precision. He recommended the plan be postponed until after the elections (November 1790), and at that point, the public having had a chance to express their feelings on a plan that discriminated against the original note holders, many of whom were veterans, the House could proceed.

I should not hesitate to say that nine out of ten would be in favor of a discrimination. The people would, on this principle, I conceive, submit cheerfully to the payment of those taxes which are requisite to discharge the public engagement; but if they are to flow into the large cities, or into the hands of foreigners, who have speculated upon the misfortunes of the most meritorious class of our citizens, they will bear the burthen with murmurs and complaints.¹⁰³

This was not objected to on constitutional grounds, although some felt that way, but on grounds of equity and fairness. It would ultimately consist of four financial plans,

¹⁰¹Proceedings, *Annals of Congress*, [known as Gales & Seaton’s *History of the Proceedings and Debates*.... They are also referred to as *Debates and Proceedings* and *History of Congress*. But the title page reads *History of*....], 2nd Session, 1st Congress, 9 January 1790, 1079-1080. Since there were not political parties members are often identified as Proponents (P) or Adversaries (A) of the Administration. Available on-line at <http://memory.loc.gov>.

¹⁰²Proceedings & Fisher Speech, *Annals of the House*, 2nd Session, 1st Congress, 29 January 1790, 1131-1141. Available on-line at <http://memory.loc.gov>.

¹⁰³Moore’s Speech, *Annals of the House*, 2nd Session, 1st Congress, 16 February 1790, 1281. Available on-line at <http://memory.loc.gov>.

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although neither his agenda nor his influence ended there. Madison's amendment lost by a substantial margin, but after further debates and amendments the House turned down Hamilton's plan. The Plan on Public Credit had been under deliberation by the Committee of the Whole House, and the vote on 26 April was to "discharge" the Committee from further proceedings on the assumption component. The vote was 32 to 18 in favor of discharge. The Plan on Public Credit was not dead. After the vote the House introduced several resolutions as to how a plan might be funded. But assumption without discrimination would have to be revised and resubmitted.¹⁰⁴

In this first major tussle over what direction the new nation should pursue and how to read the Constitution, a second issue unrelated to fiscal matters became entangled with the public credit controversy. It was officially known as the Residence Bill (1790), that is, where to locate the seat of government. The Constitution (Article 1, Section 7) stipulated that Congress had the authority to govern an unspecified territory or district to become the seat of government on land to be ceded by certain states. But the Constitution did not specify the location of the seat of government, and while New York City served as the first seat of government, the constitutional provision set off a flurry of speculation about where the capital might end up. And this was not only speculation in the form of idle chatter but also in the form of buying up land in areas (namely Delaware, Susquehanna and Potomac River basins) that could be in the running. Even the Father of the Constitution, James Madison, and his friends made such investments. It became a contentious issue even though many assumed that for geographic reasons the capital would be moved south. The new administration turned to other issues, and as the public-credit debate heated up the seat-of-government question was pushed to the back burner. Why the fuss? Did it matter where the seat of government was? It mattered in the eighteenth century as it would probably matter (perhaps for different reasons) in the twenty-first century if there was a movement to abandon Washington for another site. Travel time was certainly a major consideration, and ideally a place halfway between the northern and southern boundaries might be selected. But travel was probably a minor consideration compared to regional distrust. It was almost as if people believed that the government would personify the region where it was located. If located in the north it would reflect the interests of the urban, mercantile classes at the expense of the rural, agrarian classes. And the converse would be true if the capital were established in the South. In an age when proximity of government to the people was much admired, location would arouse passions. (I suspect that even in the globalized twenty-first century Floridians would object if the capital were moved to Minnesota

¹⁰⁴Proceedings, *Journal of the House of Representatives*, 2nd Session, 1st Congress, 22 April 1790, 199-201 Incidentally Fisher Ames did not vote to discharge. Available on-line at <http://memory.loc.gov>.

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and Oregonians would object if it were moved to Texas for reasons that were not entirely objective.) This back-burner issue rather suddenly showed up on the front burner along side of the Public Credit controversy as stalemate over the latter intensified. How it got there and eventually become the vehicle by which a compromise was reached is a slice of history that is not fully documented. There is enough documentation to allow historians to make some sound educated guesses on how the two seemingly unrelated issues came to complement each other.¹⁰⁵

As Congress stalled over assumption in the spring of 1790, Public Credit legislation was threatened. Madison's plan to reward the original as opposed to the current bondholders had been defeated in the House, but then the House turned around and voted against assumption. Jefferson, who did not arrive in New York City until March, 1790, became Madison's ally in the Cabinet despite his later protestations to the contrary. While Madison and Hamilton had been colleagues in the battle over ratification through their contributions to the Federalist Papers, Jefferson and Hamilton had apparently never met before Jefferson joined the Cabinet. While Jefferson admired Hamilton's work with respect to the Federalist Papers, he did not trust his commitment to republican principles. Even before they met, Jefferson had volunteered the opinion that Hamilton favored a much too "energetic" government. Such a government was "always oppressive."¹⁰⁶ Hamilton's became visibly agitated when the House approved the Public Credit Bill without assumption on 2 June 1790, clearly a victory for Madison and Jefferson. Two weeks before (24 May) the House engaged in several days of debate over the current version of the bill on Public Credit that did not include a provision on assumption. The House had disposed of amendments offered to the first 12 sections at which point Elbridge Gerry (A-MA) moved that a clause for the assumption of state debts be inserted. One of the arguments against assumption was that state that had taken it upon themselves to reduce or erase their war debts would be penalized by having to help to pay for states that had not. (His state, Massachusetts, fell in the latter category.) He did not want to debate the merits of one state versus another but rather wanted to find a path to conciliation among the states. His amendment read that the assumption of state debts "would be greatly conducive to an orderly, economical, and efficient arrangement of the public finance, would tend to an equal distribution of burthens among the citizens...; would promote more general justices to the different classes of public creditors; and would serve to give additional stability to public credit." Gerry

¹⁰⁵See Editorial Note on the Residence Bill in Boyd, ed., *Papers of Thomas Jefferson*, 17:163–183 for a good analysis of the controversy and the available documentation. Also Chernow's *Alexander Hamilton*, Chapter 16, covers the same ground, although in less detail and with less emphasis on the lacunae in the documentary record.

¹⁰⁶Quoted in Chernow, *Alexander Hamilton*, 310.

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proposed that a loan with interest be authorized to pay for the assumed state debts. For any portion of the debt not subscribed to by purchasers of the bonds, the federal government would make a loan at 4 percent until the a settlement between the state and the federal government could be effected. Other contingencies were provided for, but the thrust of the proposal was to make the federal government the guarantor of outstanding war-related state debts. Richard Lee (P-VA) urged the House to take no action on the Gerry proposal because to do so was to mix two separate issues: providing for the public credit did not entail the assuming of state debts.¹⁰⁷ Speakers took sides as to whether or not assumption was essential to the overall goal of stabilizing public finance and credit. Although Roger Sherman (P-CT) favored the Gerry amendment – without some provision “some of the States will be wholly unable to do it, and others of them cannot, without burdening the people with very oppressive taxes; it will be leaving the State creditors in a totally destitute situation” – he was inclined to lay the matter on the table and allow due time for debate and review. The House then adjourned.¹⁰⁸ Many of the speakers who favored assumption referred directly to the opposition mounted by Virginia and in some cases specifically by Madison. The simple fact, as revealed in the speeches, was that the states did not have the money to pay their debts, however they were subscribed and whoever may hold the certificates, and if they were to try to raise the money under the new federal system, they had even fewer sources to which to turn than before. The inevitable result was default that could erase the debt but at enormous cost to the note holders, some of whom (or many of whom) were the soldiers, the farmers and the shopkeepers who helped to wage the war. Following a day of debate George Gale (P-MD) moved to accept the bill as amended through Section Twelve (without assumption) and to discharge the Committee of the Whole of any further obligations. This provoked more debate as to what was the proper course of action. An effort was made to begin the proceedings for a separate assumption bill but to no avail. John Vining (P-DE) may have summed up the feelings of many members, especially those who in general supported the Administration and may have admiration for the work that Hamilton was doing, when he remarked that he was “a warm advocate” of assumption, “agreeable to the plan proposed by the Secretary” the whole of that report being a valuable contribution. While he regretted losing any part of it, he was prepared to put aside assumption until another time and adopt the bill as proposed in order to move ahead on the question of securing the public credit. Those favoring assumptions repeatedly argued that it would actually strengthen the bond the bond between the

¹⁰⁷Gerry Speech & Proceedings, *Annals of the House*, 2nd Session, 1st Congress, 24 May 1790, 1642-1644. Available on-line at <http://memory.loc.gov>.

¹⁰⁸Sherman Remarks & Proceedings, *Annals of the House*, 2nd Session, 1st Congress, 25 May 1790, 1645-1646. Available on-line at <http://memory.loc.gov>.

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people and their governments. The House did not adopt Gale's motion before adjourning for the day.¹⁰⁹ On the following day the House voted to discharge the Committee of the Whole of its duties regarding the public debt and proceeded to vote on amendments to several sections (but not on assumption). On 27 May the House that the bill be "engrossed" (printed) for a third reading on 31 May.¹¹⁰ The third reading came instead on 2 June in the affirmative. Importantly, the bill was renamed as an act "making provision for the debt of the United States."¹¹¹ Hamilton had a bill that dealt with the federal debt but not the comprehensive bill he wanted. He had to find a compromise quickly, and compromise would arise out of the fears shared by both camps that their honest differences may threaten the very government that they were trying to serve. The union was not only new but also fragile.

How the compromise to accept assumption as part of the Public Credit Bill and to locate the permanent capital on the Potomac River came about cannot be fully documented, but the basic detail can be reconstructed.¹¹² Even before the June House vote there were rumblings that Hamilton was working with Congressmen from Pennsylvania and Delaware, two candidates for the permanent capital, to link assumption with the location of the capital. He told Robert Morris, a senator from Pennsylvania, he needed one Senate vote and five House votes to gain approval of assumption, and if Morris helped him round up the vote he would support the transfer of the capital to Philadelphia or Trenton.¹¹³ Apparently such a deal was too late because some other deals were in play. Toward the middle of June Hamilton and Jefferson ran into each other outside Washington's home. Thus began the negotiations within the Cabinet and between the Cabinet and the House. Two years later, it would appear, Jefferson

¹⁰⁹Vining Remarks & Proceedings, *Annals of the House*, 2nd Session, 1st Congress, 25 May 1790, 1669-1671. Available on-line at <http://memory.loc.gov>. Theodore Sedgwick (P-MA) noted that Madison had not spoken in the House in the eight weeks since assumption was defeated but had made a public speech that intended to leave an "unfair and undue impression on the public mind". It was "composed of unfounded facts, monstrous premises, and inconclusive deductions". (p. 1671)

¹¹⁰Proceedings, *Annals of the House*, 2nd Session, 1st Congress, 26-27 May 1790, 1674-16755 & 1676. Available on-line at <http://memory.loc.gov>.

¹¹¹Proceedings, *Journal of the House*, 2nd Session, 1st Congress, 2 June 1790, 232-233. No number of for and against was recorded. Available on-line at <http://memory.loc.gov>.

¹¹²While the House was debating public credit, it was also discussing the time and location of the next session and a proposal related to the debt question that asked for a review by a commission on how to settle the accounts between the federal government and the states. The former continued to be debated and will play a role in the resurrection of assumption. The latter was referred to a select committee.

¹¹³Chernow, Alexander Hamilton, 327. William Maclay, a Pennsylvania Senator and a political scribbler was probably the author of an attack on Hamilton's machinations about the time Hamilton and Morris met. Maclay favored the Constitution and some of the fiscal package, but he despised deals that were being made to win approval for the package. See Editorial Note on the Residence Bill in Boyd, ed., *Papers of Thomas Jefferson*, 17:167-168.

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composed an account of the so-called bargain over assumption and residence bills in which he described his encounter with Hamilton in this way:

Going to the President's one day I met Hamilton as I approached the door. His look was somber, haggard and dejected beyond description. He asked to speak to me. We stood in the street near the door. He opened the subject of the assumption of the state debts, the necessity of it in the general fiscal arrangement and it's [sic] indispensable necessity towards a preservation of the union: and particularly of the New England states, who had made great expenditures during the war, on expeditions which tho' of their own undertaking were for the common cause: that they considered the assumption of these by the Union so just, and it's denial so palpably injurious, that they would make it a sine qua non of a continuance of the Union.

The remainder of the account explained how Jefferson had arranged (for the good of the Union) a dinner to which he invited Hamilton and Madison, how Madison came to agree not to support the amendment for assumption but not to oppose it either and how Hamilton agreed to support the move of the capital to the Potomac in exchange for Madison's acquiescence. Hamilton and Madison carried out their promise and the compromise was approved in July 1790. It must be pointed out that at the end of the account Jefferson painted a less than flattering picture of Hamilton. The reason: in the two years between assumption/residence and the composition of the account, Hamilton had preceded full steam ahead with his other fiscal plans that were even more offensive to the Virginians and resulted in the permanent disruption in relations between Hamilton and his fellow compromisers, as if Jefferson, despite his distrust of Hamilton's republican principles, had during the negotiations entertained the thought that perhaps Hamilton's had seen the light. That was not to be.¹¹⁴

Even though the principal adversaries had reached an agreement, Washington expressed concern that this was a deal and would spark further opposition because it was a deal. The *bargain*, as some referred to it, remained a "well-kept" secret, although suspicions were high that something was afoot. Deal-making is an essential tool in popular government where so many disparate voices and opinions vie for the public's attention. They can also have unexpected consequences. Historians by and large have credited the

¹¹⁴Jefferson's Account of the Bargain on the Assumption and Residence Bills, [1792], Boyd, ed., *Papers of Thomas Jefferson*, 17: 205–207. See the editor's footnotes for additional commentary and Jefferson's own revisions, 207–208.

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triumvirate of Hamilton, Jefferson and Madison for choosing compromise over further legislative warfare because, as the principals and their allies had argued further warfare would put the union itself at risk. Contemporaries did not agree. On 10 July 1790 the House approved the triumvirate's Residence Bill, which the Senate subsequently approved, and (lo and behold) two weeks later the Senate passed an amended version of the House debt bill to include assumption and the House concurred. In the meantime dismay over the approval of the Residence Bill boiled over in the public arena. Perhaps the most damning commentary was by Junius Americanus, a pseudonym for William Loughton Smith, a member of the House from South Carolina. Smith was more closely allied with Hamilton than Madison, even though he was a southerner and he distrusted Hamilton. He favored assumption, but he detested the bargain. He was ardently devoted to the Constitution, and that's what separated him from Jefferson and Madison, whom in a later diatribe he referred to as the "General" and the "Generalissimo" respectively. On the day after Washington signed the Residence Bill his "Address to the President" appeared in the *New York Daily Advertiser*. It was mainly a constitutional argument, and for those not familiar with the Constitution it may not be easy to follow. The nub of the argument was that the President had no business signing a law that determined where the next session of Congress shall convene (Philadelphia) because that was a power that rested solely with the Congress itself. The reference was indirect in the sense that it stipulated that the President had the power to approve or disapprove the bills of the legislative branch except for "the question of Adjournment" (Article 1, Section 7), and in Smith's view determining the seat of government through a law that required the Presidential signature was the equivalent of letting the President intrude in what was strictly a legislative matter that the House or Senate could adjourn and then choose to reconvene in the same place or a different place. The extension of this was, as some who debated the Residence Bill pointed out, that the Congress had the inherent power to "adjourn" to another city without the approval of the President and theoretically without inviting the executive or judicial branches to join the legislators there. Theoretically it was possible for a republic (as for monarchies, which Americans had rejected) to govern from more than one location on the grounds that by controlling constitutionally their adjournment they must then exclusively choose where to meet. While Smith was deeply concerned about the issues that gave rise to the bargain in the first place, he was greatly incensed that in trying to resolve those issues the leadership should want to sully the majesty of the Constitution. Recall also that the Constitution contained the stipulation that a territory or district should be determined for the seat of government. That, according to Smith, would require a law or resolution to be passed by the Congress and signed by the President, but so exclusive was the Congress's authority to determine solely its adjournment that even after the executive and legislative branches agreed on a

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seat of government, the two houses could then choose a different “seat of Congress”. But Smith had more in mind than his own strict reading of the Constitution. It was a short step from there to lambasting the way in which the deal was made: “...when the mind pursues a favorite object with passionate enthusiasm, men are too apt, in their eager embrace of it, to overlook the means by which it is attained.” In another part Smith’s oratorical powers reached new heights: “What will not some men do to attain a favorite object? The reflection is mortifying and degrading!” Finally, “Will not the public lose respect for the acts of Congress, when they see them blindly pursuing favorite measures, to the total disregard of the constitution?”¹¹⁵

Washington had requested Jefferson’s opinion on the Address by Junius Americanus on the day (13 July) it appeared, and so concerned was Washington he sent a second note to Jefferson two days later again to urge that he forward his opinion promptly. What concerned Washington was whether the constitutional issues were duly vented in the debate or whether they were held in petto, that is “in the breast” or hidden from public knowledge. Washington clearly saw the potential outcry of deal-making in a manner that would cast disrespect on his government and would raise comparisons with aims of the Revolution to create a government that defied the tendency to rule corruptly.¹¹⁶

Such was the context that gave rise to Jefferson’s response that contained the text that drives this the analysis of self-government in early America. Jefferson’s response was written or finished on the day he receive Washington’s second notice. Most of the response was taken up with constitutional questions. In a short note to Washington Jefferson assured him that the constitutional questions had been duly debated.¹¹⁷ Later in the day Jefferson submitted his opinion on the Residence Bill. While Junius Americanus devoted his Address almost solely to constitutional grounds, Jefferson premised his Opinion not on the language of the Constitution but on the application of the natural right of self-government. Thus the importance of the phrase: “Every man, and every body of men on earth, possesses the right of self-government: they make it with their being from the hand of nature.” Individuals govern themselves – “their single will” – but collections do it by majorities. In the case of the Residence Bill what the legislative branches did by their votes was to choose the time and place to meet (and adjourn) in order to transact their business. It was inconceivable that they possessed a

¹¹⁵Address to the President, by *Junius Americanus*, July 12 [1790], in Boyd, ed., *Papers of Thomas Jefferson*, 17:183–193, in particular 184, 187, 189, 191.

¹¹⁶Washington to Jefferson, Thursday, 15th. July [1790], in Boyd, ed., *Papers of Thomas Jefferson*, 17:193.

¹¹⁷Jefferson to Washington, Thursday, July 15 1790, in Boyd, ed., *Papers of Thomas Jefferson*, 17:193.

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collective right of self-government without the authority to decide when and where they should meet. They may do this on their own, that is, exclusively, or they may do it in association with others, such as the executive. Specifically, concerning Junius Americanus's critique of Congress's action with respect to the adjournment clause, the Constitution did not grant the right of adjournment because that was already inherent in the natural right to govern collectively. Rather what the Constitution did was to provide "some specific modification for cases where a defect in the natural right, or a too full use of it would occasion inconvenience." It would be inconvenient, for example, for the two houses of Congress to meet in different places and at different times. In other words, what the Constitution did was to set down some conditions to be followed that would make the act of exercising collective self-government more effective and efficient. Of course, individuals governing themselves theoretically were exempt from these problems because they had only to exercise "their single will".¹¹⁸

This was the first major political test of the Washington Administration. At the time of the inauguration no one knew whether the launching would be smooth or troubled. Up to the Public Credit controversy the launching had gone off with few hitches. Everyone knew, of course, that the outstanding fiscal issues would have to be resolved. Historians generally agree that Hamilton's approach was as far-reaching as probably any such program could be and still have a chance of passing. There were several less radical fixes that, if pursued, might have sparked fewer objections. It is impossible to determine how ordinary Americans divided over the components of the Public Credit rescue, especially after it became public that a deal over the location of the capital had been struck. Funding the debt at full face value certainly aroused public outcry, but they were mild compared to the outcry over assumption. Assumption unlike funding had sectional overtones, which the Residence Bill further exposed. Americans were certainly not immune from sectionalism. They understood their history largely in sectional terms. Differences among colonial populations were real, although slavery was perhaps the starkest of these differences. Racial exclusion was a fundamental characteristic of northern society, but exclusion and slavery were two distinct forces at work in this society. Enslaving a race was of a different magnitude from excluding a race. The paramount distinction concerned the state of the laborer: not only were slaves denied wages but they were also enslaved in perpetuity. In short, the basic tenets that drove the American Dream – the freedom to earn a living in order to improve one's status – were denied slaves. Southerners certainly shared the American Dream, but they valued a

¹¹⁸Jefferson's Opinion on the Constitutionality of the Residence Bill [1790] in Boyd, ed., *Papers of Thomas Jefferson* 17:194-199.

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labor component within their version of the Dream that repudiated the Dream itself. Some northerners had already arrived at a conclusion that slavery was so immoral that even if slavery were restricted to one region it would ultimately destroy America. But that was a small minority in the late eighteenth century. Slavery made northerners and southerners uncomfortable in part because of the obvious inconsistency between the rhetoric of the Declaration of Independence and the state of society and in part because a resolution suitable to all parties was notably absent. Some later historians have argued that the only opportune time for action was the late eighteenth century as Americans were engaged in the noble venture of erecting a republic. It didn't happen, and indeed, even though slavery had no direct bearing on the passage of the Credit or the Residence Bill, it found its way into the debate in the form of what-if. Hamilton's plan would serve the financial and mercantile interests in the North more explicitly than the agrarian/planter interests in the South. Moving the capital closer to the South had symbolic value, but the scattered references, some quite keenly acerbic, to the intent for domination by the anti-slave element in North or the pro-slave element in South presaged a looming battle that will become more difficult to contain as the South discovers prosperity with an institution that many Americans thought was unsustainable. It cannot be avoided – the emerging American ideology founded on the concept of self-governing individuals will become intertwined with how to manage or finesse the slave question.

How serious was the battle over funding and assumption within the larger political scene? It must be understood that American leadership in 1790 did not look favorably on the prospect of civil society dissolving into fractious parties. In fact it may have been their greatest fear that the differences that emerged over ratification would solidify into opposing forces that would make the job of reconciling differences over public policy more difficult. Although political parties, as we understand them two centuries later, did not exist in 1790, loosely-organized political factions carried over from the ratification battle into the first national government. Washington's Cabinet included Hamilton and Jefferson, who by temperament and background, were notably different, and yet, as Chernow has written, “ideological differences between Hamilton and Jefferson did not blaze into sudden open enmity.”¹¹⁹ Even in the First Congress, which was dominated by “pro-Administration” forces, the political lines were fuzzy. During the funding and assumption battle, however, fissures became more pronounced in large part because Madison who had joined with Hamilton in presenting the case for ratification in the *Federalists Papers* announced his opposition to the basic features of the Plan for Public

¹¹⁹ Chernow, *Alexander Hamilton*, 320.

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Credit (even before Jefferson had arrived in New York City to join the Cabinet) from the very outset. Madison became the leader of House of Representatives even though the majority of his colleagues were pro-administration. But the failure of Madison to support what Hamilton believed was essential for a progressive and stable nation was a blow, and the eventual alliance between the two like-minded Virginians – Madison and Jefferson – was a matter of concern to Hamilton and his allies. Madison never really endorsed the funding and assumption legislation, even though Jefferson had signed on. There was much speculation about how much fire in the belly Madison or Jefferson had to oppose Hamilton, who almost never shied away from a battle. They, unlike Hamilton, were more inscrutable. Despite their inscrutability, however, Madison and Jefferson had doubts about Hamilton's and energetic government almost from beginning. And, as his energetic government became a government program, provoking opposition in Congress and within the states, Madison and Jefferson found themselves organizing and leading the dissent not only against Hamilton, whose American pedigree was hardly noble, but also against Washington whose pedigree was.¹²⁰

Having approval for his plan to assume and fund the debt, Hamilton had to move ahead with his grand financial design. The federal government had to find revenues to meet its daily expenses as well as to be prepared to redeem the new bonds, issued to cover the refunding, and more directly to pay the annual interest. The principal source of revenue was the customs houses, which Hamilton had reorganized. Great Britain was America's chief trading partner, and in Hamilton's view that trade had to be protected. To boost custom duties in order to assure that the Treasury would have adequate revenues could jeopardize British imports.¹²¹ The government needed another source of revenue, and in December, 1790, Hamilton notified Congress of this need even though for the first time he had a Treasury surplus. A domestic tax was about as unpopular as anything he could recommend, but he had determined that sharing the tax burden was an important public policy to establish. The tax that he would recommend – a tax on producers of spirits – would only touch a segment of the population and might provoke less criticism than other, more broadly-conceived taxes. In his conversation with Washington, according to Chernow, Hamilton made the case that he wanted to enact domestic taxes in those areas that might be tempting to state governments to bolster their own revenues. To starve state treasuries would serve to enhance the fiscal role of the national government, much

¹²⁰ Chernow's Chapter "Dr Pangloss" (pp. 310-331) in *Alexander Hamilton* offers a balanced and convincing analysis of the difficult political choices facing the protagonists during the funding and assumption debate. I will return to the question of factions and parties. Joseph Ellis has given considerable thought to this in his *American Sphinx*, 121-133. He suggests quite correctly, I think, that factions could only be transformed into parties once the idea of political opposition came to be accepted as necessary and respectable.

¹²¹ Hamilton also had his New York merchant-banking constituency to worry about if he tried to boost imposts.

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desired by Hamilton.¹²² Technically, the spirits tax was an excise tax, and even Madison could support it for some of the same reasons as Hamilton and in addition for the reason that it might induce greater sobriety among citizens since the price of spirits would probably rise. (Not unlike our view toward sin taxes today.) Congress passed the so-called Whiskey Tax in March, 1791. A year later farmers and distillers in the back country of North Carolina and Pennsylvania openly and violently opposed attempts by government agents to collect excise taxes. Even before the enactment of the Whiskey Tax Hamilton added fuel to the fire by proposing, also in December 1790, the creation of a national bank. Probably no issue during Washington's first term contributed as much to the developing political fissures than chartering the Bank of the United States (known as BUS or the 1st BUS because in the nineteenth century a 2nd Bank of the United States will be chartered.). Along with the actual debates, that would highlight the fault lines, certain newspapers took up the various causes with the aim of shaping public opinion for and against the Washington Administration.

The BUS had a way of focusing opposition that the bills on public credit and excise taxes could not. By any measure the BUS would be a large, powerful, visible national institution in a nation where many doubted the trustworthiness of such institutions. Post-Revolutionary America had banks, and they can be generally divided into chartered banks empowered to issue paper currency and unchartered private banks that lacked such authority. During the 1780s the number of private unchartered banks exceeded the number of chartered institutions. In fact the country had a single chartered bank in 1781, and it gained a second chartered bank in 1784.¹²³ At the time of the debate over the BUS, these were the only two chartered banks.¹²⁴ Within a decade more than 150 other banks had been chartered. Some failed, of course, but many continued in business for decades. By 1820 more than 250 chartered banks were doing business in 23 states plus the District of Columbia and several territories. The majority of the chartered banks were in the northern states, although after 1800 the number of chartered banks in the South increased significantly. By 1820 all states had chartered banks. With or without a BUS American banking would have expanded simply because of need for capital to underwrite not only an expanding agricultural sector but equally expansive commercial

¹²² Cherow, *Alexander Hamilton*, 349.

¹²³The first had a charter from the Continental Congress and was rechartered in 1784. The second had a charter from Massachusetts.

¹²⁴Warren Weber, "Early State Banks in the United States: How Many Were There and Where Did They Exist?" *Federal Reserve Bank of Minneapolis Quarterly Review*, 30:02 (2006), 31 and Tables 1 & 2. Weber only tabulated chartered banks.

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and industrial sectors.¹²⁵ Perhaps the expansion would have followed a different path, but it would most certainly have occurred. Some banks like the Bank of New York, of which Hamilton was a founding member during the 1780s, gave up trying to secure charters and elected to operate as private banks whose clientèle were mainly well-to-do businessmen.¹²⁶ The number of private banks is not known for they appeared in various guises. Sometimes a company chartered to build a road or a canal would also create a banking operation to facilitate the financing of the enterprise. Its banking operations did not directly involve the public.

In some quarters that was precisely the question – was a BUS needed? For Hamilton and his allies there was no doubt. Chernow summarized Hamilton’s views: “Lacking a uniform currency acceptable in all states, still suffering from a hodgepodge of foreign coins, the country required an institution that could expand the money supply, extend credit to government and business, collect revenues, make debt payments, handle foreign exchange, and provide a depository for government funds.”¹²⁷ Another way of looking at these needs was to assume that centralization was preferable to decentralization. To allow individuals to pursue financial opportunities, creating new banking institutions, for example, unimpeded by overarching controls would only intensify the credit and currency instability that needed to be resolved. The obvious question raised by this point of view was the origin of the authority for such action. The Constitution made no direct reference to chartering banks. The only way in which a supporter of a national bank could make his case was by arguing that the Constitution contained both explicit and implicit powers, and that under implicit powers of, say, general welfare, the federal government could charter a national bank. The greatest fear of the opponents of the Constitution was now fully revealed: the imprecise language of the Constitution would allow for the expansion of the national government, the diminution of individual liberty and the corruption of the public arena. The debate over the BUS will not be on fiscal grounds but on constitutional grounds.

Despite the controversy that came to swirl around the BUS it took only two months (compared to six months for assumption) between introduction and passage of the bank bill. Washington signed the bill on 25 February 1791 after considering opinions for and against from Hamilton and Jefferson respectively. How controversial was the bank bill

¹²⁵ See A. Glenn Crothers discussion of the expanding role of banks in “Banks and Economic Development in Post Revolutionary Northern Virginia, 1790-1812,” *The Business History Review*, 73:01 (1999), 1-39.

¹²⁶ Chernow, *Alexander Hamilton*, 199-202.

¹²⁷ Chernow, *Alexander Hamilton*, 347.

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given the speed that it moved through Congress? While Hamilton could lay out the financial and economic arguments for a central bank, he understood that the problem was greater than a list of pros and cons. He was fully aware many citizens distrusted banks. Banking was (and still is) mysterious and mischievous in the minds of many. Banks made loans and charged interest, and with that came the power of foreclosure and confiscation in cases of default. Even more unsettling was the issuance of currency (usually only by chartered banks) that could fluctuate in value with potential losses for note holders. Distrust of bankers, who struck many as manipulators in an arcane world, was widespread. Hamilton often made the case that a government chartered national bank that operated under sound currency and credit rules would actually help to allay citizen distrust and opposition. Even as prominent and smart a figure as John Adams, who had little good to say about bankers, calling them “swindlers and thieves”, shared Hamilton's view that a national bank with branches would benefit the nation.¹²⁸ On the thorniest issue, paper money, Hamilton proposed that the national bank adhere to a policy of redemption – conversion of paper to specie upon request – as a way to forestall the tendency of bankers to issue paper beyond a reasonable limit. Furthermore, Hamilton knew that any Board of Directors would provoke suspicion since “moneyed” people would be tapped to serve, and therefore he advocated that board members be rotated periodically. Finally, since this was a private bank with a federal charter that granted powers enjoyed by no other bank, Hamilton believed that government ownership of a share of the bank plus member on the board of the bank would help to maintain the right balance between its private operations and its public duties.¹²⁹

After stumbling with Public Credit, one might be tempted to congratulate Hamilton on how he paid out the case for organizing and managing the BUS except it was irrelevant for addressing the constitutional questions. Madison and Jefferson, who had acquiesced on funding and assumption, were less inclined to do so with the bank bill. The bank bill more than the credit bill that preceded it seemed dangerous in the degree to which it relied on the Constitution's broad language. Where would empowering the federal government beyond the specifically delegated authority end? The economic justification for a central bank could not eclipse the persistent and deep-seated fear that personal liberty was under attack. And despite warnings against allowing a system of contesting political parties to develop, the situation was so agitating to some Americans that such an opposition party was needed to rid the government of the current pernicious influences. To assume that the republic could function without organized political

¹²⁸Quoted in Chernow, *Alexander Hamilton*, 346.

¹²⁹Chernow, *Alexander Hamilton*, 348-349.

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constituencies was probably unrealistic in any event. The speed with which it developed, however, was a matter of concern. Would contesting for power quickly erode the public consensus that many believed was essential for a republican government to succeed? Even Hamilton acknowledged that his programs were so controversial that they could divide the nation along certain ideological lines that would affect its security and prosperity. But, as Chernow and other biographers have underscored, Hamilton was not disposed to compromise except on a modest level.

It is oddly amusing to observe that as the bank bill worked its way through Congress where support was surprisingly strong in both Houses Hamilton and his allies had to deal with unexpected fallout from a fisheries report, in which Jefferson, as Secretary of State, had taken the lead. This report clearly involved matters of concern to the Secretary of the Treasury, but it became Jefferson project and not Hamilton's. It contained facts and figures that Hamilton had actually refused to provide Jefferson. Having secured these data from other sources, Jefferson basically recommended that the "America's navigation laws" be rewritten to reduce reliance on British commerce (which tended to monopolize the import-export business) and to follow a more balanced if not neutral policy that would include France, a *bête noire* for Anglophobes. What is relevant in this is that some observers believed that the fisheries debate had already divided "the American government into two parties, one of which, directed by Messrs. Hamilton and R. [Robert] Morris, tends to favor England, and the other, under auspices of Mr. Jefferson and his friends, inclines toward France." Even Hamilton expressed more worry over how the fisheries report (still a report that was made public before it was submitted to Congress) would be received. In effect, what Jefferson had done with the fisheries report was to renounce any further effort to seek a unified position for the sake of avoiding open disagreements. In a symbolic way Jefferson had thrown down the political gauntlet. It would not derail the bank bill, for Hamilton had the votes in Congress and apparently had the less-than-enthusiastic support of the President. Rather what Jefferson's actions foretold was trouble ahead for any further expansion of the national authority.¹³⁰

Like so many issues before the new government the political middle ground was still preferred among the participants, if, for no other reason, to avoid an out-and-out confrontation. During the bank bill debate some revisions were bandied about in order to try to win over what appeared to be fairly united southern opposition. The rationale for incorporating a central bank had been under discussion since the Continental

¹³⁰See "Editorial Note" in Boyd, ed., *Papers of Thomas Jefferson*, 20:162-169 with quote from 169. Hamilton's fears discussed on 169-170.

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Congress, which actually granted the initial charter for the Bank of Pennsylvania. During the Constitutional Convention James Madison had proposed a motion to that allowed the federal government “to grant charters of incorporation where the interest of the U.S. might require & the legislative provisions of individual States may be incompetent”, and in the discussion that followed the chartering of a national bank was raised. The motion was defeated.¹³¹ While Hamilton's specific proposal may be unsettling, his general goal was widely supported. During the Congressional debates revisions – shortening the charter from 20 to 10 years – were proposed as a way to make the bill more palatable. In the end, though, Hamilton's plan with few changes prevailed in the Senate on 20 January 1791 and in the House on 8 February with what only can be described as “one-sided” voting. The votes split along section lines: northern states voting yea and the southern states nay. Madison's opposition to the bank bill in Congress was a public stance. In fact, Madison had asked Washington to veto the bill. Jefferson's position was less well known, although his allies and friends must have known where he stood. Washington, although leaning in favor, was not yet fully committed. Following a well-established pattern evident in his military and public career Washington turned to his staff for advice. He first asked for an opinion from Attorney-General Edmund Randolph, who regarded the bill as unconstitutional but whose opinion was somewhat equivocal. He then solicited the views of Jefferson and Hamilton. Jefferson submitted his views, which sternly opposed the BUS on constitutional grounds, in a confidential memorandum to the President on 15 February 1791. A week later Hamilton submitted his memorandum, which took the opposite tack. Neither memo was made public.¹³² If the fisheries report portended a growing chasm in the Washington Administration, the BUS charter would make the chasm even more pronounced. Washington surely knew that the bank bill had effectively resuscitated and emboldened the heretofore dormant anti-ratification forces. Whether he also understood how effective the opposition would become remains a matter of dispute.

After some lawyerly comments about *Mortmain*, *Alienage*, *Forfeiture*, and *Escheat*, all constitutional issues raised in connection with how the bank was incorporated and how the incorporation benefited its shareholders, Jefferson's memorandum turned to the central issue: the bank was unconstitutional because no specific authority could be cited and general powers could not be used for convenience but only out of necessity.¹³³ For the most part Jefferson's opposition to the bank bill followed a “strict construction”

¹³¹From Madison's Notes, on-line, The Avalon Project at Yale Law School, The Madison Debates, 14 September 1787.

¹³²See “Editorial Note” in Boyd, ed., *Papers of Thomas Jefferson*, 20:281.

¹³³Jefferson's memorandum with extensive editorial notes appears in Boyd, ed., *Papers of Thomas Jefferson*, 20:275-282.

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interpretation of the Constitution with an important qualifier. No delegated authority for incorporating a bank existed in the Constitution, and the related clauses – to levy taxes,¹³⁴ to borrow money and to regulate commerce – did not apply. The only grounds upon which a nationally chartered bank could be erected derived from the “general welfare” and related clauses. It was not that Jefferson rejected any and every effort to employ the clauses that implied rather than delegated powers (because as president he will use implied powers), but rather he insisted that circumstances must justify uses of implied powers. In the case of BUS it may be more convenient for commerce and exchange to have a national bank, but it was not necessary for the welfare of the nation. In the instance where the laying of taxes was linked to providing for the general welfare, one cannot argue for using the welfare clause without first using the tax clause:

They are not to pay taxes *ad libitum* for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be good for the Union, would render all preceding and subsequent enumerations of powers completely useless. It would reduce the whole instrument [Constitution] to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the U.S. And as they would be the sole judges of the good or evil, it would be also a power to do whatever they pleased.¹³⁵

Note the phrase “sole judges of the good or evil”. If the Congress had the exclusive power to determine what individuals should or should not do, then Congress will have usurped the authority to rule that rested originally and inherently with the individual. Under such reasoning and contrary to what Jefferson and many of his peers believed, government would be assuming the power to do whatever it “pleased”.

The second instance in which Jefferson attacked the “welfare clause” approach to justify the bank bill concerned “all laws necessary and proper” to make sure the laws of the government were carried out. The reply was simple: the bank was not necessary. Other

¹³⁴There are three aspects of the laying of taxes: first to pay the debt, second to defend the nation and third to provide for the general welfare.[Article 1, Section 8, first paragraph). The first two do not apply and the third, although cited, cannot be justified.

¹³⁵“Opinion on the Constitutionality of the Bill for Establishing a National Bank” in Boyd, ed., *Papers of Thomas Jefferson*, 20:277. Italics in the Boyd edition.

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means – the growing network of state and private banks – existed by which currency and credit needs could be met. The BUS may have offered convenience, but convenience did not meet the constitutional test. Indeed, Jefferson went as far as to suggest that the BUS as a “monopoly” would reduce the competition for loans within the banking community. I will return to the competition question not strictly with reference to banking but more broadly to general economic activity as the so-called Jefferson image of America further unfolds. *Convenience* being substituted for *necessity* was a pernicious way of adding an unenumerated power to the Constitution as an enumerated power. Convenience threatened not only individual liberty but also the “foundation-laws” of state governments because it could be argued in every dispute as necessary.¹³⁶

Two visions of America? A Hamiltonian vision that foresaw enormous benefit for the individual through the creation of supportive institutions or a Jeffersonian vision that foresaw enormous danger for the individual through the creation of invasive institutions. Perhaps not yet. But the seeds had been planted. Ronald Chernow, Hamilton's biographer, writes that “nothing presaged the chasm about to yawn in American politics” as these differing visions.¹³⁷ Hamilton accepted as a given that farmers were debtors by nature” and southerners hated banks – one Virginian saying he “would no more be caught going into a bank than into a house of ill fame”.¹³⁸ Washington will sign the bank bill, but not before he sent to Hamilton the opinions of Randolph and Jefferson and requested an immediate reply. The reply came a week or so later in the form of a 40-page treatise. Smothering his opposition, writes Chernow, was one of Hamilton's favored techniques.¹³⁹ His response, however, was quite straightforward: “implied powers” derived from powers actually listed in the Constitution. It was inconceivable to Hamilton that Randolph's and Jefferson's views could stand the test of time because they would cripple the government from having power to do much of anything. (Of course, that was pretty much what some opponents had in mind.) A society without sovereignty, argued Hamilton, was a society that would fail to protect liberty and advance prosperity. Hamilton did not dwell long on the risks to the individual of too much government, but rather averred over and over that the real dangers were in too little government. In my own view Hamilton and his supporters miscalculated. Americans may not have fully comprehended (then as now) how banking systems worked, but they understood almost

¹³⁶“Opinion on the Constitutionality...National Bank” in Boyd, ed., *Papers of Thomas Jefferson*, 20:278-279.

¹³⁷Chernow, *Alexander Hamilton*, 349.

¹³⁸Chernow, *Alexander Hamilton*, 349-350.

¹³⁹Chernow, *Alexander Hamilton*, 353.

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intuitively what monopolies represented – a concentration of power whether economic or political that had an impact on how individuals behaved or performed. The idea of personal liberty was far more ingrained in the American political consciousness than the ideas emanating from the various political schools favoring individuals need to be ruled or benefit from being ruled. The political vocabulary of being ruled rather than ruling, except where some government was perfectly acceptable, had far less resonance than the bank supporters may have realized. Within a year or so prominent Americans would be squaring off through proto-political parties that directly and pointedly tried to organize the citizenry and influence their votes first in national elections and then down to local elections over public policy. The die had been cast, thanks to the BUS.

The fourth leg of Hamilton's financial package was the Report on Manufacturing. It was designed to push the development of manufacturing through subsidies (for agriculture too), tariffs and internal improvements. Some such initiatives could be more readily justified by the language of the constitution than others, but the enthusiasm for adding more powers and programs under federal sponsorship had waned. In addition, Hamilton's alleged involvement in some of the manufacturing projects that would benefit did not help his cause. It was introduced at the end of 1791 in Congress and went nowhere. The final year of Washington's first administration witnessed few new initiatives. Hamilton and Jefferson were openly feuding and resistance to the Whiskey Tax flared into the open, although the “real rebellion” began a year later. The coming apart of Washington's experiment with what might now be called “coalition” government was evident, although nearly all of the political contestants supported a second term for the Father of the Nation. The evolving political system had not yet reached a point where candidacies were easily or normally launched. Washington will be re-elected in 1792, and equally telling the Second Congress will have a different look. Hamilton and Jefferson will leave the Cabinet, ostensibly to retire but really to prepare for the next presidential election. The legacy of Washington's first term was the opposite of what was hoped for – a nation growing more divided, not united.

In addition to newspapers (which often reflected the views of political factions and personalities) pamphlets, broadsides and treatises of a few dozen pages circulated widely. The extent to which they were actually read cannot be determined, but their presence was another sign of the battle lines were forming. One of the most prolific writers was the Virginian, John Taylor of Caroline (a reference to where his estate was located). Taylor's life spanned eight decades, and from the early 1790s, when his short pieces were first published, into the 1820s more than a dozen books and treatises would appear under his name and a pseudonym or two. Historians have debated his role as a

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thinker and protagonist during this period when the nation was scrutinizing what were the limits (if any) to the intervention of the state in the lives and affairs of its citizens. In my view this was a serious debate that eventually reached a consensus along the lines suggested by Taylor's writings. For now, let me focus on the early 1790s when one of his first important treatises entered the public debate. In 1793 he published *An Examination of the Proceedings in Congress Respecting the Official Conduct of the Secretary of the Treasury*. This came on the heels of a long but unsuccessful attempt to censure The Secretary of the Treasury. William Branch Giles, a member of the House from Virginia, had been hounding Hamilton since early 1791, not on the bank question but on the debt question. In December 1792 the House asked Hamilton to submit an accounting with respect to the management of foreign loans, and Hamilton submitted a detailed report in early January 1793 that won Hamilton a temporary reprieve. Giles, not to be quieted, introduced a series of resolutions demanding more inquiries and reports. The alleged charges against Hamilton involved the manner in which he used funds from foreign loans to satisfy domestic debts, a technical violation of the laws governing these loans and debts. Behind these charges were the allegations that Hamilton and his cronies had benefited from these manipulations. Taylor's *Examination* laid out the charges against Hamilton within the larger context of how such conduct threatened to undermine the balance between individual liberty and government usurpation.¹⁴⁰

Throughout his disquisition Taylor expressed enough doubts about government to make one wonder if any government would meet his standards. The arena for misbehavior and misconduct was boundless. Only by being attentive could the people keep government on the straight and narrow. He pinned his hopes on the legislatures, but even they may turn out to be weak reeds. Taylor's skepticism toward government institutions will drive his thinking about how Americans could realize their dreams in all his future writings. He posited that if legislatures could preserve “their independence and integrity, [the people] are safe.” They had nothing to fear from bad laws or from unnatural collusions if legislatures remained constant in their vigilance, and when they failed to do so the people had to act to “repair the breaches” (read organizing political opposition).¹⁴¹ But the temptations to do harm were endless and relentless. Independence unequivocally placed an obligation on the people – to watch their legislatures and their legislators. (Watching and voting will become the hallmark of vigilance against corrupt and

¹⁴⁰Chernow covers the activities of Giles and others in *Alexander Hamilton*, 424-428. Even Jefferson joined the fray by demanding Washington conduct an inquiry. The President refused, and Hamilton went so far as to demand that Jefferson resign from the cabinet. Chernow believes that Hamilton emerged from the Giles-Jefferson attacks vindicated. Hamilton was also convinced that they would continue, and in that prediction he was correct.

¹⁴¹Taylor, *An Examination of the Proceedings in Congress Respecting the Official Conduct of the Secretary of the Treasury* (Richmond, VA., 1793), 2.

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corrupting governments for Taylor and for many Jeffersonians.) Collusions between the executive and legislative branches as well as collusions between the national legislature and the state legislatures were tempting to those who wished to enhance their own power in the name of government beyond what the charter authorized and beyond what they as individuals were entitled to. It is important to emphasize that governments became evils instruments because persons intended to use them for their own purposes. And the more centralized the government, the more likely target it was for such mischief. Taylor is often described as an apologist for state government, but even he could recognize the temptation for states to enter political arrangements that were as dangerous as if the central government were acting on its own to extend its authority. The difference was that state governments were more like local institutions, had a longer association with their citizens and were easier to scrutinize and observe.

Taylor then turned to the present situation, specially the issue of Public Credit. He opposed Hamilton's plans. He made it clear that he did not take kindly to debt. Dealers in credit, which he did not consider a legitimate profession, had little interest in serving the public. They lived off the labors of other – landholders, merchants and artists (or craftsmen) – and without a perpetual debt they lost their livelihood.¹⁴² Taylor wanted to pay off the foreign and domestic debts, which he, like Jefferson, believed could be done with import and excise taxes. He did favor underwriting the debt with bonds, and he certainly did not favor underwriting state debts. As a result of the legislation to authorize Hamilton's funding and assumption, he regretted that the government's outlays far exceeded its revenues, but he urged nonetheless that every effort should be made to reduce not maintain the debt (as was Hamilton's intent for malicious reasons). He considered the duties of the Secretary of the Treasury to be straightforward and simple – to collect revenues and to initiate disbursements – but in the hands of Hamilton the duties became unnecessarily complex and arcane.¹⁴³ Finally, Taylor expressed disdain for Hamilton's character because his policies had jeopardized the welfare of the nation and of its citizens. The political battle lines were clearly and sharply being drawn even over policies that had been in place for several years.

The BUS was also in place, and while it was for the most part ignored in Taylor's *Examination*, it will enter his cross-hairs in his next polemic. A year after *Examination* was published, Taylor composed a second broadside that was printed in 1794. Its title left no doubts about what Taylor had in mind: *Definition on Parties, or Political Effects*

¹⁴²Taylor, *An Examination*, 7-8.

¹⁴³Taylor, *An Examination*, 19-20.

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of the Paper System Considered.¹⁴⁴ By 1794 the organization of political parties was already well along. James Madison and his allies led the way in the Congress through the creation of the caucus system. The original system was not unlike the current system where the leadership of the caucus would convene supporters in order to gain assurance of their votes on pending bills. There was no valid precedent for what they were doing, and they learned quickly that political alliances and commitments remained fluid.¹⁴⁵ Taylor's *Definition on Parties* appeared against the backdrop of not only the fiscal controversies but also international disputes (Citizen Genêt Affair, Neutrality Act, Jay's Treaty) and domestic unrest (Whiskey Rebellion). Jefferson had resigned his Cabinet post and Hamilton would exit a year later. Above all, 1794 was an election year for the House of Representatives and one-third of the Senate. In joining the fray Taylor listed nine grievances against the current government: five concerned fiscal matters and the remainder diplomatic and domestic issues. The ninth grievance was a catch-all: "the general government has been an exclamation for money – more money."¹⁴⁶

What interested Taylor more than congressional responses were the ramifications of these governmental policies and institutions for the civil society. The term "public good" appeared throughout *Definition on Parties*. It was for Taylor the ultimate test. Even though he thought truth was "a theory, not of divisibility into conflicting parts, but of unity," "baneful" political behavior had undermined that unity and threatened the public good. The government had a simple duty and responsibility to serve the interests of the nation, but this government had chosen to serve the interests of few, in this case the paper-money crowd. Taylor posited that all governments "are under an influence", and this influence will make them free if it is genuine and despotic if spurious, The public good (the entire society) can only be served if the influence was genuine and the government was free of narrow private interests. This government had usurped both principle and compact because it has made itself dependent on wealth, not numbers as the Constitution intended.¹⁴⁷ Taylor was not opposed to wealth, but for him true wealth derived from ownership and cultivation of the land. "Land was the unde derivatur [sic] of all products for man's life. It comprises the stock for trade and commerce, its true interest, is the interest of the whole social and natural life. And it cannot be at enmity

¹⁴⁴Taylor, *Definition on Parties, or Political Effects of the Paper System Considered* (Philadelphia: Francis Baily, 1794).

¹⁴⁵Joseph Charles, *The Origins of the American Party System: Three Essays* (Williamsburg, Va., Institute of Early American History and Culture, 1956) and Noble Cunningham, *The Jeffersonian Republicans: The Formation of Party Organization, 1789-1801* (Chapel Hill, NC: University of North Carolina Press, 1957) provide the details.

¹⁴⁶Taylor, *Definition on Parties*, 4-5.

¹⁴⁷Taylor, *Definition on Parties*, 5.

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with the public good.”¹⁴⁸ Paper was “political property” because it was artificially created by law whereas land was “natural property”¹⁴⁹ Can the nation be saved “from being owed – bought – and sold” in violation of the Constitution and the public good? The answer was reform (already in a few short years), and the reform was to restore a convention from the Confederacy Period: frequency of elections. Indeed, many opponents of the ratification of the Constitution had argued that terms of office had to be shortened and that rotation was preferable to tenure. It was unlikely, of course, the ruling faction would consent to such reform, and therefore the only alternative was to organize an opposing party to unseat this faction.¹⁵⁰

The year 1794 was an extraordinarily busy one for the John Taylor, the polemicist. Not only did he publish *Definition on Parties* he also published a long treatise entitled *Enquiry into the Principles and Tendency of Certain Public Measures* and he composed a short but unpublished Memorandum entitled “Disunion Sentiment in Congress in 1794”.¹⁵¹ *Enquiry* went farther than any of his publications yet to lay out the principles of government: “No free government or the blessings of liberty can be preserved to any people, but by a frequent recurrence of fundamental principles.” Those principles were embedded (although ignored) in the Constitution. First, the Constitution contemplated a republican form and any attempt to introduce monarchical or other forms would subvert the charter itself: second, the Constitution permitted taxes for public defense and general welfare of all citizens but not to enrich a few; third, the power of legislating resided in and continued to reside in the people; fourth, the right to legislate is “periodically” delegated through elections by the people to their representatives; fifth, elections were not simple formalities, for they entailed a transfer of a substantial obligation to represent the people who delegated the power to legislate; finally, the erosion of republican principles turned government from one of representation to one of usurpation.¹⁵² Having laid down the principles, Taylor then proceeded to argue that the recent legislative actions (pointedly Hamilton’s fiscal program) had allowed the monarchical or aristocratic elements in effect to corral the government to advance their interests, which were based on exclusive privileges, at enormous cost to the liberty of the citizen. “The

¹⁴⁸Taylor, *Definition on Parties*, 8. Phrases like this have led some to conclude that Taylor was an American disciple of the French Physiocrats, a matter I’ll return to.

¹⁴⁹Taylor, *Definition on Parties*, 9.

¹⁵⁰Taylor, *Definition on Parties*, 15.

¹⁵¹ The first was published in Philadelphia by Thomas Dobson, 1794, and the second under the editorial hand of Gaillard Hunt in Washington by Lowderville & Company in 1905.

¹⁵² Taylor, *Enquiry*, 1 & 6.

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people are the natural body politic; kings, lords, commons are artificial structures.” The tripod that these political institutions represented became Taylor’s favorite whipping boy. If, as institutionalists like John Adams insisted, social and political structures (not necessarily only expressed as “kings, lords, commons”) had to be formalized in order to moderate human behavior that was often antithetical to an orderly functioning society, who was to “superintend the political tripod? “If a member of it [the tripod] is from time to time to adjust the weights, he will be for ever [sic] filching from the other two, to add to his own scales. Thus the equilibrium is lost....The perplexity of the mechanism requires frequent repairs, and yet its delicacy makes it unsafe to mend it.”¹⁵³ The arrangement of powers and duties among competing social blocks that had to be constantly readjusted struck Taylor as utterly unmanageable and unnecessary. “The people are the only safe guardians of their own liberty....The constitution is a limitation to legislative power.”¹⁵⁴ The tripod approach was the opposite: it denied limitation and engendered suspicion and deceit. At the risk of sounding like a reductionist, the key was to keep it simple. This became the mantra of many proponents of limited government including a future president, Andrew Jackson.

Let me turn to another part of Taylor’s *Enquiry* that concerned a fundamental questions about how the political system was designed and perhaps more importantly how the leading political lights viewed that design. The movement to replace the Articles of Confederation was driven in large part to lay the basis for a national government that was not so dependent on the politics of the states. A federation and not a confederation was clearly the objective, and when the debates over how much government the federal charter legitimized the federation-confederation argument moved from the back to the front burner. And over the next two centuries it would change burners again and again. The phrases that Americans have adopted to describe this contest are states’ rights versus federal rights. I doubt that states occupy the central position in Americans’ lives in the twenty-first century that they did in the eighteenth century, even though many among us may try to elevate them to a place that they were accorded 200 years ago. For better or worse the whipping boy of modern states-righters – the government in Washington – has evolved to a degree that it has because national and international concerns have subsumed local concerns. The analogy of fighting for states’ rights today is a battle shared with political battles in the 1790s is misplaced. They are the reverse in fact. Building a national government against the resistance by state governments was a different dynamic from rebuilding state governments against resistance of the national

¹⁵³ Taylor, *Enquiry*, 51-52.

¹⁵⁴ Taylor, *Enquiry*, 53.

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government. In his tirade against the national government in 1794 Taylor was reflecting a personal experience that was largely local, perhaps regional, but only tangentially national. He shared it with many other Americans, although it should not be forgotten that the failure of states to govern widely and intelligently was part of the motivation behind replacing the Articles. The most important difference between now and then was that critics of the newly empowered national government were critics of too much governmental power at any level. Taylor for one did not attack the federal government in hopes of furthering empower the government of Virginia but rather to limit formal government in the nation and in Virginia. Modern states-righters want to reclaim power because they want to exercise it in a different way but they still want to exercise it. Individuals complain that they are governed too much at all levels, and indeed, they are governed more than the founders ever thought was needed or safe, but they are themselves responsible because their ambitions, their aspirations have pushed society into the very complexity that stripped them of their liberty. To use a much-used cliché the worlds are different. We credit Washington, Adams, Hamilton and even Madison for looking beyond the parochial perspective because without such vision we are hard pressed to see how a nation could have evolved, at least a nation not rife with unmanageable political crosscurrents. Getting at this political duality is challenging because almost anything that arises out of a conflict between the federal system and the state system is lumped with states' rights. The Constitution was not entirely clear about the distribution of rights in large measure because it could not be. Few political theorists, even those with a more profound commitment to a logical and systematic analysis than Taylor put forth, could have sorted out what belonged here and what belonged there. States evolved from colonies with state charters being written after the fact and then being rewritten again and again. But even more difficult was trying to create a catalogue of rights that individuals were prepared to surrender or capable of surrendering. Rights were abstractions drawn from many sources – theological, philosophical, biological, natural, etc. For centuries individuals were said to have no rights or if they had rights they were said to be incapable of exercising them properly. By the eighteenth century, however, the door to the rights depository had been sprung open wide. One cannot read Taylor without noting repeatedly that individuals and rights often appear together. There was no agreement on what rights were in the depository and how they should be turned from abstractions into realities. Americans probably agree on a cluster of natural rights, but even after agreeing on the cluster they disagreed on how to manage those rights. What the rights were may have been less contentious than how they were meant to be or not to be delegated. And in particular the distribution of rights among the sovereign entities led to a political brawl in which Taylor was more than happy to be engaged. And the brawl will continue because, as Americans tried to

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shape the world to match own private and personal interests, they will further complicate the distribution of authority and the preservation of liberty.

Taylor's trust in state government was based on experience. Americans had a track record with first their colonial governments and then their state governments. They tended to view a national or federal system such as the Continental Congress and the Confederacy through the lens of their state governments. The new federal system was a different model and under the influence of a Hamilton it was acting differently. This is not to say that every citizen was always enthusiastic about colonial or state governments or opposed to national governments; rather it is to suggest that their familiarity with one the established system could make them suspicious of the reformed system. By Taylor's reckoning state governments lacked the incentive and opportunity to undermine the authority of the individual for a fairly simple reason: they were closer to their citizens and were subject to constant review of how they performed. The notion of being more in touch with the people may strike us as quaint in an increasing globalized world, but it was not so quaint in the eighteenth century as ideas on representative government gained legitimacy. The underlying concern was how to offer assurance that representatives would be no less corrupt and dishonest than the ruling classes that had preceded them. And even in the twenty-first century many political activists advocate strengthening local control on the same grounds – that citizens looking over the shoulders of their locally elected officials will have better control over their taxes, schools, etc. Taylor went so far as to equate states legislatures with the people. They existed in a state “of refinement, possessing superior information, and exhibiting the national suffrage in the fairest and safest mode.” The flow of information between the elector and the elected was a crucial element in a representative system for a person like Taylor, who was undeniably suspicious of any governmental mechanism that was entrusted the liberty of the individual. He further asserted that state legislatures were not “subject to any outside influences, and are actuated by public good.” And why was this the case? Because they were “accountable to the people through annual elections” and were “often changed thus avoiding evil combinations.” Since they were “in immediate view of their constituents”, they were less likely to “misinterpret or misrepresent the public mind.” Then Taylor shifted gears from state legislatures to the national legislature in order to underscore how the state system could act as a restraint on the national system that was far less accountable directly to the people. He approved of the selection of United States senators by the state legislatures because this would further assure that senators would be beholden to their clients and not to the machinations of those who sought to consolidate power. In short, senators had the right to judge and were in fact required to exercise the power of judging the infractions committed by Congress against

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the Constitution.¹⁵⁵ An admiring view of state government, to be sure, but not entirely accurate. I will return to the matter of how state governments governed later in this essay, but for the moment the universal characteristics of state legislatures against the backdrop created by Taylor was that they met for a few weeks every year and sometimes every two years and they operated on a frequent election cycle. Taylor endorsed such features because in his mind the fewer sessions and the more frequent elections invited less mischief relative to the individuals' basic liberties. In many ways the nationalists had a much harder case to make: to explain how a greater concentration of powers at a greater distance from the citizens could make the individual better off.

Taylor certainly had more faith in legislatures than any other branch, and yet legislatures could fall off the tracks. He presumed (without much explanation) that every community had a natural interest to allow "agriculture, commerce, manufacture and the arts" to subsist "without the direct aid of municipal law", and he further presumed that properly constituted representation would be inclined to serve natural rather than artificial interests. The Constitution intended that the power to legislate was limited to preserve the interests of the constituencies that granted it. When it came to be viewed as an end unto itself, it subverted representative government by creating exclusionary interests that aimed to legislate in order to maintain their exclusivity. This was a serious betrayal of the sovereign individual. It was best exemplified, according to Taylor, in Hamilton's funding and banking policies because they were instituted without express constitutional authority (a violation of the compact between the sovereign citizen and the government) and they helped to create and sustain interests whose aims were to narrow further the sovereignty of the individual.¹⁵⁶ The remedy for a wayward national legislature was to use the Constitution, in particular Article 5 that allowed for a new convention to propose new amendments to eliminate troublesome language and erroneous assumptions present in the document. Such an approach is much feared today because the revisions may be worse than the defects, and similar sentiments prevailed in the 1790s. Taylor surely understood that. So, in the absence of a new convention Taylor urged the following: 1] exclude from elections those who favored or served the artificial interests; 2] create a Senate "by republican standards; 3] explain through the state legislatures the principles of the Constitution as they were construed at the time of adoption and as they were misconstrued at the present time.¹⁵⁷ Details for implementing the remedies were lacking. How people were to be excluded in a "democratic" society

¹⁵⁵Taylor, *Enquiry*, 55.

¹⁵⁶Taylor, *Enquiry*, 58-61.

¹⁵⁷Taylor, *Enquiry*, 64-65.

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was problematic. A Senate by republican standards, although not defined, had to be premised on the idea, expressed earlier, that senators appointed by state legislatures must be dedicated no less than representatives to defending the sovereignty of the individual. Using the state legislatures to explain the federal charter as it was meant to be assumed, of course, that the state legislatures were somehow directly involved in the writing and ratifying of the Constitution when in fact they were intentionally bypassed. To his credit Taylor did not call for the dissolution of the charter or the overthrow of the government, but he was challenged to find a way to restore the Constitution and the government that emerged from its adoption to a “purer” form in accord with his ideal society. State governments were not necessarily reliable allies in this venture to undo constitutional mischief, and sovereign citizens were certainly preoccupied with the mundane matters of making a living. Taylor was not one to be put off easily. He spent the rest of his life writing for his fellow citizens numerous polemics and treatises that detailed the dangers and pushed his agenda for change.

The *Enquiry* had an interesting history en route to publication. Even as anti-Administration voices grew in volume, the political elite on both sides worried about the consequences. In particular they did not want to antagonize the President, who was still popular despite his endorsement of the Hamiltonian fiscal package, or to erode support for the Constitution so soon after its ratification. Even Taylor whose *Enquiry* was harshly critical of the national government and by inference of the President and who along with fellow-Virginians Patrick Henry and George Mason had opposed the ratification of the Constitution without major revisions did not believe that abandoning the charter or initiating an insurrection was the appropriate course. Taylor’s early writings almost uniformly argued that the best course of action was for citizens to exercise vigilance and to use their electoral privileges to change the assemblies and thereby to change the direction of government. He did not, however, see any inherent danger in publishing pamphlets and treatises that kept the case for change in the public eye. Still he sought advice on the eventual publication of the *Enquiry* from Jefferson, Madison, James Monroe and others. The *Enquiry* was not published until 1794, but it actually circulated during 1793 in the form of six or so essays which he had composed in the winter of 1792-1793. At the time, Jefferson and Madison were deeply preoccupied with foreign affairs, namely the arrival of the French Minister, Citizen (Edmond Charles) Genêt, to negotiate a new trade treaty and how to counter the growing influence of the British lobby inside the Washington Administration. While much of the correspondence between Jefferson and Madison (some in numeric code) concerned diplomacy, they were also aware of Taylor’s essays (under his pseudonym Franklyn). In Jefferson’s mind there was initially some confusion about the authorship

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and publication of these essays, but that was quickly was cleared up.¹⁵⁸ Apparently neither Jefferson nor Madison had read the essays or the pamphlet version. In a postscript to a May letter Madison asked Jefferson to mail him a copy. Several days later Madison received a letter from Taylor himself (perhaps sent at the suggestion of James Monroe). Taylor and Madison were not close (and never would be), and Taylor was deferential toward the more eminent Madison (not out of character for Taylor) with respect to what he had written and what was now circulating. He was not sure of its worth and hoped that Madison could give some advice. He preferred a pamphlet rather than newspaper, which he called “a species of epherma” and not orthodox as to political principles. He promised Madison that he would send him a transcribed copy as soon as it could be completed. He also urged Madison in his role as leader in Congress to make a “direct, firm and resolute attack...upon the bank law” at the beginning of the next session. Taylor was certainly aware of Madison’s leadership in opposition because during the Second Congress (1793-1795) Taylor served as one of Virginia’s senators. In June he did indeed forward a copy accompanied by a long and somewhat rambling letter. He begged Madison to be honest about the pamphlet: he was prepared to give up the “mischief” relating to the pamphlet, if so advised, but he was not prepared to give up the struggle to keep the public’s attention focused on the issues raised by the bank charter.¹⁵⁹ In early August Taylor wrote Madison again that he had discussed his project with two visitors, William Giles and Abraham Venable, members of the House who had introduced and supported bills to censure the Secretary of the Treasury. Both had urged publication as soon as possible. The letter made a special reference to an increased flow of specie into Virginia from other states if the national bank monopoly could be removed. By implication the effect of the BUS in Virginia was to drive out hard currency and make Virginians more reliant on paper money. (If true the cause was that specie had greater value in other places than in Virginia.)¹⁶⁰ A few days after Madison received Taylor’s letter he wrote Jefferson that he had finally read the pamphlet by the “reputed” author Franklyn. He believed that “it really had merit, always

¹⁵⁸The James Madison Papers, available on-line at http://memory.loc.gov/ammem/collections/madison_papers/ Access to scores of letters between Madison and Jefferson in 1793 and 1794 concerning Citizen Genêt and diplomatic controversies plus the emerging political schism. Many of these letters have been published in James Morton Smith, ed., *The Republic of Letters, The Correspondence Between Thomas Jefferson and James Madison 1776-1826*, 3 volumes (New York: W. W. Norton & Company, 1995), 2:765-767 and footnote 10, (March, 1793) and 2:800-801 and footnote 90 (August, 1793).

¹⁵⁹Taylor to Madison, 1 May 1793 & 20 June 1793, “The Correspondence of John Taylor...,” in *The John P. Branch Historical Papers of Randolph-Macon College*, 2:3 & 4 (1908), 253 and 255-256. Also available on-line through the Google Library Project at the University of Michigan, <http://mirlyn.lib.umich.edu/Record/000551477>. Taylor often portrayed a deferential character in his correspondence, although he was not a shrinking violet. He never attained the prominence of other fellow Virginians, and his deference may have been partly contrived, partly defensive.

¹⁶⁰Taylor to Madison, 5 August 1793, The James Madison Papers. Available on-line at http://memory.loc.gov/ammem/collections/madison_papers/

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for its ingenuity, generally for its solidity, and is enriched with many fine strokes of imagination, and a continued vein of pleasantry and keen satire, that will sting deeply.” He had not been in touch with Taylor, even though Taylor had solicited his opinion.¹⁶¹ Nearly a month later Jefferson informed Madison that he had received and started to read Taylor manuscript, “never was more charmed with any thing [sic]. Profound arguments presented in the simplest point of view entitle really to his antient [sic] signature.”¹⁶² A week later in a letter to Madison he further remarked that he had finished Taylor and what pleased him most was that it “could not be conjectured whether it came from N. E. S. or West.” But one page troubled him. In discussing the “state of parties” he apologized for the continuance of slavery (around p. 20 in the manuscript). It did not in Jefferson’s view have anything to do with parties or banks and could only serve to cause readers who shared Taylor’s viewpoint to fly “off in a tangent...I struck it out.”¹⁶³ About ten days later Madison finally responded to Taylor earlier queries with a green light to proceed but without the potentially inflammatory slave reference per the request of “our distant friend”. A few days later Taylor acknowledged Madison’s letter with thanks and with a request that excerpts of the pamphlet should not be published in Philip Freneau’s *National Gazette*, as that would “mute” its overall impact.¹⁶⁴ Freneau had been Madison’s Princeton classmate, and as editor of the *National Gazette*, was known to be a supporter of Jefferson and Madison in the struggle against the Administration. Publishing the pamphlet in his newspaper would have made it appear to be a partisan piece, which it fact it was, although Taylor may have hoped that it would be treated more seriously than that. After this extended discussion about whether or not to publish it and how it should be published, even though the contents had circulated as essays for months, the pamphlet was printed and circulated.

Pseudonyms were common in this age. Newspapers and journals were relatively new vehicles for conveying political information and endorsement, and public figures were reticent about revealing their authorship. Many different, often classical, monikers were used, and yet authorship was usually detectable. In some cases the moniker was not meant to hide the authorship so much as to stamp the authorship with a certain imprimatur. In this time of expansion in readership, as public officials and private

¹⁶¹Madison to Jefferson, 11 August 1793, in Smith, ed., *The Republic of Letters*, 2:800.

¹⁶²Jefferson to Madison, 1 & 2 September 1793, in Smith, ed., *The Republic of Letters*, 2:813.

¹⁶³Jefferson to Madison, 8 September 1793, in Smith, ed., *The Republic of Letters*, 2:818.

¹⁶⁴Madison to Taylor, 20 September 1793, & Taylor to Madison, 25 September 1793, in Taylor, “Correspondence,” *Branch Historical Papers*, 2:3 & 4, 259-260.

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citizens tried to gauge the degree of publicness they could afford, there was a accompanying fear about interception of the mails or packets sent by couriers. During the rise of the opposition to the Washington Administration correspondence between Jefferson and Madison on political strategies (and the all-consuming issues of Genêt and Washington's Proclamation of Neutrality) was written in code. Not only were letters between Jefferson and Madison of which there were dozens – sometimes two a day – composed in code, but they were also conveyed by intermediaries like James Monroe to prevent interception. Part of the reason for anonymity and secrecy was that Jefferson and Madison were supplying Freneau with articles and stories (as Hamilton was supplying John Fenno, editor of the *Gazette of the United States*), information that could easily offend the President and widen the split among the former allies. For the Virginians who now found themselves on the opposing side how far and how fast to push their opposition must have weighed heavily. Washington, Hamilton and their allies certainly knew about the nascent opposition, and to an extent the advantage lay with them because they could reply that the dissent endangered the uncertain national unity that the Constitution sought to establish. Moreover, some of the information that Madison, Jefferson and others were sharing involved private conversations with the President. In one of two long letters from Jefferson to Madison dated 11 August 1791 Jefferson included a “Record of Conversation” with the President about Jefferson's retirement, although the conversation was wide-ranging. In one place Jefferson recorded that the President thought that the “views of the Republican party were perfectly pure, but when men put a machine into motion it is impossible to stop it exactly where they would choose or to say where it will stop.” Apparently Jefferson raised the issue of a monarchical slant to government policy, but the President dismissed it as “insanity”.¹⁶⁵ Both Jefferson and Madison were deeply involved in the creation of an opposition party, and their confidential endorsement of Taylor's project underscored that, but neither could yet assume a more public role than they had already. It was harder for Jefferson because he was still Secretary of State, although he and Washington agreed he would leave office in December, 1793, but it was also difficult for Madison because his (as well as Jefferson's) long friendship and association with the President. By 1793 the die was cast, unmistakably so, and Washington's rejection of the perception of the monarchical slant of his administration in the eyes of many spoke volumes. Continuing respect for the Commander-in-Chief side by side with increasing fear that the republican experiment was severely off course was the paradoxical place where American politics found itself.

¹⁶⁵Jefferson to Madison, 11 August 1791, with Enclosure in Smith, ed., *The Republic of Letters*, 2:806.

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Taylor along with Patrick Henry and George Mason opposed the Constitution, but once ratified Taylor believed that it should be accepted as the rules for governing the nation. He steadfastly urged citizens, however, to be on guard. The development of political parties was well underway by the time Taylor composed *Definition on Parties*. The split within the national leadership had begun with Hamilton's ambition to erect a national fiscal structure to accomplish several goals that he and others thought were necessary for the security and growth of the young nation. Lines were being drawn in ways that threatened old friendships like Jefferson's and Adams's. It is not clear that they were ever close friends, but they had been involved in national affairs since the convening of the Continental Congress nearly 20 years before. As friends, or perhaps more appropriately colleagues, they knew that they had different views about individuals and governments. There is no speedier way to highlight the differences than to recall that Adams admired things British and Jefferson things French. Their admiration was more general than specific in the sense that both opposed the transplantation of the respective political systems in either England or France to America. Adams was accused of secretly harboring monarchical designs, and while he did not share Jefferson's faith in popular government, he did not favor the introduction of monarchy. A strong central government, to be sure, but not monarchy, a totally unsustainable position in the United States. Jefferson's support of the French Revolution came under attack as the Revolution turned increasingly violent, and even though he lamented the violence, he nonetheless believed that the French would embrace a more moderate path. His guide in this regard was the French Enlightenment in which he had read widely. And even before France was swallowed up in revolution, in correspondence with John Adams's son-in-law, William Stephens Smith, he had expressed certain opinions about what America should not do in creating a new government. He had no role in the Constitutional Convention, but was kept informed by Madison and others. Smith had apparently sent Jefferson a copy of the Constitution as Ratification was getting underway in the States. After thanking Smith he noted with some dismay the danger of a long tenure for a "Chief Executive", as provided for in the Constitution, under the pretense of preventing anarchy and preserving order. Adams and Jefferson would agree that much about the history of monarchy did not recommend it, but they would disagree about whether or not the tarnished history of kings and queens enmeshed with aristocracy made a strong, durable executive unacceptable within a Republic. Adams put far less trust in the people to act virtuously than Jefferson. That led Adams to argue that people needed to be governed, and Jefferson to argue that it was the governing itself that caused the recent uprising in Massachusetts under Daniel Shays. (At the time both Adams and Jefferson were abroad.) That caused Jefferson to reflect in his letter to Smith that the British ministers had "so long hired their gazetteers to repeat and model into every form lies

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about our [America] being in anarchy....” Jefferson then asked, where was the anarchy? One exception: Shays in Massachusetts. That rebellion, said Jefferson was “honourably conducted”. Its motives were “founded in ignorance, not wickedness”:

God forbid we should ever be twenty years without such a rebellion. The people cannot be all, and always, well informed. The part which is wrong will be discontented, in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions, it is lethargy, the forerunner of death to the public liberty. We have had 13. states independant 11. years. There has been one rebellion. That comes to one rebellion in a century and a half for each state. What country ever existed a century and a half without a rebellion? What country before ever existed a century and half without a rebellion? And what country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon and pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.

The often-attributed phrase to Jefferson – “every generation needs a little revolution” – was probably a misquote of the sentence above. At the end of the letter, as if to further distance himself from the strong-durable-executive school he repeated his hope that the Constitution would be corrected (as the ratifying conventions were commencing) before the Constitution was approved.¹⁶⁶ If Adams had a streak of Hobbes in him, Jefferson had a streak of Rousseau. And those differences would remain until their death on the same day in 1825 There was no doubt that Adams preferred a system in which personal liberty was surrounded by political and social institutions that help to lead the individual to a better life by example and restraint. That was not monarchy, but it could be easily slid into a monarchical frame of reference. Jefferson, on the other hand, preferred a system in which individual were liberated as much as possible from institutionally-imposed constraints because they were the source of corruption and tyranny. That was not anarchy, but could be portrayed as such. Adams was pessimistic about human behavior, Jefferson optimistic, and that distinction came into the open as they squared off in battle over the direction of the government in 1790s.

¹⁶⁶Jefferson to William Stephens Smith, 13 November 1787, in Paul Leicester Ford, editor, *The Works of Thomas Jefferson*, 12 volumes (New York: G. P. Putman’s Sons, 1905), 5:?. At the time of this letter, even though Adams and Jefferson were in disagreement about various provisions in the Constitution they were not yet enemies. In fact, Jefferson will send several more warmly-composed letter to Smith. The breach occurs in the 1790s, but it will arise out of views expressed in the above letter.

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As the chasm in American politics grew wider in the 1790s, Adams and Jefferson actually exchanged letters concerning where they stood on this development and whether they had any direct involvement. Like many political tussles, the exchanges between Adams and Jefferson took on a life that had both a domestic and an international component. The international component was the Englishman Edmund Burke's critical *Reflections on the Revolution in France* in late 1790 followed a few months later in early 1791 by Thomas Paine's *Rights of Man* in opposition to Burke and in defense of France. Jefferson was accused of having a hand in publication of Paine's treatise in an effort to stem the tide against political heresies circulating in the United States. John Adams and others including his son John Quincy Adams were said to be behind these heresies.¹⁶⁷ The response to Jefferson a la Paine's *Rights of Man* was through a pseudonymous voice of *Publicola*. In a series of newspaper pieces he took the language and ideas of the *Rights of Man* and compared them to what Jefferson had written over the years. *Publicola* made a good case that Jefferson did in fact endorse *Rights of Man* and by inference rejected Burke, he was rewriting his own political philosophy. Who was *Publicola*? It sounded a lot like John Adams who probably knew Jefferson's views and writings as well as anyone. *Publicola* went to great lengths to declare that he was not John Adams, although few believed him. In fact, his son, John Quincy, was the author, and it is likely that John Adams knew about and participated in the subterfuge. Using pseudonyms to conduct political warfare, especially involving prominent figures, was a common practice, and their criticisms and rebuttals usually appeared in newspapers established in behalf of certain political operations. But the use of pseudonyms itself could cause disputes to spill over into private and public relationships.

Jefferson did worry about his less cordial relations with Adams, and in the summer 1791 after a swing through New England Jefferson penned a note of explanation (several attempts apparently) to Adams. He affirmed what others had reported. He was not responsible for the publication since that had been arranged when he received the treatise. He was instructed to deliver it to the printer after he finished it. He had enclosed a note complimenting the printer on the decision to publish Paine's work and then added the provocative phrase that "something is at length to be publicly said against the political heresies that have sprung up among us." He hoped that citizens would take to heart the message in *Rights of Man* as they did in *Common Sense*.¹⁶⁸ He

¹⁶⁷See Julian Boyd's editorial note under "Rights of Man, The 'Contest of Burke and Paine...in America'" in Boyd, ed., *Papers of Thomas Jefferson*, 20: 268-290 for a detailed discussion.

¹⁶⁸Jefferson to Jonathan B. Smith, Apr. 26 1791, in Boyd, ed., *Papers of Thomas Jefferson*, 20:290.

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tried to assure Adams that he had given no authorization for the letter to be quoted and further that while he and Adams had different views about the best government, they had made an effort to keep them private, as friends should do. He had no doubt that some people wished for a public spat between them, but that he was not and would not be party to such an effort. He made clear that if he had to spoke in opposition, he would do so under his name, as he was sure that Adams would do.¹⁶⁹ Although relations between Jefferson and Adams would deteriorate beyond the breaking point during the next decade, as the battle over that best form of government took on a life of its own, there is no reason to doubt that Jefferson was being sincere in proclaiming his regrets.

A week after posting his letter to Adams Jefferson received a letter from James Monroe on local Virginia political matters. Monroe, who was not on friendly terms with the Adams contingent, mentioned the stir caused by the Paine treatise and the energetic attack on Jefferson by *Publicola*, whom Monroe said the public believed to be John Adams (not John Quincy). In an earlier letter to Monroe Jefferson had equivocated on whether Adams Senior was the author, although Madison had informed Jefferson that Bostonians believed that John Quincy was the author with material provided by his father. And Madison, like Monroe, thought that Adams deserved the criticism he was getting not only from outside of Boston and Massachusetts but at home as well. Both Monroe (like Madison) believed that Adams was at best a lukewarm advocate of republican government and his pen was constantly at work denouncing republican constitutions around the country on the grounds that they were not republican.¹⁷⁰ Republicanism meant something fundamentally different to Jefferson and his supporters from what Adams and his supporter conceived, and that difference could not be avoided much longer.

Adam's reply to Jefferson was less cordial in tone than Jefferson's apology. It is not clear that Adams ever intended to apologize for *Publicola's* attacks. He agreed with Jefferson that if he were to engage in a public debate he would only do so under his name. In a response twice as long as Jefferson's apology, he took offense, citing various instances of his adversaries and Jefferson's allies ganging up on him because of his views, irrespective of Jefferson's unintended endorsement of Paine's work. And then he turned to Jefferson's assertion that they disagreed about the best form of government. How could Jefferson say that, he asked, for they had never had a serious discussion on the subject. If Jefferson believed, as did Adams's enemies, that he Adams favored an

¹⁶⁹Jefferson to John Adams, Philadelphia, July 17, 1791, in Boyd, ed., *Papers of Thomas Jefferson*, 20:302-303.

¹⁷⁰Drawn from letter between Jefferson and Madison and Jefferson and Monroe between early May and late July, 1791. See Boyd, ed., *Papers of Thomas Jefferson*, 20:293-295, 296-299, 303-305.

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English model of King, Lords and Commons or a hereditary executive and senate in America, he Jefferson was “wholly mistaken”. If Jefferson had ever put such a construction on his writings, which, Adams claimed, were totally devoid of any such sentiments, Adams insisted that Jefferson indicate the passages and Adams would successfully refute them. But Adams acknowledged, as he stated in remarks that followed his challenge to Jefferson, that others (not Jefferson) were largely to blame for pulling passages out of context from his many writings in order to portray Adams as so admiring of England’s mixed government that he hoped America would abandon its affection for a noble but unstable republican form and embrace the English model. His enemies had maliciously misconstrued his intentions. After another blast at his enemies Adams made it clear that current rivalries that he observed in American politics were the worst that he had ever seen and if they continued to grow he would prefer to quit government. Nonetheless, at the end of his reply he professed that theirs was a long and strong friendship of 15 years.¹⁷¹ For anyone who has read a smattering of Adams’s correspondence this letter however much he may have valued the friendship of Jefferson (I tend to be dubious) was entirely in character. He was hard to please and slow to forgive.

At the end of August, 1791, Jefferson penned a somewhat more aggressive reply. While he stated that it was criminal to assert that John Adams was the author of *Publicola* and he regretted that such an accusation had entered the public debate, he reminded Adams that the great fuss must be laid at the feet of *Publicola* and not at mine nor the printer’s (that had published his comment on Paine). He also reminded Adams that some of the attacks to which he alluded had been printed before the publication of Paine’s *Rights* and therefore had another source – left unsaid was, as both Madison and Monroe had concluded, the fact that because of Adams’s active pen he had enemies in his own backyard. Jefferson used this letter to make clear that he was innocent *in effect* [sic] as I was in intention.” He then closed by reviewing the situation in France, which at that moment he looked upon favorably, and by raising the thorny issue that France should be allowed to pursue its goals within intervention from England and Prussia. There is no doubt that this letter was less friendly and less differential. Even on the matter of government Jefferson gave little ground: perhaps Adams’s writings contain no such explicit remarks about mixed government, but those who strongly adhered to a mixed-government model as superior to more republican forms referred to Adams as a source. I am not certain that Jefferson was being as honest about his role as he should have been or about their friendship, but, on the other hand, Adams got what he deserved – a scolding. This was a prelude to what was to come.

¹⁷¹John Adams to Jefferson, Boston July 29, 1791, in Boyd, ed., *Papers of Thomas Jefferson*, 20:305-307.

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Halfway through Washington's First Administration America's political giants were feuding, and they were feuding about the form of government. Two hundred and twenty years later we extol the design and durability of the Constitution, but in the 1790s some of the giants were prepared to declare it as unworkable and dangerous. And up to the Civil War the Declaration of Independence was preferred to the Constitution as an oratory device. Recall that the Declaration justified the dismissal of a government, and in the early years of the American Republic that act was regarded not only favorably but as a fallback position when this new government lost its way. The form-of-government debate went to the heart of a fundamental issue that appears albeit obliquely in the Adams-Jefferson exchange: how much government did a republic need? Adams the autocrat worried incessantly about an unrestrained people resorting to protests and rebellions to get their way, and this explained why his "mixed-government" model handed much more power to the less popular branches – the executive and the senate – certainly not as far as anointing a king or creating a nobility but farther than his opponents would ever agree to. For Jefferson, the fuzzy-minded dreamer, the opposite was true: add more and more power to the government at the expense of the individual, and a threatened citizenry will take matters into its own hands with unpredictable results. This is serious stuff, and by middle of Washington's Second Administration the serious stuff had irrevocably split the nation. A political-party system, which with our modern cynicism we so often deplore, became the vehicle for change. On one side the Federalists, the party that was pro-Administration, and on the other side the Republicans or the Jeffersonians, the party that was anti-Administration. Whether or not they wanted to take sides, Americans would have to do that. Voting was restricted in the early Republic, but when they voted and if they could vote, they apparently were more comfortable with less, not more government.

The Constitution stipulated how the House of Representatives and the Senate should be composed but left the procedures for electing and selecting to states so long as the members chosen meant the Constitutional qualifications. States had experience in conducting local and colony- or state-wide elections but almost none in conducting election for national offices. The procedures had to cover three different proceedings: direct elections of representatives at-large or by districts for the House, as assigned by the Constitutional Convention until the first census could be completed every two years; selection of two senators by the legislatures on a staggered basis every six years; and election or selection of presidential electors to choose a president every four years. The procedures not only involved setting up procedures for casting and counting ballots but also how candidates should be nominated and how voters should be enrolled. Since the

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Constitution was not ratified until September 1788, the final session of the Congress under the Articles determined that the presidential electors should be chosen by January to meet in February, 1789, and the New Congress should convene in March 1789. The states had to move quickly to organize their electoral procedures in order to meet the deadlines. (Not all states did). These proceedings are documented in a four-volume compilation under the title of *The Documentary History of the First Federal Elections, 1788-1790*. In a Chronology of Elections proceedings began in September 1788 and continued for almost a year. Senators were chosen more quickly than Representatives with eight states making their selection by the end of the year (1788). Elections for representatives were strung out with South Carolina the first to choose their five members followed by four more states by the end of the year. Even though electors were to vote on 4 February 1789 three states (three states, New York, Rhode Island and North Carolina) did not participate. (Washington and Adams were elected in any event.) Massachusetts elected four Representative of the eight in December 1788 with no decision in the other four. A second election was held in January with two more being chosen. In a third election one more Representative was chosen in March 1788. A fourth election for the final district was held in March with no decision and a fifth election in May in which the eighth Representative was elected.¹⁷²

In general the states fell back on the procedures used to elect members to the Continental and Confederations Congresses to select United States Senators. For the House elections, however, the states except for Rhode Island and Connecticut, had to pass new legislation. In both Rhode Island (which did not ratify the Constitution until May, 1790) and Connecticut procedures for popular election of members to the Continental Congress and later the Confederation Congress had been put in place in the late 1770s. The Connecticut plan will serve as an example of one approach. Enacted in 1779 it built on the colonial procedure for electing members to the colonial Council. Freemen long met to nominate persons to serve on the Council, and when the 1779 Act was passed it stipulated that freemen should not only nominate person for the Council but also 12 persons for the Congress. The Connecticut Legislature then prepared a list of the 12 receiving the most votes for an April election in which freeman once again voted but this time for seven persons from whom would be chosen no fewer than two and no more than four to attend Congress. Under the new Constitution the Legislature relied on the 1779 model with some changes and some further changes added by the Council (acting like a second house). Freemen were to meet in November 1788 and to nominate

¹⁷²“Chronology of the Elections With Names of Men Elected” in Merrill Jensen & Gordon DenBoer, editors/compiler, *The Documentary History of the First Federal Elections, 1788-1790*, 4 volumes (Madison, WI: University of Wisconsin Press, 1976-90) 2:xvi-xvii.

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12 candidates for the House of Representatives. A week after that one representative from each of eight counties met to prepare a ticket of the 12 receiving the most votes. A month later on printed ballots the freemen were to meet in each town and to vote for no more than five people (the number of representatives allowed Connecticut under the original allotment by the Constitutional Convention). The Connecticut delegation to serve “at-large”, although that would be changed later. It should also be noted that the Legislature maintained control to the extent that the House members were accountable to and were recallable by the Legislature.¹⁷³

In Delaware, the smallest state, had one House member. Their plan for selecting that member was much simpler than Connecticut. BY state law (October 1788) an election was called for in January 1789. Registered voters in each county were to “hand in, ‘on one ticket or piece of paper’” names of two persons, one which should be a resident of the county, and person who received the highest number of votes filled the single seat from Delaware.¹⁷⁴

New Jersey had a contentious election for its four House seats that ultimately landed in the lap of the House itself. All were elected at-large under the same procedures and rules by which members of New Jersey’s Legislature were elected. Those rules did not specify a time by which the returns should be reported and validated. The practice was that they should be received before the Legislature began its session. With respect to the rules for declaring the election of congressmen the same rules were thought to apply in the absence of a specific date. Apparently a majority of the counties followed this precedent with the approval of the governor. But on the day (3 March 1789) before the Congress was to convene the governor did call the election committee into session to declare the winners without all the votes of all the counties. This led to demands for an investigation by those from counties whose votes were not counted because they had not yet been verified and submitted. In September 1789, however, the members certified by the governor the previous spring were seated after extensive deliberations.¹⁷⁵

¹⁷³“Passage of the Election Resolution [for Connecticut]”Jensen & DenBoer, eds./comps, *First Federal Elections*, 2:8. In Tolland (CT), for example, when the freemen met in November to nominate candidates, 50 persons were nominated with 3 receiving no more than 1 vote each and 11 more than 20 votes, the highest being Jedidiah Strong with 40. The five eventually elected to Congress with their Tolland votes and rank were: Benjamin Huntington 22-tied for 6th), Roger Sherman, (20-10th) Jonathan Sturges, (17-12th) Jonathan Trumbull, jr.(28-tied for 4th), Jeremiah Wadsworth (8-24th). Sherman had been a member of the Constitutional Convention. All were pro-Administration.

¹⁷⁴“The Election of a Representative and Presidential Electors[for Delaware]”Jensen & DenBoer, eds./comps, *First Federal Elections*, 2:81. John Vining was elected.

¹⁷⁵Speeches in the House of Representatives, 1 September 1789, from the *New Jersey Journal*, 16 September 1789, reprinted in Jensen & DenBoer, eds./comps, *First Federal Elections*, 3 174-175.

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Controversies continued over how House elections were handled, and states will continue to revise their procedures and rules, usually with results favoring fewer obstacles to direct elections by qualified freemen. Because House members were elected every two years any shifts in sentiment on the part of the electorate would show up sooner there than in the Senate whose members were chosen by state legislatures every six years. In the first two Congresses (1789 to 1793) not surprisingly the pro forces enjoyed a majority but by no more than a handful of votes. In the next two cycles (1793-1797) the anti-forces (soon to be called Jeffersonians or Republicans) ruled the House, and again by small margin. In the next Congress (1797-1799), however, the pro-forces, now called Federalists, roared back into control of the the House. The Senate remained in the hands of Federalists. In the off-year congressional elections of 1798 the Federalists increased their numbers in both the House and Senate. Within two years, however, the Federalists fell on hard times never to recover, the Republicans will dominate national politics for nearly a quarter of a century thereafter. In the presidential-election year (1800) the Republicans will sweep to power with a substantial majority in the House and a narrow majority in the Senate. Only the judiciary remained beyond Republican reach. Despite hues and cries of the nation's imminent demise under the Republicans (understandably mainly from Federalists), the first transfer of power from one organized faction to another took place without incident. And the "best form of government" will be reformulated with different ingredients.¹⁷⁶

The changing political circumstances could not have been predicted. As political parties, or political factions as Washington referred to them in his Farewell Address, took control of the political agenda, the "ideological" disparities between advocates of a stronger central government and the advocates of a weaker such entity could seldom be bridged. Even within the parties themselves there were ideological differences that had to be accommodated. Federalists argued among themselves about "how strong" just as the Jeffersonians argued among themselves about "how weak" the federal government should be. And then they argued with each other over specific issues and who could best represent what the public expected of their government. During the last two years of Washington's Second Term, Adams's entire Presidency and into the first or second year of Jefferson's Presidency (defeating Adams in 1800) the debates were rudely contentious and arguments of defiance and disunion could drown out the defense of union. dominate the Washington left office a worried man. He warned (among others

¹⁷⁶Several on-line services provide data on "party" affiliations in the 1790s including the Clerk's Office of the House of Representatives at http://clerk.house.gov/art_history/house_history/partyDiv.html. and University of Michigan's ICPSR Database at <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies?q=congress+by+political+affiliations>.

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things) not to let party allegiances dominate national politics at the risk of creating a permanent cleavage based on regions and endeavors. He also said in his address that he continued to favor a strong national fiscal program, which more than any other administrative action helped to lay the groundwork for the rise of political parties.

The establishment of the BUS probably more than any other action put the question of the viability of the Constitution front and center. Even though the bank bill passed Congress with reasonable margins and both Edmund Randolph and Thomas Jefferson had advised Washington that the bill was unconstitutional, its constitutionality was never argued before the Supreme Court. Like other parts of Hamilton's fiscal program, the opposition made its case but then accepted the President's decision. Had it gone to the Supreme Court, the question would have been whether the legislation met constitutional standards. If it didn't in the view of the justices, what options did the Court have? The Constitution did not say. A decade later John Marshall will enunciate the principle of judicial review by which he overturned an act of Congress. It caused outrage but stood, although before the Civil War it would be used only one more time in an even more controversial case, Dred Scott, several years before the Civil War. Several state constitutions allowed for judicial review. Constitutional scholars have long argued over the origin of judicial review that can result in the Supreme Court overturning acts of Congress. It was entirely possible that some framers favored such judicial intervention, but it never reached the point of actually being proposed and debated. Even so, the framers could have assumed it. A rereading of Madison's Constitutional Convention notes relating to all matters judicial does not lend any credence to that assumption.¹⁷⁷ To be sure, Hamilton in Federalist 78 cleverly dealt with the matter of judicial review from the viewpoint that if the legislative branch enacted a law contrary to the charter it was *a priori* void. But, since it was unlikely that the legislature, which passed the act, would declare it void, then another branch must act in behalf of the people, whose representatives had failed them, and the only branch that had no vested interest in violating the charter for its own benefit, the judiciary, was the likely last resort to protect the people. In addition there was precedent for colonial and state courts to void laws that were seen as contrary to the public good. Public good cut both ways. For a subset of the citizenry who had a profound distrust of a national government, unless it was hog-tied, Hamilton and precedent was hardly reassuring.¹⁷⁸ After all, as

¹⁷⁷Robert Frankel, jr, "Before Marbury: Hylton v. United States and the Origins of Judicial Review," *Journal of Supreme Court History*, 28:1 (2003), 1-13.

¹⁷⁸"The Federalist Paper: No. 78", The Avalon Project at Yale Law School. It must be emphasized that the Federalist Papers were written primarily to win over New York, even though they have come to be treated as if they represented a national consensus. They were not universally acclaimed then as they are now. Available on-line at http://avalon.law.yale.edu/18th_century/fed78.asp.

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many pointed out during the convention and the ratification, the problem with the federal judiciary as envisioned in the charter was its utter independence – life appointments and little accountability. In addition the powers were too vague and needed more clarity and specificity. In other words, Hamilton’s words of praise could be turned into words of disapproval. Being committed to a constitutional system with a republican government was a noble goal. Filling in the details was hard work, and the results could be unpredictable and antagonistic. Where did Hamilton get his idea about the federal judiciary, as laid out in the #78 except by reading “loosely” what was written in the Constitution. Under his interpolation the judiciary would protect the citizens against the arbitrariness of the legislature and executive in establishing these programs by declaring them void. But that was an implied power – barely implied – and there was every possibility the ruling could go the other way by joining with the other branches to uphold laws for which there was not direct authority. To have drawn in the third branch, whose duties and powers were not very precisely defined and already suspect, into the dispute over the BUS or any other part of Hamilton’s program could have made the dispute even more explosive. Reading the Constitution in the way that Hamilton did was not necessarily widely approved and may not have been the intent of the majority of the framers. As Larry Kramer has suggests in *The People Themselves*, it is dangerous for historians to read back into these events what historians want to have happen.¹⁷⁹ Nonetheless, the point raised by Hamilton in #78, even though judicial review was omitted specifically from the Constitution, eventually would be addressed.

A case that began to define how the federal judiciary will act went by the name of *Hylton v United States*, with briefs filed before the Supreme Court in 1795 and a decision handed down in 1796.¹⁸⁰ This case concerned the 1794 federal carriage tax that is seldom discussed in textbooks or monographs. Other earlier cases had skirted around judicial review, but *Hylton*, all parties seemed to agree, presented an appropriate vehicle to see how the federal judiciary would behave. The carriage tax was an excise tax, passed to raise revenue in order to bolster defenses in case of a British attack. Article 1, Section 8 expressly allowed for such levies. Simple two-wheel carts would pay \$1 per year and multi-wheeled carriages up to \$10. What is the constitutional issue? Proportionality, it would appear. Some states like Virginia had many more carriages than say New Jersey and therefore would pay into the treasury more than its smaller counterparts. There is more, however. Was it an excise tax or a “direct” tax? The

¹⁷⁹Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004)

¹⁸⁰Frankel, “Before Marbury,” *Journal of Supreme Court History*, 28:1, 1-13, presents a good summary of the issues and arguments.

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Constitution stated that “...all Duties, Imposts and Excises shall be uniform throughout the United States” whereas “...direct Taxes shall be apportioned among the several States...according to their respective Numbers...”¹⁸¹ Excises were often interpreted to be taxes on useful but not necessary possessions (today, telephones pay excises), but a direct tax could be levied against any property (including slaves) and forms of wealth beyond property. Not surprisingly direct taxes were much scarier to those who feared overreach by the national government under the federal charter than excise taxes. Direct taxes were not defined in the Constitution, and since excises taxes were grouped with Duties and Imposts, they were not as much of a mystery (although they were not defined either). John Taylor, whose pamphlets had already excoriated the Secretary of the Treasury and defended the party system, was a Virginia lawyer who had refused to pay the Carriage Tax and took on the defense of Daniel Lawrence Hylton who owned a fleet of carriages and refused to pay the tax.¹⁸² Taylor had no doubt that the carriage tax was a direct tax and equally no doubt that excise taxes simply “incommoded” citizens but direct taxes “annihilated” them. On what grounds could Taylor argue that it was a direct tax?

The case was first heard in the federal circuit court meeting in Richmond, Virginia, and everyone knew, whatever the decision, it would be appealed to the Supreme Court. Some thought that the case presented before the circuit court would be routine in order to allow it proceed immediately to the Supreme Court so that some of these thorny issues about what the Constitution said and did not say could be settled. In fact, some may have hoped for a decision that would establish whether the Court believed that it had the authority to exercise judicial review over legislative action. Taylor did not present a perfunctory defense but went after the law with a gun fully loaded. John Wickham of Richmond argued for the government, after John Marshall was unable to take the case because of other judicial obligations.¹⁸³ In a switch. Taylor led off the case before the court followed by Wickham. Taylor argued that the tax was direct, and while it might be rewritten to make it proportional as the Constitution required of direct taxes, he preferred that the court declare the legislation void – in short Taylor was prepared to grant the judiciary the power of judicial review. Taylor presented his brief to the court and later published it as *An Argument Respecting the Constitutionality of the Carriage*

¹⁸¹Excise listed under Article 1, Section 9 and Direct under Article 1, Section 2. This was long before the Constitution was amended to allow for income taxes (1916).

¹⁸²Hylton was involved in another tax case at the same time as the Hylton v US was working its way through the judiciary.

¹⁸³It is worth noting that Marshall was one of Hylton’s defense attorneys in another case known as *Ware v Hylton*.

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*Tax Which Subject Was Discussed at Richmond Virginia in May 1795.*¹⁸⁴ Taylor's argument concerned more than the specific clauses related to the carriage tax. It was a statement about constitutional history and theory and the recourse available to the citizenry when the charter was used inappropriately. It was an argument that Taylor will refine and repeat many times during the next quarter century, especially in response to the judicial tenure of another Virginian, John Marshall, who will serve almost that many years as the Court's Chief Justice. For Taylor, the Constitution was a code of laws that regulated the conduct of the government. He had no doubt, however, even with the best-written charters constitutional governments can engage in malicious activities. In the case of the carriage tax, the legislative and executive branches had misconstrued (intentionally) the language of the Constitution. "Passive obedience", wrote Taylor, to such legislative mischief meant that the nation "possesses only the effigy of a Constitution." Under these dismaying circumstances – "to preserve certain rights against the aggressions of such majorities" – the judiciary must be interposed "between the government and the individual." Such interposition was preferable to an insurrection. Let the court, as an independent branch, act to void the legislation in the name of protecting the individual from legislative transgressions and the civil order from upheaval. Taylor clearly posited that citizens owed obedience to "congressional, and also state majorities, while legislating within the pale of the Constitution." When "overleaping this pale" these majorities must be called to account by the judiciary. If the framers had intended to allow the national government to impose direct taxes without restraint of proportionality, then they would have written the charter with such language. They did not. This became a favorite tactic of Taylor – to underline what the Constitution did not say and to read the "general" clauses strictly, not broadly. Taylor was up front about why he took this position. It arose from the distinctness of America, based on diversity of "soil, climate and productions" and reflected in dissimilarities of state governments. For Taylor these "natural" boundaries were to be taken seriously. He was never a fan (as James Madison had been) of erecting a nation that erased these "geographical and marked boundaries", and since his political philosophy rested heavily on a concept of virtue and citizens being virtuous – what he called "public virtue" – it linked these "natural" arrangements with the defense and extension of virtue. Taking the opposite approach would "afford but too large a scope for indulging unhappy human inclinations." Despite the geographic, economic and political dissimilarities among the states, the union envisioned by the Constitution could only work if they were treated equally and justly. Under no circumstances could the carriage tax, as promulgated, ever achieve this. What made the carriage tax so patently a direct tax, wrote Taylor, was that it can be traced to the point of consumption – if you bought a carriage you had to pay

¹⁸⁴Published in Richmond by Augustine Davies in 1795.

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the government a tax to own it, and the more carriages you owned the more taxes you paid. For Taylor this was not only lacking in virtue and justice, it was downright dangerous.

“Unless rights and duties are thus honestly balanced against each other – unless good and evil are duly mingled, so as to assuage [sic] the capacity of the latter, by the pleasantness of the former, it may certainly be observed either that a government will not last, or that it will subsist by cunning and expedient [sic], dispensing of punishment where there is no crime, and rewarding where there is no merit.

Underlying the political and constitutional distortions wrought by a direct tax like the carriage tax was an even more serious economic distortion full of risk. “Money is the life of body politic. It invigorates commerce – regulates the value of property – ascertains the price of commodities – and bestows on labour a reward.” And when it was confiscated through direct taxes it destroyed the public virtue that must exist in republican systems. The narrow grounds for voiding the carriage tax – Congress lacked the authority – was an insufficient defense because the issues transcended language. For Taylor (if not for Hylton) the design and the existence of the republic were at risk. Although Taylor will eventually become a harsh and relentless critic of the judiciary, at this early stage he was prepared to let another branch of government under the guise of “judicial review” help undo the legislation that created that risk.¹⁸⁵

The government’s case argued by a distinguished Richmond attorney, John Wickham, made a distinction between a direct tax and an indirect tax on the grounds that the former was a tax on income or revenue of the individual and the latter on expense or consumption by the individual. A tax on carriages fell into the latter category, and as such, it did not have to be apportioned (like a direct tax) on the basis of the distribution of the population. Moreover, enforcing a tax on carriages proportionally as required by the Constitution and suggested by the defense, would be an administrative nightmare as well as discriminatory with carriage owners in small states paying much high taxes than owners in large states. But Wickham knew that the case had become something more than trying to argue the fine points between direct and indirect taxes within the framework of the Constitution. Taylor had revived (once again) the fundamental question: what was the form of government embedded in the Constitution? The reticence symbolized by all the strategizing over the publication of Taylor *Enquiry* in 1793 had evaporated. No one could deny any longer what had been simmering under

¹⁸⁵Quotes from *Constitutionality of the Carriage Tax* in order: pp. 3, 4, 7, 25, 18.

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the surface, since Hamilton had started down the road of imposing a national fiscal machine. In fact, Wickham raised it in his presentation and rebuttal: the Constitution had yielded a nation not a confederation of states. Taylor was reviving the ghost of a government past in which states had the ultimate voice. That was not, argued Wickham, how the Constitution was framed. Not only was guilty Taylor of trying to resurrect the discredited and abandoned Confederation but also of substituting his ideas for what the Constitution said and what the framers, indeed for what the American people, properly understood to be its intent. Taylor by putting himself in their place “endeavours [sic] to prove that by his construction only, can the rights and people be preserved.”¹⁸⁶ As the defenders of the Constitution often reiterated, the Constitution was a compact between the people (“We the people”) and the national government in the same way that the people had approved compact with state governments. To argue for a different construction would be to cripple and destroy both the rationale for state governments and for the national government. If each sphere of government was not a contract between the people and the institution by which they were governed, the principles for the establishment of a republic would be violated. What had begun as a technical case to try to ascertain the implicit authority of the federal judiciary to judge the constitutionality of legislation approved by the Congress and the President had turned into an extension of the war over what Jefferson and Adams pointedly called the “form of government”. The form of government underlying Wickham brief was one in which the people saw no more threat from a national body than from a state body since the people by ratification had delegated powers to each. For Taylor, of course, the people had everything to fear when governments, most especially central governments, pursued policies that allied special interests to benefit themselves by broadly construing the language of the charter. To be sure, Taylor had deep affection for the state system because he believed that it offered less temptation to engage in hanky-panky, but his opposition to the construction of the Constitution with respect to the Carriage Tax along with his pamphlets opposing Hamilton and endorsing political parties was founded the principle of sovereignty – any and all governments unless the citizen exercised vigilance could undermine the inherent and natural sovereignty that resided with every individual.

If this was to be a test case, Taylor’s defense had changed the script. He addressed the legal question of direct (with proportionality) versus indirect taxes, but the context for this argument was far more germane: when a government may assume unto itself authority that it arrogated on the basis not of intent or language in the charter but on the basis of ambition or purpose in advancing the interests of a few against those of the

¹⁸⁶Frankel, “Before Marbury,” *Journal of Supreme Court History*, 28:7, quoting from Wickham’s brief.

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many. Taylor was not content to address the narrow technical point. It was from the very beginning, when he expressed a desire to defend Hylton, having himself refused to pay the tax, was a matter of principle rather than legality. By 1795, as the anti-administration party was gaining seats, the political-party battle had been publicly joined. Washington would not run for a third term, and no one denied that the 1796 presidential election would be contested. Public opinion, to the extent it can be identified, appeared to be running against the Federalists, the party organized in reaction to the opposition – Republicans among other names. The Washington Administration, although the President himself was often exempted, was accused of overstepping certain constitutional boundaries, and now it was being called to account. Given Taylor's previous publications, his tack in the Hylton case was part of a pattern to arrest, if possible, the incremental enlargement of the national sphere. Hidden to a degree was the underlying fear of the opposition that if the national government acquired its own revenue sources, it could continually expand its resources and its powers. (This debate will recur regularly during the first half of the nineteenth century.) The effort was to enlist the judiciary in the effort to halt the expansion. The fact that the circuit court hearing the case split two to one in favor of the government with the proviso that the case could be immediately remanded to the Supreme Court had unexpected ramifications. Taylor could have gotten by an expedited course the judicial review that he had argued was needed. Once the decision was rendered, he reversed his position – in effect, having argued the judiciary should resolve the conflict, he declared it could not be trusted. He would not appeal the case, and he talked Hylton into not paying the fine and not participating in an appeal. Taylor was prepared to defy the court and the government on the grounds that the sovereignty of an individual had been violated. His reaction raises the intriguing question as to whether he ever seriously considered the judiciary, as proposed under the Constitution, to mediate questions of constitutionality and whether he intended to argue the case in such a way that the judiciary could be portrayed along with the legislative and the executive as a threat, not a protector, of the liberty of the individual. Of course, the court had ignored for the most part Taylor plea to recognize the arbitrary and dangerous threat to the further existence of the republican government and had primarily focused on the more technical question of what distinguished a direct from an indirect tax without wadding into the morass of whether the sovereignty of the individual was at stake. Even though it was acknowledged that this was a test case that was needed, it could not proceed, so long as Taylor was lead counsel and refusal to file. Hylton was finally persuaded to take on new lawyers and to let the case go forward. The Supreme Court heard oral arguments over three days in February 1796. Hylton was now the plaintiff, and with Taylor off the case his new lawyers presented a risk-free brief: the Carriage Tax fit the constitutional definition of a

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direct tax and as such it must be declared void because it did not meet the proportionality requirement contained in the direct-tax clause. Hylton's attorneys, appointed by the government under an agreement with the plaintiff in order to put the case before the court, said little else – a “tempered” presentation, perhaps a tepid one. Even so the defense, i. e. the government, took this case seriously. Alexander Hamilton, who had resigned from the Cabinet a year earlier, was chosen as the lead defense attorney for the government. His appearance was widely anticipated, and the courtroom was filled with dignitaries and politicians. According to most commentators, he did not “disappoint”. His defense came during the second day in a three-hour presentation. His argument was straightforward: settling on an unassailable definition of direct taxes versus indirect taxes was probably impossible; only a few taxes – head taxes and property taxes – were generally accepted as direct taxes; all other taxes were defined as impost, duties and excises, and taxes on consumption of goods, like carriage ownership, were a form of excise tax; since the power to tax in the Constitution was between the individual and the national government (time-honored position among nationalists) and did not involve the states, proportionality did not apply and individuals were not denied fairness since all individual were treated equally. In March 1796 the Court ruled the Carriage Tax constitutional. Only a negative decision would have addressed the judicial-review issue, and such a test would be deferred until *Marbury versus Madison*. The acting chief justice recused himself because he had heard the case in the circuit court. The other three justices, although they wrote long opinions, basically accepted Hamilton's argument. Few minds were changed. After oral arguments in February 1796 Madison predicted in a letter to Jefferson that the Court would rule the Carriage Tax constitutional. He acknowledged that Hamilton's effort “was to raise a fog around the subject and to inculcate a respect in the Court for preceding sanctions, in a doubtful case.” Two days after writing Jefferson the Court ruled as Madison had anticipated.¹⁸⁷

The centralizing tendency of current national policy was undeniable, and even if it carried the imprimatur of the Father of the Country, it had reached a level that defied compromise and consensus through negotiation. The showdown that Taylor wanted in Hylton's case – that sovereign individuals could defy government that exceeded its authority – did not occur. The moment that the appeal went forward, the issue became a judicial matter to be resolved within the existing structure, as ill-defined as that was, and not rallying cry to remake the structure. For James Madison, however, the Carriage Tax was never the Rubicon. It boiled down to a technical debate over how tax

¹⁸⁷Details for the above paragraph drawn from Chernow, *Alexander Hamilton*, 501-502 and Frankel, “Before Marbury,” *Journal of Supreme Court History*, 28:9-10. Tempered in quotes from Frankel. Madison to Jefferson, 6 March 1796 in Smith, ed., *The Republic of Letters*, 2:926.

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legislation should be written. He had opposed much of Hamilton's program but in the name of national unity he had acquiesced where necessary. Hamilton had gotten three-quarters of what he wanted, mainly on his terms, and the risk from Madison's perspective was where would this lead. What came to serve as the Rubicon for him, as the leader of the opposition in Congress, was something of a different caliber. It was Jay's Treaty, which raised the stakes considerably. A commission headed by John Jay went to England to try to resolve commercial and diplomatic differences between the two former adversaries. The protocol, signed in 1794, without resolving the differences, appeared instead to ally the United States with England against France. There was no doubt that the pro-Administration forces favored such a tilt in American foreign policy. Their pro-English stance despite a failure of England to live up to previous accords was largely driven by their fear of the French revolutionary spirit that seemed to make a mockery of all political institutions and systems. The anti-Administration forces may have become fearful of the course of events in France but they were even more fearful of the ambition and power of England. Much of the correspondence between Madison and Jefferson during the final two years of Washington's Second Administration concerned diplomatic affairs in particular America's relations with England and France. Jefferson had retired from State and Madison more than once considered retirement from Congress. Although the treaty, as prescribed in the Constitution, was approved in the Senate in 1795, the House had attempted under Madison's direction to stop the enactment of the treaty by refusing to appropriate any money even for its printing. The Senate was delegated the power of consent, but the House was delegated the power to appropriate. In pursuit of its authority the House in March 1796 asked the President to turn over all papers and records concerning negotiations and discussions as a part of the deliberations on the appropriation, and the President refused, thereby establishing a basis for the precedent that we now call executive privilege. Madison and his allies then sought to block the appropriation, and after a vigorous debate the House by a narrow margin at the end of April approved the appropriation without the requested information.

The latest legislative battle left Madison discouraged and perhaps dismayed about the future. Despite discontent among the citizens, organizing opposition in the Congress, even the House that was more reflective of the popular will, was filled with setbacks. The attempt to ditch Jay's Treaty by an end-run, to deny money to print the treaty after the Senate had barely approved it by required two-thirds vote (20-10), was more disheartening than other battles Madison had lost. "The progress of this business throughout [two years] has to me been the most worrying and vexatious that I ever encountered; and the more so as the causes lay in the unsteadiness, the follies, the

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perverseness, and the defections among our friends, more than in the strength or dexterity, or malice of our opponents.”¹⁸⁸ A week later Madison reported that a calmness had returned to the House despite the fact that petitions in favor of the treaty continued to arrive from New England including the not so veiled threat that the region should stand ready to rise up against the House should their interests be ignored. Writing to Jefferson, he noted that “Such have been the exertions and influence of Aristocracy, Anglicism, and mercantilism in that quarter, that Republicanism is perfectly overwhelmed....” The pro-Administration forces in opposition to Madison in the House had cleverly used the scare tactic that the people must follow Washington’s lead on the need for the treaty to avoid war.¹⁸⁹ In a letter to Jefferson a few days before Congress adjourned in late May 1796, Madison lamented that the “name of the President” and the “alarm of war” raised in connection with the treaty had a greater effect than either side had anticipated. “The crisis which ought to have been so managed as to fortify the Republican cause, has left it in a very crippled condition.”¹⁹⁰ In less than a decade after the ratification of the Constitution the nation was gearing up for its first presidential contest six months later between the pro-Administration or Federalist Party in behalf of John Adams and the antis or Republican Party in behalf of Thomas Jefferson. There was no turning back from the politicization of the American electorate. Party allegiances were still fluid. These were parties that were mainly organized from the top down. Linking to the “grass roots” of the American electorate proved unpredictable. Because of a flaw in the Electoral College voting procedures Adams was elected President and *his opponent* (and longtime colleague and friend in various political wars) Jefferson was elected Vice-President. But that quirk gave Republicans a hollow victory for as Madison had more or less predicted the Republicans lost the House and lost seats (by indirect elections) in the Senate. Despite obvious dissatisfaction within the electorate for the nationalists’ programs and policies, the majority in Congress belonged to the President’s Party. Madison had hoped for peace in Europe to insert a wedge between the pro-English Federalists and the block of the electorate that supported the Federalists out of fear that England was less likely to make war on United States but questioned the programs identified with the Federalists.

The Presidential Election of 1796 was significant because it was the first truly contested election. In the past two presidential elections, when Electors – some chosen by state legislatures and some by popular vote – met, they did not unanimously cast their ballots

¹⁸⁸ Madison to Jefferson, 1 May 1796, in Smith, ed., *The Republic of Letters*, 2:936.

¹⁸⁹ Madison to Jefferson, 9 May 1796, in Smith, ed., *The Republic of Letters*, 2:937.

¹⁹⁰ Madison to Jefferson, 22 May 1796, in Smith, ed., *The Republic of Letters*, 2:938.

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for Washington and Adams. Other names appeared on the ballots, although the Washington and Adams received most of the votes. The Electors were free to vote however they wished, but they generally voted in accord with how they were appointed or elected. In 1796 with a total of 16 states there were 138 Electors (based on the total number of representatives and senators) and 69 (plus 1) electoral votes were needed to win. Electors wrote two names on their ballots, and the names theoretically could be any two people, people who may be running or not running. Adams received 71 and his acknowledged running mate, Thomas Pinckney from South Carolina, received 59. Jefferson, Adam's opponent, received 68 votes, and since his total was higher than Pinckney's he became Adams's vice-president. Ten others (including George Washington) received votes. The total number of electoral ballots (in 1796) was 138, but since each ballot could contain two names, the total number of votes could be double that or 276. Obviously the framers had not foreseen the complications that their electoral system would confront in contested elections. The Electoral College result meant that two old friends, now political adversaries, would try to lead the nation at a time when they disagreed about the "form of the government". The Election of 1796 with a Federalist President and Congress but a Republican Vice-President yielded not exactly a divided government, since the second in command had little power, but more like a vulnerable government. These were not the results that were expected, and, as it will turn out, the Adams Presidency will divide the nation further along the lines that many of his critics had feared and make that government more vulnerable.

The Election of 1796 was like a rumble at the foot of Mt Olympus. Neither Adams nor Jefferson actively or openly campaigned for the nominations. Acting like "nominating conventions" their advocates in the respective congressional caucuses had, which acted then as "nominating conventions", had endorsed their candidacies. The candidates themselves seldom spoke or appeared, but their proxies were itching for fights everywhere. No one was immune, not even George Washington. It is often said that a large majority of Americans wanted him to run for a third term, and while there is no polling evidence to prove or to disprove that proposition, there is evidence that in some quarters he was less than warmly received. The anti-Administration newspaper, *Aurora* castigated him as a debaucher of the political system that he had helped to establish. In effect, no one was spared. Jay's Treaty was probably the central issue, and Pierre Adet, the new French emissary replacing Genêt, issued indiscreet threats about the French treating American shipping the same way the British had – confiscation and impressments that the Jay Commission was supposed to resolve and did not – if the Treaty were to be enforced. Whether orchestrated by anti-Administration forces or attributable strictly to Frenchman's misreading of the American mood remains unclear;

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nonetheless it backfired. What may have made matters worse for the Republicans was that while Madison disowned Adet's remarks, Jefferson by remaining silent did not.¹⁹¹

Various sidebars on the campaign and election can be both puzzling and enlightening: both Adams and Hamilton embraced the principles of Federalist Party but barely embraced each other, and both Jefferson and Madison, up to their ears in manipulations and strategies that gave birth to the Republican Party, stopped corresponding and meeting from the adjournment of the Congress in June to the election in November so as not to lend any credence to the obvious existence of a presidential campaign (the Republican caucus in Congress under Madison had endorsed Jefferson). The principals excused themselves from any obligation to address campaign issues that their proxies took public positions on.¹⁹² Displeasure with administration of Washington or more precisely the Hamiltonian approach was widespread but had not yet coalesced to the degree that was needed to discredit the Federalists. Externally-induced fears weighed heavily on the young republic. Americans may have been proud of the noble experiment launched by the Revolution and the Constitution, but pride was a sentiment and not a power. Once the elections were over and the Fourth Congress convened for its final session (and Madison's too) Madison and Jefferson resumed correspondence. Electors either appointed by state legislatures or elected by popular ballot were convening to cast their votes for president and vice-president that resulted in the odd outcome. Madison, having returned to Philadelphia, was following these events in the various state capitols. At one point, based on the information he received, he thought that Adams's running mate, Thomas Pinckney, might be the winner and Adams would become his vice-president. He was unsure how to advise Jefferson, although, to be prepared for an end to his repose at Monticello or for a continuation. Jefferson's responses have struck some as disingenuous – more or less I am prepared for whatever happens, I truly wish to come in second or third, I sincerely believe that you Madison deserve to the head of the government, and so forth. As I reread these letters after having first read them 40 years ago I am no closer to divining Jefferson's state of mind now than before. Was Jefferson the Sphinx that Ellis portrays, was he playing political games or was he like many of us who have trouble deciding feeling ambivalent? I do not know the answer except I am prepared to take Jefferson at his word – unsure of his course of action.

Madison seemed to sense that. Toward the end of December as returns from four states had not yet arrived (unlike our world of instantaneous election returns) Madison

¹⁹¹A brief but useful summary may be found in "The Election of 1796", Smith, ed., *The Republic of Letters*, 2:940-948.

¹⁹²Much has been written about the way in which this first campaign evolved, and two of the most recent are Chernow, *Alexander Hamilton*, 503-516 and Ellis, *American Sphinx*, 162-168.

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speculated that Adams would not fail, Pinckney would be third and Jefferson must prepare himself for second in command. He told Jefferson not to refuse the call:

your neighborhood to *Adams* may have a valuable effect on his councils particularly in relation to our external system. You know that *his feelings* will not *enslave him to the example of his predecessor*. It is certain that his *censures of our paper systems* and the intrigues at *New York for setting P. above him* have fixed an *enmity with the British faction*. Nor should he pass for nothing, that the *true interest of New England* particularly requires reconciliation with France as the road to her commerce.

But then Madison had to warn that the success from sharing a “neighborhood” of friendship and respect would ultimately turn on how fully Adams embraced his previously stated “*political principles and prejudices*.”¹⁹³ Jefferson’s response (on New Years’ Day 1797) has acquired much notice for several reasons. He referred to the history of the New England town meeting where differences would be aired but then sacrificed “to the great object of operating in phalanx”, and that was how with the complement of other northern and eastern states this election was determined. He remarked that he had always thought himself junior to Adams and therefore his willingness to stand in election against Adams was “to put our vessel on her republican tack before she should be thrown too much to leeward of her true principles.” Finally he commented at length on Hamilton’s alleged perfidy to incite an insurrection if Jefferson and the Republicans assumed control of the government. Jefferson made clear to Madison that if Adams could be induced to administer the government “on it’s [sic] true principles, and to relinquish his bias to the English constitution”, then a “sure barrier against Hamilton’s getting in” would be erected. Even before writing to Madison, however, Jefferson had written a letter to Adams that he had not yet sent but now enclosed for Madison’s to read and if appropriate deliver. He repeated to Adams “I have no ambition to govern men”, but then went on to encourage Adams “to shun for this war” [against France] that will destroy our economy. In a subsequent letter Jefferson made it clear to Madison that if this were to be a divided government, he would not join the Cabinet but would instead perform his “legislative” duties as presiding officer of the Senate. Madison’s reply informed Jefferson that he had not forwarded the letter to Adams because it said that Adams was already aware of Jefferson’s sentiments and the letter contained some language that might endanger their friendship, although in fact Madison had leaked the contents to Benjamin Rush who passed them along to Adams.

¹⁹³Madison to Jefferson, 19 December 1796 in Smith, ed., *The Republic of Letters*, 2:950-951.

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By February 1797 the electoral vote had been tallied and validated (even though Vermont's vote was challenged) and the opposing presidential candidates assumed their respective offices. Despite some good feeling toward an Adams's presidency Madison's final correspondence to Jefferson concerning foreign relations and tax matters before he left Congress was not so encouraging. In retrospect we know that despite their neighborliness Adams's principles and prejudices became an insurmountable obstacle to modifying the course of the government.¹⁹⁴

Adams's Presidency was full of controversies and surprises. Historians disagree about the man and the President. His grumpiness about public life was well-known – “I hate speeches, messages, addresses and answers, proclamations, and such affected, studied, contraband things” in a letter to his wife Abigail – but so was his ambition to lead the nation. He was aware of how difficult it would be to follow in Washington's footsteps and to manage the wing of the party that was allied with Hamilton whom Adams did not trust and may not have liked.¹⁹⁵ His long absences from Philadelphia more or less allowed his Cabinet with their ties to the Hamilton wing of the Federalist Party to set a course that Adams himself had he assumed a more direct leadership role might not have chosen.¹⁹⁶ It would appear from the way in which the Adams's Presidency evolved against the backdrop of the first contested presidential election was that the Federalists lacked direction and discipline in the same proportion that the Republicans exhibited these qualities. The immediate and most contentious issue facing Adams was the rising French intervention with American shipping because of French anger over Jay's Treaty. He dispatched a mission to France to try to resolve the differences, and a year later in a message to Congress he announced that the mission had failed. The French demand for a loan and a bribe, to which the mission took several months to reply, doomed the diplomatic effort. Hamilton and his wing wanted a reason for boosting the military, and French ineptness handed them their cause. Hamilton and many members of Congress worked to put the United States on a war footing only to have Adams who opposed a war with France dispatch a second mission in early 1799 that negotiated a settlement

¹⁹⁴Jefferson to Madison, 1 January 1797, Madison to Jefferson, 15 January 1797, Jefferson to Madison, 22 January 1797 and 30 January 1797, Madison to Jefferson, 5 February and 11 February 1797. Jefferson underscored his legislative role and downplayed his executive role because he did not want to be privy to Cabinet debates that he feared may further erode republican principles that he might become associated with. To assume primarily a legislative role except where the Constitution specified otherwise was not by Jefferson's own admission a direct expression but rather in the spirit of the charter. Construing the Constitution was almost always dictated by circumstance.

¹⁹⁵Quote from Chernow, *Alexander Hamilton*, 523, who cited Joseph Ellis, *Founding Brothers: The Revolutionary Generation* (New York: Alfred Knopf, 2000), 176. His wish to be a national leader stressed in an older, more sympathetic study by Stephan Kurtz, *The Presidency of John Adams. The Collapse of the Federalist Party, 1795-1800* (Philadelphia, PA: University of Pennsylvania Press, 1957), 99.

¹⁹⁶David McCullough, *John Adams* (New York: Simon Shuster, 2001), 471.

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just prior to the next presidential election in 1800. Republicans found themselves in a difficult position, especially after Adams made all the correspondence concerning the XYZ Affair, the name given to the attempted bribe, public. They tried to make the case for focusing on internal defense rather mobilizing an army or navy for an actual war with France. The edge belonged to the Federalist until, that is, the Alien and Sedition Acts that passed Congress in the summer of 1798 as an added measure of protection. Consisting of a series of acts on aliens and naturalization (by which they could become citizens) and on public opposition to government policies and activities. The Sedition Acts raised an outcry, especially after the conviction of about a dozen, all of whom were Republicans. Federalists tried to defend Alien and Sedition as necessary because the nation was on a war footing, and the republicans attacked them as not only unconstitutional but also evil. While schism within the Federalist Party over Adams's leadership widened, the Republicans found in Alien and Sedition a reason to consolidate around what they saw as a miscarriage of justice directed primarily at them.

The passage and enforcement of Alien and Sedition produced a watershed event – the Virginia and Kentucky Resolutions of 1798. What many critics had been saying in newspapers and pamphlet or like Jefferson and Madison in coded correspondence about the nation's anti-republican course would now be officially sanctified in legislative resolutions. These resolution threatened disunion, the feared topic that prominent leaders, even though in disagreement, did not want to broach too openly. Threats of secession or acts of defiance in the face of national laws, which citizens found abhorrent, were not strictly a southern or Republican strategy. New Englanders had entertained such thoughts. It was never explained what citizens should do if government policies with which they disagreed remained in effect or were expanded. The opposing camps had to deal with their own extremists, but what united each camp was an attitude that more or less government would best serve national and individual goals. Thus, when the anti-Administration forces, later the Republicans, began to challenge the Administration and its leadership mainly by trying to elect more anti-Administration House members, some of the government's staunchest supporters (who later would be referred to as High Federalists) entertained the idea that if the union continued along the lines delineated in the words and actions of the opposition, they might decide to bolt. The concept of a union had not yet acquired the caché that it would come to enjoy decades. In the first decade and for several thereafter it was treated by some as an experiment. Even if fully committed to a long, durable union, as some professed to be, creation of the union did not automatically lead to the perpetuity of the union. Americans had relatively little experience in acting through a larger political entity. The vision of a Hamilton could be countered by the vision of a Jefferson without crossing

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any common ground. In 1794, when the opposition was successfully raising roadblocks to proposals that would have broadened the national government's role in economic, military and diplomatic areas and when outspoken critics like John Taylor urged even more opposition through some organized political vehicle, the response of some Administration stalwarts was unmistakably anti-union. Taylor, then a member of the Senate, was approached by Rufus King, Senator from New York, for a conversation about the prospect for disunion. King, a New Englander by upbringing, had been a member of the Constitution Convention and an ally of Alexander Hamilton. According to a memorandum prepared by Taylor and sent to Madison, then Chairman of the Ways and Means Committee, with a summary of the meeting, King made it clear that the union could not survive. The specific reason was the loss of seats held by Federalists in South Carolina. What the loss did was to reinforce the division between the "southern and eastern people" who had different views about political systems. Without any Federalist representation in the South the southern states could now dominate the government, a situation that the northern or "eastern" people would not tolerate. Since disunion was coming, King proposed to Taylor whom he viewed (perhaps incorrectly) as one of the southern leaders who was persuaded that disunion by mutual consent was a certainty. Taylor represented himself as a unionist whose discontent was overridden by a belief that the majority in the nation still preferred union as opposed to disunion changed the subject from politicians to policies, informing King that the "national debt" was the "great stumbling block" to unity, and if it could be erased the nation could work on strengthening not dissolving the Union.¹⁹⁷ The debt was preferable to other modes responded King. Regardless of the mode chosen, he believed, as reported by Taylor, that disagreeing over policy was a minor irritant, and what fundamentally separated the two regions was that they did not like each other and never would like each other. Moreover, added King, as reported by Taylor, any attempt to reconcile would be rejected by Madison who was motivated by mischievous designs in order to control the government.¹⁹⁸ Was this a real threat or a concocted threat? The thought must have crossed Taylor's mind because he asserted without qualification that this was a serious effort to dismantle the Union: "the assurances – the manner – the earnestness – and the countenances, with which the idea was uttered, all disclosed the most serious intention."¹⁹⁹ Despite Taylor's own acknowledgement that he enjoyed good and vigorous conversations, this conversation clearly worried him enough to write the

¹⁹⁷John Taylor, *Disunion Sentiment in Congress in 1794*, Gaillard Hunt, editor, (Washington: Lowderville & Company, 1905), 21.

¹⁹⁸Taylor, *Disunion*, 22.

¹⁹⁹Taylor, *Disunion*, 22-23.

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memorandum to Madison. Madison received the memorandum and then apparently sealed it. It was only published more than a century later, and the question that Madison's concealment raised was whether Madison took it as seriously as Taylor. Disunion was not a subject with which the leading political lights wanted to be directly associated, but it was certainly a part of their ongoing private dialogue and a part of the public debate by their adherents and supporters. The divisions between North and South will only grow more profound over time, but they were already fairly deeply-rooted in the minds of some early leaders. Whether King spoke only for himself or for others cannot be determined. Taylor and Madison took him seriously, and they took him seriously because defiance, disobedience, disunion were all strategies at the ready as the nation tried to figure out how much or how little government was required. Several years later when King's Federalist had repossessed the driver's seat, the back seat had different occupants who did not like the way the car was being driven and wanted out.

In retrospect, Alien and Sedition seemed like a reckless course for Federalists to follow given the rising opposition during the 1790s to the policies and practices that they had pursued. While Washington could retain his popular base across the political spectrum, Adams and Hamilton and their strongest supporters could not. Pro-Administration forces and then Federalist Party had long complained of the behavior of the press. Scores of newspapers opened for business and often took sides without much interest in "fair and balanced" reportage. Both the Republican and Federalist press engaged in slamming the views of their opponents and were guilty of scurrilous attacks and counter attacks. Once in control of the government after the Election of 1796 the Federalists were determined to muzzle the political press. John Adams along with his outspoken wife, Abigail, had denounced the Republican press with such words as wicked, base and malicious, and Abigail went so far as to state that in other countries such newspapers would have been seized.²⁰⁰ But despite John's (and Abigail's) disgust over how the press behaved, he did not want history to cast him as the instigator of Alien and Sedition, which he soon realized was a mistake. Adams was prickly about criticism and while he probably played a passive role in the birth and evolution of the legislation, he certainly did not attempt to stop his party in Congress from enacting it. As he was wont to do, he blamed someone else, and in this as in other controversial matters he blamed Hamilton. Chernow consulting Hamilton's own memos and papers could find no evidence that Hamilton was an instigator. After his first reading of the legislation he admitted to friends and colleagues that the laws appeared to be too stringent and exclusionary – "Let us not establish a tyranny" – but after revisions he endorsed Alien and Sedition. Since Hamilton was often the subject of the vilifying Republican press,

²⁰⁰Citing Chernow, *Alexander Hamilton*, 570-571.

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one may have some sympathy for his endorsement of the revised legislation.²⁰¹ One may also ask, where were his political instincts? As Republican leaders had surmised, whatever political advantages the Federalists had gained from the XYZ Affair, they surrendered with Alien and Sedition. The Republican press made it clear that Alien and Sedition was directed at the Federalist opposition, not at the general press, and as Republican editors were being rounded up for what was said to be seditious behavior, their outcry against Alien and Sedition and especially its eroding effect on the First Amendment found an audience. Still the Republican strategy was not immediately apparent.

Although Alien and Sedition was not passed until 1798, Virginia was caught up in a case a year earlier that presaged how divisive the accusation of sedition could be. A member of Congress, Samuel Cabell, from Jefferson's own district, had circulated a letter to his constituents in which he criticized the government of Adams and the policies of Federalists. A member of the federal judiciary convened a grand jury to inquire if a presentment was in order to discipline a representative for criticizing the government. This may strike us two centuries later as incomprehensible, but this was not two centuries before so incomprehensible. Even though the First Amendment guaranteed free speech, the meaning of free speech was evolving. The grand jury upon hearing testimony (in secret) concluded that Cabell and other representatives wrote communiqués that constituted "real evil" because in a period of "public danger" to the nation (Jay's Treaty *et al.*) they had "disseminated unfounded calumnies against the happy government" (of the US) and have tried "thereby to separate the people therefrom; and to increase or influence a foreign influence, ruinous to the peace, happiness, and independence of these United States."²⁰² Jefferson more or less led the fight to discredit the grand jury, surreptitiously, of course, because, as the sitting Vice-President and presiding officer of the Senate, he had to show some discretion. Working behind the scenes also suited Jefferson over leading the charge. In the past Jefferson like his peers had expressed concerns about how much public criticism was appropriate in this new constitutional experience. In a letter to Thomas Pinckney, a member of Congress from South Carolina, before becoming involved in the Cabell matter, he noted that the political disputes were being played out in much higher relief than before. "I fear that this is inseparable from the different constitutions of the human mind, and that degree of freedom which permits unrestrained expression." Unavoidable though it may be, "Political dissension is doubtless a less evil than the lethargy of despotism: but still

²⁰¹Chernow, *Alexander Hamilton*, 571-572. For a defense of Hamilton's behavior see p. 572.

²⁰²From a petition written by Jefferson (3 August 1797) to be presented to the Virginia House of Burgesses concerning the Cabell Affair in Boyd, ed., *Papers of Thomas Jefferson*, 29:501.

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it is a great evil, and it would be as worthy the efforts of the patriot as of the philosopher, to exclude it's influence if possible, from social life.” Jefferson doubted that a society could be perfected to the point where differences became inoffensive, and he was fearful that the present “hue and cry” over public policy might result in nothing less than war.²⁰³ Despite the risk of stirring up trouble for himself and the Republicans Jefferson prepared a petition to be submitted to the Virginia House of Delegates on behalf of the citizens of several counties including Albemarle where he lived and which Cabell represented. Jefferson sent the original petition to Madison for comment, and this led to revisions. The basic argument was that citizens had the freedom to communicate among themselves – “a natural right of every individual citizen, not the gift of municipal” – and by empaneling a grand jury to investigate such communications that freedom was compromised. Even though a federal judge empaneled the grand jury, the House of Delegates (Legislature) was responsible under the Virginia Constitution for protecting the rights of its citizens and for punishing those who violate their rights. The petitioners were asking the House to offer redress for the crimes that the grand jury committed against the elected officials and the citizens that they served.²⁰⁴ Since the Vice-President did not want to be seen as the originator of the petition – he warned correspondents not to reveal his identity – the submission of the petition after further editing by Madison, Monroe and others to the House of Delegates was probably assigned to Wilson Cary Nicholas, a resident of Albemarle County, in October 1797. Monroe indicated some reluctance not over the contents but rather over the tactics. Should not the petition be addressed to the House of Representative because the grand jury was convened at the request of a federal judge?²⁰⁵ In his reply to Monroe Jefferson acknowledged that the House of Representatives may be the appropriate body to petition except under its current makeup such a petition would be rejected. Further the “right of free correspondence” was not derived from the Constitution, Congress or any negotiated treaty but was granted “by nature”. “It is therefore not alienated, but remains under the protection of our courts.” On a more practical level the “General Government” was inclined to seize “all doubtful ground. We must join in the scramble, or get nothing.” In a telling phrase of what, unknown to Jefferson at the time, will test the relationship between the states and the national government, the Vice-President wrote: “It is of immense consequence that the States retain as complete authority as possible over their own citizens.” Perhaps not too much should be read into this last

²⁰³Jefferson to Thomas Pinckney, 29 May 1797, in Boyd, ed., *Papers of Thomas Jefferson*, 29:404-405.

²⁰⁴Petition to the Virginia House of Delegates [ca 3 August 1797] and Revised Petition to the Virginia House of Delegates [7 August-7 September 1797] in Boyd, ed., *Papers of Thomas Jefferson*, 29:493-504 with notes.

²⁰⁵Monroe to Jefferson, 5 September 1797, in Boyd, ed., *Papers of Thomas Jefferson*, 29:524.

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sentence. In a postscript he admitted that Congress had the authority to punish Cabell if he breached any House protocol, but at the same time he insisted that it had no power to redress the wrong inflicted on Virginia citizens. Only the State could remedy that.²⁰⁶ Once the House of Delegates received the petition it prepared, debated and approved a resolution that declared the House had a duty to correct political errors that diminished the rights of the citizens, in this case by punishing a representative for communicating with them. The House did not provide for any punishment and did not even forward the resolution for action by the upper branch. And there the matter came to end in late 1797 or early 1798. The Cabell controversy served as a practice session for what will become the strategy against Alien and Sedition.²⁰⁷

The XYZ Affair, made public to Congress by Adams in the spring of 1798, caused no small amount of grief and consternation among Republicans, who generally were pro-French and anti-British. How should this impropriety be explained or rationalized? A few weeks after Adams's revelation Madison wrote Jefferson of his frustration: "The conduct of Talleyrand is so extraordinary as to be scarcely creditable...Its unparalleled stupidity is what fills one with astonishment." Madison could not understand how Talleyrand who knew America firsthand could be so inept in dealing with the American commissioners. Surely he knew that the nation would learn of these negotiations because secrecy even in diplomatic affairs was much harder to maintain in a democratic society. Worse of all, the disclosure will only add urgency to the call for the nation to prepare for war.²⁰⁸ Indeed much of the correspondence between Jefferson and Madison in the late spring of 1798 concerned how the Congress might vote on measures that placed the nation on a war footing. In midst of the debate about the military Jefferson informed Madison of the introduction of bills regarding the status of aliens and the punishment of critics (alien and domestic) of the government. According to Jefferson, Albert Gallatin, a prominent Republican editor who was an alien, would be a primary target for deportation under the alien bill, and Benjamin Franklin Bache, editor of the Philadelphia-based, pro-Republican *Aurora* and grandson of Benjamin Franklin, a primary target under the sedition bill. Other aliens and editors were said to be in the crosshairs.²⁰⁹ Not all Federalists including the President himself believed that war with France was wise. Adams preferred to strengthen America's defenses. Either course would require new taxes. For the first time the Federalist Congress passed and the

²⁰⁶Jefferson to Monroe, 7 September 1797, in Boyd, ed., *Papers of Thomas Jefferson*, 29:526-527.

²⁰⁷See "Editorial Note" in Boyd, ed., *Papers of Thomas Jefferson*, 29:491-493.

²⁰⁸Madison to Jefferson, 15 April 1798, in Smith, ed., *The Republic of Letters*, 2:1036-1037.

²⁰⁹Jefferson to Madison, 26 April 1798, in Smith, ed., *The Republic of Letters*, 2:1041-1042.

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President signed in the summer 1798 federal property taxes. These were direct taxes, and under the Constitution they had to be apportioned among the states based on population. The tax was levied against dwellings, land and slaves. In addition to the names and occupations of the owners, the assessment rolls contained detailed information on square footage, stories and windows, and construction materials in buildings, the condition of the land and the number of slaves, and they covered not only private homes but also mills and shops. The amount of the tax (two million dollars) to be collected was apportioned among the states by population, and once collected the tax expired.²¹⁰

The double whammy that the Republicans had perennially feared (perhaps more than monopolies) was falling into place: a standing army financed by federal taxes. This combination was so feared because it resembled the way in which the British government had extended its rule over the colonies leading up to Independence. Indeed, the Republican polemicists often used this deadly duo to illustrate how governments eroded the sovereignty of the individual. Madison averred that if commerce with France were ended, agriculture in America would suffer because the lack of markets would push down prices (“Already flour is down, I hear at 4 dollars a barrel.”) at the same time that farmers had to pay federal property taxes. Madison speculated that Great Britain would also suffer unexpectedly because without income Americans could ill afford to buy imported English manufactures. With reference to Adams, Madison quoted Franklin: “Always an honest man, often a wise one, but sometimes wholly out of his senses.”²¹¹ A few days later Jefferson brought Madison up to date on the progress of the various bills that were keeping the Congress in session longer than he had expected. Indeed he reported that the leadership had announced that Congress may adjourn between July and October, a prospect that left Jefferson worried because of the further legislative damage that a longer session permitted.²¹² In what appears to be the last letter before Jefferson departed for Virginia, he lamented to Madison that as the government moved down this path of war and taxes there was no end to the drumbeat of treachery

²¹⁰Separate bills had been introduced to set the assessments and then to fix the taxes. At the same time the Congress was considering bills to prohibit trade with France and to expand the navy and to revise the residency requirement for aliens seeking citizenship. See Jefferson to Madison, 14 June 1798, in Smith, ed., *The Republic of Letters*, 2:1059-1060. With respect to the citizenship question, Jefferson reported that both parties favored a period of years from 7 to 14 because both feared that the pending war in Europe could result in a deluge of “democrats”, which the Federalists wanted to avoid, and a deluge of aristocrats, which the Republicans wanted to avoid. The Alien Bill, as finally passed, probably posed more of an immediate threat to Republicans than to Federalists.

²¹¹Madison to Jefferson, 10 June 1798, in Smith, ed., *The Republic of Letters*, 2:1058.

²¹²Jefferson to Madison, 14 June 1798, in Smith, ed., *The Republic of Letters*, 2:1059-1060. In response to Madison’s flour-price data, Jefferson reported that Maryland flour sold for between \$3.50 and \$4 a bushel with farmers having to hold onto much of the flour produced last year because of the lack of buyers (p. 1060).

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committed by Republicans.²¹³ As Jefferson whose horses had awaited the trip to Monticello since late June began his journey in early July before the Sedition Act was passed and the Congress officially adjourned and perhaps most importantly Bache had been arrested even before the Sedition Act went into effect, he may well have begun to contemplate what reprisals to take against a Federalist machine that struck him as out of control.

And then came the outcry over Alien and Sedition that tended to eclipse the war-tax controversy as the issue of the day. (Growing hostilities between England and France also helped to divert attention from the XYZ Affair.) It is probable that Jefferson and perhaps Madison and others had already decided not to let Alien and Sedition to go unchallenged, even though some like Monroe counseled caution since the acts themselves would ultimately lead to the blowup of the Federalist Party. Thus, historians have argued about whether Alien and Sedition on its own could have aroused the passionate opposition without the efforts of prominent Republicans to fan the flames or whether the more the citizenry came to know about Alien and Sedition the more outraged they would become on their own. The debate on Sedition, which Jefferson missed, was especially vituperative, to the point that Jefferson was described variously as a friend and ally of the arrested Bache. Jefferson was stung by the criticism directed at him, but he was also made more defiant by it. By the end of the summer he was ready to retaliate. In September he had composed a piece that has come to be known as the Kentucky Resolutions, perhaps the strongest protest yet against the form of government preferred by Federalists. The Resolutions were delivered to the Kentucky Legislature by John Breckenridge, a former Virginian, who was then serving as Kentucky's representative to the US House and was a friend of Jefferson. In mid-November he forwarded a copy to Madison who was preparing similar resolutions to be submitted to the Virginia Legislature. Madison may have read an earlier draft during a visit in October, but he apparently was not consulted on the final draft. Jefferson's accompanying letter strongly suggested that "we" – Jefferson and Madison – "should distinctly affirm all the important principles", hold to these principles and push them as far as necessary and wise.²¹⁴ Madison could not in good conscious follow the lead of Jefferson, and his Virginia resolutions will assume a more moderate tone. Before Madison completed his draft, he received copy of Jefferson's draft on 17 November 1799, that day that Jefferson's Resolutions were passed with few modifications by the Kentucky Legislature and signed by the governor. (A year later a briefer and less

²¹³Jefferson to Madison, 21 June 1798, in Smith, ed., *The Republic of Letters*, 2:1060-1061.

²¹⁴Jefferson to Madison, 17 November 1798, in Smith, ed., *The Republic of Letters*, 2:1079-1080.

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incendiary set of Kentucky Resolutions were be affirmed by the Kentucky Legislature.) Madison's final draft was carried to Richmond by Wilson Cary Nicholas and was introduced by John Taylor who after leaving the US Senate had become a member of the House of Delegates, and was approved in mid-December 1798. In the 1798 congressional elections the Federalists extended their margins in the House and Senate in spite of a growing backlash against the Adams Administration over Alien and Sedition. Glum though Republicans were, the Kentucky and Virginia Resolutions were viewed as more timely and urgent than ever. The debate among the leaders was how far to go with the protest, and on that the two principals – Jefferson and Madison – disagreed. Jefferson went further than his friend and compatriot, and the more that Madison resisted the more Jefferson leaned on him. Madison stood his ground. The results was that they agreed that the federal government could be challenged when states (more correctly their legislatures) viewed federal laws as inimical to the interests of their citizens and they disagreed on how far the states could go in trying to remedy federal actions.²¹⁵

Jefferson's drafts take an aggressive stance. The initial draft consisted of eight resolves of varying length. The first one set out the argument: the states were not united on the principle of "unlimited submission to their general government" and they consented to a general government that was defined by specific, delegated powers. The subsequent resolves laid out in lawyerly language the unconstitutionality of Alien and Sedition and perhaps in his most controversial pronouncements the remedies. Jefferson distinguished between abusing delegated powers and assuming undelegated powers: in the first instance the proper remedy was for the people to amend the charter; in the second instance the proper remedy was for states to declare null and void those federal laws that diminished their obligations to protect their citizens.²¹⁶ Commenting on political affairs, potentially seditious under Alien and Sedition, made the states subservient to a national political standard that could erode the power-sharing arrangement between the general government and the states. It has been pointed out that the term state legislature seldom appeared in the documents, and instead the preference was for the term state in the sense of a specific collection of people in a specific location. There were also few references to the sovereign citizen, although Jefferson's analysis made it clear that the people could suffer because of how the federal government usurped state authority. Even among Jefferson's own allies, there was dismay that he had gone too far by

²¹⁵Much has been written about Alien and Sedition and Kentucky and Virginia Resolutions. A good summary of the events and the roles of Jefferson, Madison and their allies can be found in Smith, ed., *The Republic of Letters*, 2:1063-1075.

²¹⁶Jefferson's Draft of the Kentucky Resolution of 1798 in Smith, ed., *The Republic of Letters*, 2:1080-1084, especially first and eighth *Resolved*.

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including such words or phrases as “void”, “null” and “of no force”. These words conjured up images of states under the Confederation being able to oppose national law and refusing to enforce it. The question of what states could or should do if the national government approved laws that the states disapproved was raised but never satisfactorily addressed in terms of specific remedies. Now, it had happened on a far more serious scale than ever before, and given that the entrenched positions of the opposing parties offered little opportunity for compromise, the fallback to null and void remedies appeared the only viable options. It is doubtful that Jefferson envisioned a resurrection of the abandoned Confederation, but under the circumstances – and this may be often overlooked – where so many violations of the Constitution with reference to Alien and Sedition existed the states on behalf of the citizenry had a duty to undertake some actions beyond simply making protests to stop the erosion of the authority of the state and to reverse the course of the nation. The Kentucky Resolutions put in formal legislative language what some anti-government forces had been saying publicly with different voices since Washington’s first term.

Madison’s more moderate and less specific plan of action was based a fear that the nation could not survive under a system where states could intercede in a way to nullify or disobey the will of Congress, even if done on a selective basis. More than one historian has pointed out that this difference in attitude was fully manifest in their respective roles in the birth of the nation: Jefferson’s wrote the document justifying rebellion and Madison the document creating government. Madison’s draft, which was passed just one day before Christmas 1798, expressed warm affection for the Constitution and the government of the United States and then expressed regret that the national government had violated the compact to which all states were parties by the Congress passing and the President signing Alien and Sedition. For Madison Alien and Sedition eroded the basic liberties specifically guaranteed in the First Amendment. Asking other states to join Virginia (as Jefferson’s draft had asked on behalf of Kentucky) in declaring such actions unconstitutional, Madison draft fell short of specifying any specific remedies such as calls to declare acts null or void or to disobey them. Presumably, in his view the Congress with pressure from the states would see the error of its ways and rescind the objectionable legislation. Moral suasion versus direct action.²¹⁷ Not everyone was happy with Madison’s moderate protest. In fact, Jefferson, while Madison was away from his home, tried to persuade the House of Delegates to

²¹⁷Copies of the Virginia Resolutions (as well as the Kentucky Resolutions) can be found at numerous on-line web sites. At http://avalon.law.yale.edu/18th_century/virres.asp, http://avalon.law.yale.edu/18th_century/kenres.asp, http://avalon.law.yale.edu/18th_century/alien.asp & http://avalon.law.yale.edu/18th_century/sedact.asp, One can read the Acts themselves and the Resolutions. The Acts can also be found under “Statutes -at-Large,” at <http://memory.loc.gov/ammem/amlaw/lwsl.html>.

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add more provocative language, not unlike the allusion to nullification in Kentucky's Resolutions. Madison's draft lacked the punch of Jefferson draft because it was briefer and lacked a plan of action. Taken together, of course, they represented the first formal challenge and therefore could not be ignored.²¹⁸

The events surrounding the Resolutions and the participants have been studied extensively. Almost every sentence has been pried apart to try to determine what the authors, in particular Jefferson, had in mind. The ultimate attraction to these documents is understandable. A decade after the Constitution was ratified and a quarter century after the Declaration was proclaimed, the nation was confronted with a fundamental dilemma. Was the national government so off course that the opposition had justification to threaten if not disunion at least disobedience? Off course though it may be, the opposition could not agree on a plan of action. Among the editors and pamphleteers disunion was only rarely advocated. Disobedience, on the other hand, (recall the Carriage Tax) was more openly advocated. It was certainly true that eighteenth-century Americans had a much stronger attachment to the Declaration than the Constitution and to state government than national government. Central government was still a work in progress, and based on the first decade it had not endeared itself to everyone. There was some truth to view that too many had unrealistic expectations about how a central government should and would function. The experience of state government did not translate easily into central government because the central government by its very existence was more than the sum of its parts. It could be expected to ruffle feathers and overturn conventions. It had the task of juggling and mediating a multitude of differing and conflicting interests among the parties to the compact. Governing was proving to be a messy business. Nonetheless, even though Jefferson and Madison understood the difficulties better than most, that elected officials must make choices that will not be immediately greeted with acceptance, they were themselves so alarmed at the shape and the direction of the national government under the Federalists that they were willing to test the sentiments of citizens or their representatives on the preservation of the union. Should this union be preserved in the form that it was taking under the Federalists? For critics like John Taylor argued that the messiness was self-induced. When interests trumped principles, this was the result. Once it occurred, the tendency was to demand more government and not less. States in his opinion (not all would agree), had done a better job of sticking with principles that limited the role of government and thereby preserved the sovereignty of the individual. Liberty stood a better chance under limited local government than under expansive

²¹⁸For summary see Smith, ed., *The Republic of Letters*, 2:1070-1075.

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national government. Actions like the Kentucky and Virginia Resolutions were necessary to the national government to his constitutional foundations.

Part of the historical debate over Kentucky and Virginia has concerned the precedent that such resolutions would set. The national government facing constant review of its legislative and executive actions would ultimately paralyze the government. This was a legitimate concern, and it led opposition leaders like Madison to tread lightly. It must look more fearful 200 years later than it looked ten years after ratification. In the minds of some opponents the future prospects under the Federalists looked far more dangerous than stern responses to their policies. Six months before the Resolutions controversy and the Federalists' triumphal elections John Taylor of Caroline wrote Jefferson that "Indeed I am unable to discuss any natural political state; not only as a political state is the antithesis to a state of nature, but as all countries and nations seem liable to revolutions in government, and even in character, from artificial causes." For Taylor could even the best of constitutions or the best of administrations defeat "wicked propensities"? He did not see himself as so distant from Jefferson's own observations about the current crises: "Admitting...that individuals [Federalists] have robbed liberty of its ascendancy, so as to be able to convert the resources of the nation to the purpose of buying and supporting a party, can any remedy exist, except that of depriving individuals of this ascendancy, and restoring it, not to other individuals, but to liberty? What endowed them with it? The form of government. What will deprive them of it? A reformation of that form." How long, asked Taylor rhetorically, should the ascendancy be allowed? "How many years will bring it to decrepitude?" Taylor wrote as if the majority of the citizenry was ready for action that would change the course of the government. "Where are the converts made during the late eventful periods of this policy? Has it not already lost the advantage of the locality of political opinion in some degree?" He had four recommendations designed to correct the nation's course: 1] extension of the vote and the abbreviation of tenure in office; 2] rotation in office; 3] new mode for abrogating [federal] law; and 4] annual tax laws. Points 1, 2 and 4 would raise few eyebrows because they had been publicly advocated since the beginning of the nation. The third while proposed from time to time was potentially more unsettling because it carried the seeds of disunion. Never an ardent friend of a national government Taylor went so far as to advance the principle that "The right of State government to expound the constitution, might possibly be made the basis of a movement towards its amendment. If this is insufficient, the people in state conventions, are incontrovertibly the contracting parties, and possessing the infringing rights, may

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proceed by orderly steps to attain the object.”²¹⁹ At the end of 1798, after Federalists had increased their majority in the House, Taylor became more dispirited. To Jefferson with whom he shared a deep devotion to the agricultural life he wrote: “It would be happy indeed for us, if agriculture and farming still continued to be interesting subjects---but alas! can we, when our house is on fire, be solicitous to save the kittens? How long is it to burn, or will it ever be extinguished? I would be almost content to save a single apartment.”²²⁰ A year or so later Taylor was still gloomy. “But I give up all for lost. The malady of all government is monopoly. This is creeping and creeping in to ours.”²²¹

Although the rhetoric over Alien and Sedition was fiery, how great was the threat of disunion? No polls existed then to measure sentiment for or against the union, but the threat of nullification or disobedience was several large steps away from taking direct action to dissolve the union. In fact, there was no prescribed course as to how that should happen. The Constitution did not contain (as one would hardly expect) procedures for “unratifying” the Constitution. Nor did the states have established procedures for opposing federal rule. The Constitution including its amendments had affirmed the rights of states without detailing what states should do when they believed their rights had been violated. Appeals by the states could be made to the Congress or the President or suits could be filed in federal court, but in the event that states were unsatisfied with the results of their appeals or suits, they had no other recourse except to try to elect representatives or select senators who would alter the offending legislation. Under the Articles of Confederation states could opt not to enforce the acts of Congress. The Constitution, however, had been written and approved as a measure to avoid the impasse that state vetoes could create in conducting national affairs. And yet by language or at least by inference the Resolutions by Jefferson and Madison declared that states could interpose their own sovereignty with respect to legislation that they objected to. How this could be accomplished without threatening the very foundation of a national government remained to be worked out. In fact, the risks portended by the Resolutions never came to fruition.²²² It cannot be determined with any certainty that Resolutions played much of a role outside of Kentucky and Virginia in galvanizing

²¹⁹Taylor to Jefferson, 6 June 1798, in “The Correspondence of John Taylor..., *Branch Historical Papers*, 275 and in Boyd, ed., *Papers of Thomas Jefferson*, 30:430-435.

²²⁰Taylor to Jefferson, before December 1798, in “The Correspondence of John Taylor..., *Branch Historical Papers*, 277, and in Boyd, ed., *Papers of Thomas Jefferson*, 30:601-602.

²²¹Taylor to Jefferson, 14 October 1799, in “The Correspondence of John Taylor..., *Branch Historical Papers*, 283.

²²²In the nineteenth century during the Jackson Presidency South Carolina will endorse a procedure for nullifying federal legislation that will later be used by southern states during the secession period.

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opposition to Alien and Sedition. Upon his return to Philadelphia Jefferson sensed that a backlash was developing. Federalists had made a tactical error. Even later historians, partial to the Federalists and in particular Adams and Hamilton, have expressed skepticism if not scorn for the Administration's ineptitude. Had their recent triumph at the ballot box blinded them to the political risks in the enforcement of Alien and Sedition? In all probability arrests of Republican editors and anti-Administration politicians for writing or speaking critically of the government did more to cast the Federalists as villains who had no respect for the Constitution and in particular the First Amendment than the Acts themselves. Jefferson returned to Philadelphia for the Third (and final) Session of the Fifth Congress that ended in March 1799.²²³ He noted the Congress under the control of Federalists had to dispose of several petitions from citizens who demanded that Alien and Sedition be repealed. The Federalists had the votes to block repeal, but they still had to address the petitions. A one-sided debate ensued when the committee assigned the petitions returned a bill that defended the constitutionality of Alien and Sedition.²²⁴ In April, after the Congress had adjourned, Jefferson wrote Edmund Pendleton, a much-revered Virginian (and John Taylor's guardian): "I observe, however, that it is running through all the republican papers, and with great effect, the moment too is favorable, as the tide is evidently turning & the public mind awaking from Marshall's X,Y,Z romance." [Virginia's John Marshall, a member of the American delegation, had played a less than scrupulous role in his handling of the report on the negotiations with the French and was much criticized in his own state.]²²⁵ The opposition appeared to be emboldened by the way in which events were unfolding.

Emboldened though they may be, the Republicans had to face the fact that in the November 1798 House races (for the Sixth Congress) they had lost seats – at least fourth – and that when the next Congress convened the Federalists would have a larger majority of a dozen or more seats. Since the First Session of the Sixth Congress did not begin until December, 1799, the party leaders had nine months in which to contemplate how to employ their new strength(Federalists) or to counter their recent decline (Republicans). Moreover, once the Sixth congress convened (December 1799) the next presidential and congressional elections were less than a year away. In spite of the 1798

²²³Generally each Congress met in two sessions, the first convening in December the year after the elections and the second in the following December a month after new elections. Upon occasion , such as the 5th Congress, there could be three sessions: the 1st Session began in May 1797, the 2nd Session in November 1797 and the 3rd Session in December 1798 after the November 1798 elections in which the Federalists gained seats.

²²⁴Jefferson to Madison, 26 February 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 31:64.

²²⁵ Thomas Jefferson to Edmund Pendleton, 22 April 1799 in Boyd, ed., *Papers of Thomas Jefferson*, 30:96-98.

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election returns and Taylor's glum appraisal, the blowback from Kentucky and Virginia was minimal without seriously eroding the Republican base. Between the election of 1798 and the First Session of the Sixth Congress (December 1799), even with a larger majority, the Federalists only augmented public censure by enforcing Alien and Sedition. convened If, as the Republican leaders had charged, the Federalists had played the fear card in the last elections, they had ample opportunity to engage in further such mischief. But the President himself, not enamored of the the most hawkish branch of the Federalist Party, largely under the control of Hamilton and his allies, altered the game plan. In the Spring 1800 Adams defied the War Hawks by authorizing a new commission to negotiate with France. It became known that France sought to mend its relations with the United States and would welcome a new delegation for discussions. (A new convention was signed after the next presidential election.) As the presidential and congressional contests took shape during the course of the year, talk of war receded and talk of misbehavior by Federalists increased. The election of 1800 became a referendum on "a form of government" that the Kentucky and Virginia Resolutions had declared to be inimical to what the framers had intended and therefore worthy of resistance.

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JEFFERSONIAN GOVERNING MODEL

In the decade since the ratification of the constitution the nation had to confront a potential divide over domestic policy followed by a real divide over foreign policy that spilled over into the domestic arena. That the new government had ultimate authority in the international arena was generally accepted as a given; its authority in the domestic arena was shared and in the mind of many was to be limited at most. Unexpectedly as foreign affairs began to intrude on the American experiment the assumed division between foreign and domestic became less distinct. Americans had their differences over how engaged the nation should be in the larger world and whom it should trust. Anti-British sentiment was strong and widespread in part because of flare-ups over Atlantic trade and western boundaries. Washington's overtures for reconciliation with Great Britain resulting in Jay's Treaty evoked definite regional responses. America's chief trading partner was Great Britain, and that trade provided the revenue needed by the Treasury to keep Hamilton's fiscal program afloat. In addition, the Treaty provided for a commission to settle the pre-Revolutionary debt, most of which was owed by Virginia planters. In short the opposition feared that the Treaty was another building block for a governmental edifice that would rule rather than serve the citizen. Jay's Treaty had implications for not just for US-British commercial relations but also for internal political disagreements. The negative reaction of France, England's longtime enemy and a minor but an increasingly important trading partner for certain US region, led to harassment of American shipping by a country that had been an ally since the Revolution and led to the call for war to defend the national interest. Nothing would impinge more directly on domestic politics than a declaration of and mobilization for war against France. That was precisely the course taken by the Hamilton wing of the Federalist Party. Despite Washington's embrace of neutrality and Adams's distrust of war-making, the Congress having passed into the control of the Federalists in 1796 set about to raise an army with Hamilton and Washington being assigned military prominent roles and to raise the revenue through new taxes and imposts. For the opposition this was the ultimate nightmare – more need to empower the national government in behalf of a dubious cause. Alien and Sedition were at times justified on the grounds that a nation preparing for war could hardly afford to tolerate aliens and critics in its midst. The confluence of foreign and domestic problems, which not a few Americans thought were concocted in order to redirect the American experiment, ended up where “angels might fear to tread”. Preparations for war-making and war-making itself cost money, normally affecting the citizen's pocketbook, and on that point taxing and thieving were often viewed as inseparable. Federalists had managed to secure

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“excises” on whiskey and carriages, but war taxes usually came in the form of direct taxes.

It is possible, of course, to misread the level of agitation within the citizenry based on the level of agitation expressed in the communiqués among Virginia’s political elite. No other state took up the cause proposed by Kentucky and Virginia, although several states witnessed public protests and demands for similar actions. Despite the fact that political alignments had become more sharply defined since 1794, there remained a degree of fluidity within the electorate. Since electoral laws varied from state to state – how many citizens could vote as well as the offices for which they could vote – the elections themselves did not fully reflect citizens’ political attitudes. Generally speaking Federalists had less faith in those institutions and practices that advanced popular government than Republicans. As Jefferson pointed out to John Wise, leader of the Virginia House of Delegates in 1798, the political spectrum was diverse in opinion and outlook.²²⁶ It had been reported to Wise that Jefferson in a conversation had referred to him as a “Tory”, a term that signified Federalist. Wise took offense and demanded an explanation.²²⁷ Jefferson’s reply could not have totally pleased Wise because, while regretting any impropriety. Jefferson said in frankness that on certain “public questions” Wise had concurred with “those who were on the side of Executive powers.” Jefferson made clear that such views had been expressed by “moral and good men”, but they were views that distinguished such men from the more republican views that sided with legislative powers. Indeed in his description of the political landscape Jefferson made the use of the executive against the legislative as central to what constituted true republicanism.

It is now well understood that two political sects have risen within the US. the one believing that the Executive is the branch of our Government which the most needs support; the other that, like the analogous branch in the English government, it is already too strong for the republican parts of the Constitution, and therefore, in equivocal cases, they incline to the Legislative powers. the former of these are called Federalists, sometimes Aristocrats or monocrats and sometimes tories, after the corresponding sect

²²⁶The letter itself has not been found, although copies in various forms exist and the letter is noted in Jefferson’s “Summary Journal of Letters” written in his own hand. Whatever the exact origin or intent of this letter, I am more interested in the manner by which Jefferson described the political landscape at a time that the politics of the nation were becoming more divisive. See the extended editorial note at the end of the letter. Letter from Jefferson to Wise, 12 February 1798, in Boyd, ed., *Papers of Thomas Jefferson*, 30:98-100.

²²⁷Wise to Jefferson, 28 January 1798, in Boyd, ed., *Papers of Thomas Jefferson*, 30:63-64.

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in the English government, of exactly the same definition: the latter are Stiled [sic] Republicans, Whigs, Jacobins, Anarchists, Disorganizers &c.

Jefferson claimed that these were familiar terms – Wise must certainly have known these terms and probably did not need to be lectured by Jefferson – and could not recollect exactly which term he used on the hotel conversation to which Wise objected. He added:

they are all well understood to designate persons are for Strengthening the Executive rather than the Legislative branches of the government. But probably I used the last of those terms [Tories], & for these reasons, both parties claim to be Federalists and Republicans, & I believe with truth, as to the great Mass of them: these appellations therefore designate neither exclusively: and all the others are Slanders, except those of Whig and tory, which alone characterize the Distinguishing principles of the two sects....

The phrase “both parties claim to be Federalists and Republicans” will show up in a modified form in Jefferson’s First Inaugural and spark controversy among historians. Here the use is unmistakable: theoretical constructs rather than political parties. The case being made by Jefferson was not unreasonable: both Tories and Whigs in America could claim to represent a system that embraced federal and republican principles, but the ultimate test was how those principles were actually executed. Jefferson leaves little doubt that favoring the executive over the legislative implied a questionable devotion to the basic principles.²²⁸ At the end of 1799 Wise lost his leadership post because he was thought to advocate gently, although sincerely, a plan for Virginia that echoed sentiments of a monarchical government.²²⁹

Historians look at events surrounding Alien and Sedition through different lenses. On the Republican side the fundamental differences between the two lions (Jefferson and Madison) of the Party suggested that not all were prepared to follow Jefferson down the potentially disunion path. The Kentucky Legislature, which had supported Jefferson’s original draft that included references to nullification, changed its stance a year later with a shorter and less threatening resolution. Even Madison, whose Virginia resolutions were milder, had to defend himself against charges of advocating disunion. On the Federalist side Hamilton was the leading advocate for more drastic action than had

²²⁸Jefferson to Wise, 12 February 1798, in Boyd, ed., *Papers of Thomas Jefferson*, 30:98-100.

²²⁹Thomas Mann Randolph to Jefferson, 3 December 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 31:250-251.

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already been taken and was willing to undercut the President himself. Where did the average Federalist or Republican or American stand on these developments that had yielded such differences of opinion among the most prominent leaders that one political element was willing to risk disunion and another war. Some sense of what might have been happening between the extremes can be observed in Pennsylvania. The locale was Northampton and Bucks Counties in Eastern Pennsylvania with a large German-American population. When the assessors arrived in 1799 to promulgate the provisions of the federal direct tax on homes, lands, slaves, etc., the farmers “fashioned” their own response under the leadership of one named Jacob Fries. Cooper, auctioneer, former militia officer and father of ten children, Fries had sparked the insurrection when he and a band of armed compatriots he led stormed a Bethlehem PA jail to free their fellow citizens who refused to pay the federal property tax. Reminiscent of Shays Rebellion in his own state a decade earlier and of the whiskey Rebellion a few years ago, Adams responded with a proclamation, which stated that the uprising was too serious to be settled through judicial proceedings and therefore it required the mobilization of the military. But since the task fell to the army, the leader of the suppression became Alexander Hamilton. Upon issuing the proclamation the President left Philadelphia for Quincy MA, and Hamilton and his closest Cabinet ally, Oliver Wolcott, lamenting the absence of the national leader at a time of a national crisis, were hardly reluctant to undertake the task. They deployed lots of troops, arrested hundreds of ordinary citizens and tried and eventually convicted the leaders. Hamilton and other High Federalists had argued that a military was required to defend borders and to suppress internal insurrections. What they did in the Fries Rebellion, as was done in the Whiskey Rebellion, was to treat disobedience, albeit somewhat violent, as insurrection, no less dangerous than invasion. It could be argued that both the Whiskey and the Fries Rebellions were on the wane at the time that federal forces arrived and intervened and each could have been settled without resort to military suppression. That may miss the point. Insurrection, if allowed to persist, could hobble and destabilize the government to the point that national government could neither defend itself against protestors nor invaders.. What, then, was a justifiable response? With Hamilton in charge it would be massive rather than modest, and whereas the Federalists like the Republicans in this era of public politics knew it would be held accountable, the risk for the Federalists as the ruling party was greater than the risk for the Republicans. It was not risk-free for Republicans. They portrayed it as an unfortunate but necessary response to a government determined to strip away the freedoms that undergirded the fight to become an independent nation. But they could not dismiss out of hand the need for some restraint and control in order to insure the survival of the nation itself. The value of the research recently presented at a Fries Symposium was that it emphasized both the

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insurrection and the suppression and how they affected political attitudes in Pennsylvania and elsewhere. The Rebellion, as a political event, must be taken seriously in terms of how it was instigated and how it was suppressed against the backdrop of a union struggling to survive.²³⁰

Despite harsh language after (as well as during the height of the protest) the radicals in both camps, at least in terms of the Pennsylvania experience, were corralled. Fries Rebellion brought everyone close up to what disobedience could entail. Radical measures in terms of party strategies could be self-defeating. In short the party leadership, it would appear, pulled America back from the brink. The discontent remained, however. The Pennsylvania elections in the fall of 1799 elected a Republican governor, who continued to express dismay with Federalist policies but without the brinkmanship. But while the Republicans refashioned their message as the next presidential cycle was about to begin, they continued to emphasize in the press and on the stump the threat that Federalism posed to individual liberties. In a nation where many still interpreted the War for Independence as first securing liberty in order to be independent (rather than the other way around) the Federalists remained the obstacles and the threats to preserving and advancing individual liberty. What was different were the tactics.

In the spring of 1800, Adams pardoned the rebels who had been arrested, tried and convicted (for treason) against the advice of his Cabinet, which because of his frequent absences had taken its cues from Hamilton who deplored any reprieve for the troublemakers. Adams's action may be applauded, but his explanation revealed the contradiction within his own political ideology as well as his party: the President was quoted as saying that Hamilton, "haunted by that hideous monster or phantom so often called a crisis", called for "imprudent measures" to deal with that crisis. At the same time Adams's disdainfully viewed the participants as "obscure, miserable Germans, as ignorant of our language as they were of our laws."²³¹ The elite should lead out of need and design but with a degree of prudence dictated perhaps by no more than a simple political calculation that the unavoidable expansion of the role of the individual in determining political developments required attention, more attention than Hamilton, Wolcott and other High Federalists understood. Did Adams pull back on expediency or principle? If his Administration had pushed ahead with the ambitious war-making plans of Hamilton, would the nation have followed? He was a man of principle and he many

²³⁰I rely on an issue of *Pennsylvania History, A Journal of Mid-Atlantic Studies*, 67 (Winter, 2000), that is devoted to the Fries Rebellion. All the articles are available on-line <http://www.pa-history.org/pahistory.htm>.

²³¹ Quotes from Chernow, *Alexander Hamilton*, 578-579.

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have been justly offended by the way Hamilton, whom he more or less left in charge, carried out his duties. But expediency played inasmuch as he will also launch a new effort to pacify the French by appointing a new commission to resolve the differences between the two countries. Despite serious setbacks for Republicans since Jay's Treaty, they may have had the easier case to make in a political environment in which the rules were being up as they went. The Federalists were in command, and being in command they tended to bumble. What Adams was faced with was trying to explain what they had to undo to ease the crisis while Hamilton and his minions continue to clamor for justice and strength, while the Republicans, being out of control, could quietly step back from the crisis and yet continue to raise doubts about the Federalist leadership even with respect to the survivability of the union, despite the challenges posed by Kentucky and Virginia. If the nation was not at such great risk either to insurrection or invasion then, what were the Federalists up to? It was the form of government, Adams and Jefferson had long debated, and it was also the execution of that form. On the latter, certainly, and perhaps on the former, the Federalists were losing ground.

The Fries Rebellion followed on the heels of the Kentucky and Virginia Resolutions, but a connection cannot be made. Neither set of resolutions called rebellion an appropriate remedy, but both endorsed the necessity for action in the face of continuing federal legislation that lacked for constitutional authority. Most of the northern states took the position that the courts and not the state legislatures held the power to pass on the validity of legislative acts. No other state endorsed the Kentucky and Virginia Resolutions. They remained hot-button issues, however, in part because they intimated a potential link between the need for disobedience in order to reverse an action or redress a grievance. The Resolutions continued to be a part of the debate about what America should do when demands by citizens or states were disregarded. The basic problem, unsolved by the Constitution because of unclear and imprecise language, was how to mediate differing views. The the judiciary should be the ultimate arbiter except the federal courts were no less suspect than other branches. On the other hand, serial insurrections were not much of an answer. What Kentucky and Virginia and Fries proved was in the absence of workable compromises among disputing parties the nation would have to rely on securing majorities that broadly reflected the interests of the citizens over narrower interests. Wilson Cary Nicholas informed Jefferson by letter in August 1799 that he was heading to Kentucky, and he then asked if Jefferson continued to believe that the position taken by Kentucky and Virginia should be defended, what action would he recommend to the Kentucky Legislature. (Recall that the original Resolutions did not agree on remedies.) Jefferson consulted with Madison by letter, but plans proposed for all of them to meet for discussion did not materialize. Several weeks

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later he sent a reply to Nicholas in which he reiterated what he had said to Madison: a strong response must be made for fear no response would indicate acquiescence. The response ought to address the positions taken by other states and the congressional committees involved with the enactment and the enforcement of Alien and Sedition and in response to declare unreservedly that past missteps cannot be used to pursue further violations of the compact but also to reaffirm “in affectionate & conciliatory language our warm attachment to the union” to which we are willing to sacrifice everything but the “rights of self government in those important points to which we have never yielded & in which alone we see liberty. Safety & happiness....” Jefferson thought it unwise to make every difference an issue for secession, and while the current controversy was indeed serious, it may not require any further direct action because the majority of Americans, wedded to the same Republican principles he and others were would eventually hold the Administration accountable for its misdeeds. He closed by saying that he could not participate in any discussions or revisions to avoid arousing any further suspicions concerning his involvement. Besides, in his opinion Kentucky had a large pool of talented and principled individuals who could prepare new resolutions.²³² Speak loudly and firmly with a big stick without using the big stick.

Pennsylvania’s vote in the fall gubernatorial elections concerned Jefferson. How would they react to the uprisings? Would they punish Republicans, who were accused of fomenting disrespect for the law or Federalists who were responsible for the laws that had to be challenged? Even a year before the next presidential election a political strategy to unseat the Federalists had to be forged. Direct confrontation as proposed in the Kentucky Resolution or as witnessed in the Fries Rebellion had lost favor. The discontent remained, however, and had to be properly nourished. His correspondence continued to address current political questions, although somewhat more obliquely and less openly. To a prominent New York politician, Henry Remsen, he observed a month before the Pennsylvania election that they were “all-important to the union at large, as that state nearly holds the balance between the North & South.”²³³ A few weeks later he wrote to South Carolina’s Senator, Charles Pinckney, that Republican victories in both the gubernatorial and legislative races would add strength to the cause championed by the southern states to respect the Constitution. He went on to condemn the Federalists for erecting a defense that some administrative proceedings could be based on the existence of a common law (English Common Law being the precedent) that could

²³²1st letter, Nicholas to Jefferson, 20 August 1799 in Boyd, ed., *Papers of Thomas Jefferson*, 31:172; 2nd letter, Jefferson to Nicholas, 5 September 1799, in 31:178-179; Jefferson to Madison, 23 August 1799, in 31:172-173.

²³³Jefferson to Remsen, 14 October 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 31:211-212.

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trump American constitutional authority.²³⁴ At the end of November, after the favorable Pennsylvania results were known and prior to the convening of the Virginia House of Delegates, Jefferson wrote Madison (a letter that was hand-delivered) of his thoughts on Republican strategy: 1. peace even with Great Britain; 2. cultivation of the union; 3. disbandment of army on grounds of economy and safety; and 4. protestations against past and continuing violations of the Constitution. But Jefferson made it clear that he did not believe anything should be said or done that would even give the appearance that Republicans would resort to any coercion or force to achieve their goals. If the Federalists were truly split between “Monocrats & Anglo-monocrats, we should leave them alone to manage all those points of difference....” Republicans should vote to arbitrate the differences between them but not to “hoop them together.”²³⁵

In Jefferson’s mind at least the election strategy was set: establish peace with all nations, eliminate costly government undertakings like a standing army and defend republican principles as the surest way to respect the Constitution and the Union. Adams unlike Hamilton saw the need for Federalists to broaden their base. His was an appeal not to stalwart Republicans but to undecided voters, some of whom had supported the Federalists in past elections, especially the last two congressional contests. Dispatching new envoys to France, slowing war preparations and pardoning the Fries convictions were designed to put a different face on the portrait of governance under a Federalist. All the issues that were in play during the previous four years will be raised during the 1800 presidential and congressional campaigns, but the crux of the campaign concerned the Federalist’s natural predilection to impose a form of government designed to rule the individual. In short the Federalists have trouble turning themselves into something they are not.

It is important to point out that the congressional and presidential elections in 1800 did not take place at the same time in every state. States were free to establish their own election rules and dates. In 1800 elections that would have a bearing on the Electoral

²³⁴Jefferson to Pinckney, 29 October 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 31:226-228. This concerned specifically a mutinous British sailor, Jonathan Robbins, whom President Adams had denied refuge and who was promptly hanged when return to the British. Republicans denounced Adams for ignoring the constitutional demands of trial by jury, which prompted a reply from Congressman John Marshall in behalf of the President in which he asserted that the President had sole authority over the nation’s foreign affairs. Jefferson told Pinckney, who had published a pamphlet highly critical of Adams and Marshall, that this was the most momentous illegal act yet: “all the encroachments...heretofore...mere retail stuff, compared with the wholesale doctrine, that there is a common law in force in the U.S. of which & of all the cases within it’s [sic] provisions their courts have cognizance. it is complete consolidation.” For details on Robbins case see Ruth Wedgewood, “The Revolutionary Martyrdom of Jonathan Robbins,” *The Yale Law Journal*, 100:02 (November, 1990), 229-368.

²³⁵Jefferson to Madison, 26 November 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 31:243.

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College that would meet at the end of the year began in the spring of 1800. Spring legislative elections in New York more or less started the ball rolling. New York election results favored Republicans, and other state elections during the ensuing months also gave Republicans hope. Startling as this was for Federalists, who had handily won in the two previous election cycles, they were not without other resources. They could and they did with some success muddy up the way in which electors were chosen. The maneuvering to ensure sufficient electoral votes entailed many months and was not finally determined until the spring of 1801 after a tie in the Electoral College threw the election into the House of Representatives.

Despite Jefferson's disclaimer – to John Taylor in November 1799 he wrote “I cease from this time during the ensuing twelve-month to write political letters...” – politics were alive and well in correspondence with friends and allies, as it was with friends across the ocean.²³⁶ Political intelligence was remarkably ample in a time without all the instruments now available to measure sentiment or the devices to distribute information. Counting votes, analyzing trends, discussing strategies and predicting outcomes became a preoccupation of both parties. Did anyone ever anticipate that popular government would create a political stage on which the drama may briefly recede but never end. Both the Federalists and Republicans knew that despite the outcry against Kentucky and Virginia and other related events the Republicans were adherents in Federalist strongholds in the North including Massachusetts. As noted above, April legislative campaigns in the state of New York were closely, as were New York City municipal elections. If the vote favored the Republicans, then the chance that New York would choose Republican electors in the fall presidential contest would improve greatly. In almost every letter dedicated to political matters in the winter and spring (1799-1800) Jefferson took note of the latest intelligence from New York. It was not much of a secret in the shifting political sands that the New Yorker Hamilton regarded the Resolutions controversy as revealing the true colors of the Virginia/Southern crowd who had never fully accepted the idea that the nation was a creation of the people – “We the People” – and who continued to harbor the belief that a strong central government, which Hamilton unstintingly defended as essential to progress, was inimical to their narrow, parochial way of life. He thought Jefferson dangerous and Madison, his old ally from Ratification days, too prone to compromise. He generally distrusted or disliked Republicans. Not only was he ambitious but also authoritarian. The attack on Republican editors suited him fine. He had no reluctance to intimate that a standing

²³⁶Jefferson to Taylor, 26 November 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 31:244.

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army might be necessary to put down the “subversion” in Virginia.²³⁷ In the midst of this campaign that was both political and personal among the principle contestants a curious alliance emerged between Alexander Hamilton and Aaron Burr, whose historic place was sealed a few years later because of a duel in which he mortally wounded Hamilton. In the turbulent years of 1798-1800 Hamilton and Burr had business and legal dealings that hardly presaged the later events. Burr was more Republican than Federalist, but he had no compunctions about using Federalists to advance his own agenda. He enlisted Hamilton’s support to charter a water company in New York City, even though his real intent was to use the Manhattan Company as a ruse to enter the banking business in competition with the Federalist banking monopoly. Even though Hamilton determined that he had been “hoodwinked” (to use Chernow’s term) their association did not end there.²³⁸ It was a puzzlement even to Chernow why Hamilton and the “hoodwinking” Burr ended up defending Levi Weeks who has been accused of murder. Levi was acquitted (another story), but as they were arguing for the defense they were also watching intently the local campaign in which they both had a stake. In a fascinating contrast they displayed utmost courtesy toward each other in public, especially in the courtroom, but they took to the streets with their supporters to try to persuade the public to support their candidates. Street politics were rough and tumble, and Burr was probably better at it than Hamilton. The slate of candidates that Burr so cleverly crafted sweep the election, and at the end of the day (1 May 1800) “a fundamental realignment in American politics” appeared to be in the making: Hamilton’s own turf – a Federalist redoubt – had been lost to the Republicans. That loss meant that the Federalist grip on New York’s legislature would end, and most importantly the 12 electoral votes would probably be cast for Jefferson. Throughout the spring of 1800 Jefferson’s letters to his political friends stressed the need to win one or more of the middle states. Burr more than anyone else had now put the presidency within reach for Jefferson and not to be lost in the triumph he had advanced his own national political ambitions. Hamilton’s dismay was profound. He even revived a plan to change the way electors were chosen, a plan which Burr had proposed and the Federalists had rejected, in a desperate effort to save New York for the Federalists. The result was that Hamilton further disgraced himself in the eyes not only his enemies but also his allies. Adams was so disturbed that he purged most of Hamilton’s supporters in the Cabinet.²³⁹

²³⁷Chernow presents a compelling portrait of Hamilton’s attitude and behavior on Alien & Sedition, Kentucky & Virginia, libel and slander in *Alexander Hamilton*, Chapter 32 “Reign of Witches”, 569-579.

²³⁸Chernow, *Alexander Hamilton*, 588, 589-591. Burr’s duel shortly thereafter with John Baker Church (both survived), a relative of Hamilton, made the relationship with Hamilton even more intriguing.

²³⁹Chernow, *Alexander Hamilton*, 608-611.

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In Massachusetts and New Hampshire Republicans also made inroads. Jefferson remarked to William Short that “the people are now returning rapidly to their natural preference of republican principles.”²⁴⁰ Shortly after the New York election, Burr informed Jefferson the results were more impressive than previously reported. He told Jefferson that the victors had acted honorably and that the vanquished through their “Runners” (deliverers) of newspapers had “inundated” the city “with Scurrility and ribaldry” after the elections.²⁴¹ Finally, in mid-May (1800) Jefferson let Madison know that the Federalists had not been able to carry any measures in the House even with a potential majority of 20 or so. Reasons: “many of the new & moderate men” began to see close up the “true character of the party to which they had been well disposed while at a distance” combined with the tide of public opinion turning against Federalist actions and the majority “melted off”. The Federalist Senate, however, held fast in the face of a mounting discontent.²⁴² Jefferson then departed from Philadelphia for Monticello.

The Presidential Election of 1800 did not involve any public campaigning by the candidates themselves. Adams and Jefferson remained in their respective homes until November when the Adamses arrived in the new Capitol City Washington and moved into the unfinished White House and Jefferson returned to preside over the final session of the Sixth Congress. The casting of the electoral votes began in December and continued into the next year. Even without campaigning the candidates’ positions were widely circulated in letters, pamphlets and newspapers by their supporters. The Republicans were more unified than the Federalists, although both parties had their internal squabbling. As noted earlier, the Electors did not cast separate ballots for president and vice-president, but instead cast ballots with two names – the name with the most votes became president and the name with the next most the vice-president. Both parties used similar strategies to avoid a tie – Republican electors were to cast one less vote for Jefferson’s running mate Aaron Burr and Federalist one less vote for Charles Coatsworth Pinckney. The Federalist pulled it off, even though Hamilton worked mightily to sabotage Adams (for making peace with France) and elect Pinckney. The Republicans did not pull it off and Jefferson and Burr ended up in a tie. Unfortunately. Burr had presidential aspirations and did not yield to Jefferson who was

²⁴⁰See the Editor’s discussion of the packet of materials that Jefferson sent Short, including “uncopied” letter that this remark may have appeared in, in Boyd, ed., *Papers of Thomas Jefferson*, 31:510-512, quote from 512.

²⁴¹Burr to Jefferson, 5 May 1800, in Boyd, ed., *Papers of Thomas Jefferson*, 31:557.

²⁴²Jefferson to Madison, 12 May 1800, in Boyd, ed., *Papers of Thomas Jefferson*, 31:579-580.

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the preferred Republican presidential candidate. In the end, Hamilton who despised Burr more than Jefferson persuaded his supporters in the House, where the election was to be decided because of a tie, to support Jefferson over Burr. Adams actually came much closer than most had anticipated with 68 electoral votes to Jefferson's 73. Much had happened between the euphoria of a Republican victory in the spring and summer and the stalemate in early 1801.

The positions of the two candidates and the parties that they represented were well publicized, even if they did no public campaigning. The Federalists under Adams had expanded the power of government beyond anything known before, and they had done so on the grounds that the individual's security and happiness would be enhanced because those ungovernable elements in society would be restricted or eliminated. By and large, Federalists were uncomfortable with popular government in which the rules for governing behavior and participation were too loosely defined. Many Americans may have viewed Hamilton as more dangerous than Adams – he was viewed in some quarters as a true monarchist – but they also regarded Adams with distrust, despite his long and noble service in the cause of the birth of the nation. Even in his most democratic demeanor Adams was filled with distrust over what a liberated society would produce. In 1790, to his more radical cousin, Samuel Adams, he wrote: “The love of liberty, you say, is woven in the soul of man. So it is, according to La Fontaine, in that of the wolf, and I doubt whether it is much more rational, generous or social in one than in the other, until in man it is enlightened by experience, reflection, education and civil and political institutions.” The love of liberty was an unpredictable emotion. In Adams's world inequalities would always exist and had to be reckoned with. If some in society legitimately possessed more than others, their status and rank must be protected against those who in the name of liberty would level society. Throughout his life he worried about the propertied versus the unpropertied, a cauldron of suspicion and discontent that could boil over any time. “When the people,” he reminded his cousin, “who have no property feel this power in their hands to determine all questions by the majority they will ever attack those who have property, till the injured man of property lose all patience....The multitude as well as the nobles must have a check....”²⁴³

Adams's most important, published work was his *A Defence of the Constitutions of Government of the United States of America*, written while he was Minister to England. According to his grandson, Charles Francis Adams, who published a collection of his grandfather's writings including *A Defence*, Adams began writing the book in October

²⁴³Adams to Adams [1790], *Works of John Adams, The Second President of the United States*, Charles Francis Adams, editor, 10 volumes (Boston: Little, Brown & Company, 1850-1856), 6:417-418.

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1786 and finished it in December 1787. The first volume dealt with the history of governments founded on the principles of monarchy, aristocracy and democracy and when it arrived in the United States after an edition (1787) had been hurriedly printed in England, it was printed here and was circulated among the framers of the Constitutional Convention. Two additional volumes were printed in England a year later. The volumes were not as carefully edited as they should have been, and Adams, while praised for the scope and erudition of the work was also harshly criticized for sloppiness and misstatement.²⁴⁴ Be that as it may, the theme was clear enough. In the original publication an epistolary form was followed in which each chapter was written as a letter. One can find many instances in these letters where Adams sounded very American and could share the stage with Jefferson with respect to what individuals could achieve. Indeed, upon receiving a copy of the first volume in Paris, Jefferson praised it and recommended it be translated and published in French. In one passage Adams wrote: “The only practicable method, therefore, of giving to farmers, &c. [merchants and mechanics] the equal right of citizens, and their proper weight and influence in society, is by elections, frequently repeated, of a house of commons, an assembly which shall be an essential part of the sovereignty.” He even invoked Aristotle (after scolding him for being inconsistent) “that a happy life must arise from a course of virtue; that virtue consists in a medium; and that the middle life is the happiest.” The “middle” in this case was the farmer, merchant and mechanic who may be “splendid geniuses” with “benevolent disposition” and who under the “moral equality that nature has unalterably established among men” have the “undoubted right to have every road opened to them for advancement in life and in power that is open to to any others.” What got Adams into trouble was his assumption of the existence of orders within nature and any form of government must take them into account.²⁴⁵ Everywhere one turned to in the first volume, one encountered orders and the need to balance them. This was what history had taught Adams, and from that he concluded this was how nature worked. One of his fiercest critics was John Taylor of Caroline who relentlessly assailed Adams’s view of nature and interpretation of history. A concept based on the need to balance conflicting interests because it was natural to all social orders was meant to deny the individual his sovereignty and his liberty. In short, Adams was not interested in protecting liberty but in assigning authority. A decade after his presidency he wrote a long critique of Taylor’s book, *An Inquiry into the Principles and Policy of the Government of the United States...*, written over many years as an attack on *A Defence*. He believed Taylor and others who argued for limited government overstated

²⁴⁴Available on-line at <http://oll.libertyfund.org>: “Preface by the Editor,” under “Works on Government” in Charles Francis Adams, editor, *The Works of John Adams...*, 10 volumes (Boston: Little, Brown and Co, 1856), 4:np in on-line edition.

²⁴⁵*A Defence...*, as reprinted in C F Adams, ed., *Works of John Adams*, 5:454-456.

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the capacity of the individual to manage his own life well. As Adams said and repeated often, confronting so many competing elements man must “modify, organize, and arrange the powers of human society” simply “to protect, secure and cherish” his natural rights. He must give up some freedom if he was to preserve any freedom at all.²⁴⁶ He reminded Taylor that there were three basic forms of government: of one, of the few and of the many. All posed risks to individual sovereignty, and since the competition among the three was endless, was it not preferable to find a system that provided a little for each without submitting totally to any one of the trio: a strong executive combined with a popular lower house and a privileged upper house guided by a judiciary whose interests lay not with public sentiments but with respect for law. He asserted to Taylor that if the democrats were empowered to dislodge the aristocrats, then the democrats became the new aristocrats and the cycle of struggle and instability would continue indefinitely. Only a system of government (within a constitutional framework) that recognized and balanced a natural competition among the social orders could assure a stable and secure society.²⁴⁷ This was indeed a “balancing act” that critics like Taylor thought absurd and unnecessary. How could a system ever be created by fallible individuals to accomplish all these goals? Did not the system itself invite greater competition among the orders? It is doubtful that many Americans ever read Adams’s treatise on government, but it is probable that many had been told what a dangerous model it was. Even worse for Adams, unlike Jefferson, he had been President and had been president and had pursued policies that may have colored whatever he might have argued in a book written ten years earlier. How he had administered the government had raised questions about his political precepts. His “balancing of interests” came across as “favoring interests” that had a monarchical or aristocratic bent. He was not completely out of step was the America of the 1790s. He had his defenders among those who feared that too little government would lead to assaults on property and for demands of equality. As President, he had shown himself to be contemptuous of the capacity of the individual at a time when the individual was being ennobled.

Jefferson’s message was different. He was remembered for the Declaration of Independence, as he should be, that could be easily quoted and understood. Jefferson probably never lost his image as a “revolutionary”, even though he did not always carry the mantle comfortably. If Adams was consistent to a fault, Jefferson could retool his message to meet the circumstances. The core of his thinking about government and how governing should be done remained consistent, however. Jefferson’s political ideas

²⁴⁶Adams to Taylor, 15 April 1814, in C F Adams, ed., *Works of John Adams*, 6:458.

²⁴⁷Adams to Taylor, 15 April 1814, in C F Adams, ed., *Works of John Adams*, 6:466, 475-476, 484, 487, 516.

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emerge from his letters, of which there are thousands, although stitching the ideas from the letters into a large, comprehensive political theory is almost impossible. But the ideas expressed in his letters are not fundamentally different from the ideas behind the documents and publications for which he is well known. What the letters reveal, as noted earlier, was how closely he watched the changing political scene and how often his comments to his correspondents reflected his thinking about governing. The contents of private letters are not trouble-free historical sources. An author can comment on a political matter one way to one correspondent and another way to another correspondent, and there was always the risk of being found out. In Jefferson's case some letters were written with the intent that they should be published or circulated. One such letter prior to the election of 1800, it would appear was written to Elbridge Gerry, a delegate to the Constitutional Convention and a member of Congress with a mercurial temperament and a topsy-turvy political career. (Most famous the term "gerrymandering", invented to describe Gerry support for drawing political boundaries to favor one party over the other.) Gerry was a Federalist to the extent that he generally favored Hamilton's fiscal plans, although he opposed other Administration policies. He was appointed as one of the commissioners that the French tried to bribe in the XYZ Affair. Gerry remained in France but lost favor with the Federalists because he raised some questions about the way in which John Marshall, another commissioner, had explained XYZ to the American public upon his return. It was Marshall's description that caused such outrage against the French and lent credence to the Federalist program for ramping up the central government to defend the nation from insult and invasion. Gerry returned to the United States in October 1798 and dispatched a letter to Jefferson a month later. Not yet officially a Republican he finally joined the Party when he ran unsuccessfully for governor of Massachusetts in 1800. After several further attempts he finally won the governorship in 1810 and then went on to become James Madison's vice-president. Jefferson and Gerry had a limited correspondence prior to 1800 in part because Gerry seemed to be such a strong Federalist partisan. The letter in question from 26 January 1799 was more than a friendly salutation of two people whose political fortunes were now beginning to line up. The Republicans entertained some hope that Massachusetts might be unlocked from the Federalist iron grip. The letter was several "leaves" long and dealt with a range of political issues that spoke volumes about the next presidential campaign. At the end, Jefferson urged Gerry to destroy the letter or at least "leaves" two and three, which constituted about half of the letter. Moreover, the letter was to be delivered by courier or friend once a reliable party could be found. Such precautions were not unusual for Jefferson, but they were not always meant to be followed absolutely. His request that Gerry guard the contents at the very least and

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preferably destroy part or all of the letter went further than was his usual practice. And yet the letter was not destroyed but was widely circulated.²⁴⁸

It may be best to begin with Gerry's letter of 12 November 1798. Written from Cambridge MA it was a short letter that concerned certain figures and events relating to the French mission. At the end Gerry asked for "yeas & nays" during his appointment as an envoy and for other political information that might be useful to him, since his reputation was under attack by both parties. He also dispatched the letter by "a private hand."²⁴⁹ Clearly, the letter alone did not necessitate the reply that Gerry received in January 1799. After a generous salutation, Jefferson declare his political goals, almost a rehearsal for his Inaugural Address of 1801. In a list of "I am for" he spelled out without mentioning his candidacy what he thought constituted sound government: he favored the legislature over the other branches of the national government, a shared responsibility between the states and the federal government, a "simple and frugal" government, free commerce, no alliances, the First Amendment and restoration of the nation to the intent of the Constitution. There was nothing surprising in any of this. Although he may have said that the letter not be published, he had stated these positions before, perhaps in a less direct and unvarnished summary than he provided Gerry. The second half of the letter, the part to be destroyed, dealt with the XYZ Mission, his understanding from various sources of what had happened and an opinion on Gerry's specific query of how Gerry was viewed. He reaffirmed his suspicions that Marshall's report was meant to put the French in the worst possible light in order to provide justification for the Federalist drive to expand the government and that the tarring of Gerry was primarily the objective of the Federalist press. The inference can certainly be drawn from Jefferson's remarks that he would be pleased to have Gerry join the Republican cause in light of the drubbing he had taken from the Federalist partisans. The ever-circumspect Jefferson, in part because of his position in Adams's Administration and in part because of his discomfort with public criticism, was actually performing in way that was familiar to him. The fact that Gerry did not heed his instructions was not, so far as I could determine from other correspondence, an occasion for anger or dismay. When he did reply, not until after he had lost the governor's race in 1800, he shed no further light on earlier communiqués with Jefferson. With or without

²⁴⁸Jefferson to Gerry, 26 January 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 30, see editorial notes 651-653.

²⁴⁹Gerry to Jefferson, 12 November 1798, in Boyd, ed., *Papers of Thomas Jefferson*, 30:577-578. Jefferson probably did not receive the latter until late December.

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the letter Jefferson stood to be severely criticized in Gerry's home state and across New England. The letter did not help Gerry and probably did not hurt Jefferson.²⁵⁰

While campaigning in behalf of the candidates for president was heavy and intense, few Americans had a direct role in choosing the Chief Executive. New England was solidly Federalist, and the South and the West was almost solidly Republican. The middle Atlantic states split. Two states voted Federalist and one Republican. The other two divided their votes between Federalists and Republicans. There were 16 states with 138 electoral votes. In ten states electors were chosen by state legislators. Voting for legislators with party affiliations would indicate to the voters the presidential candidates they supported. Three states chose electors by popular votes cast in legislative districts. Two states selected electors in an "at-large" popular vote. One state used a hybrid system of legislative votes and popular district votes. Six of the 10 states that chose electors through state legislatures voted Federalist. Of the remaining six states with some form of popular vote the breakdown was three to three between Federalist and Republicans. Since few Americans could vote even in the popular contests in 1800, any attempt to gauge how ordinary citizens felt about the candidates and issues cannot be determined from analyzing electoral voting. Republicans were more confident about their appeal across the population than the Federalists. Federalists had little interest in courting the average citizen because they had a less optimistic view about citizen participation than their opponents. They could be more scornful since direct voting was limited. If a poll had existed, Republicans would have probably been the more popular party. Given the way that the electoral system was set up, the candidates were directly competitive in a few states. In the remainder they were linked to local candidates. As a consequence, the shift from Adams to Jefferson in 1800 compared to 1796 involved a small number of voters. In 1796 Adams had several more electoral votes than Jefferson, and in 1800 the reverse occurred. The bug-a-boo in 1800 was that Jefferson and Burr, his running mate, received the same number of electoral votes, and since in casting their ballots electors did not distinguish between votes for president and for vice-president, the tie meant that the House of Representatives would decide. In the House each state regardless of the number of electors had one vote. Over the course of the week from 11 to 17 February (1801), after 35 ballots and much scheming and politicking, Jefferson was elected mainly because of the intervention of Hamilton in his behalf. Three weeks later Jefferson was inaugurated, and the transition in government from one party to another, actually the first in the young Republic's history, began.

²⁵⁰ Thomas Jefferson to Elbridge Gerry, 26 January 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 30:654-653.

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Among my favorite American historians is Henry Adams. I remember reading, quite by accident nearly 50 years ago, a paperback edition on *The United States in 1800*, the first six chapters of his larger *History of the United States of America During the Administrations of Thomas Jefferson*. I've gone back to it from time to time simply because it is such a pleasure to read. Adams is no longer in fashion, but no one would deny, despite his New England pedigree (great grandson of John Adams) and some unenlightened views, he posed interesting questions about what Americans were trying to do. He like many before him and many after him down to the present day, looked upon the Election of 1800 as a turning point in the noble experiment that the American Revolution unleashed. He captured the dilemma when he asked: how to define the "national character". It is almost anyone's guess what Americans were thinking, worrying about or anticipating in 1800. It was abundantly clear that the Electoral College as laid out in the Constitution needed to be fixed, but it was less clear that Americans were besieged with panic over the tie between Jefferson and Burr, running mates but now contestants. Of course, Henry Adams wrote a half century or more after the event, and despite the potential for trouble-making in 1800, the situation was managed. Adams recognized the essential difference between the Federalists, whom he linked without apology to a conservative view of the world, and the Jeffersonians, who were the visionaries. Federalists considered those visions as based on "sentimentality, and charged with many bad consequences. If their view was correct, history could occupy itself to no better purpose than in ascertaining the nature and force of the quality which was charged with results so serious; but nothing was more elusive than the spirit of American democracy." In Adams's mind the Federalist/Conservative could detail the dangers of being visionary whereas the Jeffersonian/Republican could not offer assurances for being visionary. "The people themselves, although millions in number, could not have expressed their finer instincts had they tried, and might not have recognized them if expressed by others." But even though the Federalists could cite danger after danger, they really could not influence the American Democratic Spirit because they did not understand or embrace its potential.

To a new society, ignorant and semi-barbarous, a mass of demagogues insisted on applying every stimulant that could inflame its worst appetites, while at the same instant taking away every influence that had hitherto helped to restrain its passions. Greed for wealth, lust for power, yearning for the blank void of savage freedom such as Indians and wolves delighted in,-- these were the fires that flamed under the caldron of American society, in which, as conservatives believed, the old, well-proven, conservative crust of religion, government, family, and even common respect for age, education,

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and experience was rapidly melting away, and was indeed already broken into fragments, swept about by the seething mass of scum ever rising in greater quantities to the surface.

Adams then turned to the election of Jefferson. Did that election answer the doubts and fears posed by the Federalists?

Against this Federalist and conservative view of democratic tendencies, democrats protested in a thousand forms, but never in any mode of expression which satisfied them all, or explained their whole character. Probably Jefferson came nearest to the mark, for he represented the hopes of science as well as the prejudices of Virginia; but Jefferson's writings may be searched from beginning to end without re-vealing the whole measure of the man, far less of the movement. Here and there in his letters a suggestion was thrown out, as though by chance, revealing larger hopes,--as in 1815, at a moment of despondency, he wrote: "I fear from the experience of the last twenty--five years that morals do not of necessity advance hand in hand with the sciences." In 1800, in the flush of triumph, he believed that his task in the world was to establish a democratic republic, with the sciences for an intellectual field, and physical and moral advancement keeping pace with their advance. Without an excessive introduction of more recent ideas, he might be imagined to define democratic progress, in the somewhat affected precision of his French philosophy: "Progress is either physical or intellectual. If we can bring it about that men are on the average an inch taller in the next generation than in this; if they are an inch larger round the chest; if their brain is an ounce or two heavier, and their life a year or two longer,--that is progress. If fifty years hence the average man shall invariably argue from two ascertained premises where he now jumps to a conclusion from a single supposed revelation,--that is progress! I expect it to be made here, under our democratic stimulants, on a great scale, until every man is potentially an athlete in body and an Aristotle in mind." To this doctrine the New Englander replied, "What will you do for moral progress?"

There will be an answer, but every answer had its risk because it depended on the nature of man, and not on the society in which he lived.

Every possible answer to this question opened a chasm. No doubt Jefferson held the faith that men would improve morally with their physical and intel-

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lectual growth; but he had no idea of any moral improvement other than that which came by nature. He could not tolerate a priesthood, a state church, or revealed religion. Conservatives, who could tolerate no society without such pillars of order, were, from their point of view, right in answering, "Give us rather the worst despotism of Europe,--there our souls at least may have a chance of salvation!" To their minds vice and virtue were not relative, but fixed terms. The Church was a divine institution. How could a ship hope to reach port when the crew threw overboard sails, spars, and compass, unshipped their rudder, and all the long day thought only of eating and drinking. Nay, even should the new experiment succeed in a worldly sense, what was a man profited if he gained the whole world, and lost his own soul? The Lord God was a jealous God, and visited the sins of the parents upon the children; but what worse sin could be conceived than for a whole nation to join their chief in chanting the strange hymn with which Jefferson, a new false prophet, was deceiving and betraying his people: "It does me no injury for my neighbor to say there are twenty Gods or no God!"²⁵¹

Adams acknowledged that the conservative stance had been used time and again in similar crises in world time. This time it had no political context, for the two parties faced each other without sharing a common ground. Americans were inventive and clever people, and the future may defy the odds. Education may provide the creative power needed to meet the challenge of dispelling the illusions and installing the safeguards, and for that Thomas Jefferson would be the enlightened leader. Would it happen?

Henry Adams was writing as a historian almost a century after the election of 1800. He was not just reflecting what he thought characterized the Election of 1800, but he was doing so through a lens on America that had undergone a colossal economic transformation and devastating civil war. His view of the Election of 1800 was in part conditioned by the failure of American to make the change that his Federalist/Conservatives instincts required. At the time of the Election of 1800 some Americans thought that the stage was set (including Henry's great grandfather) for the demolition of the American Experiment. In fact, the nation faced with an unpredictable outcome managed the transition. It was not that we read Henry Adams because he made the right prediction but rather because he understood what was at stake. He never fully

²⁵¹Chapter VI "American Ideals", of *History of the United States: The United States in 1800* (Electronic version by University of Virginia American Studies Program 2003-2004), np. Available on-line at http://xroads.virginia.edu/~HYPER/ADAMS_HISTORY/ch06.html, quotes from the final half paragraphs, Chapter VI.

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accommodated himself the forcefulness of change in the new industrial world, but he spoke honestly about why he could not make that change. He was critical of the Federalists' intransigence, but he himself could not completely divorce himself from the Federalist paranoia of increasing dangerous world because the well-trod path of the past was being deserted. The past did not matter as much as the future in American in 1800 except that Americans were pretty determined that shackling the future with the past was not to their liking. Perhaps Adams was right that they should have been more respectful of what had preceded them, but that was not their predilection.

After the results of the balloting by the electors were made known, there was certainly intense interest in what the next step should be. The choosing of a President now passed to the House of Representatives. How a state would arrive at what that vote should be depended on the split among electors in a given state. In some states electors voted unanimously for one candidate; in other states they cast votes for more than one candidate. Under the circumstances how should states with divided allegiances arrive at a single vote? The simple answer was politicking, horse-trading, compromise.

How much of crisis did the nation face in 1800 or more accurately in 1801? The public campaign was nasty, even though the candidates themselves said little, and once the electoral vote was counted, the full force of a political impasse became fully manifest. A distinguished scholar of the period and its politics, Joanne Freeman, has written a brief on-line piece worth taking note of. "The presidential election of 1800," she writes, "was an angry, dirty, crisis-ridden contest that seemed to threaten the nation's very survival....The unfolding of this crisis tested the new nation's durability." When the House of Representatives met to resolve the crisis in February it became deadlocked. The new Seventh Congress was not to be seated until the next month, and even though the Federalists controlled the lame-duck Sixth Congress now in its final session, they did not have the votes state-by-state, as the Constitution stipulated, to elect Adams. House members "pushed partisan rivalry to an extreme, inspiring a host of creative and far-reaching electoral ploys. As a sense of crisis built, there was even talk of disunion and civil war, and indeed, two states began to organize their militias to seize the government if Jefferson did not prevail." Freeman makes a strong case that this election must be seen more in the context of a long political tug-of-war that began with Hamilton's fiscal program and escalated to military brinkmanship during the previous decade "The United States was new, fragile, shaky, and likely to collapse, a prevailing anxiety that could not help but have an enormous impact on the period's politics. But as Freeman's essay underscores the political situation was fluid. The Congressional caucuses attempted to line up the votes of their members for or against a candidate, but

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the loyalties of the members varied in the strength from state to state and from region to region. Small states, especially in the middle region, had the most to fear if the union should be dissolved.²⁵² The ill wind a-blowing had several directions. After 35 House ballots Jefferson won eight states, one shy of the absolute majority, and Burr, the declared choice of the Federalists, won six states. The split was North-South with the exception of South Carolina, which voted with the Federalists, the last bastion of Southern Federalism. Two states, Maryland and Vermont, voted no result, in effect a tie vote within their Congressional delegation. Everyone was fully aware that the Federalist vote for Burr was a ploy to prevent the election of Jefferson. That Federalists lined up behind Burr to prevent Jefferson's election did not displease Burr, who may have foreseen the possibility of a deadlock from which he could emerge victorious. Some of Jefferson's correspondents in the weeks before the House declared him President suggested that Burr or his agents at his direction were busy with a strategy that would peel off some Republican votes, which in combination with the Federalist votes, would assure Burr the prize. Although Burr certainly had his agents, he was not in Washington (Jefferson was) and he may have chosen to remain personally in the background. In notes by Jefferson concerning a conversation with General John Armstrong (then serving as Republican senator from New York), he wrote that Senator Gouverneur Morris (former Pennsylvanian, now New Yorker) had asked his colleague[Armstrong] why Burr, then "400. miles off (at Albany) has agents here at work with great activity while mr Jefferson, who is on the spot, does nothing."²⁵³ Given their styles of "politicking", not unlike Jefferson or Burr. But the record as to how little Jefferson did or how much Burr did to advances their won causes remains incomplete. Burr's longtime New York adversary, Alexander Hamilton, did not remain aloof from the fray for long. H was committed, once a Federalist victory was beyond reach, to denying Burr his quest. Other prominent Federalists such as John Marshall and Fisher Ames thought that Burr was safer than Jefferson because Jefferson was at heart a Jacobin (read French revolutionary).²⁵⁴

A deal had to be made despite claims by the principals that deal-making was unsavory. Without a deal the prospects for political stability dimmed significantly. A key player in this unfolding drama became James Bayard of Delaware. He had voted for Burr in the first 35 ballots, but he grew ever fearful that the nation was at risk because of this

²⁵²"The Presidential Election of 1800: A Story of Crisis, Controversy and Change", available on-line at HISTORY NOW – www.historynow.org/09_2004/historian4.html.

²⁵³Notes on a Conversation with Gen John Armstrong [14 February 1801] in Boyd, ed., *Papers of Thomas Jefferson*, 32:590.

²⁵⁴Chernow offers a good appraisal of Hamilton's efforts to deny Burr his quest in *Alexander Hamilton*, 630-635.

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standoff. He met with a Jefferson supporter who after a conversation with Jefferson could assure Bayard that Jefferson was committed to maintaining certain Federalist policies, in particular Hamilton's fiscal program. There were of course denials that Jefferson ever made such a deal, and this slice of history may never be fully clarified. In any event on the thirtysixth ballot Bayard, Delaware's only House member, voted absent. In addition, Maryland and Vermont, which had voted consistently for Burr, voted for Jefferson, and South Carolina, which had also voted consistently for Burr, announced no results. Jefferson now had the votes of 10 states and Burr four with two abstentions. The vote came on 17 February 1801, and beginning the next day Jefferson wrote Madison:

The minority in the House of Representatives, after seeing the impossibility of electing Burr, the certainty that a legislative usurpation would be resisted by arms, and a recourse to a convention to reorganize and amend the government, held a consultation on this dilemma, whether it would be better for them to come over in a body and go with the tide of the times, or by a negative conduct suffer the election to be made by a bare majority, keeping their body entire and unbroken, to act in phalanx on such ground of opposition as circumstance shall offer....

Jefferson then gave his own assessment of how the voting went: in Vermont one representative withdrew and that left the other to vote the state for Jefferson; in Maryland four Federalists cast blank ballots and their colleagues cast their votes for Jefferson; South Carolina and Delaware entered blank ballots; 10 for Jefferson, 4 for Burr and 2 no ballot. "We consider this, therefore, as a declaration of war, on the part of this band. But their conduct appears to have brought over to us the whole body of federalists, who, being alarmed with the danger of a dissolution of the government, had been made most anxiously to wish the very administration they had opposed, and to view it when obtained, as a child of their own...." He then added that Adams "embarrasses us" because of his continuing appointments.²⁵⁵ "A declaration of war" were combative words. Warfare was how Jefferson thought of the Federalist strategy. On the same day, Jefferson replied to an earlier, somewhat critical letter from Major William Jackson, who had served George Washington and supported his government, that he would not make any statement as to what he was to preserve or change until he could seek the counsel of those he will bring into his government. He reminded his correspondent that after 30 years in public life, the public can judge whether or not "my future course is likely to be marked with those departures from reason and moderation",

²⁵⁵Jefferson to Madison, 18 February 1801, in Ford, ed., *Works of Jefferson*, 9:202-204.

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although his critics may prefer to describe him as too irrational.²⁵⁶ A day later, he wrote his son-in-law, Thomas Mann Randolph, about the House election with more details about how Federalist voting changed and how their actions should be interpreted: “their vote showed what they had decided on, and is considered as a declaration of perpetual war; but their conduct has completely left them without support.”²⁵⁷ In his public role Jefferson was more moderate and less outspoken, but in his private correspondence he showed both disdain and distaste for what the Federalists had tried to do. While he remained cordial toward Burr and even apologetic for misinformation that had circulated, he must have had serious reservations about the motives of his running mate.

In the correspondence of the Republicans it was not uncommon to find phrases suggesting that the population at large shared their sentiments about government and society, and certainly in the months leading up to the Election of 1800 and during the balloting in the House of Representatives the Republicans portrayed this as a battle between what the people wanted and what the special interests controlled by the Federalists wanted. Federalists seldom expressed much affinity for the people’s sentiments; in fact they lived in a fear of how dangerous those sentiments could be if unmoored from governmental and social institutions that were needed to manage and direct them. Because only a part of the population actually enjoyed the franchise, any vote captured a portion of the “people’s” hopes and aspirations. The closeness of the electoral vote did not necessarily reflect how the nation at large felt about the candidates and their policies. Jefferson made it clear in letters after the House vote that any other action would have caused the people to take matters into their own hands. It was more likely that states in opposition to Federalist hanky-panky would have organized counteractions in the name of the citizens of their states. In many parts of the country, perhaps in all parts, the states still commanded more respect from the citizenry than the nation. Jefferson along with Madison presented the state as a countervailing power to the national government (although in different ways), and now that Jefferson led the national government (and Madison was his Secretary of State), he had to find a balance between what he and his constituents and backers could define as a proper federal role within this complex arrangement of individual and collective self-government. The opportunity to do that was his First Inaugural to be delivered on 4 March 1801.

Probably no Inaugural Address has been analyzed as much as Jefferson First. There were several drafts, it is not absolutely certain which draft was delivered to Congress

²⁵⁶Jefferson to Jackson, 18 February 1801, in Ford, ed., *Works of Jefferson*, 9:205-207.

²⁵⁷Jefferson to Randolph, 18 February 1801, in Ford, ed., *Works of Jefferson*, 9:205-207.

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and because of the several drafts there is a debate over the meaning of capitalized or not capitalized words. Recently a rhetorician has weighed with his analysis of the address.²⁵⁸ Steven Hall Browne's book is titled *Jefferson's Call for Nationhood, The First Inaugural Address*, and the title more or less sums up the position of the author. The historical context is fairly conventional. What is important is how Jefferson expressed himself to a nation that had endured the most serious crisis yet. Browne ranges across many different sources and histories to try to flesh out the meanings behind Jefferson's words. The Third President was a highly literate man, and the ideas and words in the First Inaugural could have had many different origins. Browne makes clear that the Address can be read as expressing certain partisan aims as well as nobler concepts of nationhood.²⁵⁹ I have no more information than the many scholars who have studied the First Inaugural. But I am less inclined to find the Address all that intriguing and certainly not mysterious. Jefferson said pretty much what he had been saying in his private and public utterances for years, certainly for most of the 1790s. No one should have expected the Administration of Thomas Jefferson to be a continuation of the previous Federalist Administrations. The Republicans had long argued that the national government had expanded too far, had become a threat to the sovereignty of the state and the individual and had lost the confidence of the citizens. Jefferson forthrightly acknowledged the differences between the party that had ruled for a decade and the party that would now assume the government. The "contest of opinion", as animated as it was, might strike those unfamiliar with thinking, speaking and writing freely as unsettling, but the contest had been settled according to the Constitution and the nation can now unite under the rule of law for the common good. He assured the minority that their rights would be protected, and he pleaded for citizens to "restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things." A few sentences later appeared one of the most argued-over phrases in part because it is not known absolutely how Jefferson meant for it to appear. Jefferson wrote "But every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are Federalists." Some have understandably read that to mean political parties, but surely Jefferson could not have intended, after a decade of opposition to the policies and ideals of the Federalist Party, that there were no differences between the two parties. Without the capitals republicans and federalists could refer to governmental systems –

²⁵⁸I will not list all the sources relative to the provenance and content of the Address. I would call the reader's attention to Ellis, *American Sphinx*, 181-183. I tend to agree with Ellis's interpretation of the language of the Address except I find the Address a less complicated document than he or others find it.

²⁵⁹Browne, *Jefferson's Call for Nationhood, The First Inaugural Address* (College Station, TX: Texas A&M University Press), 129.

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federalism and republicanism – and such an interpretation would seem more logical in light of Jefferson’s own political ideals. In some versions of the published address, “federalists” and “republicans” appear in small letters. Of course, it is possible that Jefferson intended to leave the impression that the opposing parties shared common principles and therefore differed on the basis of how the members of the parties pursued or used their powers. Still, Jefferson as well as the nation, knew that the parties while endorsing some basic common ideals about a government of laws and institutions disagreed about almost everything else. Republicans were not Federalists, and Federalists were not Republicans. This was not the first time that Jefferson made this remark. In a letter to John Wise two years earlier Jefferson was forced to defend himself because of remarks he was alleged to have made about Wise’s “Tory” leanings he promised to be “frank” in this response.[For the sake of clarity in my argument, let me repeat some of the quotes I used in the earlier discussion of this tiff with Wise.] He contended that “two political sects” had emerged in America: one that favored the Executive branch and the other the Legislative branch. The former were known as “Federalists, sometimes Aristocrats or monocrats and Sometimes tories, after the corresponding sect in the English government...” In opposition to the Tories were Republicans known as “Stiled Republicans. Whigs, Jacobins, Anarchists, Disorganizers...” Although he claimed a faulty memory as to the exact words used in the hotel (Francis) conversation, he presumed that he used Tory to describe Wise in terms of the above definition – one who favored strengthening the Executive. He then added “both parties claim to be Federalists [sic] and Republicans [sic], & I believe with truth, as to the great Mass of them; these appellations therefore designate neither exclusively; and all the others [for example, monocrats or Jacobins] are Slanders, except those of Whig & tory, which alone characterize the Distinguishing principles of the two sects as I have before explained them...”²⁶⁰ It is entirely possible that Jefferson was waffling in his recollection of the conversation to avoid further embarrassment with a fellow Virginian, but even if he were, he still had a point to make. Although the rhyme and rhythm of capitalization in late-eighteenth-century correspondence (not only Jefferson but many of his correspondents) is beyond the understanding of this untrained mind, the meaning of the words whether capitalized or not can be figured out. The phrase that “both parties claim to be Federalists and Republicans” can actually be read as if the words were uncapitalized – federalists and republicans with reference to systems of government. Indeed Jefferson seemed to distinguish between parties that wrapped themselves in these terms and concepts by which these terms were defined. The capitalization of federalists and republicans appear to me to be irrelevant. What was

²⁶⁰Jefferson to Wise, 12 February 1798, in Boyd, ed., *Papers of Thomas Jefferson*, 30:98. I have quoted the letter with words capitalized as they appear in the Boyd edition.

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relevant to Jefferson was the list of terms used to define the opposing political factions, and in that list Tory (never capitalized) and Whig (always capitalized) represented the dividing line. Tory meant expanding the power of the Executive, much as English Tories believed, and Whig meant expanding the power of the Legislature more akin to English Whigs. Although the terms Federalist and Republican were used to designate political parties, their usage could be ambivalent. Jefferson closed his letter in somewhat less apologetic mood: men of principle can disagree about the form of government as Tories and Whigs, Federalists and Republicans do; these disagreements are based on sentiments as to how a government should be or should not be executed; to describe Wise as a Tory (that is the term Jefferson believed he used) may in fact reflect accurately Wise's sentiments toward a government with a powerful Executive; if so, then no apology is required since no imputation of slander was intended.²⁶¹ Although I have not seen Jefferson's handwritten draft, Ellis states that "the key words were not capitalized." Rather in the version printed in the *National Intelligencer* the operative terms were capitalized, and from the rendering contemporaries as well as historians have viewed Jefferson as offering an olive branch after a bitter campaign. Ellis is dubious as am I. Ellis argues correctly, I believe, that few Americans would disagree with Jefferson's assertion in small letters – that is how they described their system of government – and there was no reason for Jefferson to step back from his private and public position that the Federalists, that is, Tories, perhaps men of principle but Tories nonetheless, had moved American in a direction that aroused the opposition of the majority of Americans who embraced both federalist and republican principles.²⁶²

What followed this long-debated phrase strikes me as equally important. After considering the federalist/republican conundrum Jefferson closed that section of the Inaugural with reference to disunion. The public did not yet know of Jefferson's authorship of the Kentucky Resolutions, although the scuttlebutt that circulated in the opposition press tarred Jefferson as a disunionist. Even if his role in the manufacture of the Kentucky and Virginia Resolutions remained a secret, his position on state

²⁶¹Jefferson to Wise, 12 February 1798, in Boyd, ed., *Papers of Thomas Jefferson*, 30:99.

²⁶²Ellis, *American Sphinx*, 181 and footnote 23. Ellis was not the first to underscore the distinction between the handwritten and the published versions. The recent work of the editors of the Papers of Thomas Jefferson has resolved many issues surrounding the various drafts of Jefferson's Inaugural. Draft III with its many abbreviations was determined to be the "reading" version, the one that Jefferson read from during his Inauguration, and not as some earlier commentators had thought was (because of the abbreviations) the original draft. Capitalization of republicans and federalists was the work of newspapers that received copies to print. Besides standards for capitalization were not uniformly agreed upon or adhered to. I had read various letters written by Jefferson on the subjects of political labels and ideal governments before I read the latest volume of Jefferson's Papers in which the editors also discuss the provenance of some of the ideas in this Inaugural. I tend to be in agreement with the editors that much of what Jefferson expressed in the Inaugural had already been "rehearsed" in these letters. See Editorial Note in Boyd, ed., *Papers of Thomas Jefferson*, 33:134-138. The three versions of the Inaugural follows on pp. 139-152 (published in 2006).

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sovereignty within the framework of a federal system opened him up to criticism on loyalty to the Union. But he was not alone. Many Americans, mostly Republicans but also a few Federalists, were unhappy with manner in which the Constitution could be read to expand the authority of the national government at the expense of the states and its citizens. Given his views Jefferson was an easy target for his opponents who wished to present him in the least favorable light possible with respect to his commitment to the Union. Jefferson and like-minded Americans would not support the Union at any cost. As blasphemous as that may sound 200 years later, the idea of what was “a more perfect Union” was still under discussion. Only one decade old under the new charter and two decades old since Independence, many questions remained on how this Union was going to be preserved. And what did Jefferson, the alleged disunionist, counsel? Immediately following the two “we’s” Jefferson wrote “If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.” Federalists enacted Alien and Sedition in the name of the preservation of the Union against radicalizing influences and characterized Kentucky and Virginia as undermining the Union. With the election of the Republicans the Federalists claimed that republicanism would produce a government too weak to preserve the Union. If the nation followed republican principles, it was at risk because those principles encouraged constitutional challenges to much-needed public policies and because they envisioned a government without such policies. Noting that some would dissolve the Union or change the Constitution Jefferson, having won the election and having not yet been implicated in the Kentucky and Virginia Resolutions controversy, could now ask why should any “honest patriot, in the full tide of successful experiment”, ever doubt that this government, “the world’s best hope”, had the strength to survive. (How would Jefferson have felt if the Republicans had lost the election?) Positing an inconsistency that he and his colleagues – especially John Taylor of Caroline – often favored in criticizing strong central governments, Jefferson closed this part of the Inaugural thusly: “Sometimes it is said that man can not be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question.”

Jefferson was not about to wait for history to tell the Administration’s what the agenda should be. In the contemporary world the inaugural is supposed to lay out the vision so to speak of the inaugurated. Details would follow later. That is precisely what Jefferson did, as he turned from how the nation got to that point to how the nation should move ahead. And it would not be the Federalist model, although he did not say explicitly what would become of that model to the extent that had been enacted. This section begins

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with the sentence “Let us, then. With courage and confidence pursue our own Federal and Republicans principles, our attachment to the union and representative government. Those capitalizations again, but in this case not parties but ideas. After a brief paean to man’s innate goodness and enlightened self and an even briefer acknowledgement of “an overruling Providence”, he introduced a phrase that would resonate with Republicans far more so than Federalists: “A wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuit of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.” Explicitly stating the general principle “within the narrowest compass” but without indicating “all its limitations”, Jefferson laid out the goals:

Equal and exact justice to all men....

Peace, commerce and honest friendship with all nations....

Support of state governments in all their rights as the most competent managers of domestic affairs as well as bulwarks against anti-republicans tendencies....

Preservation of the national government as the sheet anchor of peace at home and safety....

Care for the right of election by the people....

Acquiescence in the decisions of the majorities....

Well-disciplined militia....

Supremacy of civil over military....

Economy in public expense....

Payment of our debts....

Encouragement of agricultural and commerce its handmaiden....

Diffusion of information and arraignment of abuses at the bar of public reason....

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Freedom of religion, of the press, of the person under the protection of habeas corpus and of the trial by jury....

“These principles form the bright constellation that has gone before us and guided our steps through an age of revolution and reformation.” One can only read these phrase and conclude very Jeffersonian and Republican, but not very Federalist. In many ways the antithesis of the Federalists – the nation will carry on with a smaller, more discrete and less intrusive government. These ideas, although expressed somewhat differently but more eloquently, were the gist of Jefferson’s communiqué with Elbridge Gerry, a letter that was said to circulate widely. Here is a paraphrase of what he wrote:

I am for the preservation of the federal constitution as it was envisioned by the framers and not as envisioned by those that want to unite the authority of the President and the Senate so as “to worm out” the elective principle....

I am for preserving to the states the powers not yielded by them and I am not for transferring all the powers of the states to the general government....

I am for a government frugal and simple and the application of public revenues to extinguish the public debt....

I am not for the multiplication of public offices that will require more revenue and taxes....

I am for relying on the militia for our defense and not for a standing army or navy which will only aggravate the nation’s burdens....

I am for free commerce with all nations, for political connections with none and for little or no diplomatic establishment....

I am for the freedom of religion and the press and I am not for measures to silence citizen complaints, just or unjust....

I am for encouraging progress and science....

The contents of Jefferson’s Inaugural have been laid out in different language, construction and format in other venues, but the American people as well as his political opponents should not have been surprised. The republicanism that he came to epitomize

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rested squarely on a concept of government that delegated some authority to the institutions themselves and left the rest with the sovereign individual.²⁶³

Thomas Jefferson described the triumph of Republicanism as a “pacific revolution of 1800”. He further declared that his would be a government that “respected the people and placed confidence in their abilities for self-government.”²⁶⁴ Whether it counted as a “revolution” or not it carried significance for two reasons: first, the peaceful transfer of power from the defeated party to the triumphant party established an important precedent; second, the proposed agenda of the triumphant party pointed to a change not only in policy but also in governance. The Inaugural may have calmed fears of a radical and vindictive shift from Federalism to Republicanism, but it left no doubt that changes were coming. When he assumed the Vice-Presidency (1797) under John Adams he wrote to a Bostonian, James Sullivan, who had written earlier to urge Jefferson to accept the vice-presidency in behalf of his many supporters in New England, that the “helm of a free government is always arduous...Where a constitution, like ours, wears a mixed aspect of monarchy and republicanism, it’s [sic] citizens will naturally divide into two classes of sentiment according as...their habits, connections, and callings induce them to wish to strengthen...the monarchical or the republican features....” Some, he said, will favor a monarchical approach and wish to make it hereditary; others will demand “an energetic republic” with “free and frequent elections”. He then stated that the “great body of our *native* citizens are unquestionably of the republican sentiment.” His xenophobia was evident because he attributed the absence of republicanism to those with foreign backgrounds or connections. But the “great mass is republican”.²⁶⁵

Jefferson never much doubted that the people’s sentiments and principles were allied with his. Several days after his Inaugural Jefferson penned a letter to James Monroe in which he acknowledged the fears at home and abroad over his ascension to the presidency and the course of action that his government will take. He left no doubt that the course to be taken should reflect republican sentiments and principles. In his opinion, beginning with the XYZ affair, the Federalists had misled the public, but in time the public – “a great body of the people, real republicans, & honest men under virtuous motives” – became wise to the delusion created by the Federalists: “At length

²⁶³The First Inaugural can be found in many places. Browne presents full text as published by the US Government Printing Office in Jefferson’s Call for Nationhood, xiii-xvii. Jefferson to Gerry, 26 January 1799, in Boyd, ed., *Papers of Thomas Jefferson*, 30:645-647. Available on-line in which Federalists and Republicans were capitalized at http://avalon.law.yale.edu/19th_century/jefinaul.asp.

²⁶⁴Adrienne Koch, *Jefferson and Madison: The Great Collaboration* (New York: Alfred Knopf, 1950), 215.

²⁶⁵Jefferson to Sullivan, 9 February 1797, in Boyd, ed., *Papers of Thomas Jefferson*, 29:289.

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the poor arts of tub plots, &c. were repeated till the designs of the party became suspected. From that moment those who had left us began to come back.” Jefferson made a distinction within the Federalist ranks between those who were bent on obstructing his election at any cost and denying to the majority of Americans the republican government they desired and those who favored a strong executive but also feared that obstruction would lead to anarchy. He was willing to reach out to the latter but not the former. “I am in hopes that my inaugural address will in some measure... present the leading objects to be conciliation and adherence to sound principles. This I know is impracticable with the leaders of the late faction, whom I abandon as incurables, & will never turn an inch out of my way to reconcile them. But with the main body of the federalists [sic], I believe it very practicable.” He was willing to allow time for conciliation to take place, but he was unwilling, as some had advised him, to give Federalist leader a voice and role in his administration. “I have given, and will give only to republicans, under existing circumstances.” At the same time he would not engage in a wholesale dismissal of Federalists in order to appoint Republicans. That would only push reasonable Federalists back into the arms of the party’s discredited leaders, “who now stand alone”. He saw this as a balancing act to play out over time. He did not know whether this approach would ultimately achieve the goal of redirecting the nation along a path of republicanism that would embrace both adherents – the great majority – and doubters, but he was willing to take the test.²⁶⁶

After a bitter campaign and a deadlocked election Jefferson remained committed to basic republican principles that the Federalists had scorned but also optimistic that the majority of Americans agreed with him and that this majority might come to include members of the opposition party. Indeed, Jefferson will be proved right. His two terms as president and the subsequent presidential administrations of two more Virginians, James Madison and James Monroe, will have their controversies and their critics, but the Federalist Party, as fashioned in the 1790s, will pass from existence. By the 1820s the Party, where it continued to contest elections, “fared poorly....” In some cases dissident Republicans would form alliances with Federalists to win elections only then to be denied the patronage they needed to remain a force. “Often the success was meager but the hostilities seldom ceased. Even more fundamental was the question whether the party should stay together or dissolve itself. Some old-line Federalists went so far as to suggest dissolution for the good of the nation.²⁶⁷With the lingering death of

²⁶⁶Jefferson to Monroe, 7 March 1801, in Albert Bergh, editor, *The Writings of Thomas Jefferson*, 20 volumes [in 10] (Washington DC: The Thomas Jefferson Memorial Association, 1907), 9:2101-203.

²⁶⁷Shaw Livermore, *The Twilight of Federalism, The Disintegration of the Federalist Party 1815-1830* (Princeton, NJ: Princeton University press, 1962), 86.

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the Federalist Party came, Henry Adams would describe decades later, the displacement of a “conservative” governing model for America. The form of government that John Adams and Thomas Jefferson knew they could not agree upon would seek to liberate the individual rather than confine him. The risks were real because the historical experience – century after century – had to one degree or another accepted the premise that individuals left to their own devices will create chaos. Being endowed with a panoply of rights did not mean that they knew how to use them properly and benignly. If the Jeffersonians were to be taken at their word, the idea of reversing the pattern of individuals being ruled instead ruling would be put to the test. The Federalists, while recognizing the potential capacity of the individual to make himself better, could never overcome their fears that his self-love – a much-used term in the political discourse of the times – would lead him astray to the detriment of a stable social order. Turn self-love in the other direction and the result was that when liberated the self would naturally know the limits and boundaries for his actions. What history had actually shown, was not that individuals must be ruled to prevent them from being bad but that ruling them had transformed their capacity for self-love into a behavior of self-aggrandizement.

When Thomas Jefferson assumed the Presidency in March 1801, he was joined by a Republican Congress both in the House by a large margin and in the Senate by a smaller margin. The third branch, the Judiciary, could continue to be a Federalist stronghold because of John Adams’s exercise of the presidential appointment power between election and inauguration with support of a lame-duck Senate. The question before the Jefferson Party was how to turn the ship of state in a direction more favorable to the republican principles. Joseph Ellis in *The American Sphinx* offers an intriguing portrayal of Jefferson as occupant of the seat of power that he had often downplayed publicly as his objective. His descriptive phrase was “The Textual Presidency”, an appropriate description for a man who – a president who for the most part during the first year was desk-bound was determined to execute his duties with the pen.²⁶⁸ If one surveys the correspondence of Jefferson during the months immediately after his Inauguration – mainly his incoming correspondence – one is struck by how much of it concerned appointments to federal offices and indirectly how much pressure existed to clear the bureaucracy of Federalists. Ellis has actually counted the incoming mail – not including internal communiqués with his Secretaries – and has come up with the figure of 1,881. He responded with 677 letters.²⁶⁹ Ellis did not say how many incoming letters concerned appointments, and I have not made a count myself, but after reading the

²⁶⁸Ellis, *American Sphinx*, 186-194, especially 192.

²⁶⁹Ellis, *American Sphinx*, 192.

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latest volume of Jefferson's papers (33 in 2006, Boyd Edition), I came away with impression that many, perhaps a majority, in some way concerned appointees – removing, keeping or naming them.²⁷⁰ Despite a long paper trail Jefferson confessed to James Madison that the disposition of Presidential correspondence troubled him:

Having no confidence that the office of the private secretary of the President of the US will ever be a regular and safe deposit for public papers or that due attention will ever be paid on their transmission from one Secretary or President to another, I have, since I have been in office, sent every paper, which I deem nearly [sic] public, and coming into my hands, to be deposited in one of the offices of the heads of departments, so that I shall never add a single paper to those now constituting the records of the President's office; nor should any accident happen to me, will there be any papers in my possession which ought to go into any public office.

Jefferson further informed Madison that he regularly selected the papers that should be sent to the Secretaries and those that were "private papers" or those that might relate to public topics but were "personally confidential". Finally, he explained to Madison that certain public papers were being transmitted to the Secretary of State for safe-keeping.²⁷¹ Jefferson had a preference for the pen, and in his inaugural year his pen (as well as the pens of others) was certainly busy.

Jefferson and his allies are often described as minimalists in theories on government. It is an appropriate term. The election of a minimalist, however, did not mean that suddenly government after a period of aggressive growth could be reconstituted in a simpler, smaller form. Presidential appointment power illustrated the problem that a minimalist faced. Jefferson's benevolent attitude toward Federalist officeholders was selective and temporary. From the outset he was inundated with requests to dismiss Federalist officeholders and to replace them with Republicans. That actually happened on a grand scale in New England, the heart of Federalism. It is not so surprising that Federalists were bumped for Republicans, but it is surprising, almost a caricature, that Republicans, the governing minimalists, were so eager to occupy federal offices. At the most fundamental level Republicans should have called for reducing bureaucracy and

²⁷⁰For lists of appointments and editorial comments see Boyd, ed., *Papers of Thomas Jefferson*, 33:Appendix 1, pp. 663-679.

²⁷¹Jefferson to Madison, 29 December 1801, in Smith, ed., *The Republic of Letters*, 2:1211-1212. My reading of this letter is different from Ellis's reading. Jefferson appeared to be concerned about the preservation of the correspondence rather than the obliteration of "any traces of his written record as president..." Ellis, *American Sphinx*, 192.

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downsizing government. During his first term Jefferson will actually downsize the government, but in the early months of his administration he was under constant pressure to remove Federalists and to replace them with Republicans, all of which would have had the effect of maintaining the bureaucracy. However Jefferson may have personally viewed the nasty business of appointment and patronage, he must have reached the conclusion that the selective continuation of a Federalist bureaucracy would not allow him to reconstitute the government that he now headed. The test to reshape the government will endure throughout his first term.

The Hamiltonian program was a bold gamble to stabilize government fiscal policy after more than a decade of uncertainty and volatility. Bold though it was, radical it was not. Alexander Hamilton had to know that Americans were committed to a form of government that was more republicanism than absolutist or any combination of absolutism and constitutionalism. Empowering the central government and forging an alliance between the elite and that government to achieve stability and prosperity, even if wrapped in republican rhetoric, that embraced the past. Different details, but same principles: being ruled. Americans may not have understood all the pieces of Hamilton's program, they understood the context. Refashioned, perhaps, but how different was Hamilton remedy from what the British had told the colonists was in their best interests? I have not yet used the term *conservative*, but it may surely apply in the sense that even under republican principles governing was privileged. Adams's "orders" reached the same conclusion. To be fair, Hamilton belonged to a new generation of eighteenth-century thinkers like Adam Smith and Anne Robert Jacques Turgot among others who harshly criticized European mercantilism by which governments in varying degrees exercised control over their economies and strongly urged these governments to adopt an agenda to eliminate regulation and restriction and to allow autonomous market forces to drive economic behavior. In his recent treatise, *The Moral Consequences of Economic Growth*, Robert Friedman argues that good moral results flowed from the new economic ideas that placed emphasis in growth and development. Per-capita incomes rose, and therefore people were better off. This occurred in stages from hunting and gathering, shepherding, farming and commerce. Economic activity was at the center of human activity, and the stages were important because they demanded that political and legal activities adapt in order to support and encourage the evolving stages that were necessary to enjoy the progress – moral advance in eighteenth-century terms – that was envisioned.²⁷² Friedman clearly warns, though, not confuse contemporary ideas of economic growth relative to individual wellbeing with eighteenth-century views. The Enlightenment served as a seedbed for rethinking the relationship between government

²⁷²(New York: Alfred Knopf, 2005), 27-29.

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policy and economic advancement. Certain practices stood in the way of advancement and progress and should be eliminated. In certain quarters, after centuries of intervention and regulation, such an admission was almost revolutionary in itself. It was possible to embrace an anti-mercantilistic policy of unshackling the economy without necessarily taking an anti-government stance.²⁷³ Moreover, anti-mercantilists like Smith never used the French phrase – *laissez-faire* or literally “let (them) act” – in describing the unshackling of the economy. The so-called “moral consequences” flowed from reordering government but not eliminating it, and perhaps not even restricting it overall. The idea of reordering government to make it smaller was not exclusively an American precept, for in fact the eighteenth-century French Physiocrats, to whom I shall return, held a fairly radical position about how to rationalize an economy in which agriculture was made supreme and under such a model government became virtually unnecessary.²⁷⁴ Hamilton’s thinking about what America needed was not a throwback to mercantilism. Even Adam Smith whose “invisible hand” was omniscient accepted tariffs and subsidies for those industries that were vital to a nation’s defense and security. Nor was Hamilton advocating *laissez-faire*. A central bank that ruled over money and credit in concert with wealthy bondholders and financiers in an enduring arrangement was not an endorsement of minimal government. No, Hamilton espoused a form of rationalistic, enlightened, robust government that would give America “a meritocracy of infinite variety, with a diversified marketplace absorbing people from all nations and backgrounds.”²⁷⁵ To encourage economic diversification and specialization was to encourage growth and progress. While he believed “In matters of industry, human enterprise ought doubtless to be left free in the main, not fettered by too much regulation...,” but he recognized, as did others, that “prudent aids and encouragements on the part of the government” can be beneficial. His support of quasi-mercantilistic policies like tariffs and subsidies were considered to be temporary to allow the new nation to gain an equal footing with the established European states.²⁷⁶ The red-flags for

²⁷³Friedman, *Moral Consequences*, 47-48.

²⁷⁴The only reference I could find in Friedman to the French Physiocrats was one in which the founder, François Quesnay, was linked to Adam Smith, David Hume and other anti-mercantilists with regard to free trade. Such a linkage does not reveal how different Quesnay’s economic model was from the British models.

²⁷⁵Chernow, *Alexander Hamilton*, 376.

²⁷⁶Quote from Chernow, *Alexander Hamilton*, 377, from an article in the *New York Evening Post*, 24 December 1801. Hamilton makes a few appearances in Friedman, mainly in the notes. *Moral Consequences*, 108. & see index for pages of endnotes. Friedman places Hamilton in the progressive camp vis-a-vis his support for government-sponsored internal improvements but does not analyze the controversy that such programs engendered. Other versions of “progress” in nineteenth-century America pointedly denounced Hamilton (and Henry Clay) advocating too much government. For a brief and more critical discussion of Adam Smith’s “The Invisible Hand and the State” see Duncan Foley, *Adam’s Fallacy, A Guide to Economic Theology* (Cambridge, MA: Harvard University Press, 20006). 33-40.

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the minimalists were everywhere. Hamilton may sound rational and moderate but at the core of his advocacy was an energetic government that few Americans had difficulty in identifying and excoriating.

It should not be lost in all the praise of Hamilton's forward-thinking that the enactment and execution of his program required an active central government that under Washington's predecessor expanded to the point that the ideals of the Revolution were called into question. The minimalists rejected mercantilism, but they did not replace it with an energetic government under a different format. Whether or not they used the term *laissez-faire*, that was what they preached. The Jeffersonians/Republicans in rejecting the Hamiltonian approach were moving toward delinking the government and the economy. They conceived of a social order that demanded a small government that it would act primarily as a negative influence, to protect, not to endow. Another way to think about the Jeffersonian approach was the liberating of the individual from social and political restraints that came to embody another phrase I have not yet used, a *liberal* state. Terms like conservative and liberal are loaded with many connotations that often reflect current political positions. The purpose here is to weigh the terms within a historical context: Hamiltonianism had a conservative component in the sense that it depended on a robust (albeit enlightened) government to assure prosperity and security because according to the conventional justification for government free-acting individuals could not be trusted; by contrast Jeffersonianism broke the link with the past by argument that even enlightened government was still government whose track record over time made a mockery of the idea that it in a collective sense could do more for the prosperity and security of the individual than he could do for himself. It was the Jeffersonian view that drove nineteenth-century liberalism, even though at times it had to assume a more conservative stance.

The election of Thomas Jefferson in 1800 ushered in a quarter century when Republicans dominated the national government. Although I have used the term "Republican" to designate the party of Jefferson and his allies, I am well aware that the term "Democratic-Republican" was more or less the official name of the Jeffersonian Party. When political affiliations of the members of the House (elected) and Senate (appointed and election) are tracked from 1800 to 1825 the Republicans assumed control in 1801 and expanded their majorities in successive elections. In the Eleventh Congress (1808-1810) with 142 Representatives slightly more than a third of them were affiliated with the Federalist Party and with 34 Senators (17 States) only a fifth were Federalists. With fewer than 50 House members more than half came from five New England states. The rest were spread across the other Atlantic coastal states with New

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York (7) and Virginia (5) claiming the largest contingents outside of New England. The three “western” states of Kentucky, Tennessee and Ohio had no Federalist Congressmen. As the westward movement picked up momentum, the base of the Republicans will also grow. Ten years later, in the Sixteenth Congress (1818-1820) Federalist House membership had fallen to 14 percent (of a total of 186), although Federalists in the Senate (46 members) remained at a fifth.²⁷⁷ In Ohio, Indiana, and Illinois in the Upper Ohio-Mississippi Valley region, Kentucky and Tennessee in the middle Mississippi region and Alabama, Mississippi and Louisiana in the lower Mississippi region not a single House member was a Federalist. Along the Atlantic coast, however, the most profound changes in political-party affiliations can be observed. In New England Connecticut, Rhode Island, New Hampshire and Vermont not a single Federalist was elected to the House. In Massachusetts, the heart of Federalism, only seven of the 20 Congressmen were Federalists. As fewer and fewer Americans identified with the principles and the goals of Hamilton and Adams, their presence in the national government vanished. Even Adams’s son, John Quincy, had abandoned the Federalists for the Republicans and served as President Monroe’s Secretary of State, and given the fact that since Jefferson’s Presidency the Secretary of State was a stepping stone to the White House, John Quincy with an impeccable Federalist lineage was in line to succeed Monroe. One could conclude on the basis of no further evidence that the Jeffersonians/Republicans/Democrats were doing something right that attached them to the populous, a point that was reinforced by the broadening of the franchise. The Federalist Party as a political entity disappeared after 1820, and, ironically, so will the Republican or Republican-Democratic Party. It is often argued by political-party historians that parties need competition, and when their umbrella became so broad that the competition ceased, their dominion will stimulate its own competition. As America entered the second quarter of the nineteenth century, new party alignments and party names will have to be considered.

Patronage occupied Jefferson’s time in the early months, but that would pale in significance to another issues that he would have to soon address. The Federalists had left him was an large national debt that could not be ignored and had to be paid. Jefferson and his allies had long regarded the debt, as structured by Hamilton, to be part of a plan to make the government dependent on those classes that were inimical to popular rule. Managing the debt required constant attention to and manipulation of government finances. No other area of government would test the Jeffersonians political theories than how it dealt with money. From the outset Jefferson intended to reduce or

²⁷⁷Since US Senators were chosen by state legislatures, and since some state legislatures remained in Federalist hands, the Federal Party could maintain a voting bloc in the US Senate that from time to time challenged the Republicans’ goals.

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eliminate the debt, a goal shared by his Swiss-born Secretary of the Treasury, Albert Gallatin. But Gallatin, although loyal to Jefferson and Republicanism, was not a “yes” man. Jefferson apparently considered Gallatin one of the few people in the country who could unravel the labyrinthine financial structure created by Hamilton.²⁷⁸ The labyrinth was not as complex or mysterious as Jefferson liked to portray it, but it served a political purpose in that Republican fiscal goals could be highlighted for their frugality and simplicity. While Gallatin understood the distrust and dislike of Hamilton and had as a Congressman from Pennsylvania questioned certain assumptions and figures used by Federalist to defend Hamilton’s program, he also recognized that Hamilton had performed a valuable service in stabilizing the government finances. Republicans might have pursued a different course to achieve fiscal stabilization, but they should not allow their differences with Hamilton to misrepresent what he had accomplished.²⁷⁹ Gallatin did not consider it possible or wise to dismantle quickly the Hamiltonian fiscal structure, but he did follow Jefferson’s instructions to develop a plan to reduce the national debt.

Opinions differ over the size of the national debt when Jefferson assumed power exist among historians. In 1801 by most accounts it sat at \$80 million plus.²⁸⁰ The plan developed by Gallatin indicated by 1810 the national debt would be slightly above \$45 million and by 1820 eliminated. In 1803 the debt grew by more than \$11 million because of the purchase of Louisiana. The total cost of Louisiana was about \$15 million of which approximately \$4 million was covered with a \$2 million cash down-payment from the surplus and a short-term loan.²⁸¹ Thus, about \$11.5 million was financed with long-term bonds at 6 percent per year and not redeemable for 15 years (1818) and then

²⁷⁸Donald Stabile, *The Origin of American Public Finance, Debates over Money, Debt, and Taxes in the Constitutional Era, 1776-1836* (Westport, CT: Greenwood Press, 1998), 141-142. Many studies focusing on government finances in the early national economy rely on data collected, analyzed published a half century ago by Paul Studenski and Herman Krooss, *Financial History of the United States, Fiscal, Monetary, Banking, and Tariff, including Financial Administration and State and Local Finance* (New York: McGraw-Hill Book Co., Inc, 1952 [2nd Edition, 1963]), Chapters 4-7 plus Appendix.

²⁷⁹Chernow, *Alexander Hamilton*, 646-647. According to Chernow Gallatin after reviewing the Treasury archives had to persuade Jefferson that Hamilton did not operate the US Treasury to enrich himself or his friends, no doubt a hard pill for Jefferson to swallow.

²⁸⁰Edwin Perkins *American Public Finance and Financial Services, 1700-1815* (Columbus, OH: Ohio State University Press, 1994), 264. Ellis in *American Sphinx* (194) quoted a much higher figure of \$112 million, a figure I could not verify after checking Ellis’s footnote (Chapter 4, footnote 42).

²⁸¹The accounting on the purchase of Louisiana can be confusing. It is not always clear in scholarly commentary whether the discussion of the public debt and Gallatin’s reduction plan includes the Louisiana debt. I have relied mainly on Stabile, *The Origin of American Public Finance*, 146-148. The French accepted a purchase price of about \$11.5 million, and the remainder was reimbursements for French debts held by American merchants. See L. B. Kuppenheimer, *Albert Gallatin’s Vision of Democratic Society, An Interpretive Profile* (Westport, CT: Praeger, 1996), 63.

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in four installments with the final installment in 1821.²⁸² By 1803 the total inherited debt had fallen to about \$77 million, but then Louisiana pushed the current total debt to \$86.4 million. If just the Jefferson years are counted, through 1808, the pay-down of the public debt including Louisiana was \$30 million or \$6 million a year, from \$86 to \$57 million. In the next three years another \$3 to \$4 million was applied each year to the debt. Since some Jeffersonians (perhaps even Jefferson himself) considered the Hamiltonian debt pernicious because it was not legitimate – it was created to serve other purposes – they may have wished to pay it off as quickly as possible. Gallatin’s mass of correspondence with the President and other members of the Cabinet and the Congress made it clear that the pay-down had to proceed in an orderly manner in accord with the terms of the bonds. It was always possible to refloat outstanding bond issues – convert existing bonds to new bonds – but that would not eliminate the debt and would probably raise the cost of servicing the debt. The pay-down as orchestrated by Gallatin followed a specific timeline, although, as so often happens with such plans, course corrections had to be undertaken. Samuel Blodget (cited by Edwin Perkins as a “contemporary statistician”) estimated in 1803 that foreigners owned \$43 million, or slightly more than half of the federal debt of which the English owned \$25 million and the Dutch \$15 million. The remainder was owned by American investors including the Bank of the United States and other state-chartered banks. As Perkins explains, the Treasury “retired” some bonds directly and in other cases it purchased bonds on the open-market in behalf of the sinking fund that was set up to cover future debt obligations. In spite of all the handwringing over American finances at the outset of the Washington Administration the attentiveness to managing the debt had paid off a decade later when US Treasuries were considered to have “gilt-edged status”.²⁸³

When Gallatin made his first projection (14 March 1801) of receipts and expenditures for the current fiscal year and for the coming years he was conservative and cautionary. He estimated that import duties would yield annually about \$8 million (despite the fact that in 1800 the income was over \$9 million). He noted that domestic taxes and sales brought in about \$2 million annually, but since Jefferson had indicated his desire to eliminate internal taxes (land and stamp sales would continue although how much they

²⁸²This was a fairly sophisticated deal, largely the work of Gallatin. No French investment bank would underwrite the US bonds because of the French-English conflict so the bonds issued were underwritten by two investment banks – Baring (British) and Hope (Dutch-German). Napoleon got his money – between \$8 and \$9 million – within months after the bonds were placed at a discount. Over the life of the bonds the cost of Louisiana, principal and interest, was about \$21 million. Several letters and reports by Gallatin spell out the details of the transactions. See letters between Jefferson and Gallatin written in August and September, 1803, and Gallatin’s “Remarks on Jefferson’s Annual Message, October 1803, in Henry Adams’s edition of Gallatin, *The Writings of...*, 3 Volumes (Philadelphia, PA: Lippincott & Co., 1879), 1:134-162.

²⁸³Perkins, *American Public Finance*, 326-327 but especially endnote 4, p. 401.

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would yield was hard to ascertain), Gallatin dropped the figure to about \$500,000. Total receipts under his projection would be about \$8.5 million, and from that total he intended to use \$6.2 million to pay for the interest and redemption charges. Looking ahead to 1804, Gallatin expected the actual level of debt to drop by \$10 or \$11 million. Most of the annual projections, including these early ones, had to be revised because the actual annual receipts and expenditures presented a different picture. The federal government enjoyed (or suffered) an embarrassment of riches. There was money to do more than could have been foreseen in 1801, and when one reads the extensive correspondence between Jefferson and Gallatin and with other members of the Cabinet and the Congress, one can sense that the surpluses could not be ignored. As the internal storm clouds gathered, however, the discussion of the surpluses was accompanied by discussion of what to do if war came to pass. Between 1801 and 1811 the national debt was reduced by half in large measure because custom receipts generated about \$30 to \$35 more than projected. (\$12 million on average instead of \$8 million per year.) Moreover, government sales, in particular land sales, had risen to more than \$1 million dollars a year so that average total receipts were between \$13.5 million and \$15.0 million. In addition to paying down the debt Jefferson had promised to cut government expenses, and he fulfilled that promise. Non-debt-related costs were kept between \$2 and 3 million per year. Hence, total expenses (including debt) absorbed about \$12 million, and that left a surplus of several million dollars per year. Everyone knew that war would quickly turn surpluses into deficits.²⁸⁴ Gallatin became convinced that war was inevitable, although he was far from a War Hawk. He made the case first with Jefferson and then with Madison, and with Congress as well, that if war ensued, revenues would surely fall, but every effort should be made to use federal receipts to meet basic expenses including interest and principal payments and the cost of war should be financed with loans from banks, which he thought had ample capital to purchase government bonds (if the incentives were right) and from others of the investor class. At the end of the Jefferson Presidency Gallatin could justifiably write to Jefferson with whom he had his disagreements:

The reduction of the public debt was certainly the principal object in bringing me into office, and our success in that respect has been due both to the joint and continued efforts of the several branches of government and to the prosperous situation of the country. I am sensible that the work cannot

²⁸⁴Gallatin's projections appear in attachments to a letter that he wrote Jefferson, 14 March 1801, in Boyd, ed., *Papers of Thomas Jefferson*, 33:275-281. I have also used data from Perkins, *American Public Finance*, 263, and from Stabile, *Origin of American Public Finance*, 142. Their numbers are not in absolute agreement, but I am less interested in perfectly accurate figures than in data that point to the level of activity. All accounts agree that in the decade of the 1800s revenues were higher and expenses lower than they had been in the previous decade.

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progress under adverse circumstances. If the United States shall be forced into a state of actual war, all the resources of the country must be called forth to make it efficient, and new loans will undoubtedly be wanted. But while peace is preserved, the revenue will, at all events, be sufficient to pay the interest and to defray necessary expenses. I do not ask that in the present situation of our foreign relations the debt be reduced, but only that it shall not be increased so long as we are not at war.²⁸⁵

Gallatin, after being rejected for the post of Secretary of State, carried on at Treasury under Madison with not so enviable a task of putting into practice what he outlined to Jefferson in the above letter.

Under Hamilton and his Federalist successors the operating economic principle was that a partnership between government and business would provide the necessary stability for growth, development and prosperity. Jefferson and his allies rejected this approach. The concept of self-rule postulated that individuals were best equipped to determine their political and economic destinies, and financial structure erected under the Hamiltonians had to be cleared away in order to achieve the benefits of a nation of self-governing individuals. Within months of his Inauguration Jefferson had set in motion a program that would substantially alter the role of the government in the economy and would over time serve as the model that many Americans from various economic sectors would embrace to a degree. To be sure, Jefferson had not mapped out an economic plan with the Hamiltonian grand vision of securing progress and prosperity. To do so would be contrary to what he believed. Progress and prosperity would derive from letting individuals make their own decisions. That a collectivity like government could anticipate or create the conditions in which individuals could reach their goals was sheer folly. Why should a collectivity be better at it than the individuals themselves, since collectivities were made up of individuals who apparently on their own were incompetent but in a group were suddenly made competent. There were answers to these questions from those who thought societies could only progress with an element social cohesion and coercion because individuals on their own were untrustworthy. But past experience even under the Federalists had proven the Jeffersonian point that collectivities designed to suppress the malevolent predilections ended up exciting them. And the reason was that governing often involved invasion or confiscation of one's property and wealth or at the very least limitations on how individuals could realize the potential of property and wealth. Stripping away political barriers had to be

²⁸⁵Gallatin to Jefferson, 8 November 1809 in Gallatin, *The Writings of...*, 1:465. See also letter to John Epps, Chairman of the Committee on Ways and Means, 29 February 1810, 1:466-475.

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accompanied by stripping away economic barriers. Pursuing a dream of political liberty in which individuals ruled themselves (in most areas) had to be linked to a dream of economic liberty self-rule. In the end, the pleasures that would flow from political and economic liberty would create the social harmonies that civil societies failed to establish. Thus, Jefferson confined himself to the nitty-gritty of paying down the debt and indirectly leaving as much of the wealth of the citizenry as undisturbed as possible.

In the early years of Hamilton's reign the federal government seldom had sufficient receipts to meet annual expenses, especially the costs associated with the \$80-million debt that he had established. A tariff (since 1789) was in place, but receipts were not yet high enough to meet annual government expenses. During the 1790s nearly \$14 million was added to the public debt but only \$8 million was applied to redeeming the debt. Hamilton and his successors argued that internal taxes as well as higher duties were needed to meet these financial contingencies. The fight over how to boost government receipts took a nasty turn in the Adams Administration (after Hamilton had retired) as the shortfall was made worse because of the Federalist plan to expand the military. Federalists had succeeded in getting approval of some internal taxes plus modest revision in import duties. But little progress in reducing the debt was made partly because Federalist approved new debt issues and partly because Federalists, especially the Hamiltonian wing, were not worried about the size or permanence of the debt and saw no rush to redeem it. One purpose of the BUS was to arrange for infusions of liquidity (at a cost, of course) to allow the government to perform its duties and meet its obligations, especially in periods of shortfalls in receipts. The government was duty-bound to pay its debt obligations but not bound in any way to accelerate the redemption. In addition Federalists thought that paying taxes was a good civic exercise – people shared in the cost of having a secure and progressive nation. These ideas were based on the assumption that citizens benefitted from the policies that the Jeffersonians regarded as confiscatory.²⁸⁶

How confiscatory was the Federalist tax program? Based on Gallatin's financial review presented to Jefferson two weeks after his Inauguration, internal taxes and levies generated \$1.5 million in 1800 and would generate \$1.8 million in 1801. In a nation of five or seven million, dependent upon whether or not slaves were counted the per-capita burden was a fifth of a dollar or less.²⁸⁷ Hardly onerous, as Federalist often pointed out,

²⁸⁶I would be remiss in not noting two important essays that cover the period from the Revolution to the Civil War. They are Richard Sylla, "Experimental Federalism: The Economics of American Government, 1789-1914" and Hugh Rockoff, "Banking and Finance, 1789-1914" in Engerman & Gallman, eds., *Cambridge Economic History*, 2:483-541 & 643-684.

²⁸⁷Gallatin to Jefferson, 14 March 1801, in Boyd, ed., *Papers of Thomas Jefferson*, 33:278.

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and justification for upping the contribution that Americans had to make to pay for effective governmental system. Americans also paid state and local taxes, but even they in per-capita terms were hardly onerous. Some scholars have argued that the outcry against colonial taxes in the decades before the Revolution was prompted not so much by the monetary penalty but more by the distaste from having to pay direct imperial taxes at all. So long as the Mother Country absorbed certain imperial costs without much regard for the enactment of new taxes or the enforcement of current taxes, the colonies enjoyed a light tax burden. When a shift in policy began, so too did the outcry. The idea that a central authority – in this case the Parliament in league with the King – could tax the colonies without consent of the parties being taxed, as was required with colonial taxes, was rejected, even though the actual tax was not large. Direct taxation by the Confederation government was nearly impossible, since it required unanimity of the state legislatures. The states themselves went through turbulent times with respect to post-Revolutionary debts and taxes, but these were differences over the components of the debts and rates of taxation. The Constitution made it difficult to impose direct taxes with the proportionality clause and more or less bound the central government to indirect taxes such as imposts and duties. The enactment of some “direct” taxes during the 1790s intensified the drive to create an opposition party in order to reign in the Hamiltonians and Federalists whose fiscal goals aroused deep-seated fears over higher government costs to be accompanied by greater tax burdens. Tariff duties were not cost-free, for whatever was imported to be sold had to reflect all the costs including the duty. Not only was it a “hidden” or indirect cost it had limited applicability. Only a segment of the population, so it seemed, could afford to purchase imported goods. They could afford to pay the levy. Jefferson preached this sermon: tariffs best served agrarian goals because they fell “exclusively on the rich”; a “poor man” who used nothing more than what he produced for himself and his family would “not pay a farthing of tax to the general government, but on his salt...”²⁸⁸ The dichotomy was a useful political ploy but not an accurate portrayal of the nation’s socio-economic structure. By the end of the eighteenth century the majority of Americans fell in that middle grouping (an embryonic middle class) that was neither rich nor poor. Americans had been engaged in international trade for decades. It is estimated as much as a quarter of what Americans produced in 1700 was exported, and although that had been cut in half by 1800, an aggressive export market implied also an active import market, as Americans used what they earned from foreign sales to purchase goods for domestic consumption or for re-export.²⁸⁹ Although figures on distribution of imports during the eighteenth century are

²⁸⁸Quote from Stabile, *Origin of American Public Finance*, 142.

²⁸⁹Robert Lipsey, “U. S. Foreign Trade and the Balance of Payments, 1800-1913,” in Engerman & Gallman, eds., *Cambridge Economic History*, 2:685.

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hard to come by, they no doubt included imports for domestic consumption and for re-export (the latter may have been larger than the former). During the century imports for domestic consumption may have grown as more and more American moved away from a self-sufficiency economic model. But, as noted above, re-exports remained a large and perhaps the larger component of the import trade.

The first tariff was enacted in 1789. Tariffs are generally divided into two groups: those designed primarily to raise revenue and those designed to protect a domestic producer from international competitors with lower prices. All nations have resorted to protective tariffs at one time or another, and the United States will enact much more punitive tariffs to protect native industries in the 1820s. The first tariff enacted in 1789 was more revenue-based than protective although some of the rates were quite high. Under the law duties were levied in three categories: (1) specific duties on 30 items; (2) *ad valorem* rates (7.5 percent to 15 percent) on listed items; and (3) 5-percent rate on all other goods. The rates in categories two and three were raised several times during the next several decades. Items subject to duties were hemp, steel, nails, dishware, molasses, coffee, rum, rope, salt, boots, shoes, candles, cheese, soap, tobacco products and playing cards. Except in the case of tobacco and a few other items protection was less likely to be the aim than the generation of revenue.²⁹⁰ In addition, there was a tonnage tax that was meant to encourage international traders to use American ships. US ship-owners paid 6 cents per ton while foreign ship owners paid from 30 to 50 cents per ton. The average rate rose between 1790 and 1810 from about 10 percent to about 15 percent.

There is another side to the tariff issue. When a nation both imports and exports, it is easier to keep a balance between the two. If imports greatly exceed exports, then a way must be found to pay off foreign creditors. It is generally assumed that prior to the Revolution (where the data are less reliable) the colonies ran a substantial trade imbalance of imports over exports. After the Revolution and more specifically after 1790 the trade deficit narrowed, although it probably never full disappeared. The other side of the trade coin was that America not only saw its imports rise but also saw its exports rise. Imports rose from about \$20 million in 1790 to \$124 million in 1810 and exports from \$20 million in 1790 to \$110 million in 1807.²⁹¹ A negative trade imbalance remained but was manageable. Indeed, the import-export figures ignore other

²⁹⁰Stabile, *Origin of American Public Finance*, 87.

²⁹¹This was not a straight upward trend especially during Jefferson's Second administration. Commerce during those years was affected by rising international tensions and governmental restrictions on imports and exports to address these tensions. I will deal with these in short order.

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transactions that come into play with respect to the trade deficit. Even though half of the exports may have been made up re-exports, these transactions still involved a level of activity within the domestic economy. What can be said is that the rise in import-export traffic coincided with notable growth in American's economy. Although economic statistics for the early national period are problematic, those that economists have assembled and studied indicate that the economy's per capital growth was in the range of 1 to 1.5 percent per year between 1790 and 1810 after recording perhaps modest negative growth in the two prior decades.²⁹² If these rates are accurate, they compare favorably with other periods in antebellum America. Per-capita economic growth meant that American output was increasing over and above what was needed to sustain any rise in the population. Other figures indicate that productivity was rising, that is, that fewer inputs were needed to increase outputs. Moreover, the savings rate was high, and since savings equal investments, they became the capital that underwrote the improvements that resulted in *real* growth. Without delving into all the figures and the techniques used to derive the figures, let it suffice to say that the 1790s and 1800s (at least until 1807) were broadly speaking prosperous times.²⁹³ Since agriculture was by far the largest economic sector, it had to be a contributor to the nation's economic growth. Although some agricultural areas suffered decline, overall agricultural production was growing in *nominal* and *real* terms. Coinciding with the rise in domestic production of agricultural goods was a rise in world demand for certain goods. American had few manufactures yet to sell abroad, but they had various comestibles and commodities to sell: forest and sea products, grains like wheat and tobacco and cotton. American ran a trade deficit in these years (other transfers have to be accounted for), but the trade deficit did not impose much of a burden.

The importance of a growing export sector can be seen in the way in which international payments were executed. Since shipping currency to cover foreign transactions to and from the United States was expensive and time-consuming, international traders had long relied on bills of exchange to facilitate these transactions. Bills of exchange seldom involved the transfer of currency. A simple example will suffice to explain the system. An American exporter, almost as soon as his merchandise was shipped, would have a bill drawn on what the foreign importer owed him and then would try to sell the bill (in exchange for imported merchandise), allowing for a slight discount to cover risk and haulage to an American importer, who in turn would present the bill to satisfy his debts for purchases from foreigners. Thus, the money owed to the American exporter became

²⁹²Gallman, "Economic Growth," 2:Table 1.16, Panel B, p. 22. See Gallman's notes for sources and qualifiers.

²⁹³Again the source is Gallman, "Economic Growth," in Engerman & Gallman, eds., *Cambridge Economic History*, 2:1-55 with analysis of savings/investment, 39-43.

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the voucher by which an American importer purchased goods and satisfied creditors. If all parties accepted the terms of the bills, the American importer would pay, upon the release of his shipment, the duties levied against his imports.²⁹⁴ It could be that the only point at which money exchanged hands was when the importer paid his duties. All the parties were satisfied to avoid the cost of shipping and storing bullion. If too few bills issued in connection with exports existed, then currency itself would have to be exchanged, and in all likelihood transaction costs would be higher. Jeffersonians had no desire to interfere with this well-established system of payment and exchange, although having strong southern connections they had no desire to enact protective tariffs that would end up costing the South more to export its staples.

Although debt reduction and policies on duties were important to Jeffersonians, one would expect, given the warfare over the chartering of the Bank of the United States, that it to be high on the Jeffersonian agenda for elimination. It was certainly discussed but never undertaken. Gallatin, for one, advised against it. Historians have generally been in agreement that the BUS was well-managed and its natural constituency of merchants, shippers and manufacturers were not showered with favors as its opponents had averred. The BUS basically stuck to its charter and fulfilled its assigned tasks in a “bankerly” fashion.

At the time of its chartering few private banks existed, and in time because the BUS could establish branch operations it came to dominate the banking system. Hamilton’s model was the Bank of England, which played a large role in organizing and managing that nation’s public finances. The BUS’s charter, however, laid out a more limited role. For example, the BOE could make long-term loans to the government in order to deal with unpredictable financial crises whereas the BUS could only make short-term or “bridge” loans to assist the US Treasury in times of revenue shortfalls. Such loans were necessary in the 1790s, as the federal receipts were not always sufficient to cover federal outlays. By the mid-1790s, shortly after Hamilton’s resignation as Secretary of the Treasury, the public finance component of the BUS’s overall operations began to shrink in importance. The reason was that the federal treasury was no longer as starved for cash, and that made the lending of money to the treasury to cover short-term imbalances less of a money-maker for the Bank. This was especially true in the Jeffersonian years when US Treasury enjoyed substantial annual surpluses, as noted above, from rising customs revenues. This led the BUS to concentrate more effort on its commercial business rather than its government business. As the Treasury paid down

²⁹⁴I have drawn on some excellent examples of how the bill-of-exchange system worked in Perkins, *American Public Finance*, 317-323.

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the federal debt, which Hamilton had created in order to stabilize public credit as well as to provide a rationale for linking the moneyed classes, who often had a stake in the banking sector, the Treasury came to rely on the BUS primarily for collecting, holding and dispersing federal funds. It also continued to expect the BUS to exercise control over increasing circulation of bank notes being issued in lieu of the absence of specie currency. As the federal depository, the BUS had on hand millions of dollars interest-free that could be deployed to its lending operations. It is estimated that the commercial business at BUS rose from around 40 percents of its “earning assets” in 1793 to 85 percent by 1809. In 1801 the BUS held about \$3 million in long-term federal bonds. In addition, the Bank’s short-term loans to the Treasury amounted to another \$3 million. By comparison commercial loans had reached more than \$13 million. As of 1809 the Bank had further reduced its federal bond portfolio by a third to \$2.1 million, carried no short-term government loans and had raised its commercial loan portfolio to nearly \$17 million. In the same period federal deposits at BUS and its branches averaged about \$4 million per year.²⁹⁵

Perhaps the most telling statistics with respect to the Bank’s financial strength was its specie reserves. Albert Gallatin reported in 1809 that they reached about \$15 million or equal to about half of its total capitalization. Specie was scarce in the Unites States, and yet through prudent management the BUS, as would be expected of a sound central banking operation, had acquired specie in order to allay any fears or suspicions about its own financial standing or its determination to make the emerging banking system operate on sound financial principles.²⁹⁶

No matter from what angle one views the BUS, in every sense an experiment in the young nation that had few banks, public or private, the question initially raised during the charter debate continued to haunt American politics. Jefferson remained a foe but took Gallatin’s advice and let the Bank continue to operate. (Its charter did not expire until 1811 in Madison’s Presidency.) After he left the presidency, Jefferson wrote in 1813 that his “disapprobation” of note-issuing banks including the BUS was unmitigated: “...nor have I since [the chartering of the BUS and state banks] observed any effects either on the morals or fortunes of our citizens which are any counter balance for the public evils produced.” On this score his old nemesis, John Adams, had

²⁹⁵Perkins, *American Public Finance*, 254-256.

²⁹⁶Bray Hammond, *Banks and Politics in America, From the Revolution to the Civil War* (Princeton, NJ: Princeton University Press, 1956), 202.

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written some years earlier that every banknote in excess of actual gold and silver in the vault “represents nothing and is therefore a cheat upon somebody.”²⁹⁷

Bray Hammond’s *Banks and Politics in America* had an impact when it was published in the late 1950s.²⁹⁸ Hammond, a former Federal Reserve figure, in his wide-ranging narrative of the evolution of the banking sector and the role of politics, sparked new interest in the arcane business of banking and in general gave the Bank of the United States and its successor, the Second Bank, except for occasional lapses, high marks for stabilizing credit and currency activity at a time when that was what the economy needed. Although recent analytical scholarship (more about numbers) has revised that narrative in some significant ways, Hammond raised an essential question about the Jeffersonian Period: how with a nearly one-hundred-fold increase in the number of chartered banks (state rather than national) could the known advocates of banking have “propagated” any greater growth than what mainly occurred under the declared enemies of banking?

Hammond answered his own question. Banking “flourished” even as the Hamiltonian era faded because “business was becoming democratic”. No longer the preserve of the elite or privileged – America’s so-called aristocracy – “business opportunities were falling open to everyone.” Hammond detected a new alignment between agrarians who were the bedrock of a Jeffersonian society of self-governing individuals and non-agrarians who could fit their own entrepreneurial ambitions into the Jeffersonian ideological framework. Hammond invoked Charles Beard’s interpretation from his *Economic Origins of Jefferson Democracy* that Jefferson’s “academic views pleased the one group [agrarians] and his practical politics propitiated the other [entrepreneurs].” What banks could do in an expanding economy both from demographic and economic incentives was create money or capital – each dollar invested by a stockholder allowed the bank to lend as much as five dollars. Risky to be sure – the problem then as now was overextension – but necessary if the economy was to expand.²⁹⁹ Jefferson surely understood that farmers and planters needed access to capital, which banks could provide, but he was inclined to allow banks to establish themselves on the basis of those needs rather than by national fiat. That these same banks organized to serve agrarians could also serve other economic sectors in competition with agriculture must certainly

²⁹⁷Quoted in Hammond, *Banks and Politics*, 195-196.

²⁹⁸In fact I, a graduate student, shared briefly office space with his son, Peter Hammond.

²⁹⁹Hammond, *Banks and Politics*, 145-146. Citation in Beard, *Economic Origins of Jefferson Democracy* (New York: Macmillan, 1915, 1949), 467.

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And there was the thorny question of control and regulation. Whether chartered as national or state agencies banks were in business to make money. Banks made money lending their own bank notes, and in the absence of governmental controls their restraint could not always be guaranteed. While Jefferson may never have accommodated himself to banking, mainly because of reliance on paper, he acquiesced to a level of banking, never clearly defined, that served the real needs of producers and not the artificial needs of speculators or profiteers. From almost any angle banking posed a dilemma for agrarian theorists who preferred such matters somehow be negotiated among those who needed and those who had. In a letter to Gallatin (12 July 1803) Jefferson commented on the matter of patronage for a Republican bank in Providence, RI, raised in a previous letter: "...I am decidedly in favor of making all the banks Republican, by sharing deposits among them in portion to the disposition they show...." If the laws prohibit such actions, then the laws ought to be revised as soon as possible. "It is material to the safety of Republicanism to detach the mercantile interests from its enemies and incorporate them into the body of its friends. A merchant is naturally a Republican, and can be otherwise only from a vitiated state of things."³⁰⁰ Jefferson was hardly giving a strong or unqualified endorsement for banking, as it then functioned, and yet he was convinced that mercantile-banking interests under a different structure could fit inside Republican principles. Under his predecessors the mercantile sector had been corrupted to believe that it had no "natural" alliance with agrarians and Republicans when in fact they were the most reliable allies. In light of the continuing growth in Republican-Party membership, which had its share of support from bankers and merchants Jefferson may have been onto something. He did not spell out details in this letter nor in other letters I have read. I suspect, however, it was less the "natural" fit and more the perceived benefits to be gained from hands-off government. One can surmise that he did not believe that the benefits from his approach to government and economic policy would devolve exclusively on the agrarian sector. Nor, it would seem, did businessmen automatically dismiss the Jeffersonian approach as incompatible with their economic interests.

Even though the Republicans' opposition to the BUS was well known, their political position on banks and banking was less well known. There were aspects of banking that Republicans had publicly criticized, such as the issuance of bank notes, the absence of sufficient capital and the exclusivity of banks charters. Purists like John Taylor of Caroline believed that state-chartered banks created the same corrupt monopolies that

³⁰⁰Cited in Hammond, *Banks and Politics*, 146-147. Both Adams's edition of Gallatin, *The Writings of...*, 1:129 and Ford's edition of Jefferson, *Writings*, 8:252 contain the actual letter. I have not yet found the prior correspondence that prompted Jefferson to make the remark cited above to Gallatin. No prior correspondence turned up in either Adams's or Ford's editions of Gallatin's or Jefferson's writings.

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the BUS charter had created. It is fairly obvious from the research on banking and the US economy in the early national period that Republicans found the banks to be useful instruments or gainful investments in pursuit of their own economic ambitions. Certainly, the explosive growth in the number of private banks (i.e. banks with private investors but state charters) was not anticipated by either the Republicans or the Federalists, and, one might add, not the consequence of any particular political strategies invoked by either party but rather the consequence of some internal financial imperative. The argument for state-chartered banks was often cast in terms of the need to provide an alternative to the BUS, which to many Jeffersonians amounted to a Federalist monopoly, or in terms of the need to serve particular interests such as farmers or mechanics or artisans. In short, the business of lending provoked competition among investors and their allies that another chartered bank was needed to help an “underserved” constituency. State legislatures, of course, could write the charters in such ways as to mandate certain services and fees that would benefit the states.³⁰¹ The role of banks was changing as the American economy was expanding and broadening. Indeed, Edwin Perkins also recognizes the paradox in the Jeffersonian model: less government not only encouraged individual initiative in developing an agrarian society but also in developing a broadly-based economy. Fewer regulations begat freer markets, and for better or worse those who tried to take advantage of the swelling capital pool, not only at BUS but also at a rising number of private banks, were driven by the potential for an economic return rather than for the endorsement of a political position, although the less-government banner certainly served the Jeffersonians well.³⁰² Those who had constitutional scruples about the existence of a national bank, regardless of the efficacy of its performance in stimulating economic growth and managing federal finances, could put forward the argument that with the overall growth in the banking sector a national bank had become irrelevant. In 1811 when the BUS’s recharter vote failed by a narrow margin, that argument was in evidence. Even in a Jeffersonian political government the vote in the Senate was a tie, broken by the Vice-President, George Clinton from New York, who as an opponent of the BUS but not of banking cast a vote against extension of the charter. The situation will change, of course, as a result of the War of 1812 and the rise in the federal debt (which prior to the war had fallen by about half), but that part of the narrative is ahead.

Opposition to the recharter came from those who were opposed ideologically but also from those who favored banking. The latter group were businessmen, investors,

³⁰¹Hammond, *Banks and Politics*, 146-147.

³⁰²Perkins, *American Public Finance*, 260-261.

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financiers who considered the BUS as an obstacle to their own economic ambitions. When the BUS was chartered, the nation had at most a half-dozen state-chartered commercial banks. In the following decade more than two dozen such banks were opened with perhaps 90 percent above the Mason-Dixon Line. In the Jefferson decade the number more than quadrupled to 115 by 1811, and with the demise of the BUS the number nearly doubled by 1815 to 210. New England was the home of most of the new banks, but every state north, south and west chartered new banks. By 1815 the state-chartered banks (now operating without a national bank) were capitalized probably in excess of \$115 million. Average capitalization was above a half-million dollars, and the majority of banks were clustered around the mean. Only a few banks qualified as large. Port cities like Boston New York, Philadelphia and Baltimore had the largest banks, with medium-sized banks scattered along the coast and throughout the interior.³⁰³

Banks were in the business of lending money from which they earned interest with which to reward their stockholders. Loans were made from funds subscribed by the original investors. If the banks also accepted deposits or savings, those funds could also be used to enlarge the pool of money for loans. In these proceedings there was much room for abuse in light of the absence of any federal oversight in the broad area of currency transactions and credit portfolios except what for bank-note redemptions under the auspices of the BUS. State regulation could be uneven because state charters were neither standard nor uniform among states or within the states. Bank charters were often written to meet demands of specific groups or to realize goals of state politicians. They also contained *quid pro quos*. (As I write this section the US economy is in the middle of a “sub-prime” meltdown that was in large part created by bankers and financiers pushing the envelope as far as possible. We do not call this “wild-cat banking”, a term that was applied to later nineteenth-century banking activities, but for those caught on the wrong side of the sub-prime crisis, it may well feel as if a wild cat had been let loose.) Research on the economy in general and on banking in particular since Hammond published *Banks and Politics* has dug more deeply into the question of performance and impact. As so often happens, the research has clarified some areas and muddied others. One can criticize the rush to expand state banking without adequate guidelines and suitable controls. How many Americans who applied for loans to buy land or start a business had the credit-worthiness to justify the loans. From the bank’s side not making loans meant less business. Trying to determine an individual’s worthiness as a borrower was as difficult as trying to determine a bank’s worthiness as a lender. On the plus side, since banks had stockholders and investors, they were

³⁰³Perkins, *American Public Finance*, 271-276; Richard Sylla, “U. S. Securities Markets and the Banking System, 1790-1840,” *Federal Reserve Bank of St. Louis Review*, 80:03 (1998), Table 1, p. 86, gives similar figures.

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restrained in their goals and did not for the most part engage in highly risky or speculative ventures. Perkins offers the general observation about banking during the Jeffersonian period: "...bank directors made a sufficient volume of loans to generate just enough interest revenue to pay annual dividends of 8 to 12 percent to stockholders. They rarely tried to earn addition profits with the aim of boosting a bank's capital base through the retention of earnings."³⁰⁴ Perkins also notes that earlier historians had underscored the cautious performance of the banking sector during the Jeffersonian era, but they have also been too complimentary. It is a bit technical but worth noting. These historians argued that these bankers made loans based "strictly on so-called real bills". That meant that loans were "secured by self-liquidating inventories that were nonrenewable beyond sixty to ninety days." Perkins's inquiries indicates that this was a myth, an attempt to use history to get pre-World-War-I banks (before the Federal Reserve System) to strengthen their balance sheets. In reality, according to Perkins, banks allowed for rollover loans beyond the ninety days and even granted "accommodation "loans for longer periods and with dubious collateral. Some of these loans proved to be bad decisions, and yet the volume of such was never so great as to jeopardize the whole sector. In many cases banks could recoup their losses by initiating legal proceedings against the assets of the borrowers or their endorsers. The overall scorecard appears to have been that banks were discretionary than reckless. Perkins even proposes (as have others) that bankers may have been too conservative in how they gathered and deployed their assets. Jeffersonian bankers may have put "safety", that is preservation of capital, ahead of "efficiency", that is deployment of capital in terms of market opportunities, and held the money supply at too low a level for the need. As fast as banking grew in Jeffersonian America and as successful as it may have been, it can be argued that redirecting the national agenda did not impose a burden on the American financial sector.³⁰⁵

Richard Sylla, who has written widely on America's early financial history, does not hide his admiration for Hamilton and his fiscal policies. The Jeffersonians, on the other hand, deserve harsher judgment because they backed away from a robust national approach to building the institutional framework that would support economic growth and development. Jeffersonian economic policy or more precisely lack of policy was in his opinion best described as "politics of drift". He does not constrain his disregard for the Jeffersonian vision of the role of government in the economy: that vision was based on "a misreading of U.S. interests, capabilities, and prospects" and proved to be

³⁰⁴Perkins,, *American Public Finance*, 268.

³⁰⁵Perkins, *American Public Finance*, 267. The entire chapter (12) in Perkins must be read along with the footnotes to understand more fully the basis for these introductory passages.

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“illusionary”. He praised Jefferson for a bold step in the purchase of Louisiana but criticized him for not enunciating a set of policies that would encourage Americans to tap immediately into the Territory’s resource base. Louisiana, in the parlance of financial markets was a long-term play, not a short-term opportunity. He faulted Jefferson for enacting the Embargo Act (1807) that closed down American ports on the mistaken assumption that American goods were vital to the rest of the world (they weren’t), for allowing Gallatin’s internal-improvements program (discussed below) to be “eviscerated” even when “many politicians agreed that something like it was necessary” and faulted his successors for terminating BUS and then declaring war when the nation was ill-prepared militarily (the War Department budget had been cut to save money and reduce taxes) and financially (without a national bank and enlightened tax policy the federal debt almost tripled). These criticisms are not new. Even though Hamilton was much despised in his own time, he has been embraced by modern historians because his policies stressed the establishment of both private and public financial institutions through which citizens from all economic sectors could harness the power of the market. Paying down the federal debt, for example, was driven not so much by what would be the economic benefits or costs but rather by an inherent dislike of debt. Without spelling out the details Sylla remarked that to pay down the federal debt would have been more effective “later in time” because it would have allowed the surplus to be recycled back into a more dynamic domestic economy instead of rewarding foreign investors who held part of the debt and earned a premium as result of the redemptions.³⁰⁶

Hamilton despite his unpopularity is the hero, and Jefferson despite his popularity is the goat. In a recent address Sylla made Hamilton’s “financial revolution” even more central than before to the positive direction in which the U.S. economy was moving after 1790. It is worth repeating the ingredients of the financial revolution as summarized by Sylla :sound public finance and national debt management; stable currency and monetary system; effective central bank; growing banking system to provide credit to entrepreneurs and bank money to the economy; vibrant securities markets to give liquidity to governmental and private securities issues; numerous corporations, financial and non-financial, to pool capital, limit liability, and organize enterprises on larger scale than can sole proprietorship and partnerships. This is an impressive list of accomplishments for an economy just emerging from its colonial past. I dare say this list exceeds almost any other list of Hamilton’s contributions that earlier scholars have compiled. Most would be in general agreement on the first three items, for they appeared as installments of Hamilton’s fiscal program. Sylla is clearly

³⁰⁶Sylla, “Experimental Federalism,” in Engerman & Gallman, eds., *Cambridge Economic History*, 2:518-519.

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enthusiastic about revolution in economic policy that Hamilton promoted. When Hamilton became Treasury Secretary, declares Sylla, the United States had “none of the components of a modern financial system. By the times he left office less than six later, it had all of them.” Although he is not the first to underscore Hamilton’s role, he seeks to expand it: the effects of Hamilton’s plan (somewhat neglected by others) “almost immediately led to more rapid economic growth that continued for two centuries.”³⁰⁷ Few can doubt Hamilton’s bold influence in shaping the nation’s financial system. But is the historical context somewhat distorted in this scenario? It might be inconvenient to ask for some details about the revolution and the components that apparently powered it. It might also be inconvenient to ask how the opposition in part led by Jefferson but not confined to him was to be neutralized? If people did not disagree, the world was be an easier place to get things done, although not necessarily a better place to live in. And the Jeffersonian drift, could we have some more details? Jefferson made some mistakes (as did Hamilton) but the statistics we have indicate that economic growth continued and, whether or not the Jeffersonians approved, economic diversification and specialization were taking root. Perhaps under Hamilton it would have been done more orderly or dynamically, although why should we believe or expect that. Sylla has written extensively written about American history, and I have yet to read it all and perhaps I have missed the crucial essays. I have not yet run across any convincing analysis that, unless you can reset the context, can make Hamilton into the hero cum revolutionary that eluded him. That Jefferson was not Hamilton and therefore is to be castigated because he was not is simply ahistorical. In fact, the argument has been put forth that even as Jefferson turned America away from Hamilton, he unleashed (perhaps unwittingly) a different economic dynamic, based on minimal government (not so unpopular even today), that allowed America to grow and by some accounts prosper. Specifically in terms of the banking question Had Hamilton lived he might have opposed the growth of state banks as less efficient and more parochial than an expanded national banking system. We don’t know, and we can’t know. When Sylla himself addresses the state bank question, he tends to describe the growth as moderate as opposed to robust (however do we resolve that) because states through stock purchases in chartered banks had a predilection to restrict the number of banks in existence. This opened the door to decision being made on the basis of personal alliances rather than economic merits. Some states like Massachusetts moved away from stock ownership and instead chose to tax bank profits. Under the taxing scheme the more banks the more revenue, although certain market restraints would still operate. But this boils down to

³⁰⁷Sylla, “Political Economy of Financial Development: Canada and the United States in the Mirror of the Other, 1790-1840,” *Project Muse, Scholarly Journals Online*, Oxford University Press on behalf of the Business History Conference, 2006, 657.

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the question of best practices. Even if we grant Hamilton and the foresight of his financial policies as having a “jump-start” role (according to Sylla) much of the sustained activity occurred under administration that for the most part renounced the specific Hamilton model.³⁰⁸

I have no doubt that Sylla’s economic reasoning is sound or is certainly defensible, but it has an ahistorical tone. Hamilton’s “modern” outlook with respect to the nation’s financial system involved political choices that many Americans were unprepared to accept. Jeffersonians can be blamed for preaching an unruly gospel compare to a santized version of the gospel according to Hamilton, but task is to try to explain how events following one scenario that differed from another scenario produced the outcomes that they did. Hamilton as downsized, although not erased. My reading of Sylla did not leave me with the impression that drift proved to be economically disastrous, for the extant quantifiable evidence indicates the economy was growing in nominal and real terms, but rather with the impression that more attention to the benefits of a more fully developed financial structure would have broadened and perhaps even accelerated economic growth. Although “better” policies might well have yielded “better” outcomes – the wisdom of hindsight – the fact remains that the financial sector in general and the banking system in particular were working, even if structured differently from how Hamilton or Sylla might prefer. Another student of the rise of commercial banking in the early national period writes:

It must be remembered that by 1800 American banking was almost two decades old and had had ample time to prove itself. So, though probably exaggerated, the view that agrarian agrarians could have squelched banking needs to be considered here. In other words, what were the wider uses of early banks? Though not direct causes of the first banks, the facilities banks provided businessmen are important to the study of banking’s origin because they help explain why banking not only arrived, but thrived....Banks, in short, helped individuals and businesses with their day-to-day financial concerns....[B]anks survived politically and thrived

³⁰⁸ Sylla, “U. S. Securities Markets, *Federal Reserve Bank of St. Louis Review*, 95-96 & 97. Sylla considers with savvy and intelligence other issues such as capital inflows, inter-market arbitrage and security pricing in this same article, and while they may strengthen the economic argument for a Hamiltonian approach, they do change the historical context. Perhaps the way in which banking evolved in Jeffersonian America was messy and ragged, but that what we have and what we have did not drive the economic train into a permanent ditch.

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economically because they made people's lives easier and their businesses more efficient.³⁰⁹

Even though the reduction of the debt took priority in the Jefferson presidency in large measure because it unwound any potential pernicious linkage between the Federal Treasury and special interests, other economic issues had to be addressed. With Americans on the move in both a geographic and economic sense the demand for access through better transportation, what was called in the lingo of the times, internal improvements. Albert Gallatin, Jefferson's Secretary of the Treasury, took the lead in developing a plan. The idea of enlarging or improving the transportation system had been bandied about for decades. The difficulty in implementing any plan how to set up and then pay for any such project. There was no handy mechanism for the colonies to undertake such projects singly or collectively. After Independence neither the Confederacy nor the states had the resources to do so. It is entirely conceivable under the Hamiltonian approach to government that a broad-based, nationally-designed transportation system could have emerged. (Hamilton's biographer, Ron Chernow, did not devote a section to this possibility.) The matter became more urgent after 1800 because the westward movement underscored the inadequacy of the system. But the *ad hoc* approach still predominated. Often local transportation networks were creations of local citizens, who for personal or business reasons would organize to build, upgrade or maintain a road. State governments became more directly involved toward the end of the eighteenth century as the movement of people and merchandise became a more pressing matter. The famous western artery that helped to spur settlement of Kentucky was the Wilderness Road. Beginning in 1775, Daniel Boone and several dozen men built the road from western Virginia through the Cumberland Gap into central Kentucky for a land company that wanted to attract buyers and settlers. It was later lengthened until it reached the Falls of the Ohio River near Louisville. For almost two decades it was mainly a foot- or horse-path, but in 1792 the state of Kentucky paid for upgrades that widened and leveled the road and a few years later for paving that made the road an all-weather artery. By 1800 the accelerated westward movement combined with the expanded economic activity to lift the transportation question to a higher priority.

³⁰⁹ Wright, *Origins of Commercial Banking in the United States, 1750-1800* (New York: Roman and Littlefield Publishers, Inc., 2001), 111. I must confess my doubts about the level of analysis in this book. Wright mainly focuses on banking in New York and Pennsylvania, for good reason: these were states with strong, robust banking operations. Further, Wright unearths many interesting and pertinent details about how banks and other financial agents performed. But the writing left me in a fog. The citation above strike me as reasonable and in line with what other scholars have found – that the banking system developed the financial facilities that citizens needed, but Wright's analysis that follows – important topics like bank liquidity, accommodation loans, commercial paper, etc. – ranges so far afield that the facilities-argument is more or less lost in the thicket. Regrettable, I think, because Wright has a wealth of information that would enhance our understanding.

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Among the Jeffersonians Gallatin's attitude toward public financing of public project was less doctrinaire and more pragmatic. As a Swiss émigré he enthusiastically embraced the idea of creating a republican society in which the shape of the government must be in accord with the preservation of the freedom of the individual. Over his long career of nearly 40 years in American politics, he had a tendency to come down on the side of an issue in a way that did not always please his allies. Perhaps because he was European he did not automatically reject the importance of and need for some institutional anchor in this mobile and robust society. By all accounts he was closer to Madison than Jefferson in part because, like Madison, he was not absolutely convinced that the individual would always be the best judge of what was in the public interest. Institutional restraints over individual pursuits was sometimes necessary for a harmonious and stable society. The collective body could pave the way for greater individual gain and happiness. He was not afraid of a active government, but like his fellow Republicans, he rejected the Federalist view that government should enjoy a such supremacy that individual rights can be compromised. Conversant with the tenets of European Enlightenment Gallatin did not have an automatic distaste or distrust for government. Thus, Gallatin was not opposed to a national bank with quasi-monopolistic powers. He foresaw positive rather than negative benefits arising from a properly-administered and constrained national bank, with an emphasis on properly. Nor did he see a federal program of internal improvements as pernicious so long as it met all constitutional constraints. As the Republican Party, which came to power under a somewhat purer concept of self-rule, became the sole party, it found within the tent some like Albert Gallatin, John Quincy Adams or Henry Clay who espoused the virtue of self-governing individuals but who also envisioned a partnership between the individual and government that would not deny an individual's essential freedom nor the government's potential support for the pursuit of that freedom.³¹⁰

The economics of transportation turns out to be a complicated subject. It is much more than building a road or canal with private or public funds and then waiting for the benefits for investors and users to roll in. In theory, at least, original investors "cannot recapture through their charges all of the benefits conferred" once the facility is built. To charge a single tariff for all users negates the relationship between benefit and value, that is, what can be charged for that benefit. User A because of location or some other factor may enjoy greater benefits than user B and yet they pay the same tariff.

³¹⁰Kuppenheimer, *Albert Gallatin's Vision*, 27-28, 38-39. The author raises pertinent questions about the origin and evolution of Gallatin's political principles, but his discussion of specific points is often too brief and lacking in context. He tries to portray Gallatin as more consistent in developing and enunciating his political principles when Gallatin, like others, found himself having to rethink their positions from time to time because of the unpredictable character of an evolving political situation

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(Theoretically at least in other investments the disparity between revenues and benefits is much smaller.) Even more troubling, however, is that transportation investments have durability far into the future, and in the meantime the very existence of a certain facility “will set into motion ancillary investments” and may affect the profitability of the original one. Of course, governments could assume the total responsibility for building transportation facilities and use its taxing power to raise funds to underwrite and maintain the system. That is more common in modern times but was harder to achieve in the early national period simply because governments lacked the tax base needed and the public support to broaden the base. Despite the market defects facing private investors such investments proved to be “surprisingly vigorous”, in the words of Albert Fishlow.³¹¹

As noted above the new nation was not roadless by any means. The network of common roads that existed when the new national postal service came into being was inadequate. In response Congress passed legislation authorizing the construction of new post roads in 1794. In the 1790s the network of roads augmented by the postal roads was estimated to have grown four-fold by 1800 from about 5,000 miles to about 20,000 miles and even more impressively twenty-fold by 1830. The federal government did not build and maintain roads or provide funding directly for construction and maintenance (with the exception of the National Road discussed below). Rather authorization for building or upgrading roads used by the postal service involved a contract (sometimes by auction) with local businesses, which would be reimbursed for construction and maintenance from postal revenues. But roads designed for mail shipments were often circuitous and low grade and did not therefore meet the needs of merchants, haulers and other commercial businesses. Private citizens and public agencies (how many I do not know) were already wrestling with the problem of how to upgrade the system in order to accommodate the economic opportunities and changes in the absence of a funding mechanism. The solution came in the form of privately-financed toll roads. Between 1800 and 1830 more than 11,000 turnpike miles were built in New England and in the Middle States at an estimated cost of nearly \$28 million. More than a third of the mileage at a cost surpassing \$8 million was built in the first decade of the nineteenth century. Close to 60 percent of the total mileage between 1800 and 1830 belonged to New York and Pennsylvania, two large states with borders on the Ohio Valley. Most of the money was raised through private sources, although about a third of Pennsylvania’s investments came from State treasury. Fishlow’s observations based on available data concerning investments and returns deserve consideration. Turnpike building was a

³¹¹Fishlow, “Internal Transportation in the Nineteenth and Early Twentieth Centuries,” Engerman & Gallman, eds., *Cambridge Economic History*, 2:546-548.

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decentralized activity. In Massachusetts, he reports, the average length of the turnpike was 20 miles. One of the longest early turnpikes from Philadelphia to Pittsburgh was built by eight different road companies and three different bridge companies. States may have chartered as many as 400 turnpike companies in Jefferson's decade. Most companies were capitalized under \$100,000 and most companies apparently depended on local commitments and contributions. Some charters of incorporation limited how many votes a shareholder could cast and frequently required payment of subscription in cash. "The motivation for the investment," writes Fishlow, "seemingly was not the direct financial return but the indirect advantages accruing to those with access to better roads. Whatever the expectation, however, little direct profit was actually realized." He employed the term decentralization to explain how America approached its first major infrastructure project, a term that appears to me to fit well with the ideology of minimal government.³¹² It is plausible to argue that a national approach would have been more efficient or less wasteful, but such an argument must somehow accommodate the suspicion or distrust of a central authority that could only have achieved its goals through expanded taxation.

The national government under Jefferson assumed a small role in the infrastructure build-out. When Ohio entered the Union in 1803 the admission legislation included a provision (designed by Albert Gallatin) that authorized the construction of a National Road that would begin in Cumberland Valley of Maryland and eventually link the East with the Ohio Valley. Money from land sales would be set aside to pay for the construction (a provision that apparently was added to other state admission legislation). Congress did not authorize money for the National Road until March, 1806, and while surveys commenced shortly after authorization, construction did not until 1811. In the aftermath of National Road legislation in his Sixth Message to Congress (December, 1806), Jefferson made a brief reference to the disposition of federal surpluses that could not be applied to more rapid extinguishment of the federal debt without the bondholders' consent (part of contractual agreement) and was not currently needed for any military or defense buildup. It was true, he observed, that once the debt was eliminated – "the most desirable of all objects" – imposts could be eliminated. Was that desirable, for then foreign manufacturers could flood the American market and drive American manufacturers out of business. Most imposts, stated Jefferson, were levied against luxury goods, and those that were not like salt should be erased. Other uses of

³¹² Fishlow, "Internal Transportation," Engerman & Gallman, eds., *Cambridge Economic History*, 2:548-550. Fishlow, Sylla and Blumin, all cited thus far in this essay, describe arrangements that prefigure the Alexis de Tocqueville phrase "voluntary associations". I will address this later as a part of a discussion of *Democracy in America*, but let me add that I am in general agreement with the idea that citizens undertook small projects through temporary associations in which the role of government was limited or absent.

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treasury surpluses might include projects to improve education, transportation and communication that would help to strengthen the bonds between states. Jefferson was anticipating some years before surplus revenues would be available. He was proposing that the states and the Congress, which would have to approve a constitutional amendment to allay any fears and doubts, use the time to do the needed groundwork before a national program could be launched.³¹³ A few weeks before submitting his Message to Congress Jefferson solicited opinions on the Message from Gallatin and presumably others. As a result, it underwent some rewriting. Gallatin's reply included numerous emendations mainly for clarity and precision, but he expressed special concerns about the improvements agenda. He thought that the time-frame in the draft that he read was too imprecise, as if there was ample time to prepare. Gallatin estimated that since paying off the bondholders could not be sped up and the imposts would remain in place, several million dollars in unappropriated surpluses would be available within two years for an improvements program. He urged Jefferson to excise a sentence that read in part the improvements be "partitioned among the States in a federal and just ratio". An early form of revenue-sharing, perhaps, Gallatin did not ever think that such a partitioning could be accomplished. He asked for some clarification as to whether Jefferson was interested in a broad-based improvements program or had a preference for education. For Gallatin's part, he thought that federal appropriations for education might be less popular than other improvements. Jefferson accepted some of Gallatin's recommendations, but the improvements section (two paragraphs) remained a mixture of what Jefferson wanted and what Gallatin wanted. The idea of allotting projects or funds in accord with state demographics or some other formula was gone. Education was listed along with "roads, rivers, and canals" in the first paragraph, but it was given special attention in the second paragraph in which he urged the donation of federal land to advance educational opportunity in order to make it immune from budget cuts if the surplus had to be diverted to other projects. Jefferson's time frame still lacked specificity and could be read as more opened-ended than Gallatin's calculation.³¹⁴

Time was not on the side of Jefferson, who may have been lukewarm on infrastructure improvements anyway, as Gallatin seemed to detect. A few months later in March, 1807 the Senate requested that the Secretary of the Treasury prepare a report on the state of the nation's transportation network. As Gallatin envisioned a program of internal improvement, he was seriously committed to expand the federal role to a level that made the purists uncomfortable. After a year of research Gallatin presented his "Report

³¹³ Thomas Jefferson, Sixth Annual Message to Congress, December 2, 1806 on-line.

³¹⁴Gallatin to Jefferson, 16 November 1806, in Gallatin, *Writing*, 1:319-320.

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on Roads and Canals” in April, 1808 to the Congress. Before examining some of the language used by Gallatin to justify a plan for internal improvements under the aegis of the federal government, I would remind the reader that Gallatin’s Report arrived in Congress during the last year of Jefferson’s second term, when the government as well as the nation was more preoccupied with international threats than internal problems. No internal-improvements legislation was passed in Congress until after the War of 1812 in 1816 and then was vetoed by James Madison in the last year of his second administration. Gallatin’s 1808 report opened with the assertion that the need for better transportation was universally acknowledged. More than half of the Report proposed investments in waterways (rivers, canals, harbors), but water-based transport will gained momentum after the War of 1812. In the decade before Gallatin’s Report road construction paved the way toward an extended and improved system. Haulers and travelers came to realize that routes in a natural state could cost users more annually than the cost of the tolls that were collected by those with charters to build turnpikes. (Whether tolls were adequate to cost costs and reward investors is another matter.) In justifying a national program with federal funding Gallatin contended that better transportation would add to the nation’s overall wealth by encouraging more people to ship more goods, especially heavier goods that heretofore were too expensive to transport, without compromising the government’s financial standing. His accounting indicated that between 1801 and 1807 the government had reduced the federal debt (principal and interest) by \$48. The remaining \$34 million because of bond covenant restrictions could only be reduced at a lower annual payment of \$4.6 million. Based upon incoming revenues imports and other sources, the Treasury had another \$3.4 million to be allocated. Since his total improvement package was estimated at \$20 million over a 10-year period, the annual write-down of \$2 million could be easily accommodated.³¹⁵ What intervened to soak up the surplus and push up the debt was the War of 1812, an event that only figured into Gallatin’s calculations with the customary caveat – barring any unforeseen financial crises.

In the initial pages Gallatin underscored the dilemma for Jeffersonians. Gallatin asserted without qualification that the “utility of artificial roads and canals, at this time so universally admitted, as hardly to require any additional proofs.” The dilemma was how best to accomplish the goal of improving and expanding transportation. Gallatin had no doubt that high transportation costs reduced economic growth. In some circumstances the cost of transport exceeded what the interest on the capital needed to improve the system would be. Better transportation stimulated trade and therefore growth because it

³¹⁵Gallatin, *Report of the Secretary of the Treasury on the Subject of Public Roads and Canals* (New York: Augustus M. Kelly Publishers, 1969), 69-70.

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reduced costs for those already linked to markets, allowing them to expand, and more importantly it drew in others who because of costs had been barred from markets. The dilemma: investors in roads seldom made any money from the toll revenues (see Fishlow above). Where property was secure and population was compact citizens probably could raise the necessary capital without great risk to finance transportation projects. In other cases the projects reach such a large scale that local citizens would be hard pressed to carry them out. It was not the cost of labor or the lack of knowledge, but rather in a nation where demand for capital was growing, the risks associated with some infrastructure investments would be insurmountable. Hence, the “general government” can help to remove some of the barriers to investment and development. With high-risk projects the capital needed was seldom subscribed in total, and that slowed down the work, delayed the completion and added to the cost. Gallatin was more comfortable with a role for the general government than Jefferson and many of the President’s supporters. A defender of the American democratic dream Gallatin believed that in certain areas the intervention of the general government would unite the citizenry and thereby enhance the dream. Good roads and canals, will shorten distances, facilitate commercial and personal intercourse, and unite by a still more intimate community of interests, the most remote quarters....”³¹⁶

Gallatin was mindful of constitutional questions. Given the current political controversies he fully endorsed the need of a constitutional amendment to pave the way for such projects. In meantime (since amendments took time), he proposed that the national government consult with the states, especially with those states that had authorized similar projects, to work out arrangements that would be satisfactory to both. Those arrangements might involve the states granting the national government permission either to fund and build the projects or to purchase stock in and make loans to the companies incorporated within the states to build the projects. Gallatin expressed that arrangements could be agreed upon that would protect the state sovereignty and serve the national interest.³¹⁷

Of the \$16.6 million for specific projects recommended by Gallatin, \$7.8 million (47 percent) was for road constructions. The lion’s share – \$4.8 million – went for a single project – a road from Main to Georgia. He also recommended four “first rate” turnpikes from the four major east coast rivers across the mountains to connect with the four western rivers. Finally, a small sum of \$200,000 was to be allocated to improving roads to Detroit, St. Louis and New Orleans. Gallatin’s plan did not envision further

³¹⁶Gallatin, *Report...on... Public Roads and Canals*, 5-8.

³¹⁷Gallatin, *Report...on... Public Roads and Canals*, 73-74.

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investment in those areas, mainly in the northern and middle states, where road construction had been carried out largely as local projects. His goal was to improve the linkages between states, but he was also willing to add another \$3.4 million to upgrade some of these locally financed roads for a total of \$20 million.³¹⁸ Gallatin spoke directly to westerners where the need for internal improvements was most palpable. Excluding the Louisiana Territory, Gallatin declared that about 100 million acres of uncultivated land existed north of the Ohio River and about 50 million acres south of Tennessee. His proposal was designed, he said, “to enable every industrious citizen to become a freeholder, to secure indisputable titles to purchasers, to obtain a national revenue, and above to suppress monopoly.” But because of a poor transportation system citizens too often ended up with waste lands rather than fertile lands and fertile lands too often ended up “engrossed by individuals possessing greater wealth, activity or local advantages”. Would not ordinary citizens be favorably disposed toward a plan to provide access to all these lands and then to use the proceeds from the sales of these lands to underwrite further improvements that would benefit the communities and individuals?³¹⁹ The answer to the question seemed self-evident, at least to Gallatin, if for no other reason because the general government had the resources to fill in where private investment could not or would not take the initiative. Clearly, he saw this as an enhancement to liberty not a threat, an idea that was not yet ready for prime time.

The brief excursion above into transportation pricing theory was intended as an alert. The headlong rush to invest in roads and later canals was not because people could make easy or quick profits. In simplest terms Americans recognized a need that had to be fulfilled if they were to realize their economic ambitions. The call for more roads and better roads was an acknowledgement that the transportation system was not as effective as it could be. In retrospect it's easy to see what should have been done. At the time it was not so easy. Launching national initiatives along the lines of the Hamiltonian model may have had positive economic outcomes but at a political cost. Many Americans were uncomfortable with or opposed to the Hamiltonian approach. It represented a threat to their liberty, and the way in which Federalist politics played out during the 1790s could only have affirmed their worst fears. At the same time, as political adversaries were battling at the national level about an appropriate federal role, the economic problems that affected localities and their citizens were actually being confronted. In the absence of a national strategy, which seemed highly suspect, solutions were offered and some were embraced. What unfolded over the next several decades was a spree in building an

³¹⁸Gallatin, *Report...on... Public Roads and Canals*, 69-70.

³¹⁹Gallatin, *Report...on... Public Roads and Canals*, 71-72.

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infrastructure that added thousands of miles to the transportation system. Without a national plan or strategy, such as Gallatin's Report might have put into place, a system arose that could move people and goods to regions and across regions that were virtually unreachable before. The cost of transport by road as opposed to water (to be treated later) was expensive because the revenues generated were less than what was needed to pay for the construction and maintenance and to pay off the investors. What builders and investors had to come to terms with was the fact that despite certain efficiencies offered by hard-surface (John McAdam or macadam design) roads came at a higher cost per ton-mile than haulers with other options were willing to pay. For high-value commodities over long hauls at maximum-loads the rates were acceptable; for most other trips they were higher than the advantages gained. Turnpike entrepreneurs faced high construction and maintenance costs, limited technology for road improvement, competition from so-called "shunpikes" or nearby common roads that were slower but cheaper and pricing that led to inelastic demand.³²⁰

Would a federal program have had a different outcome? I don't know the answer nor does anyone else. It could have been better or worse. The success of the BUS, Hamilton signature federal achievement, cannot be used as a model to predict something so different and diverse from setting up a banking system and so much more complicated to initiate and complete. I would add one further comment: the pattern of development associated with road-building will be duplicated with other transportation technologies and in other economic sectors. The role of the federal government will remain limited – hands-off will remain the standard – and the role of the states, while more hands-on than the national government, was less about funding and more about opening the way for private companies. Given the continuing advocacy for a society of self-governing individuals (regardless of the messiness that resulted, I might editorialize), Americans chose a model that fit the theory.

Whatever the economic merits, advancing an internal-improvements program never became a front-burner issue for Jeffersonians, who clearly had other, more pressing issues. First, divisions were developing within the Republican Party. There is much controversy about how to view and interpret the dissenting wing. It was certainly not a single wing and more appropriately involved several unrelated wings. Despite generally high approval ratings in this first term, Jefferson had enemies, notably among the Federalists but including some Federalists who had loosely aligned themselves as moderates within their own party. And he had made enemies among Republicans who believed that Jefferson had not pushed the agenda far enough to dismantle the Federalist

³²⁰Fishlow, "Internal Transportation," Engerman & Gallman, eds., *Cambridge Economic History*, 2:551-552.

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judiciary and reinforce individual liberty. From all we have learned about the history of the American political party system, dissenting elements almost always exist even when the parties appear to be united behind a single candidate or a single platform. The Jeffersonian dissenters have often been called Quids (from *Tertium Quids* meaning roughly third something), but, as it turned out, several unrelated Quiddish groups began springing up as early as 1804.³²¹ Certainly the most prominent Quid faction was organized in Jefferson's home state of Virginia. (The Quids of Virginia are still in existence with a quote from John Taylor of Caroline on their Internet Home Page.) Three prominent Virginian politicians – Nathaniel Macon and John Randolph, both of whom served as Speakers of the House of Representative and John Taylor – were active Quids. Even the Virginia Quids had difficulty uniting in their opposition to the direction that Jefferson's Second Term had taken. Part of the dispute involved principles and part politics. One should recognize that when Republicans assumed power, the logic of self-governing individuals required that those who espoused liberty were now suspect of restraining it. Taylor himself reminded James Monroe that should he become President, a candidacy that Taylor could support, Taylor would become a minority Republican: "No, no, the moment you are elected, though by my casting vote, carried a hundred miles in a snow storm, my confidence in you would be most confoundedly diminished [sic], and I would instantly join again the republican minority." Why? Because "Majority republicanism is inevitably, widely (but not thoroughly) corrupted with ministerial republicanism, and it is also tinged with the folly of certain sympathies, toward strong parties, popularity, and noise."³²² The lovers of unleashed liberty had to deal with mundane politics as well. There was anger among the Virginians because a line of presidential succession appeared to have been initiated: Madison was Jefferson's choice to succeed him. The Quids did not trust Madison, whose Republicanism was not pure enough. Monroe would be a better choice. More to the point, in 1806 Monroe, as Minister to England, had negotiated a treaty that did not follow their instructions. The question of British harassment of American shipping in part to find disloyal British subjects at a time when the British navy was short of personnel was ignored, and although the British government granted minor concessions with respect to trade between the United States and France, it held firm on the most vexing issue. Jefferson and Madison, his Secretary of State, did not regard the effort by Monroe and his aide, William Pinkney, as worthy of being submitted to the Senate. The treaty was simply relegated to the circular file. From that moment forward Jefferson embraced a series of

³²¹Noble Cunningham, "Who Were the Quids," *The Mississippi Valley Historical Review*, 50: 2 (1963), 252-263 remains a good introduction. Many other political historians of the early national period have weighed in with new findings and new insights, and they can be easily tracked down on the Internet.

³²²Taylor to Monroe, 31 January 1811, in "The Correspondence of John Taylor . . .," *Branch Historical Papers*, 2:316-317.

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policies designed to punish those who did not recognize American neutrality. The Embargo Act (December, 1807 with subsequent revisions) was one such policy. It “punished” so-called belligerents (England and France mainly) by forbidding American ships to leave port, by requiring ships engaged in inter-coastal trade to post bonds for twice the value of the cargo and by forbidding foreign vessels that entered American ports to leave with American goods. It became a bureaucratic nightmare, as attested to by the extensive correspondence between Jefferson and his Cabinet, especially his Secretary of the Treasury, over how to make the “embargo” work. By 1808 the failure of the embargo was widely evident, and it was abandoned in favor of a new round of so-called “non-intercourse” acts, that is, America would refuse to trade with nations that did not respect its neutrality. For the Quids the failure of Jefferson’s policies would inevitably lead the nation to war and all the financial burdens that the nation had endured earlier would be reimposed. Taylor went so far as to suggest that the Monroe-Pinkney Treaty should have been signed on the grounds that a less than satisfactory treaty was preferable a military buildup: “...by rejection of your treaty and embargo and non-intercourse substitute, seems to have screwed up some gentlemen to wish for war... after they have wasted another hundred millions in commercial projects, they will find out that the treaty was a very good one. It is infinitely better for us to waste our money than our liberty on projects of statesmen...”³²³ Besides Jefferson’s and Madison’s out-of-hand dismissal of the treaty offended Monroe and by extension his Quid supporters.

The international situation remained volatile as the country prepared for an election in 1808. Madison was the anointed successor, but Monroe toyed with the idea of running against his fellow Virginian. Some Quids encouraged him to do so. Both Macon and Randolph openly supported Monroe. A Washington-based newspaper, *The Spirit of '76*, was the “mouthpiece” of Monroe, and Taylor wrote articles in support of Monroe for the newspaper. The Jefferson/Madison newspaper, *The Enquirer*, saw little threat, but after the election criticized Taylor for his apostasy. This angered Taylor and probably pushed him further outside the Jefferson/Madison orbit. He remarked to Monroe that despite his discomfort with Madison the dissenters had to rein in their opposition: “I entirely agree with you that the support of the administration has become absolutely necessary, not that I think that it can have much influence on our foreign relations, but for the sake of supporting republicanism at home.”³²⁴ The darkening clouds arising over the international arena should not divert attention from the domestic front where republican divisions might lead to the resurgence of the real opposition – Federalists.

³²³Taylor to Monroe, 10 February 1810, in “The Correspondence of John Taylor...,” *Branch Historical Papers*, 2:304-305.

³²⁴Taylor to Monroe, 10 February 1810, in “The Correspondence of John Taylor...,” *Branch Historical Papers*, 2:298-299.

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For the future of Republicanism, in spite of his own behavior, Taylor urged Monroe to renew his friendship with Jefferson and Madison and to join the new administration in some capacity. Indeed, Taylor's concerns were borne out to the extent that the Federalist Party made a comeback in the 1808 elections. Federalist House membership rose from under a fifth to more than a third largely in reaction to New England's hostility to the embargo.³²⁵

The place of the individual in any social or political order had long been discussed. After all the individual could think for himself and organize his life in pursuit of security, nourishment and pleasure. The much-debated topic was whether or not he could attain greater success and good by living within the boundaries imposed by others. Even among the most autocratic European systems individuals could theoretically dismiss those who claimed power illegitimately or exercised authority unwisely, although to undertake such a task was extraordinarily difficult. The English Civil War – the beheading of Charles 1 and the inauguration of the Cromwellian government – in the name of purging the political and social order of malignant institutions and laws that failed to serve the interests of citizens was a notable step in reframing the question of who should rule. Protestant theologians had already granted the individual a more elevated role in addressing the Almighty and determining the mode of worship and devotion, and writers like Hobbes and Locke and later writers like Montesquieu, Voltaire and Rousseau would enshroud the individual with even more *a priori* authority in directing one's life. And, of course, the Declaration of Independence itself laid out in more concrete language than ever before that individuals were so endowed as to be able to choose their course and to pursue their happiness on their own. The traditional notion that individuals, however large and potent their repository of rights was, needed to be governed had not by any means fallen into total desuetude. How was one to balance, as Jefferson posited in this memorandum the Washington in 1790, the capacity for individual self-rule with the need for collective self-rule? Even in a more liberated social order no one could miss the failure of individuals to exhibit a self-love or a self-interest that was destructive. Where to draw the line between individual self-rule and collective self-rule. There was much doubt that the new President and his Administration wanted to unleash the individual but how to accomplish that ideas be converted into actions. The key was to embrace a governing model that invoked good behavior of individuals among themselves. The text for the Jeffersonians to live by – if you will – was the phrase in the Inaugural – if man cannot be trusted with governing himself, how can he be trusted with governing others.

³²⁵William Dodd, "John Taylor, of Caroline, Prophet of Succession," in "The Correspondence of John Taylor..." *Branch Historical Papers*, 2:229-231.

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Let me come back to the idea self-government – what we opened this volume with – a term that appears so frequently in the writings of the Jeffersonians and the Republicans and hardly at all in the writings of Federalists. It was a term that distinguished the political adversaries because it implied a form of government that left Federalists uneasy. As described in the opening paragraphs of this volume, the term is most often used in a collective sense – a body of individuals or citizens collectively governing. Republican government from the local to the national level was founded on the idea that elected representatives would enact legislation or establish policy in behalf of the citizenry and within the bounds of the charter. When trying to trace the lexicographical history of the term self-government, I consulted the Oxford English Dictionary. According to my edition, Thomas Jefferson first used the term in the collective sense in 1798. In fact, Jefferson had used the term as early as 1790 in his Opinion on the Constitutionality of the First Bank, when he distinguished between individuals governing themselves individually and governing themselves collectively.³²⁶ Collective self-government was listed behind individual self-government, the latter being defined as “self-control, self-command” but “now rare”. The lead definition of self-government had a religious origin in that individuals must impose discipline on their lives in order to avoid the temptations that led to misbehavior: “His natural Faculty of Self-Government impaired by Habits of Indulgences” [Samuel Butler].³²⁷ I consulted a number of English and American dictionaries to try to determine when self-government, sometimes hyphenated, sometimes not, and in use from the early eighteenth century, appeared in published dictionaries. As far as I could ascertain, self-government was not included until the middle decades of the nineteenth century, and when it was finally acknowledged, it appeared with a single definition – to rule oneself. This could encompass both individual and collective self-government, but more than likely the collective sense was not yet fully recognized lexicographically. In contemporary dictionaries both definitions appear, although, as indicated above with the OED entry, individual self-government may be noted as rare. In the hands of some Americans like John Taylor of Caroline self-government was standard nomenclature for what the American political experiment was all about. Taylor like others used the term in both contexts, and those contexts must be examined to understand which usage was intended. A rare usage of a term in our time – we seldom implore ourselves or other to exercise

³²⁶*Oxford English Dictionary*, 1971. Since writing this I have discovered an earlier usage: In his widely-published letter “*that the earth belongs in usufruct to the living*” to James Madison, Paris, 6 September 1789, Jefferson wrote “What is true of a generation all arriving to self-government on the same day, and dying on the same day, is true of those in a constant course of decay and renewal....” This hypothetical discussion concerned contracting and extinguishing generational debt based on M. de Buffon’s mortality tables. Boyd, ed., *Papers of Thomas Jefferson*, 16:394.

³²⁷*Oxford English Dictionary*, 1971.

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self-government – was the original intent of the term and had a political as well as a religious meaning.

The matter of how well a governmental system, founded on new and in many cases untested assumptions about sovereign individuals making constitutional bargains, would actually play out in the real world was widely debated in the eighteenth century. The difficulty of getting it right was not more apparent than in the United States where within ten years after Independence two national charters were adopted along with dozens of revised state constitutions. Calls for further revisions in the national and the state charters continued well into the nineteenth century. No one, not even the most ardent supporters of republican principles, knew how governments, vastly stripped of their traditional powers and prerogatives, would perform. Could they perform? Could citizens, now theoretically endowed with natural rights, ever agree upon a governmental system that may not fully endorse what individuals “individually” demanded? Even in America, where republicanism was more broadly embraced than anywhere else, some citizens feared that too little government and too much freedom was a dangerous recipe for social unrest and economic chaos. Not surprisingly, then, it was incumbent upon the most aggressive, radical advocates of republican principles to link the concept of individuals ruling themselves to a much greater degree than practiced before to a societal model that would draw out the best qualities and suppress the worst. Of the many economic ventures undertaken by humans – and the variety was growing – ownership of land from which individuals could gain sustenance and wealth made eminent sense. So while the debate over the course and direction of agriculture in early America may bog down in how self-sufficient farming should be, the more basic proposition that republican government with limited authority would work best in a society of productive landowners was generally assumed. Land was abundant in America and seemingly was exploitable without need for intricate and complex (and often without transparency) deal-making. Farming was not simplistic but compared to other endeavors, especially banking, it could be explained simply.

The Virginia Republicans defined their political ideas and objectives within a particular social construct. That construct was based on ownership of land. In 1800 probably 80 to 90 percent of the (free) population earned their livelihood from the land. Land had almost assumed a sacred status. Even as glorified as land had become in the minds of many, it was a slippery and messy topic for the nation at large. Between 1780 and 1800 the nation had nearly 800 million acres of land in public and private hands. And in 1803 with the purchase of the Louisiana Territory more than 500 million acres were added.³²⁸

³²⁸Precise figures are not available. These numbers may not agree with other data.

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If we assume a total population of about 5 million, then the quantity of land per person across all the states and territories was 300 acres. That figure should not be taken literally, that every man, woman and child would become the possessor of 300 acres. America was land rich, and in the absence of precious metals and other economic diversions ownership of land was the route by which Americans came to measure their wellbeing. It was an ideal that shaped both the economics and the politics of the colonial era. From the earliest days, when John Winthrop, Governor of Massachusetts Bay, lamented that the congregants were dispersing to acquire land in lieu of communing in worship of God, settlers made acquisition of property a priority and, more importantly, erected a legal system of property rights, some inherited from the Mother Country and some innovated by the colonial assemblies, to protect and encourage private land holdings. Other forms of wealth-building – trading, shopkeeping, fabricating – grew up along side of landholding, and even though their possessors might enjoy greater prosperity and power than those who earned their keep from the land, but they could never displace the ideal of the landholder. Laws governing the acquisition, transfer and protection of property had assumed an important place in the colonial legal systems, and both the fear and the fact of invasion or usurpation of property rights drove the movement for independence and deliberations on what form the government should take. The rise of Republicanism and the election of Jefferson caused some Americans to expect an assault on individual property rights. Being committed, as the Jeffersonians were, to a less active and intrusive government could lead to more Shays, Whiskey and Fries Rebellions. It was certainly true that since property rights and the legal codes that protected them involved more than land ownership, those property rights that could be determined to be inconsistent with a republican system might be modified or abolished. Monopolies, for example, conferred certain rights that seemingly violated the ideal. In its historic sense, however, property as land, the Jeffersonians were expansionary not restrictive. Ownership of land was crucial to achieving the goal of a less-governed society.

Republican political principles were closely intertwined with an agrarian social order. The Hamiltonian/Federalist vision for America emphasized a system in which individuals were more thoroughly integrated into an elaborate institutional framework, and that was a vision that the Jeffersonians did not share. The nature of American agrarianism has been much debated. The typical model embraced the idea of the yeoman farmer. Yeomanry assumed individuals owned and worked the land, and from that effort they will take care of the needs of themselves and their families. Self-sufficiency may have been touted more than it was practiced. On a working farm – I remember this as a kid where the root cellar contained Mason jar after Mason jar of

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produce and meat for the winter months – providing for the needs of the family was entirely possible. And in the eighteenth century the more remote the farm was the more likely this was the way in which it operated. The less remote the farms were the less likely they were intended to be self-sufficient. Yeomanry was not irrelevant to the colonial experience, but by the end of the eighteenth century it did not epitomize that experience. Some farms produced surpluses for local markets while at the same time producing for themselves. The transformation to a more market-driven agriculture, which will reduce even further the yeomanry model will accelerate after 1800. Before then specialization was gaining ground and existed along with yeomanry. Simply put, was the Jeffersonian model of limited government intended to work only a form of yeomanry?

The Jeffersonian ideal of landowning, producing agrarians is often linked to the eighteenth-century French Physiocrats who accorded agriculture the most productive as measured by “produit net” or net profit. Francois Quesnay identified three categories: 1] the proprietor class owned the land and advanced the capital; 2] the productive class or farmers who tilled and produced; and 3] the servile class made up of the rest of the population. The nobility granted the agricultural endeavors would have pleased the American agrarians but not the division between the owner and the tiller. The obstacles to developing a productive and profitable agriculture would have caught the attention of the Jeffersonians, to be sure, mostly imposed by or related the servile class: 1] bad forms of taxation; 2] excessive costs in collecting bad taxes; 3] luxury consumption; 4] expensive litigation; 5] lack of freedom in internal trade; 6] lack of export of raw materials; 7] harassment of “country people”; and above all 8] diversion of net profits being applied to production expenses. Physiocrats argued that a good price for the output of the land would be brought about by an increase in consumption, and an increase in consumption would be achieved by freeing producers and consumers from taxes and regulations. Freedom of commerce, exchange and competition were necessary steps to progress and wealth. I have found few direct references to the Physiocrats in the American agrarian literature, and yet I can appreciate a basic prescription that allowing just returns to those who make the land productive will also mean more freedom and less government for the citizenry³²⁹ On purely economic terms, yeomanry did not fit into Physiocracy very well because of the emphasis on price and profit, investment and allocation.

³²⁹An older but useful interpretation of the Physiocrats is Ordell Olson, “The Physiocrats: A Study in Economic Rationalization,” *The American Economic Review*, 21:4 (December 1931), 607-619. Also the Harvard economist, Joseph Schumpeter gave attention to the idea of a “good price” in his *History of Economic Analysis* (New York: Oxford University Press, 1954.)

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In 1800 and after American agriculture lacked a monolithic face. Jefferson's Inaugural underscored his commitment to agriculture and its "handmaiden", commerce, but agriculture occupied a big tent and his commitment did not highlight one form of agriculture over another. In a provocative essay Stuart Blumin offers a description of how America's land-based economy was functioning in the late eighteenth century and was beginning to change in the early nineteenth century. As late-eighteenth-century Americans began to move westward and to settle in the interior, not along rivers and bays, as they had done along the coast, the farm population became more dispersed and localized into the extent satisfying family needs took precedence over accumulating material goods. In other word, yeomanry, a pattern of self-sufficiency among farmers, may have intensified in the initial phase of the westward movement where families found themselves spread out in the interior with limited access to or limited need for the level of commercial exchange that accompanied markets serving more densely populated areas. Starting around 1800, the "age when the population would tend to 'equalize itself' in space was over; henceforth it would seek those places it *most* abounds." Dispersion continued as America added more and more land, but dispersion was accompanied by urbanization. Statistically, the urban population grew from 5 percent of the total in 1790 to 11 percent in 1840. What must be factored into this calculation is that the population itself was growing by a third each decade. In absolute terms urban population densities in towns and cities, old and new, was rising as the nation was expanding geographically. That growth led to important structural changes, especially in transportation, that interlinked settlements and markets and altered farming patterns.³³⁰ What Blumin calls the "logic of sufficiency" was replaced by the "logic of accumulation."³³¹ Jefferson and his supporters may have idealized the "logic of sufficiency", but they were not necessarily practitioners of that logic. Even in 1800, American farming ranged from plantations with hundreds of acres, specializing in export crops and using slave labor, to scores of acres, practicing sufficiency model and using family labor. This is a slice of American history that is still dimly understood but is being slowly revealed as scholars collect more data and analyze it with new or different tools and perspectives. The Jeffersonian political ideology of minimalist, hands-off government was linked to a social system that was changing.

Making the land productive was a crucial component of the Jeffersonian agrarian dream that in my view separates it from the eighteenth-century yeomanry. Since land was in abundance, why should anyone spend money on revitalizing old land when new land

³³⁰Blumin, "The Social Implications of U. S. Economic Development," in Engerman & Gallman, eds., *Cambridge Economic History*, 2:815-825.

³³¹Blumin, "Social Implications," in Engerman & Gallman, eds., *Cambridge Economic History*, 2:833.

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could be acquired. The simple answers that new land cost money not only to acquire but to improve so that it could be productive. Land could be made more productive was by adding inputs that would allow producers to increase outputs. Efforts to improve output for comestible or commodity production, local or international markets or for small or large farms spoke directly to commercial agrarianism because it implied that the cost of such improvements would be paid back in higher returns that would allow for higher production through greater investment. This was not the world of yeomanry (although it was an idea shared with the Physiocrats), and yeomanry, it would appear, was not the agrarian model that many advocates of republican principles had in mind. Advancing productivity meant enlarging the knowledge base, and that enlargement can be seen in the establishment of agricultural journals and societies. John Taylor of Caroline, already an established Republican polemicist, was also a persistent advocate of the agrarian life and specifically the advancement of agriculture to preserve the experiment in republican government.

From the outset it must be stressed that when Taylor published *Arator, Being a Series of Agricultural Essays, Practical and Political*, consisting of 61 essays in its first edition in 1813 and 64 essays in its fourth edition in 1818, he was addressing his concerns to owners of old lands to the east of the Appalachians. New lands to the west of the mountains were richer, and yet as the agricultural economy expanded in the West to meet market demands, inputs – basically what Taylor was advising to restore lands – had to be employed to improve efficiency and productivity. The political side to Taylor’s land restoration project must be acknowledged. The failure to restore exhausted lands (such as existed in the states he knew well) would over time allow the locus of power currently enjoyed by Virginia to shift to other regions less sympathetic to its way of life. Virginia had been in the political forefront since the protests against England prior to the American Revolution, and with the election of Thomas Jefferson a presidential dynasty of Jefferson, Madison and Monroe would lead the executive branch until 1825. Although Taylor’s strategy for reclaiming and improving agricultural lands had applicability beyond the specific needs of Virginia and the surrounding states, it had a special interest in protecting the local world that he knew so well and loved so dearly.

In this sense Taylor was among the earliest American agriculturalists who argued that investments in improvements could make farming more profitable. Taylor introduced the collection by recalling that an English traveler to America around 1800 had observed that the state of American agriculture in those regions where he visited was dismal and diminished. He quoted more than a half-dozen pages in which the Englishman used words or phrases like “Land...affords little pleasure or profit...;”

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agriculture had reached “its lowest state of degradation”; and landowners existed in “low circumstances”, the ranks of some being “wretched in the extreme”

These conclusions, if true, are awfully threatening to the liberty and prosperity of a country, whose hostage for both is agriculture. An order of men, *earning a bare subsistence in low circumstances and whose inferiour rank is wretched in the extreme* [sic], cannot possibly constitute a moral force adequate to either object. It is therefore highly important to the agricultural class, to ascertain whether it is true, that agriculture is in a decline.

If the strong chord that vibrated in the human heart could not be anchored to the soil because people could not make a living from the soil, then the fate of the nation was in peril. To exhaust the land would ultimately exhaust the country.³³²

Taylor understood that to test the hypothesis that American landowners and producers were faced with deteriorating conditions required statistics that did not exist. He was able to cite a few figures on the absence of growth in hogsheads of tobacco shipped from Virginia during the past half century or more and a few estimates on per-capita surplus after agriculturists met their costs and taxes, but these figures did not directly prove that landholdings were as degraded as the Englishman’s observations suggested. Indeed, land that had been under cultivation for decades, especially acres dedicated to tobacco production, was probably wearing out and remained degraded at the time that Taylor published his essays. What concerned Taylor as well as the English critic was that long-used land was not being recovered in a way to maintain or boost production, and that the tendency was to abandon such land rather than to restore it.

The *Arator* was laced with political commentary by design, and the agricultural advice cannot be separated from the political commentary. While Taylor expressed discomfort with how the western movement was taking shape, he understood a larger cause was at stake. There was an interlocking relationship between the two components: how the American farmer should perform his tasks and how the American government should manage the political system in behalf of the American farmer. In its essay format *Arator* had the quality of a polemic. This was not just a how-to manual. Taylor proposed many ways in which farmers (or more precisely a class of farmers) could make practical improvements that would increase fertility and productivity. But the descriptions and

³³²Taylor, *Arator; Being a Series of Agricultural Essays, Practical and Political*, 3rd edition (Baltimore: Printed by J. Robinson, 1817), 5-6, 8-9.

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explanations were more than procedures embodying step one, step two, etc; rather they often were presented within the context of certain historical or theoretical considerations. Although each essay averaged about three pages, the subject may require as many as a half-dozen separate essays. References to history, theory, experimentation or speculation would surround the actual steps for making farming better. At times the language was stylized and the text convoluted. His approach was didactic, instructional and argumentative. His agrarian commentaries were composed much like his political commentaries. Hence, the essays on drainage contained a section of Roman drainage and the long-term effects of abandonment of classical infrastructure. In earlier essays on “Inclosing” best translated as fertilizing he described the planting of a willow in a box of soil weighing 200 pounds that in a few years yielded a tree weighing 200 pounds with the result that “without having diminished the earth in which it grew, demonstrates the power of the vegetable world to extract and elaborate the atmospherical manure. This 200 pound weight of willow was a prodigious donation of manure by the atmosphere, to the 200 weight of earth in which it grew.”³³³ These are two of many examples that could be cited. In spite of the commentaries, however, Taylor’s discussions of crops and techniques always contained detailed procedures to be followed if improvements were to be expected.

More than once Taylor remarked on his intent to keep the essays simple and straightforward.

It is not my design to advance any thing [sic] strange or new, or to recommend expensive, difficult or uncommon modes of improving land. Brilliant projects for improvement, in the present state of agriculture [ruinous in Taylor’s opinion], would be like diamonds set in lead. My utmost design is to point a few improvements which even ignorance can understand, and poverty practice; yet such as may not be beneath the regard of knowledge, or the interest of wealth.³³⁴

Some explanations were indeed as Taylor intended them. Others on the page at least but perhaps not to the practitioner sounded complicated. Minimally, they were labor intensive, involving time and effort and following a precise regimen. Take for example plowing for Indian corn, a favorite of Taylor.

³³³Taylor, *Arator*, 3rd ed., Essay #51, p. 151 & Essay #16, p. 51.

³³⁴Taylor, *Arator*, 3rd ed., Essay #20, p. 61.

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The rows are never planted but in one direction, cross ploughing being wholly abandoned. Their width is five and a half feet. The field being once thrown into the position of ridges and furrows, never require to be laid off again. The furrow is left as deep as possible, and the when the field comes again into tillage, the list or ridge is made upon this furrow, so that there is a regular alternity [sic] between ridges and furrows. If the soil is of a friable nature, a large plough driven by four horses, and cutting a sod about twelve inches wide and eight deep, is run on each side of this old furrow, and raises a ridge in its centre, on which to plant the corn. The old ridge is split by a large trowel-hoe-plough, having a coulter on the point, two mould-boards, driven by four horses, and cutting ten inches deep....³³⁵

And the description continued for another page. Any experienced farmer could no doubt follow Taylor's procedures, but once the plowing was complete he then had further instructions concerning planting, cultivating and harvesting. Taylor took farming seriously, experimented endlessly and recorded faithfully the results and more or less expected the same level of devotion and commitment from his adherents.

Although Taylor may have admired self-sufficient agriculturalists, he was advocating a way beyond simple sufficiency. The *Arator* improvements were intended to increase fertility, efficiency and productivity in order to insure greater profitability. This was especially relevant to his region and its longstanding export crop of tobacco along with more extensive cotton production. These were commodities that called for agricultural laborers, in most cases slaves. With a labor force, of course, some of his improvements would be more easily accomplished. More than a dozen sections deal with labor including slavery. Taylor expressly argued that slavery was America's most tragic mistake, and yet because of the racial implications of slavery's termination Taylor concluded it could not be ended without causing even more social disarray. Hence, his approach was to improve the treatment of slaves as well as laborers in general to make them content and cooperative. Labor was an input – within classical economics a factor of production – that had to be assessed in the same way that other inputs were assessed. Slavery presented a special dilemma since free laborers who were content and cooperative had the opportunity to change their condition whereas slave did not. And Taylor and others who acknowledged that slavery could hardly be justified as a republican principle was unwilling because of a concurrent belief in the racial inferiority of the black slave simply decided to live with the inconsistency. Whether labor was slave or free Taylor prescribed many steps for how agriculturalists should

³³⁵Taylor, *Arator*, 3rd ed., Essay #33, p. 101.

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manage his workers, all of which was designed to increase efficiency and assure profitability. And while the agriculture that he knew best was slave-based plantation systems, he believed that he was addressing agriculture across America.

The reason for this was that Taylor devoted more essays to the pleasures and politics of agriculture than any other topic. Recall that Taylor's main concern was to make Americans, especially American farmers, aware that deterioration of agricultural land had a cost beyond the loss of the land itself. Wherever tillable land reached exhaustion, Taylor's call to action was renewal. Even though the future of American agriculture lay across the mountains in the Mississippi Valley, Taylor so closely linked his theories of government with his theories of agriculture that even decrepit farming operations in the East must heed the call. It was for the most part a losing battle. As ingenious and devoted as he was with his own lands and as he thought others should be, much of the depleted eastern agricultural lands were never restored. Although the westward movement accelerated during the first quarter of the nineteenth century, there were costs – monetary and personal. But agricultural historians have underscored the choice before eastern farmers at the time that Taylor was composing his agrarian essays – to stay or to go. This was true not only the states in the northeast and middle Atlantic but also of the southern Atlantic. Planters as well as farmers were beginning the western migration. The economics was fairly straightforward: if easterners stayed they had to compete with an expanding “western” agriculture where soil was more fertile and the climate more salubrious.³³⁶ So the state of agriculture, which Taylor treated in several *Arator* essays, was accurate to the degree that replenishment of the eastern agricultural land pool had to precede any boost in output. Land improvement on the scale envisioned by Taylor was expensive, time-consuming and doomed. That did not prevent Taylor attacking the Federalists on land policy as he had on other policies. The national government under the Federalists had enacted policies that discouraged investment in improvement of agriculture and therefore eroded its primacy. The main culprit was the tariff policy that favored manufacturers over farmers. These amounted to subsidies or bounties because they made it more expensive for agriculturalists (especially planters) to buy imported goods. Would it not, asked Taylor, be better to encourage domestic manufacturing by eliminating policies that penalized the dominant consumer sector, the agriculturalists? Taylor claimed not to be a foe of manufacturing – so long as it was subservient to agriculture – but he did not favor policies that protected infant industries at the expense of the most important sector.³³⁷

³³⁶Jeremy A. A. Atack, Fred Bateman, and William Parker, “Northern Agriculture and the Westward Movement” in Engerman & Gallman, eds., *Cambridge Economic History*, 2:232.

³³⁷Drawn from the first 12 essays, *Arator*, 5-39. Taylor had many other complaints besides tariffs.

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For Taylor agriculture was a way of life that if lost would bring down the republican experiment. It had to be preserved on the old lands as it would be expanded in the new lands. A shift was underway, as Taylor composed these essays, by which “The West” would become the new agricultural center. East coast farming, whether small- or large-plot farming, would play an ever-declining role in driving the nation’s agricultural economy. Taylor partially recognized the decline in farming output among the original colonies, but he could not envision any other economic regimen because farming was not only economically beneficial but also morally enriching. Toward the end of the *Arator* Taylor addressed the moral imperative. If unrestrained or uncorrupted the agrarian experience became “the inexhaustible sources of human pleasure, of fitting ideas to substances, and substances to ideas; and of a constant rotation of hope and fruition...Liberality in supplying its labourers [sic] with comforts of life, is the best sponsor of agriculture, and the practice of almost every moral virtue is amply remunerated in this world....” Poetry, according to Taylor, granted agriculture more virtue than any other profession and in so doing “has abandoned her privilege of fiction and yielded to the natural moral effect of the absence of temptation.” Invoking religious images Taylor declared that at judgment day the virtues derived from an agricultural life would serve the supplicant well in his admission to heaven.³³⁸ In several remarks Taylor made clear his conviction that in contrast to other vocation, say banking and speculating, agrarians can enjoy of the pleasures of making money and of practicing morality.³³⁹ The supremacy of agriculture on the moral-social-economic ladder was unmistakably postulated but was hardly assured. Agriculture’s dreadful state (at least along Atlantic) arose in part from the lack of care and attention to good farming practices by the agriculturalists themselves but it also could be traced to pernicious governmental policies. In sum, without listing all Taylor’s complaints, these policies privileged other professions at the expense of the agriculturalist.

As I conclude this section on the august but endangered role of agriculture in America, I want to underscore the time of the publication of the *Arator*. The first edition was published in 1813 and subsequent editions were published over the next decade. Many of the essays were published in journals and newspapers before they were assembled as a book. These were the years of the presidencies of the Virginians and, one would assume, the agrarian model would be favored. Jefferson himself in his inaugural referred only to agriculture and commerce as agriculture’s handmaiden. Not only did the

³³⁸Taylor, *Arator*, 3rd ed., Essay #59, p. 179-180.

³³⁹Taylor, *Arator*, 3rd ed., Essay #59, p. 180, for example. Let it be noted that the liberality to be enjoyed by laborers did not extend to slaves for whom any liberality would by Taylor’s own formula consist mainly of better living conditions.

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accelerating westward movement make East Coast agriculture less competitive, but Republican policies – embargoes, non-intercourse acts, another war with England, rising national indebtedness, resurrection of a national bank and other Hamiltonian programs – left Taylor and his allies dispirited. Thus, while both external and internal circumstances prefigured important economic changes that would over time reformulate the agrarian world that Taylor had concocted based on his Virginia experiences the bleak undertone of the *Arator* or more specifically the essays written and rewritten were retrospective rather than prospective. The agrarian model, which Taylor found so harmonious with Republican principles that stressed limited government and personal liberty, did not disappear as economic changes took hold but rather it took on some new features and more importantly it shared those features with other economic interests.

It is estimated that the American economy in 1800 had a nominal Gross Domestic Product of about \$500 million (in real terms, 2000 dollars, about \$6.5 billion). Nominal per capital GDP was about \$90 (in real terms more than \$1,200). By 1860 nominal GDP was estimated to have reached \$4.3 billion (in real terms \$72 billion) and nominal per capita GDP \$137 (in real terms \$2,300).³⁴⁰ Not all would agree with these estimates. Data for determining such estimates are far less extensive and reliable for the period before the Civil War than after, but even if lacking the quality of post-Civil-War data and certainly contemporary data pre-Civil-War estimates are still useful. These estimates indicate that the American economy underwent significant *real* growth after 1800, and on that point most scholars seem to be in general agreement. Since the population was five times larger in 1860 than 1800 the economy had to produce at least that much more to feed, house, and serve the ever-increasing numbers. Since per capital growth rose by nearly 50 percent the economy grew beyond what was required to sustain a larger population. If only enough had been added to GDP to accommodate the demographic change the nominal, GDP would have been about \$2.5 billion and the nominal per capital GDP the same \$90. That did not happen. Statistically speaking, Americans were better off in 1860 than in 1800 because of intrinsic economic growth.

Some scholars relying on modern statistical techniques have managed to tease from sporadic economic data information about the rate of growth and about the factors of production that contributed to that growth. They have calculated a long-term rate (in 1860 dollars) of around 4 percent per year, a rate that meant the economy could have doubled about every 18 years. Short-term rates (also in 1860 dollars) could be highly

³⁴⁰Available on-line through Economics History Services “What was the GDP Then?” at <http://eh.net/hmit/gdp>.

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fluctuant from less than 1 percent a year to more than 5 percent.³⁴¹ In other words, growth could move ahead aggressively only then to fall back to a much slower pace. Total factor productivity is a complicated subject and for our purposes need only be briefly considered. If *real* GDP grew by 4 percent a year, the share of each factor to the total has been calculated as follows: land +/-2 percent, capital +/-30 percent and labor +/-50 percent. The rate of change in outputs accounted for +/-85 percent, and the remaining +/-15 percent arose from changes in productivity, that is, improvements in technology, efficiency (mainly allocation of inputs), human capital and economies of scale. It is important to stress that these calculations may understate the importance of land. American was rich in land, and yet land is given a much smaller weighting in the calculations than it may deserve. As Robert Gallman who created this dataset writes: “[Land] was...the enormous potential of the continent that encouraged the high rates of fertility and immigration by which the population grew so rapidly, the high rates of internal migration by which it was efficiently distributed, the enormous recorded investment, and the technical change that contributed to the improvement in productivity.”³⁴² It is impossible to explain America’s post-1800 economic growth without land, but given the data its contribution is still unsettled.

Given the abundance of arable land, especially after the acquisition of Louisiana in 1803, it would follow logically that agriculture was the dominate sector. With relatively sparse data that would appear to be the case, even though its share declined during the first half of the nineteenth century as Americans turned to other economic undertakings. In 1840, however, some data indicate that agriculture accounted for 41 percent of GDP followed by commerce at 23 percent, manufacturing at 17 percent and others including government 19 percent. By 1860 agriculture had fallen to 35 percent and manufacturing had risen to 22 percent with the others remaining about the same. In Gallman’s opinion these figures probably overstate the contribution of agriculture and understate that of manufacturing.³⁴³ In other words the decline in the agriculture sector was sharper because the growth in other sectors was heavier than the data indicate. In all probability agriculture commanded an even larger share in 1800, perhaps 60 to 70 percent, but over

³⁴¹Robert Gallman, “Economic Growth and Structural Change in the Long Nineteenth Century,” in *The Long Nineteenth Century*, (Volume 2) of Stanley Engerman and Robert Gallman, editors, *The Cambridge Economic History of the United States*, 3 volumes (Cambridge: Cambridge University Press, 2000), 2:Tables 1.3 & 1.4, pp. 9-12 & Table 1.8, p. 25. The article should be consulted for how these rates were determined.

³⁴²The actual calculations are divided between 1800-1840 and 1840-1900: for land, 2 & 2 percent; for capital 29 & 35 percent; for labor 54 & 45 percent. Gallman, “Economic Growth,” in Engerman & Gallman, eds., *Cambridge Economic History*, 2:Table 1.4, p. 15. His analysis is covered in pp. 14-16.

³⁴³See explanation by Gallman “Economic Growth,” in Engerman & Gallman, eds., *Cambridge Economic History*, 2:Table 1.14, p. 49-51.

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the course of the nineteenth century agriculture lost ground to manufacturing, which had within its capacity the power to push productivity all across the economic spectrum more robustly than other sectors could on their own. Farmers, merchants, transporters, laborers, they all benefited from the invention and fabrication of new machines and processes that allowed them to create more outputs with fewer inputs. For the average American, as the costs of inputs and the prices of outputs declined (through greater efficiency) personal incomes were rising. The driving force in the economy (then as now) was increasing consumption. It probably implied, as some resisters claimed, a different way of life from what might have been envisioned by the early agrarians. Yeomanry, no matter how appealing on a personal or philosophical level, was too self-contained. It was static rather than dynamic. It was a mismatch with America's opportunistic and acquisitive spirit. Land had financial potential that could only be realized through making it both productive and vendible. By abandoning self-sufficiency for commercially-based agriculture farmers sought to advance their standard of living, and by and large that was accomplished.

Although less complete for the pre- than the post-Civil-War period, the agricultural data point to returns on current production that may have averaged six to ten percent with a capital gain of three to seven percent. In the Mississippi Valley the returns could be even higher. Such returns could not be guaranteed year after year because of market vagaries, and that led frequently to agrarian protests about market manipulations and speculator exploitation, but the fact was that farmers enjoyed some protections from the fluctuations. A trio of scholars who have studied extensively the economics of northern and western farming write: "[Farmers] enjoyed some margin of income security against market vicissitudes because of their ability to store surplus labor value in land improvements. The owner-occupier further had the satisfaction of being his own boss...If commercial markets soured badly, they could still feed and otherwise maintain themselves in a secure way unavailable to nonfarm workers."³⁴⁴ There is no attempt here to paint a commercially-driven agriculture as an economic nirvana, for in fact farmers lost money and endured hard lives. "Farm families, having embarked on the road of money and markets, often came to find that they – like small capitalists everywhere – had little control over the rate or evenness of their economic journey." But farmers occupied a dual economic world that gave them a degree of security. "Their capital market divided between farm-produced physical capital (such as fencing or buildings) and commercially purchased goods (mechanized implements)." Even their land, catalogued as improved and unimproved, held potential wealth. In downturns

³⁴⁴Atack, Bateman & Parker, "The Farm, the Farmer, and the Market," in Engerman & Gallman, eds., *Cambridge Economic History*, 2:276-277.

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farmers could use their time to improve further land already under cultivation as well as clear new land to be available when the economy regained its footing. “And the capacity to continue feeding one’s family even when external market opportunities went bad” was available to farmers but not to others, mainly urban dwellers. Farmers “lived well materially, particularly in the northern settled regions.” Based on the available data farmers were not pursuing Faustian bargains to realize their economic dreams but were reacting to choices that a changing economic order was serving up: “they settled the best lands first, their mobility patterns maximized their human capital, they diversified against risk, they responded to prices, they tried to smooth out seasonal labor usage, and they capitalized on knowledge of markets and production techniques.”³⁴⁵

Jefferson's Presidency changed the course of America. It established different parameters for how formal government should be balanced against individual self-rule. This was a dynamic interchange between the citizens and their institutions since it followed a course not tried before. No prior blueprint had been drawn up and the specifications were being added and deleted as the experience was unfolding. It is hard for citizens now to imagine how unsettling the idea of self-rule was after centuries if not millennia of rule by political and religious authorities had served as the standard. When the Jeffersonians spoke of liberating the individual from institutions and rules that had been in place for so long, they had to rely on assumptions and suppositions, little of which could be cited and confirmed in past history. The best that they could do was to recall their colonial past in which they built politically stable and economically prosperous societies that existed and developed in the absence of strong central government. England, of course, represented the strong central authority, but unlike Spain it neglected to impose its rule in such a way as to bind the colonists to the Mother Country. Indeed many colonists' devotion to England was based on the absence of rule rather than its opposite, and when England began to modify that arrangement the colonists took exception. As they learned rather quickly during the Revolution and the Confederation creating the superstructure that English imperial policy provided was not easy. And after a series of crises the Framers sought to replace the rather messy decentralized system that evolved with a central authority, different from the English model but capable nonetheless of enacting legislation and enforcing concurrence among its constituents. If the Federalist model had become the standard, the central government would have taken on many of the attributes of today's Federal government, but with one crucial difference: collective self-rule rather than individual self-rule (to recall Jefferson's distinction) was to become the prevailing philosophy. The concept of

³⁴⁵Atack, Bateman & Parker, “The Farm, the Farmer, and the Market,” in Engerman & Gallman, eds., *Cambridge Economic History*, 2:283-284.

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individual self-rule would not have been abandoned, only bracketed to the concept of collective self-rule. With the ascension of the Jeffersonians, the reverse occurred. Individual self-rule became the bedrock upon which collective self-government would be structured. The Jeffersonians must be taken at their word – formal governmental authority was to be minimized, not embraced and elaborated. Once unleashed, however, the Jeffersonians had no more idea how the society would evolve than their opponents, who for the most part painted a picture of disorder and instability. A self-governing society may have been conceived in a more static world than the America that was emerging in the early nineteenth century. Geographic and economic mobility became a powerful and at times an uncontrollable force. In a letter to John Breckenridge of Kentucky Taylor expressed unease with the life and culture he was observing beyond the Appalachians:

I must confess that I ‘have not abstracted myself from the political world’ but I must at the same time acknowledge that this kind of world, of which I am a member, is quite distinct from that in which your country has placed you. Mine is a sort of metaphysical world over which the plastic [sic] power of the imagination is unlimited. Yours, being only physical, cannot be modulated by fancy. The ways of mine are smooth and soft; yours, rugged and thorny. And a most prosperous traveler [sic] into the political world which I inhabit generally becomes unfortunate if he wanders into the region of which you are now a resident.³⁴⁶

Add to his comments remarks that John Randolph made in a speech about his opposition to the admission of new states:

What were the new states? Vast deserts of woods, inhabited by the aborigines, to whom, if we come to the question of right they did of right belong, and it was a question, whether sound policy would dictate that we ought, by creating these states, to encourage sparse settlements, and thereby weaken our frontier. I thought this was bad policy. Not that I am in favour of a very dense population. I am against the rabble of your great cities, but I am equally opposed to having a land without inhabitant.

Especially, it should be added, if sparsely populated areas could participate on an equal basis with the Virginia in the election of presidents and a voice in the nation’s public

³⁴⁶Taylor to Monroe, 22 December 1801, in “The Correspondence of John Taylor...,” *Branch Historical Papers*, 2:284.

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affairs.³⁴⁷ For Taylor, Randolph and others the course that the nation was following a course, driven by the ambition of gain and accomplishment without restraint, raised some fears about whether the republican dream would survive. The practice of a political theory was hard to predict.

³⁴⁷Randolph, *Substance of a Speech of Mr. Randolph on Retrenchment and Reform...* (1 February 1828) 2nd Edition (Washington, DC: Green & Jarvis, 1828), 7-8.