AP UNITED STATES HISTORY

Chapter 8 Materials

*Securing the Republic, 1790-1815*

Mr. Bailey-Room 401

cbailey@quaboagrsd.org

bailey401.weebly.com

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| Securing the Republic: *Terms* |
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**Article 1, Section 8, Clause 18- The “Elastic Clause”**

**Thomas Jefferson, Opinion on the Constitutionality of the Bill for Establishing a National Bank, 15 Feb. 1791 *Papers 19:275--80***

The bill for establishing a National Bank undertakes, among other things

***HIPP/NOTES:***

1. to form the subscribers into a Corporation….

1. to give them the sole and exclusive right of banking under the national authority: and so far is against the laws of *Monopoly*.
2. to communicate to them a power to make laws paramount to the laws of the states: for so they must be construed, to protect the institution from the controul of the state legislatures; and so, probably they will be construed.

I consider the foundation of the Constitution as laid on this ground that "all powers not delegated to the U.S. by the Constitution, not prohibited by it to the states, are reserved to the states or to the people" [XIIth. Amendmt.].1 To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

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

1. They are not among the powers specially enumerated, for these are
	1. A power to lay taxes for the purpose of paying the debts of the U.S. But no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, it's origination in the Senate would condemn it by the constitution.
	2. "to borrow money." But this bill neither borrows money, nor ensures the borrowing it… The operation proposed in the bill, first to lend them two millions, and then borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.
	3. "to regulate commerce with foreign nations, and among the states, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts… To erect a thing which may be bought and sold, is not to prescribe regulations for buying and selling. Besides; if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every state, as to its external. For the power given to Congress by the Constitution, does not extend to the internal regulation of the commerce of a state (that is to say of the commerce between citizen and citizen) which remains exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another state, or with foreign nations or with the Indian tribes....
2. Nor are they within either of the general phrases, which are the two following.
	1. "To lay taxes to provide for the general welfare of the U.S." that is to say "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power and the general welfare the purpose for which the power is to be exercised. They are not to lay 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,

1 The Bill of Rights had not yet been ratified at the time that Jefferson wrote this. What he refers to as the Twelfth Amendment was ratified as the Tenth Amendment to the Constitution.

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 for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the

***HIPP/NOTES:***

U.S. and as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they pleased….

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

It has been much urged that a bank will give great facility, or convenience in the collection of taxes. Suppose this were true: yet the constitution allows only the means which are "necessary" not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to every one, for [there] is no one which ingenuity may not torture into a *convenience, in some way or other,* to *some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one phrase as before observed. Therefore it was that the constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of the power would be nugatory….

Perhaps indeed bank bills may be a more *convenient* vehicle than treasury orders. But a little *difference* in the degree of *convenience,* cannot constitute the necessity which the constitution makes the ground for assuming any non-enumerated power….

It may be said that a bank, whose bills would have a currency all over the states, would be more convenient than one whose currency is limited to a single state. So it would be still more convenient that there should be a bank whose bills should have a currency all over the world. But it does not follow from this superior conveniency that there exists anywhere a power to establish such a bank; or that the world may not go on very well without it….

The Negative of the President is the shield provided by the constitution to protect against the invasions of the legislature 1. the rights of the Executive 2. of the Judiciary 3. of the states and state legislatures. The present is the case of a right remaining exclusively with the states and is consequently one of those intended by the constitution to be placed under his protection.

**QUESTIONS:**

1. How does Jefferson interpret the Elastic Clause? What kind of construction does this suggest?
2. Why does Jefferson believe that the establishment of a national bank would violate the principles of the Constitution?
3. What danger does Jefferson see in Congress adopting Hamilton’s plans for a national bank?

**Article 1, Section 8, Clause 18- The “Elastic Clause”**

**Alexander Hamilton, Opinion on the Constitutionality of the Bank, 23 Feb. 1791 *Papers 8:97--106***

The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State and Attorney General concerning the constitutionality of the bill for establishing a National Bank proceeds according to the order of the President to submit the reasons which have induced him to entertain a different opinion….

***HIPP/NOTES:***

…principles of construction like those espoused by the Secretary of State and the Attorney General would be fatal to the just and indispensable authority of the United States.

In entering upon the argument it ought to be premised, that the objections of the Secretary of State and Attorney General are founded on a general denial of the authority of the United States to erect corporations…

Now it appears to the Secretary of the Treasury, that this *general principle is inherent* in the very *definition* of *Government* and *essential* to every step of the progress to be made by that of the United States, namely--that every power vested in a Government is in its nature *sovereign,* and includes by *force* of the *term,* a right to employ all the *means* requisite, and fairly *applicable* to the attainment of the *ends* of such power; and which are not precluded by restrictions and exceptions specified in the constitution, or not immoral, or not contrary to the essential ends of political society….

… To deny that the Government of the United States has sovereign power as to its declared purposes and trusts, because its power does not extend to all cases, would be equally to deny, that the State Governments have sovereign power in any case; because their power does not extend to every case. The tenth section of the first article of the constitution exhibits a long list of very important things which they may not do. And thus the United States would furnish the singular spectacle of a *political society* without *sovereignty,* or of a people *governed* without *government*….

It is not denied, that there are *implied,* as well as *express powers,* and that the *former* are as effectually delegated as the latter. And for the sake of accuracy it shall be mentioned, that there is another class of powers, which may be properly denominated *resulting* powers. It will not be doubted that if the United States should make a conquest of any of the territories of its neighbours, they would possess sovereign jurisdiction over the conquered territory. This would rather be a result from the whole mass of the powers of the government and from the nature of political society, than a consequence of either of the powers specially enumerated….

To return--It is conceded, that implied powers are to be considered as delegated equally with express ones.

Then it follows, that as a power of erecting a corporation may as well be *implied* as any other thing; it may as well be employed as an *instrument* or *means* of carrying into execution any of the specified powers, as any other instrument or mean whatever. The only question must be, in this as in every other case, whether the means to be employed, or in this instance the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government… it is incident to a general *sovereign* or *legislative power* to *regulate* a thing, to employ all the means which relate to its regulation to the *best* and *greatest advantage*….

It is essential to the being of the National government, that… the meaning of the word *necessary,* should be explored.

It is certain, that neither the grammatical nor popular sense of the term requires that construction. According to both, *necessary* often means no more than *needful, requisite, incidental, useful,* or *conductive to*. It is a common mode of expression to say, that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted, by the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense.

And it is the true one in which it is to be understood as used in the constitution. The whole turn of the clause containing it indicates, that it was the intent of the convention, by that clause to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are, "to make *all laws,* necessary and proper for *carrying into execution* the foregoing powers and *all other powers* vested by the constitution in the *government* of the United States, or in any *department* or *officer* thereof." To understand the word as the Secretary of State does, would be to depart from its obvious and popular sense, and to give it a *restrictive* operation; an idea never before entertained. It would be to give it the same force as if the word *absolutely* or *indispensably* had been prefixed to it.

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Such a construction would beget endless uncertainty and embarrassment. The cases must be palpable and extreme in which it could be pronounced with certainty that a measure was absolutely necessary, or one without which the exercise of a given power would be nugatory. There are few measures of any government, which would stand so severe a test…

It may be truly said of every government, as well as of that of the United States, that it has only a right, to pass such laws as are necessary and proper to accomplish the objects intrusted to it. For no government has a right to do *merely what it pleases*….

This restrictive interpretation of the word *necessary* is also contrary to this sound maxim of construction; namely, that the powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defence etc. ought to be construed liberally, in advancement of the public good….

The truth is, that difficulties on this point are inherent in the nature of the federal constitution. They result inevitably from a division of the legislative power. The consequence of this division is, that there will be cases clearly within the power of the National Government; others clearly without its powers; and a third class, which will leave room for controversy and difference of opinion, and concerning which a reasonable latitude of judgment must be allowed.

But the doctrine which is contended for is not chargeable with the consequence imputed to it. It does not affirm that the National government is sovereign in all respects, but that it is sovereign to a certain extent: that is, to the *extent* of the objects of its specified powers.

It leaves therefore a criterion of what is constitutional, and of what is not so. This criterion is the *end,* to which the measure relates as a *mean*. If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the constitution--it may safely be deemed to come within the compass of the national authority. There is also this further criterion which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any State, or of any individual? If it does not, there is a strong presumption in favor of its constitutionality; and slighter relations to any declared object of the constitution may be permitted to turn the scale.

**QUESTIONS:**

1. How does Hamilton interpret the Elastic Clause? What kind of construction does this suggest?
2. Why does Hamilton believe that the establishment of a national bank is in accordance with the principles of the Constitution?
3. What danger does Hamilton see in Jefferson’s construction of the Constitution?

**Washington's Neutrality Proclamation (1793)**

Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France on the other; and the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers;

***HIPP/NOTES:***

I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectfully; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.

And I do hereby also make known, that whatsoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States, against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the Powers at war, or any of them.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twenty-second day of April, one thousand seven hundred and ninety-three, and of the Independence of the United States of America the seventeenth.

George Washington April 22, 1793

***Summarize the main idea of this document…***

**Washington's Farewell Address (1796)**

**"I have at my bedside George Washington's final address to the American people, which was never delivered. But it was later published in newspapers throughout the country. His thoughts, his words - they are as relevant right now as they were when they were written. His warnings give us insight into what is going on right now."**

**-- Jon Voight (Actor)**

Friends and Citizens:

***HIPP/NOTES:***

The period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those out of whom a choice is to be made…

The unity of government which constitutes you one people is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquility at home, your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize. But as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens, by birth or choice, of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have in a common cause fought and triumphed together; the independence and liberty you possess are the work of joint counsels, and joint efforts of common dangers, sufferings, and successes…

In contemplating the causes which may disturb our Union, it occurs as matter of serious concern that any ground should have been furnished for characterizing parties by geographical discriminations, Northern and Southern, Atlantic and Western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heartburnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection…

To the efficacy and permanency of your Union, a government for the whole is indispensable. No alliance, however strict, between the parts can be an adequate substitute; they must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a constitution of government better calculated than your former for an intimate union, and for the efficacious management of your common concerns. This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government…

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Towards the preservation of your government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember, especially, that for the efficient management of your common interests, in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty is indispensable…

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but, in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy…

It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foments occasionally riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself through the channels of party passions. Thus the policy and the will of one country are subjected to the policy and will of another…

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy to be useful must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people, to surrender their interests.

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

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

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

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

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

Geo. Washington.

**QUESTIONS:**

1. Why does Washington warn Americans against “the spirit of the parties”?

2. What European “interests” does Washington have in mind when he warns against forming permanent alliances with any foreign country?

**The Federalist No. 10**

###### The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection (continued)

***Daily Advertiser***

Thursday, November 22, 1787 [James Madison]

###### To the People of the State of New York:

***HIPP/NOTES:***

**AMONG the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction…** Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our [state] governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority…

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community….

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed…

**QUESTIONS:**

1. According to Madison in *Federalist 10*, what problem would the Constitution help to remedy? To what extent?
2. Why are political factions unavoidable in a free society?

**The Virginia and Kentucky Resolutions**

**Virginia Resolution of 1798 [Madison]**

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

***HIPP/NOTES:***

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

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

That the General Assembly doth also express its deep regret, that a spirit has in sundry instances, been manifested by the federal government, to enlarge its powers by forced constructions of the constitutional charter which defines them… and so as to consolidate the states by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States, into an absolute, or at best a mixed monarchy.

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the "Alien and Sedition Acts" passed at the last session of Congress; the first of which exercises a power no where delegated to the federal government… and the other of which acts [Sedition Act], exercises in like manner, a power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which more than any other, ought to produce universal alarm, because it is leveled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed, the only effectual guardian of every other right.

That this state having by its Convention, which ratified the federal Constitution, expressly declared, that among other essential rights, "the Liberty of Conscience and of the Press cannot be cancelled, abridged, restrained, or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having with other states, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution; it would mark a reproachable inconsistency, and criminal degeneracy, if an indifference were now shewn, to the most palpable violation of one of the Rights, thus declared and secured; and to the establishment of a precedent which may be fatal to the other.

… the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people…

***HIPP/NOTES:***

Agreed to by the [Virginia] Senate, December 24, 1798.

**Kentucky Resolutions of 1798 [Jefferson]**

1. *Resolved*, That the several States composing, the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes — delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: that to this compact each State acceded as a State, and is an integral part, its co-States forming, as to itself, the other party: that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress….

3. *Resolved*, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitutions, that “the powers not delegated to the United States by the Constitution, our prohibited by it to the States, are reserved to the States respectively, or to the people”; and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people… That, therefore, the act of Congress of the United States, passed on the 14th day of July, 1798, intituled “An Act in addition to the act intituled An Act for the punishment of certain crimes against the United States,” which does abridge the freedom of the press, is not law, but is altogether void, and of no force….

1. …in cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (*casus non fœderis*) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them…

These and successive acts of the same character, unless arrested at the threshold, [will] necessarily drive these States into revolution and blood… and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism--free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits. Let him say what the government is, if it be not a tyranny…

***HIPP/NOTES:***

###### In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

**QUESTIONS:**

* 1. What did Jefferson and Madison mean when they referred to the Constitution as a *compact*?
	2. According to these resolutions, whose responsibility is it to interpret the Constitution?
	3. What amendments from the Bill of Rights did Jefferson and Madison use as justification for their protest?
	4. Which of these resolutions is stronger and more radical in tone? Explain why.

**Albert Gallatin, Secretary of the Treasury, to Thomas Jefferson**

Treasury Department, 18th December, 1807.

***HIPP/NOTES:***

**Dear Sir,—**

Reflecting on the proposed embargo and all its bearings, I think it essential that foreign vessels may be excepted… I also think that an embargo for a limited time will at this moment be preferable in itself, and less objectionable in Congress. In every point of view, privations, sufferings, revenue, effect on the enemy, politics at home, &c., I prefer war to a permanent embargo.

Governmental prohibitions do always more mischief than had been calculated; and it is not without much hesitation that a statesman should hazard to regulate the concerns of individuals as if he could do it better than themselves.

The measure being of a doubtful policy, and hastily adopted on the first view of our foreign intelligence, I think that we had better recommend it with modifications, and, at first, for such a limited time as will afford us all time for reconsideration and, if we think proper, for an alteration in our course without appearing to retract. As to the hope that it may have an effect on the negotiation with Mr. Rose, or induce England to treat us better, I think it entirely groundless.

**Respectfully, your obedient servant.**

**Questions to Consider:**

1. What are Gallatin’s thoughts on Jefferson’s proposed embargo?
2. What are Gallatin’s thoughts about such actions, in general? What does this say of his political philosophy?

**Report and Resolutions of the Hartford Convention (January 4, 1815)**

The Delegates from the Legislatures of the States of Massachusetts, Connecticut, and Rhode-Island, and from the Counties of Grafton and Cheshire in the State of New-Hampshire and the county of Windham in the State of Vermont, assembled in Convention, beg leave to report the following result of their conference.

***HIPP/NOTES:***

**T**he Convention is deeply impressed with a sense of the arduous nature of the commission which they were appointed to execute, of devising the means of defense against dangers, and of relief from oppressions proceeding from the act of their own Government, without violating constitutional principles….

**THEREFORE RESOLVED—**

That it be and hereby is recommended to the Legislatures of the several States represented in this Convention, to adopt all such measures as may be necessary effectually to protect the citizens of said States from the operation and effects of all acts which have been or may be passed by the Congress of the United States, which shall contain provisions, subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments, not authorized by the Constitution of the United States….

*Resolved*, That the following amendments of the Constitution of the United States, be recommended to the States represented as aforesaid, to be proposed by them for adoption by the State Legislatures, and, in such cases as may be deemed expedient, by a Convention chosen by the people of each State.

And it is further recommended, that the said States shall persevere in their efforts to obtain such amendments, until the same shall be effected.

*First*. Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, and all other persons.

*Second*. No new State shall be admitted into the union by Congress in virtue of the power granted by the Constitution, without the concurrence of two thirds of both Houses.

*Third*. Congress shall not have power to lay any embargo on the ships or vessels of the citizens of the United States, in the ports or harbours thereof, for more than sixty days.

*Fourth*. Congress shall not have power, without the concurrence of two thirds of both Houses, to interdict the commercial intercourse between the United States and any foreign nation or the dependencies thereof.

*Fifth*. Congress shall not make or declare war, or authorize acts of hostility against any foreign nation, without the concurrence of two thirds of both Houses, except such acts of hostility be in defence of the territories of the United States when actually invaded.

*Sixth*. No person who shall hereafter be naturalized, shall be eligible as a member of the Senate or House of Representatives of the United States, nor capable of holding any civil office under the authority of the United States.

*Seventh*. The same person shall not be elected President of the United States a second time; nor shall the President be elected from the same State two terms in succession.

*Resolved*, That if the application of these States to the government of the United States, recommended in a foregoing Resolution, should be unsuccessful, and peace should not be concluded, and the defense of these States should be neglected, as it has been since the commencement of the war, it will in the opinion of this Convention be expedient for the Legislatures of the several States to appoint Delegates to another Convention, to meet at Boston, in the State of Massachusetts, on the third Thursday of June next, with such powers and instructions as the exigency of a crisis so momentous may require….

***HIPP/NOTES:***

***Summarize the main ideas of this document…***

**Opposition to the Idea of Party - Richard Hofstadter**

Although political parties had already emerged in England during the eighteenth century, they were not envisioned as part of the American republic by those who shaped it. Not only did the Constitution make no '- provision for parties, but the leaders who framed the Constitution and peopled the new government were actively hostile to the idea. Madison, in fact, used "party" as a synonym for "faction," which he said must be avoided. This selection from Richard Hofstadter's study of the origins of parties in America describes the hostility toward the concept of party that was common among those with influence in the new republic.

Political discussion in eighteenth-century England and America was pervaded by a kind of anti-party cant. Jonathan Swift, in his *Thoughts on Various Subjects,* had said that "Party *is* the madness of many, for the gain of the few." This maxim ... plainly struck a deep resonance in the American mind. Madison and Hamilton, when they discussed parties or factions (for them the terms were usually interchangeable) in *The Federalist,* did so only to arraign their bad effects. In the great debate over the adoption of the Constitution both sides spoke ill of parties... George Washington devoted a large part of his political testament, the Farewell Address, to stern warnings against "the baneful effects of the Spirit of Party." His successor, John Adams, believed that "a division of the republic into two great parties .... is to be dreaded as the greatest political evil under our Constitution."…

That the anti-party thought and partisan action of the Founding Fathers were at odds with each other is not altogether surprising. What they were trying to resolve-and they did so, after all, with a substantial measure of success-is a fundamental problem of modern democracy... The Situation of the Americans in their formative years was unusually complex, and perhaps quite unique. The Founding Fathers had inherited a political philosophy which also denied the usefulness of parties and stressed their dangers. Yet they deeply believed in the necessity of checks on power, and hence in freedom for opposition, and were rapidly driven, in spite of their theories, to develop a party System....

The idea of a legitimate opposition-recognized opposition, organized and free enough in its activities to be able to displace an existing government by peaceful means-is an immensely sophisticated idea, and it was not an idea that the Fathers found fully developed and ready to hand when they began their enterprise in republican consti­tutionalism in 1788.... The Federalists and Republicans did not think of each other as alternating parties in a two-party System. Each side hoped instead to eliminate party conflict by persuading and absorbing the more acceptable and "innocent" members of the other...

There are, of course, many ways of looking at what the first generation under the Constitution accomplished-setting administrative precedents, establishing the national credit, forging a federal union in the teeth of provincial loyalties, winning a national domain, . . . but one of the most important things they did was to come to terms with the idea of opposition and to experiment, despite their theories, with its in­carnation in a party system.. . . Their skepticism about the value of parties made it inevitable that their discovery of a party system should be the product of drift and experimentation, that the rather nice system of implicit rules under which the modern two-party duel takes place could be arrived at only after many misunderstandings and some serious missteps...

... during the eighteenth century, the root idea we find is that parties are evil.. . .

The very terms, "party" and "faction," which were used by some writers interchangeably, carried invidious overtones, though this is more regularly true of "faction." That word, in fact, seems to have had the meaning of a more sinister version of "party"-party functioning at its worst.. . . in the 1790's the leaders of the emerging Republican party in the United States were sometimes disposed at first to shy away from calling themselves a party.. . . As for faction-that was out of the question: Jefferson indignantly denounced Hamilton in 1792 for "daring to call the Republican party *a faction."*

Party had . . . come to be conventionally condemned by political writers on three separate but not inconsistent grounds. First, . . .It was a prolific cause of "turbulence" . . . Second, a party or faction was very likely to become the instrument with which some small and narrow special interest could impose its will upon the whole of society.. . .

Finally, the party, with its capacity to arouse malice and hostility and to command loyalty to a political entity much narrower and less legitimate than the "public good" as a whole, was considered to be a force directly counterposed to civic virtue.. . .

A few observers . . . saw that parties could be good because instead of making for aggrandizement of power they offered another possible source of checks and balances in addition to those already built into the constitutional structure.. . . none saw that parties might perform a wide variety of positive functions necessary to representative democracy and unlikely to be performed as well by any other institutions.. . . First, parties had to be created; and then at last they would begin to find a theoretical acceptance.

***Summarize the main ideas of this document…***

**Securing the Republic: Political Cartoons**

**Analyze the cartoon and answer the questions.**

1. What are the characters and symbols in the cartoon, and what does each one represent?

2. How do the words help you identify the cartoonist’s intention?

3. What action is taking place in the cartoon?

4. What opinion is the cartoonist expressing?

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**REVIEW QUESTIONS**

**1.** Identify the major parts of Hamilton’s financial plan, who supported these proposals, and why they created such passionate opposition.

**2.** How did the French Revolution and ensuing global struggle between Great Britain and France shape early American politics?

**3.** How did each of the following demonstrate a growing U.S. involvement in the world: Washington’s Farewell Address, Jefferson’s response to the Haitian Revolution, and the Barbary Wars.

**4.** How did the expansion of the public sphere offer new opportunities to women?

**5.** How did the Virginia and Kentucky resolutions of 1798 threaten government stability and the future of the republic?

**6.** Thomas Jefferson spoke of creating an “Empire of Liberty.” What actions did he take to achieve such a goal, and was a universal expansion of freedom the result?

**7.** Why did contemporaries refer to the War of 1812 as the Second War of Independence, and was this name accurate?

**8.** Whose status was changed the most by the War of 1812—Great Britain, the United States, or Native Americans?

**FREEDOM QUESTIONS**

**1.** Why did Jefferson believe Hamilton’s financial plan would destroy both freedom and the republic?

**2.** Identify the key components of liberty endorsed by the Democratic-Republican societies. Why did Federalists view such societies and ideas as evidence that liberty was getting “out of hand”?

**3.** Why were the Alien and Sedition Acts of 1798 viewed as assaults on freedom by Jefferson’s supporters, but justified as a defense of a stable republic by the Federalists?

**4.** The divide between the ideals of American liberty and the institution of slavery grew during the first quarter century of the American republic. Explain how and why, using examples.

*Competing Visions of Government: The Federalists vs. the Republicans*

*Directions*: Identify the Hamiltonian and Jeffersonian perspective regarding the following topics. Each box requires a specific answer and a brief sentence to explain their rationale for this position. No one-word answers are acceptable.

|  |  |  |
| --- | --- | --- |
|  | ***Hamilton (Federalist)*** | ***Jefferson (Democratic-Republican)*** |
| ***What was his vision of the role of government*** ***(National or State?)*** |  |  |
| ***Payment of National & State Debts*** |  |  |
| ***Tariff on Imported Goods*** |  |  |
| ***The U.S. Economy: (Manufacturing or Farming?)*** |  |  |
| ***Creating a National Bank***  |  |  |
| ***Interpretation of the Constitution*** |  |  |
| ***Whiskey Tax and Whiskey Rebellion*** |  |  |
| ***Support for the French Revolution*** |  |  |
| ***What is the fundamental idea at the heart of the Hamilton/Jefferson disagreement?*** |

***Analysis Questions:***

1. Summarize the fundamental idea that is at the heart of the Federalists/Anti-Federalist disagreement. In what ways is this similar to the idea at the heart of the Hamilton/Jefferson conflict? In what ways is it different?
2. Who’s vision for America, Hamilton’s or Jefferson’s, do you feel was most appropriate for America in 1790? Explain.

**How Jeffersonian was President Jefferson?**

|  |  |  |  |
| --- | --- | --- | --- |
| **Issue** | **Jeffersonian** | **Not Jeffersonian** | **Explanation** |
| *Alien and Sedition Acts* |  |  |  |
| *Excise Tax* |  |  |  |
| *The Budget* |  |  |  |
| *The Bank of the United States* |  |  |  |
| *Tariffs* |  |  |  |
| *Tripolitan War**(Barbary Wars)* |  |  |  |
| *The Navy* |  |  |  |
| *Louisiana Purchase* |  |  |  |
| *Chesapeake Affair* |  |  |  |
| *Embargo Act* |  |  |  |

**Jeffersonian Philosophy**

* Pro agricultural America, rural, small town yeomen
* Tax the rich—distrust wealth and power
* Banking at state level
* Focused upon liberty and individual rights
* National debt frowned upon
* Power should be concentrated at the state level
* Had faith in the common man: education could improve citizenry
* National school system was necessary
* Wanted government by and for the people
* Wanted western lands settled into states for the yeoman farmer
* Sympathized with the French struggle for democracy
* "The government that governs best, governs least"