

Jeffersonian Federalism:  
State Rights and Federal Power

Seth Kincaid Jolly  
John C. Young Fellow  
Mentor: Larry Matheny, Ph.D.

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### INTRODUCTION

Since his death on the Fourth of July 1826, Thomas Jefferson has been one of the most studied and beloved figures in American history. Standard bearers of radicalism, conservatism, and liberalism utilize his complex views to legitimize their arguments. Recently, Jefferson has once again become a serious topic of discussion due to an ongoing critical analysis of his personal, political, and practical views on equality and slavery.<sup>1</sup> Regardless of such debates, the third president continues to fascinate political scientists and historians. With an ever-increasing federal dependency on the states and municipalities to solve problems such as welfare and crime, Jefferson's views on state and federal powers will be useful to both the scholar and the politician. An analysis of Jeffersonian federalism will therefore provide contemporary political observers new insight on a problem that has confronted the nation since its founding: the appropriate division of power between the State and federal governments.

This study provides the opportunity to compare and contrast Jefferson's theoretical views on federalism with his pragmatic political behavior. To do so, I first investigate Jefferson's theoretical ideas on federalism, concentrating on speeches, letters, and legislation. As Jefferson himself noted, only in his letters and writings would be found a "'full and genuine journal' of his life."<sup>2</sup> Then, I shift the focus to three examples, including the Hamiltonian Bank, the Kentucky Resolutions, and the Louisiana Purchase, to assess the degree to which Jefferson's practice was consistent with his theoretical arguments. Despite the seeming contradictions of his career such as the Louisiana Purchase, I will argue that Jefferson's theories on federalism are indeed consistent with his practical political actions as an American statesman.

### JEFFERSONIAN FEDERALISM: THEORY

As a young Virginia Burgess, Thomas Jefferson began theorizing on the proper relationship between the central, state, and local governments. In 1774, he published these views in a pamphlet about the abuses of the English Parliament entitled, *A Summary View of the Rights of British America*. The major complaint of the young Jefferson involved transgressions by Parliament against the local governments. By passing legislation such as the Stamp Act and the Intolerable Acts, Parliament superseded the authority of the state legislatures and lost their legitimacy from the people:

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<sup>1</sup> See, for example, Conor Cruise O'Brien's article: "Thomas Jefferson: Radical and Racist," *The Atlantic Monthly* Oct 1996: 53-74; and Douglas L. Wilson's "Thomas Jefferson and the Character Issue," *The Atlantic Monthly* Nov 1992: 57+.

<sup>2</sup> qtd. in David Mayer, *The Constitutional Thought of Thomas Jefferson* (Charlottesville, VA: University Press of Virginia, 1994) ix. It should be noted that in this paper I have intentionally chosen to leave Mr. Jefferson's language as I found it, complete with misspellings and grammatical errors, in order to retain the spirit of his words.

While those [legislative] bodies are in existence to whom the people have delegated the powers of legislation, they alone possess and may exercise those powers; but when they are dissolved by the lopping off one or more of their branches, the power reverts to the people, who may exercise it to unlimited extent . . . We forbear to trace the consequences further [should Parliament continue their current practices]; the dangers are conspicuous with which this practice is replete.<sup>3</sup>

In the *Summary View*, Jefferson continued to argue that the social contract does not give Parliament complete political authority over its colonists. Further, Jefferson maintained: "No longer should [Parliament] persevere in sacrificing the rights of one part of the empire to the inordinate desires of another; but deal out to all equal and impartial right. Let no act be passed by any one legislature which may infringe on the rights and liberties of another."<sup>4</sup> Jefferson refuted the political equity of a unitarian state such as the United Kingdom, in which all decision-making is done at the national level. While the United Kingdom centralized power at the national level, Jefferson advocated shared power between national and local governments. Such balance can be seen in both the Articles of Confederation and the Constitution of 1787.

During the War for Independence, the States of America created a new form of government, the Confederation; however, the ineffectiveness of the Articles of Confederation became apparent rather quickly. One practical problem of the Articles was the weakness of the federal government relative to its State counterparts. Regardless, while serving as the Minister to France for the Confederation, Jefferson attempted to utilize the Articles to the fullest. In a letter to his young friend, James Monroe, Jefferson explained the means one could use to supersede the constitutional limitations of the Articles to expand trade for the United States:

If therefore it is better for the states that Congress should regulate their commerce, it is proper that they should form treaties with all nations with whom we may possibly trade. You see that my primary object in the formation of treaties is to take the commerce of the states out of the hands of the states, and to place it under the superintendance of Congress, so far as the imperfect provisions of our [Articles] will admit, and until the states shall by new compact make them more perfect.<sup>5</sup>

This passage explains Jefferson's disappointment with the current regime. Certainly, Jefferson perceived the need for greater power at the national level than the Articles offered.

While many Americans see Jefferson as a mere State rights advocate, one can not overlook his firm belief in a strong central government, demonstrated in his views on commerce. Perhaps this support for a strong centralized government, albeit laden with checks and balances, can be directly traced to his time as Governor of Virginia beginning in 1779. At the time of Jefferson's election, the executive of Virginia had little power or autonomy, thereby ensuring the legislative omnipotence of the House of Burgesses. The constitutional limitations in Virginia

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<sup>3</sup> Merrill D. Peterson, ed., "A Summary View of the Rights of British America," *Thomas Jefferson: Writings*, (New York: The Library of America, 1984) 118.

<sup>4</sup> "A Summary View," Peterson 121.

<sup>5</sup> Julian P. Boyd et al., eds., "TJ to James Monroe, 17 June 1785," *The Papers of Thomas Jefferson (1760-93)*, vol. VIII (Princeton: Princeton University Press, 1950+) 231.

greatly hindered the effectiveness of the Governor of Virginia.<sup>6</sup> Partly as a result of this distaste for one branch of government's control over another, Jefferson supported a more equitable division of power between the legislative, executive and judicial branches of government in his book, *Notes on the State of Virginia*:

All the powers of government, legislative, executive, and judiciary, result to the legislative body [in Virginia]. The concentrating these in the same hands is precisely the definition of despotic government. . . . An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others.<sup>7</sup>

During this period, legislative despotism threatened Jefferson the most; however, his fears of tyranny can be seen again later in his life when the federal judiciary began consolidating and growing in influence. As expressed in the passage above from the *Notes on Virginia*, Jefferson wished to distribute power so equitably that no particular segment could supersede the authority of any other. This fear of transgressions from any branch of government provided Jefferson reason enough to support the new Madisonian constitution in 1787.<sup>8</sup>

While checks and balances within a government continued to play an important role throughout his life, Jefferson also greatly concerned himself with the balance between the State and general governments. In an early letter to one of his young Virginia proteges, James Madison, Jefferson drew the line between these two governments as allowing the latter government the power to deal with foreign concerns while leaving the State governments capable of handling domestic problems.<sup>9</sup> In his first inaugural address in 1801, Jefferson expanded on this idea:

. . . I deem the essential principles of our Government, . . . the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad . . ."<sup>10</sup>

In Jefferson's eyes, both the federal and the State governments have specific tasks in a republican government. He continued to maintain the appropriateness of this division throughout his life, as seen in a letter to William Johnson in 1823: "I believe the States can best govern our home

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<sup>6</sup> For more discussion on the limitations Jefferson faced as Governor of Virginia, see the first volume of Dumas Malone's *Jefferson and His Time: Jefferson the Virginian* (Boston: Little, Brown and Co., 1948) 304-308.

<sup>7</sup> "Notes on the State of Virginia," Peterson 245.

<sup>8</sup> Peterson 1522.

<sup>9</sup> "TJ to James Madison 16 December 1786," Boyd X: 603. (hereafter, citations will be done in this form with volume number: page number at the end.)

<sup>10</sup> "First Inaugural Address," Peterson 494.

concerns, and the General Government our foreign ones. I wish, therefore, to see maintained that wholesome distribution of powers established by the constitution for the limitation of both . . .”<sup>11</sup>

While Jefferson clearly recognized the advantages of an independent federal government, he continually espoused the greater utility of State governments. In his inaugural address, Jefferson enumerated liberty as the value which governments should strive to protect: "a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits 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."<sup>12</sup> This speech clearly demonstrates the influence of classical liberal philosophers such as John Locke and Adam Smith. Like Smith and Locke, Jefferson firmly believed in a limited role for government in people’s personal lives. As discussed above, State governments were solely responsible for domestic liberty; however, in Jefferson's opinion, States also provided the best defense for liberty against a national tyrant:

the true barriers of our liberty in this country are our State governments; and the wisest conservative power ever contrived by man, is that of which our Revolution and present government found us possessed. Seventeen distinct States, amalgamated into one as to their foreign concerns, but single and independent as to their internal administration, regularly organized with legislature and governor resting on the choice of the people, and enlightened by a free press, can never be so fascinated by the arts of one man, as to submit voluntarily to his usurpation. . . .<sup>13</sup>

Thus, States not only serve to protect individual liberty, but they also deny tyrants the opportunity to overthrow the democratic government. Significantly for Jefferson, by retaining the power over personal property and individual liberty at a level close to the people, the Constitution preserved the safety of the people from tyrants.

For these reasons, Jefferson stood constantly on guard to protect States from the encroachment of the federal government, be it legislative, executive, or judicial. Nonetheless, near the end of the Confederation period, Jefferson gladly acquiesced to greater federal power. The weakness of the Confederation, as demonstrated in its inability to collect taxes and maintain order, practically demanded increased centralization if the experiment were to succeed. Jefferson, therefore, supported a "federal government which could walk upon it's own legs, without leaning for support on the state legislatures."<sup>14</sup> Similarly, he applauded the people for being so “well informed they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.”<sup>15</sup> Even though Jefferson continued to advocate State rights in the compact, both Jefferson and his Virginian colleague Madison recognized that the new Constitution must distribute enough power to the federal government for it to successfully carry out those tasks assigned to it.

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<sup>11</sup> Paul Leicester Ford, ed., “ TJ to William Johnson 12 June 1823,” *The Writings of Thomas Jefferson*, vol. X (New York: Putnam's, 1892-99) 232n.

<sup>12</sup> "First Inaugural Address," Peterson 494.

<sup>13</sup> "TJ to A.C.V.C. Destutt de Tracy 26 January 1811," Ford IX: 308-9.

<sup>14</sup> "TJ to Richard Price 8 January 1789," Boyd XIV: 420.

<sup>15</sup> "TJ to Richard Price 8 January 1789," Boyd XIV: 420.

As noted above, Jefferson perceived the need for equalizing the distribution of power and supported the new Constitution; however, from the founding of the new Constitution to the end of his days, the Virginian fought against the consolidation advocated by Hamilton and the Federalists. For Jefferson saw the Hamiltonian attempts to consolidate as an attempt to circumvent the States and derive power directly from the people. And he argued that the Constitution remained a compact between the States, rather than between the people.<sup>16</sup> He perceived in consolidation as great a threat to the Union as a complete dissolution would be: "I scarcely know myself which is most to be deprecated, a consolidation, or dissolution of the states. The horrors of both are beyond the reach of human foresight."<sup>17</sup> He sincerely believed the powers of the States must be protected to ensure the safety and liberty of future generations of Americans:

Tho' the experiment has not yet had a long enough course to shew us from which quarter incroachments are most to be feared, yet it is easy to foresee from the nature of things that the incroachments of the state governments will tend to an excess of liberty which will correct itself (as in the late instance) while those of the general government will tend to monarchy, which will fortify itself from day to day, instead of working it's own cure, as all experience shews. I would rather be exposed to the inconveniences attending too much liberty than those attending too small a degree of it. Then it is important to strengthen the state governments: and as this cannot be done by any change in the federal constitution, . . . it must be done by the states themselves, erecting such barriers at the constitutional line as cannot be surmounted either by themselves or by the general government. The only barrier in their power, is a wise government. A weak one will lose ground in every contest.<sup>18</sup>

Even at this early stage in 1791, Jefferson assumed that some forces within the federal government would attempt to centralize political power at the national level. Further, he foreshadowed the future Alien & Sedition Acts by asserting that transgressions by the federal government would inevitably limit liberty. Thus, Jefferson urged States to guard their power rather than simply accept greater consolidation than necessity demanded.

Again, while Mr. Jefferson did support State rights, he emphasized an equitable distribution of powers throughout his life. In 1823, he explained to Judge William Johnson that he believed in federalism because this distribution of powers provided the foundation for the country's well-being: "our general objects are the same, to preserve the republican form and principles of our constitution and cleave to the salutary distribution of powers which that has established. These are the two sheet anchors of our Union. If driven from either, we shall be in danger of foundering."<sup>19</sup> As Jefferson explained many times, he espoused the view that each government had certain duties, explicitly enumerated in the constitution. He attributed external affairs to the general government while leaving "the care of our persons, our property, our

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<sup>16</sup> *Kentucky Resolutions*, Ford VII: 289-92.

<sup>17</sup> "TJ to William Johnson 27 October 1822," Ford X: 226.

<sup>18</sup> "TJ to Archibald Stuart 23 December 1791," Boyd XXII: 436.

<sup>19</sup> "TJ to William Johnson 12 June 1823," Ford X: 232n.

reputation, and religious freedom" to the particular States.<sup>20</sup> He strongly believed that the State governments must maintain these powers over the person. In a letter to Monroe, Jefferson warned the young Virginian of the fears he held: "The system of the General government, is to seize all doubtful ground. We [the States] must join in the struggle, or get nothing. Where first occupancy is to give a right, he who lies still loses all. . . . It is of immense consequence that the States retain as complete authority as possible over their own citizens."<sup>21</sup> To Jefferson, this distribution of powers between the federal and State governments must be preserved to ensure the success of the noble experiment called the United States.

Jefferson's reliance on State militias rather than a standing national army illustrated his commitment to the preservation of State rights. Since he believed State militias and harbor navies would be fully capable of protecting the security of the nation, he strenuously objected to a standing army or a large navy. He perceived the former as a threat to domestic liberty and the latter as an unnecessary burden that would draw the United States into external conflicts.<sup>22</sup> He saw his opinions justified when the Ohio militia adequately handled the Burr conspiracy, capturing Aaron Burr and the other conspirators without a call for a national army:<sup>23</sup>

The hand of the people has given the mortal blow to a conspiracy which, in other countries, would have called for an appeal to armies, and has proved that government to be the strongest of which every man feels himself a part. It is a happy illustration, too, of the importance of preserving to the State authorities all that vigor which the Constitution foresaw would be necessary, not only for their own sake, but for that of the whole.<sup>24</sup>

These views on the militia reemphasize his opinions that State governments should be solely responsible for internal affairs. To Jefferson, States must not only be capable of handling such problems, they must also be encouraged to do so to maintain their power relative to the federal government.

I would be remiss when discussing Jeffersonian federalism were I to completely neglect the federal judiciary. From the early years of the republic, the judiciary continually plagued the republican statesman. Jefferson despised judicial consolidation and feared its repercussions:

the germ of dissolution of our federal government is in the constitution of the federal judiciary; an irresponsible body, (for impeachment is scarcely a scare-crow) working like gravity by night and by day, gaining a little to-day and a little to-morrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one. To this I am opposed; because, when all government, domestic and foreign, in little as in great things, shall be

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<sup>20</sup> Andrew A. Lipscomb and Albert Ellery Bergh, eds., "TJ to the General Assembly of Rhode Island and Providence Plantation 26 May 1801," *The Writings of Thomas Jefferson*, vol. X (Washington: The Thomas Jefferson Memorial Association, 1903): 263.

<sup>21</sup> "TJ to Monroe 7 September 1797," Ford VII: 173.

<sup>22</sup> "TJ to Elbridge Gerry 20 January 1799," Ford VII: 327-8.

<sup>23</sup> For a more in-depth look at the Burr conspiracy, see the fifth volume of Dumas Malone's biography: *Jefferson the President, Second Term 1805-1809*, vol. 5, (Boston: Little, Brown and Co., 1974), particularly chapters XIII-XXI.

<sup>24</sup> "TJ to the Governor of Ohio, H.D. Tiffin 2 February 1807," Ford IX: 21-2.

drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated.<sup>25</sup>

Jefferson, a lawyer by trade, perceived the need for an independent judiciary; however, when the federal judiciary overstepped its constitutional boundaries, Jefferson began considering ways to circumvent its power. To do so, Jefferson stated that each body, not just the judiciary, has the power to nullify legislation or actions if they contradict the constitution: "My construction of the constitution . . . is that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the constitution in the cases submitted to its action; and especially, where it is to act ultimately and without appeal."<sup>26</sup> We will see Jefferson return to this idea in the discussion on the Alien and Sedition Acts below. Regardless, Jefferson feared the growing power of the federal judiciary relative to the other branches and the State governments.

Jefferson's theories on federalism rely on liberty as a core value. The statesman feared encroachments from practically every direction: the legislative, executive, and judicial branches as well as the federal government in general. In the theories presented above, he attempted to preserve the balance between the general and the State governments. In the ensuing paragraphs, I examine whether his political actions confirm whether he followed the preceding theories in practice or not.

## **JEFFERSONIAN FEDERALISM: THEORY IN PRACTICE**

Thomas Jefferson not only theorized on the general relationship between the two governments, he also served as a statesman during the formative years of the republic. During this period of public service, Jefferson approached many issues with his views on State rights and federal power foremost in his mind. To adequately compare Jeffersonian theory with these pragmatic examples from his life, I examine the Hamiltonian system, in particular the National Bank; the Alien and Sedition Acts, focusing on the Kentucky Resolutions; and finally, western expansion, emphasizing the Louisiana Purchase of 1803. By doing so, I hope to provide the empirical evidence necessary to evaluate Jefferson's ability to put his theories into practice.

## **THE HAMILTONIAN SYSTEM AND THE NATIONAL BANK**

During George Washington's terms as President, both Alexander Hamilton and Thomas Jefferson served in his cabinet. Hamilton and Jefferson became the first Secretaries of the Treasury and State, respectively. From an early point in the Republic, fundamental disagreements between these two gentlemen forced Washington to deal with a divisive cabinet. At the heart of these quarrels stood the Hamiltonian system.

According to tradition, Jefferson defended state rights and strict constitutional interpretation while Hamilton advocated a loose interpretation and an expansive federal

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<sup>25</sup> "TJ to Charles Hammond 18 August 1821," Lipscomb XV: 331-2.

<sup>26</sup> "TJ to Judge Spencer Roane 6 September 1819," Ford X: 141.

government. However, Hamilton's pro-active legislative approach restricted Jefferson to the role of opposition. For example, he criticized Hamilton for his "Report on Manufacturers" in the fall of 1792, for it "expressly assumed that the general government has a right to exercise all powers which may be for the *general welfare*, that is to say, all the legitimate powers of government: since no government has a legitimate right to do what is not for the welfare of the governed."<sup>27</sup> While he steadfastly refused to attack the Hamiltonian System in public, he continually degraded it in private letters, notably in a letter to President Washington:

I have utterly, in my private conversations, disapproved of the system of the Secretary of the treasury, I acknowledge and avow: and this was not merely a speculative difference. His system flowed from principles adverse to liberty, and was calculated to undermine and demolish the republic . . .<sup>28</sup>

Hamilton's proposals convinced Jefferson that the Secretary of the Treasury stood as a threat to the legitimate division between federal powers and state rights. Such proposals forced Jefferson to take an active role in the defense of States against Federalist consolidation.

This dispute was not merely a speculative argument between two theorists: both men were practical politicians and statesmen. When Hamilton introduced the National Bank in 1791, it became the first major initiative of the Hamiltonian System.<sup>29</sup> But Jefferson did not stand idle. The Secretary of State disagreed with the concept of a National bank based on constitutional grounds. The tenth amendment became integral in the Constitutional debate surrounding the Bank for Jefferson. It reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."<sup>30</sup> For Jefferson, the key to the tenth amendment pertained to whether the particular action interfered with the proper division of power between the States and the federal government. According to David Mayer, the Bank bill concerned Jefferson mainly because it "threatened federalism by establishing a corporation with powers that would impinge upon the sphere of state authority reserved by the Tenth Amendment."<sup>31</sup> This realization ensured the opposition of Jefferson to the Bank Bill and Hamilton's attempts to consolidate power in America. He prophesied the dangers of surpassing the division of power presented in the Constitution: "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."<sup>32</sup> As Federalists, led by Hamilton, advocated a stronger, more centralized government, Jefferson defended the Constitution that, to him, limited the opportunities of the federal government to consolidate power.

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<sup>27</sup> "TJ to George Washington 9 September 1792," Boyd XXIV: 353.

<sup>28</sup> "TJ to GW 9 September 1792," Boyd XXIV: 352-3.

<sup>29</sup> For more detail on the actual proposal for the National Bank, see Jefferson's "Opinion on the Constitutionality of a National Bank" in Peterson 416.

<sup>30</sup> Alpheus Thomas Mason and Gordon E. Baker, *Free Government in the Making: Readings in American Political Thought*, 4th ed. (New York: Oxford UP, 1985) 788.

<sup>31</sup> Mayer 215.

<sup>32</sup> "Opinion on the Constitutionality of a National Bank," Peterson 416.

Furthermore, the Secretary of State did not just cite one Constitutional problem with the Bank, he described several. Possibly, his most damning critique questioned implied powers:

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 not one which ingenuity may not torture into a *convenience* in some instance *or other*, to *some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power, 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 power would be nugatory.<sup>33</sup>

While loose constructionists questioned the viability of a government constrained by such strict interpretation, Jefferson urged the opposite extreme. A government unbridled by constitutional rules would lead to a greater restriction of liberties than ever before seen. Jefferson illustrated these views in an opinion written to George Washington in 1791.<sup>34</sup> In this document, Mr. Jefferson admitted that a National Bank would have certain advantages, but that these advantages did not warrant such legislative action: "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."<sup>35</sup> So, in this instance and throughout the Federalist period, Jefferson maintained his strict stance toward Constitutional interpretation.

Again, Secretary Jefferson saw this legislation and Hamilton's system as a threat to republican government. As a foundational belief, Jefferson advocated a strong division between the powers of the particular and general governments. Clearly, such beliefs forced Jefferson to take a decisive stand against the Federalists on the Hamiltonian system. He proclaimed his fears about Federalists in a letter to Washington:

That this corrupt squadron, deciding the voice of the legislature, have manifested their dispositions to get rid of the limitations imposed by the constitution on the general legislature, limitations, on the faith of which, the states acceded to that instrument: That the ultimate object of all this is to prepare the way for a change, from the present republican form of government, to that of a monarchy, of which the English constitution is to be the model.<sup>36</sup>

Even though Jefferson's writings are by no means unbiased, they clearly demonstrate the vehemence of his feelings against the Federalists. Also, this particular passage warned that legislative encroachments such as the National Bank would set a precedent for overstepping the boundaries of the Constitution, thereby threatening liberty. For, in Jefferson's eyes, centralizing power in the national legislature could only result in the same tyranny Americans suffered under

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<sup>33</sup> "Opinion," Peterson 419.

<sup>34</sup> "Opinion," Peterson 416-421.

<sup>35</sup> "Opinion," Peterson 419-420.

<sup>36</sup> "TJ to GW 23 May 1792," Boyd XXIII: 537.

Great Britain. Thus, the Secretary of State opposed such constitutional transgressions to preserve the liberty of the States and the people.

Jefferson's opposition to the National Bank and the Hamiltonian System confirmed his most cherished beliefs about federalism. Not only did he see Hamilton attempting to subvert legislative as well as executive authority, but he also perceived the clear threat to State rights. Regardless of small benefits of particular legislation, Jefferson feared a centralization of power because it would encroach upon liberty. Therefore, his actions in this regard illustrate and confirm his core theoretical beliefs.

## THE KENTUCKY RESOLUTIONS

Throughout the rest of the eighteenth century, circumstances continually tested Jefferson's ideas on liberty. The foremost examples of such threats are the Alien and Sedition Acts. Approved in June and July of 1798, these bills were an attempt by the Federalists to quell internal dissension during a time of strained relations with the French republic.<sup>37</sup> According to Dumas Malone, the great Jeffersonian biographer, the Alien Friends Act disturbed Jefferson simply because it gave the President arbitrary power “to deport any alien he thought dangerous.”<sup>38</sup> Similarly, despite the protection afforded by the First Amendment, the Sedition Act labeled certain actions of the press treasonous.<sup>39</sup> To the tolerant, classically liberal Jefferson, these bills excited particular interest. Laying particular emphasis on the *Kentucky Resolutions*, I will argue that Jefferson’s reaction to these bills justifies his theoretical ideas on federalism.

In arguing against the Alien and Sedition Acts, Jefferson relied mainly on the Tenth Amendment, which limits the authority of the federal government to those powers specified in the Constitution while leaving all other powers to the individual States.<sup>40</sup> Again, this confrontation illustrates the classic debate between Jefferson and the Federalists on implied powers and federal dominance. Regardless, Jefferson secretly displayed his views in the *Kentucky Resolutions*. As Vice President, Jefferson felt constrained from explicitly stating his views; therefore, he utilized John Breckinridge of Kentucky to denounce these unconstitutional measures.<sup>41</sup>

In the *Resolutions*, Jefferson firmly expanded upon his theory that each department or government had the right to nullify an unconstitutional measure. In fact, the *Resolutions* explicitly denounce both the Alien and the Sedition Acts.<sup>42</sup> In addition to the Tenth Amendment, Jefferson utilized social contract theory to support his argument. As he explained in the *Kentucky Resolutions*:

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<sup>37</sup> Dumas Malone, *Jefferson and the Ordeal of Liberty*, vol. 3 (Boston: Little, Brown and Co., 1962) 379-84.

<sup>38</sup> Malone *Jefferson and the Ordeal of Liberty* 385-6.

<sup>39</sup> Malone *Jefferson and the Ordeal of Liberty* 387.

<sup>40</sup> Mason 788.

<sup>41</sup> Malone *Jefferson and the Ordeal of Liberty* 401.

<sup>42</sup> *Kentucky Resolutions*, Ford VII: 295-6.

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 amending 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 party, 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.<sup>43</sup>

In this passage, Jefferson firmly disputed the contention that the Constitution formed a compact between the people of the United States rather than between the States themselves. Also, he asserted a fundamental principle of Jeffersonian federalism that each party to the compact (State governments as well as the various branches) has the same right to judge the constitutionality of a law. While his *Resolutions* did not have the desired effect on the federal government of forcing a repeal of the laws, he eventually utilized these same theories to relieve those persecuted under the Alien and Sedition Acts as President. Upon entering office, Jefferson pardoned those persecuted by the Sedition Acts, such as the editor of the Philadelphia *Aurora*, because he deemed the law unconstitutional.<sup>44</sup> Such persistence reinforces the argument that Jefferson's theories on federalism guided his reaction to the Alien and Sedition Acts.

Further, Jefferson directly addressed the line between State and federal power in the *Kentucky Resolutions*. He asserted that, for any case not directly reserved to the federal government in the Constitution, the States have the inalienable right to nullify legislation they deem illegitimate.<sup>45</sup> These points flow readily from his strict construction of the Constitution. However, Jefferson did not merely rely on theory, he also attempted to gain popular support for his ideas. According to Jefferson, not only must Kentucky and Virginia declare their opposition to the bills, but they must also gain the support of other States.<sup>46</sup> This perception demonstrates Jefferson's realization that theory alone cannot defeat the legislation. By pursuing the support of other States, Jefferson hoped to alleviate the problems associated with the laws.

To the ardent republican, the Alien and Sedition Acts simply expanded upon the abuses by the Federalist party for the first ten years of the United States. Jefferson voiced his disapproval of these trends in a letter to John Taylor: "It is a singular phenomenon, that while our State governments are the very *best in the world*, without exception or comparison, our general government has, in the rapid course of 9. or 10. years, become more arbitrary, and has swallowed

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<sup>43</sup> *Kentucky Resolutions*, Ford VII: 289-92.

<sup>44</sup> Mayer 208-9.

<sup>45</sup> *Kentucky Resolutions*, Ford VII: 301.

<sup>46</sup> "TJ to John Taylor 26 November 1798," Ford VII: 311.

more of the public liberty than even that of England."<sup>47</sup> In this passage, Jefferson criticizes the entire Hamiltonian system of government. Throughout this period, he continued to oppose any strengthening of the general government or the executive in lieu of the States.<sup>48</sup> As a republican, therefore, Jefferson could not support these bills because they superseded the authority of the States.

The fear of oppression created during this period of heightened tensions and war frenzy weighed heavily on Jefferson's mind. According to Jefferson, such circumstances precluded certain freedoms of speech and threatened the nation itself: "the circumstances of the times are against my writing fully & freely, whilst my own dispositions are as much against mysteries, innuendos & half-confidences. I know not which mortifies me most, that I should fear to write what I think, or my country bear such a state of things."<sup>49</sup> The seizure of arbitrary power implicit in the Alien and Sedition Acts was simply not acceptable to the classically liberal Jefferson.

Before we decide that Jefferson's opinions in this regard were indeed radical, it may be wise to reconsider certain aspects of Jeffersonian federalism as depicted in the *Kentucky Resolutions*. While many readers gather secessionist sentiment from these *Resolutions*, it may be argued that Jefferson never explicitly supported the right of secession. In fact, at times he saw secession as one of the greatest threats to the union: "Dangers of another kind might more reasonably be apprehended from this perfect and distinct organization, civil and military, of the States; to wit, that certain States from local and occasional discontents, might attempt to secede from the Union."<sup>50</sup> The compact between States remained inviolate; Jefferson merely reasserted that the Constitution formed a compact between States, not citizens.

Also, significantly, historians such as Dumas Malone warn us not to take Mr. Jefferson out of context. In a period of nationalist zeal, the Federalists passed resolutions infringing upon the rights of citizens. Jefferson replied by anonymously submitting the *Kentucky Resolutions* to refute the legitimacy of the Alien and Sedition Acts. However, as Malone contended, the end, as well as the means, must be appreciated:

It can surely be said, however, that to base a state-rights position on them without reference to human rights would be to disregard their central purpose. They must be viewed in no vacuum but in their own setting of time and circumstance. While their instigator was undoubtedly concerned to preserve his party and to check what he regarded as a trend toward consolidation, he was not seeking primarily to safeguard local interests, and certainly not vested interests, but the freedom of all men everywhere to think as they liked and speak as they thought. Emphasis should be laid not on the weapon he used, but on the ends he sought, and he should be recognized as a champion of rights which he deemed universal.<sup>51</sup>

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<sup>47</sup> "TJ to John Taylor 26 November 1798," Ford VII: 311.

<sup>48</sup> "TJ to Elbridge Gerry 20 January 1799," Ford VII: 327.

<sup>49</sup> "TJ to John Taylor 26 November 1798," Ford VII: 309.

<sup>50</sup> "TJ to A.C.V.C. Destutt de Tracy 26 January 1811," Ford IX: 309.

<sup>51</sup> Malone *Jefferson and the Ordeal of Liberty* 424.

As Malone noted, a position of State rights is inherent in the *Resolutions*. Nonetheless, this position must be tempered by the realization that Jefferson's primary fears consisted of loss of liberty in the face of consolidation.

In the end, Jefferson's position on the Alien and Sedition Acts supports the assertion that Jeffersonian theory corresponds to his pragmatic political views. Despite the secrecy, Jefferson's role in the *Kentucky Resolutions* seems a clear expansion of his views on a sharp division of power, strict construction of the Constitution, and the independent authority of each segment of government to nullify legislation considered unconstitutional.

## **Questionable Ground: Western Expansion and the Louisiana Purchase**

While each of the examples above reaffirms Jefferson's core theoretical beliefs, it must be acknowledged that each occurred when Jefferson stood in opposition to the Federalist government. The transition from opposition to chief magistrate could have shifted Jefferson's opinions on executive and federal power sharply. Many authors contend that the Louisiana Purchase provides a prime example of this change. Even though I recognize the constitutional predicament associated with the Purchase, I will contend this particular action did not violate any of Jefferson's theories, even though it expanded the power and prestige of the United States.

Mr. Jefferson foreshadowed his ideas on an empire of liberty as early as 1791. In a letter complimenting James Sullivan on his recent pamphlet in 1791, Jefferson observed: "it is hoped that by a due poise and partition of powers between the general and particular governments *we have found the secret of extending the benign blessings of republicanism over still greater tracts of country than we possess*, and that a subdivision may be avoided for ages, if not for ever."<sup>52</sup> The statesman of Monticello saw the federal system of the United States as the optimal government to protect the liberty of Americans while expanding the country's territory.

However, his support of expansion did not merely arise from a realization of the superiority of the American system. As tensions heightened in Europe between the Napoleonic and reactionary forces, Jefferson feared that the United States would be dragged into a war on its own continent.<sup>53</sup> In addition, the cession of Louisiana to France by Spain could have destabilized trade in the region significantly as Spain provided Americans many trade privileges not enumerated in any treaty.<sup>54</sup> Gaining the rights to the Mississippi, therefore, seemed a necessary, pragmatic function to assist Westerners in their trade and to maintain peace throughout North America.<sup>55</sup>

The Louisiana Purchase, negotiated by Monroe and Robert Livingston, accomplished the goals of the administration. Not only did the acquired land secure free trade rights over the

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<sup>52</sup> "TJ to James Sullivan 31 July 1791," Boyd XX: 709. Emphasis added.

<sup>53</sup> Dumas Malone, *Jefferson the President, First Term 1801-1805*, vol. 4 (Boston: Little, Brown and Co., 1970) 256.

<sup>54</sup> Malone *Jefferson the President, First Term 1801-1805* 239-40.

<sup>55</sup> Malone *Jefferson the President, First Term 1801-1805* 288.

Mississippi River, but it also cast France out of America, thereby lessening the tensions between the two countries. As Jefferson explained in a letter to John Dickinson:

The acquisition of New Orleans would of itself have been a great thing, as it would have ensured to our western brethren the means of exporting their produce: But that of Louisiana is inappreciable, because, giving us the sole dominion of the Mississippi, it excludes those bickerings with foreign powers, which we know of a certainty would have put us at war with France immediately: and it secures to us the course of a peaceable nation.<sup>56</sup>

Practically, the Louisiana Purchase had a great impact on foreign relations as well as trade; however, domestically, the acquisition of land caused some disagreement on the constitutionality of such expansion.

The President quickly realized the Louisiana Purchase placed the country in a unique constitutional predicament. As he explained, "Our confederation is certainly confined to the limits established by the revolution. The general government has no powers but such as the constitution has given it; and it has not given it a power of holding foreign territory, & still less of incorporating it into the Union."<sup>57</sup> As a result of this strict construction, Jefferson realized he overstepped executive authority when he authorized the acquisition. Nonetheless, he also recognized the necessity of seizing such a splendid opportunity. In a letter to John Breckinridge, he said: "The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution."<sup>58</sup> In these letters, Jefferson displayed his knowledge that some risks must be taken for the future of the country. In Jefferson's opinion, the benefits of trade and peace outweighed the constitutional concerns.<sup>59</sup>

While Jefferson originally overlooked these questions about expansion, he soon began contemplating a constitutional amendment to deal with land acquisition. His belief that an amendment could provide the only means of circumventing these constitutional questions remained a constant in these early letters.<sup>60</sup> He discussed his version of a suitable amendment in a letter to William Dunbar: Congress must soon request "an amendment of the Constitution, authorizing their receiving the province into the Union, and providing for its government; and the limitations of power which shall be given by that amendment, will be unalterable but by the same authority."<sup>61</sup> By such amendment, the President could gain the practical advantages of acquiring Louisiana and continue to practice strict construction of the constitution.

Nonetheless, despite his conviction that the purchase must be validated by an amendment, he soon began to question his opinion based on political expediency. As he explained:

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<sup>56</sup> "TJ to John Dickinson 9 August 1803," Ford VIII: 261.

<sup>57</sup> "TJ to John Dickinson 9 August 1803," Ford VIII: 262.

<sup>58</sup> "TJ to John C. Breckinridge 12 August 1803," Ford VIII: 244n.

<sup>59</sup> "TJ to John Dickinson 9 August 1803," Ford VIII: 261.

<sup>60</sup> "TJ to John Dickinson 9 August 1803," Ford VIII: 262; "TJ to Albert Gallatin January 1803," Ford VIII: 241n.

<sup>61</sup> "TJ to William Dunbar 17 July 1803," Ford VIII: 255n.

I confess, then, I think it important in the present case, to set an example against broad construction, by appealing for new power to the people. If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction; confiding, that the good sense of our country will correct the evil of construction when it shall produce ill effects.<sup>62</sup>

In the above passage, Jefferson implied that he would trust the people not to abuse this precedent. Under political pressure, both domestic and foreign, the President attempted to hasten the process of ratification, thereby neglecting the amendment. In a letter to Levi Lincoln, he "observ[ed] that the less that is said about any constitutional difficulty, the better; and that it will be desirable for Congress to do what is necessary, *in silence*."<sup>63</sup> Quite frankly, Jefferson was willing to loosen his construction of the Constitution to accomplish the noble goals of the Louisiana Purchase and alleviate the problems associated with a French Louisiana.

Despite the constitutional concerns raised by the Louisiana Purchase, Jefferson thought the acquisition would provide exceptional benefits to the United States. The President compared the government's actions on the Louisiana Purchase to that of a doting guardian concerned about his ward's future. Even though the purchase was accomplished with the best possible intentions, the guardian, or nation, realized the possibility of rebuke: "It is the case of a guardian, investing the money of his ward in purchasing an important adjacent territory; & saying to him when of age, I did this for your good; I pretend to no right to bind you: you may disavow me, and I must get out of the scrape as I can: I thought it my duty to risk myself for you."<sup>64</sup> Thus, Jefferson expected some criticism for the administration's decision. But for Jefferson, the political risks and constitutional questions did not warrant hesitation by the Senate.

As discussed above, the President feared a French Louisiana as an economic and military threat to Westerners. Further, after signing the treaty, Napoleon doubted the logic of the sale of Louisiana. Accordingly, Jefferson feared legislative hesitation because the time required to ratify an appropriate constitutional amendment would have provided Napoleon the opportunity he needed to revoke the treaty. As Jefferson observed in a letter to Wilson Cary Nicholas, "There is reason, in the opinion of our ministers, to believe, that if the thing were to do over again, it could not be obtained, & that if we give the least opening, they will declare the treaty void. . . . Whatever Congress shall think it necessary to do, should be done with as little debate as possible, & particularly so far as respects the constitutional difficulty."<sup>65</sup> Such pragmatic concerns ensured Jefferson's ability to overlook the constitutional questions.

Furthermore, many of the questions surrounding Jefferson's behavior during this period may be answered simply by his theories on the appropriate division of power between the State and federal governments. As he explained in his "First Annual Message," "this [federal] government is charged with the external and mutual relations only of these states; . . . the states

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<sup>62</sup> "TJ to W. C. Nicholas 7 September 1803," Ford VIII: 248n.

<sup>63</sup> "TJ to Levi Lincoln 30 August 1803," Ford VIII: 246n.

<sup>64</sup> "TJ to John C. Breckinridge 12 August 1803," Ford VIII: 244n.

<sup>65</sup> "TJ to Wilson Cary Nicholas 7 September 1803," Ford VIII: 247n.

themselves have principal care of our persons, our property, and our reputation, constituting the great field of human concerns . . .”<sup>66</sup> No question arises whether the purchase of Louisiana from France involved external relations. And as David Mayer explains, even though Jefferson continued to practice strict interpretation on domestic issues, he did loosen his interpretation for external matters, which he considered reserved for the national government.<sup>67</sup> Thus, while the Constitution did not enumerate an acquisition such as the Louisiana Purchase, the power to conduct foreign affairs definitely resided with the general government.

Jefferson’s decision in the case of the Louisiana Purchase does not contradict his own theories on constitutional interpretation. As discussed above in the National Bank section, only if a governmental action threatened federalism should the Tenth Amendment be utilized against the act. Unlike the National Bank, which Jefferson feared would infringe on State rights, the Louisiana Purchase did not adversely affect any State’s rights. In fact, if anything, the Purchase would free the entire country from fear of foreign attack. Also, because the Purchase involved foreign affairs, Jefferson allowed himself much more freedom to interpret the Constitution.<sup>68</sup> While the Constitutional standing of the Louisiana Purchase seems most ambiguous to the modern reader, the necessity and propriety of the decision, as well as his views on the appropriate sphere of power of the federal government, allowed Jefferson to revise his theories on Constitutional interpretation to suit the circumstances.

Despite his position on the Louisiana Purchase, Jefferson continued to advocate strict construction of the Constitution. Fearing future abuse of the precedent set by the Purchase, Jefferson affirmed, "Our peculiar security is in possession of a written Constitution. Let us not make it a blank paper by construction."<sup>69</sup> Theoretically, Jefferson continued to worry about the propriety of the new treaty; however, pragmatically, no question existed on what should be done. The territory provided too much security and advantages to be cast aside. Frankly, Jefferson realized that strict adherence to theory could not always be achieved. Reflecting upon times when circumstances necessitated transcending boundaries, he noted:

A strict observance of the written laws is doubtless *one* of the high duties of a good citizen, but it is not *the highest*. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.<sup>70</sup>

This passage at least partially justifies Jefferson's actions during the Louisiana Purchase. The eminent danger of France gaining a foothold in the American west as well as the necessity of free passage on the Mississippi persuaded the President to loosen his theoretical belief in strict construction. As Malone observed, we cannot examine Jefferson's theory without noting the circumstances of the political situations in which he was involved. While the Louisiana Purchase

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<sup>66</sup> "First Annual Message 8 December 1801," Peterson 504.

<sup>67</sup> Mayer 194.

<sup>68</sup> Mayer 215.

<sup>69</sup> "TJ to Wilson Cary Nicholas 7 September 1803," Ford VIII: 247n.

<sup>70</sup> "TJ to John B. Colvin 20 September 1810," Ford IX: 279.

may be seen as a break from his usual strict constructionist attitude, it may also be defended as a viable piece of Jeffersonian federalism when one takes into account political expediency and circumstances.

## **Conclusion: State Rights and Federal Power**

As a practical statesman, Jefferson was restricted from being a complete philosopher; in other words, circumstances often demanded more pragmatic responses from him. Perhaps, though, the political actions of Jefferson prove the legitimacy of his theories despite some apparent contradictions. In this conclusion, I argue that, based on these three case studies, the theory and practice of Jeffersonian federalism complement, rather than conflict with, each other.

To claim Jefferson simply advocated State rights would be to oversimplify complex constitutional opinions. The integral part of Jeffersonian constitutional theory involved the appropriate division of power between State and federal governments. As he noted in his *Commonplace Book*:

‘[T]he way to have good and safe government, is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to. Let the national government be entrusted with the defense of the nation, and its foreign and federal relations; the State governments with the civil rights, laws, police, and administration of what concerns the State generally; the counties with the local concerns of the counties; and each ward direct the interests within itself. It is by dividing and subdividing these republics . . . that all will be done for the best.’<sup>71</sup>

While Jefferson firmly supported both segments of government, as can be demonstrated by his admirable service at all levels of public life, he tended to lean toward the State governments simply because the likelihood of despotism remained lower at that level. He attempted to maintain the level of government intended by the founders. Jefferson’s position on the Hamiltonian system serves as a good example. He faulted this legislation simply because Hamilton stepped over the constitutional line, if you will. Despite any advantages the National Bank may have created, it did not provide a necessary end to justify the extra-constitutional means.

The Alien and Sedition Acts provide an even clearer example of Jefferson’s attitude towards consolidation. While the *Kentucky Resolutions* do imply significant powers for the States, they mainly attack the right of the general government to infringe upon the private liberties of citizens. Again, Jefferson feared a consolidation of power to the general government as a step toward despotism; therefore, protecting State rights in cases such as the Alien and Sedition Acts merely served as a means to the end of protecting individual liberties.

The Louisiana Purchase introduces some contradictions into the discussion. One may point at the Constitution and demonstrate that the right of acquiring new property was not enumerated. However, one must first remember the circumstances of the Purchase. As Garret

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<sup>71</sup> qtd. in Garret Ward Sheldon, *The Political Philosophy of Thomas Jefferson* (Baltimore: Johns Hopkins University Press, 1991) 85.

Ward Sheldon notes, even Jefferson's principal biographers, Dumas Malone and Merrill Peterson, recognize the Louisiana Purchase and other actions as "'pragmatic' adjustments to extreme circumstances."<sup>72</sup> Throughout his letters, he related that an amendment would be optimal, though unfeasible. The position of the United States in international affairs precluded any hesitation on the part of Monroe or Jefferson. The precarious position of Westerners, as a result of trade and foreign enemies, necessitated action on the part of the general government. In Jefferson's opinion, this necessity separated the Purchase from the National bank and other parts of the Hamiltonian system. Also, the fact that the Purchase did not interfere with State rights allowed Jefferson to interpret the Constitution favorably in this case. Finally, as he noted in the letter to John Colvin discussed above, sometimes the end does justify the means.<sup>73</sup> And in the case of Louisiana, the end was the security and success of the United States.

After analysis of these three cases, I conclude that Jefferson's theories, born of a practical politician, coincide with his practice. The noblesse oblige felt by Jefferson hindered his more theoretical pursuits; nonetheless, his constitutional views may be amply found in his letters and in his history as a public official. The Sage of Monticello succeeded in melding his theories on federalism and practice in a pragmatic way. Perhaps, his views on the proper division between State and federal governments may become even more useful to modern politicians with that realization.

Increasingly, Americans realize that the federal government can not cure all the ills of modern society. For Jefferson, this realization served as a guiding light in the search for an appropriate balance between State and federal powers. To explain the significance of this study today, I will briefly examine the trends of the twentieth century, emphasizing welfare programs.

While the trend toward a more Hamiltonian America can be traced back much further, the New Deal era of politics established the supremacy of a Hamiltonian or Keynesian State. In this period, Franklin Roosevelt introduced concepts such as Social Security to the American polity. Dealing with the Great Depression, the President surpassed those boundaries on the federal government enumerated in Jefferson's ideas on federalism. Lyndon Johnson expanded these programs in the 1960s in his Great Society. By the 1980s, the federal government of America encompassed a large, expensive welfare state.

Leaving aside the political propriety of these policies, we may still question their validity using Jeffersonian theories on federalism. According to Jefferson, the federal government should deal with any matter involving foreign affairs or federal matters. Likewise, he ascribed "every power purely domestic" to the State governments. Therefore, "whenever a doubt arises to which of these branches [state or federal] a power belongs," it should be tested by these boundaries.<sup>74</sup>

According to this model, the federal government should not have addressed welfare programs. Clearly, the national welfare program limited State rights and flexibility in this matter. As I noted above, Jefferson enumerated care of the people themselves and their property as a

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<sup>72</sup> Sheldon 101.

<sup>73</sup> "TJ to John B. Colvin 20 September 1810," Ford IX: 279.

<sup>74</sup> qtd. Mayer 188.

duty of the States, not the federal government.<sup>75</sup> To the classically liberal Jefferson, the welfare programs would have been judged unconstitutional according to the Tenth Amendment. In fact, Jefferson seems to be addressing future issues such as the New Deal in his “Solemn Declaration and Protest of the Commonwealth of Virginia” of 1825:

But the federal branch has assumed in some cases and claimed in others, a right of enlarging it’s own powers by constructions, inferences, and indefinite deductions, from those directly given, which this assembly does declare to be usurpations of the powers retained to the independent branches, mere interpolations into the compact, and direct infractions of it.

They claim, for example, and have commenced the exercise of a right to construct roads, open canals, & effect other internal improvements within the territories and jurisdictions exclusively belonging to the several states, which this assembly does declare has not been given to that branch by the constitutional compact, but remain to each state among it’s domestic and unalienated powers exercisable within itself, and by it’s domestic authorities alone.<sup>76</sup>

From the above discussion and this passage in particular, it seems clear to me that Jefferson would have objected to the consolidation of power inherent in the federal welfare programs. For Jefferson, the authority to deal with the welfare of the people remained with the States in the constitutional compact. Thus, programs such as the New Deal further usurped the power of the States vis-à-vis the federal government.

During the 1980s and 1990s, the trend toward consolidation has been somewhat reversed. Beginning with the neo-federalism of the 1980s, this trend culminated in the welfare reform bill of 1996, which shifted much of the responsibility of welfare from the federal government to the individual states. To Jefferson, such a balance of power, rather than simple federal domination, would have seemed highly desirable.

In this era of neo-federalism, it would be wise to remember Jefferson’s theories on federalism. While the balance of power seems irrevocably biased toward the federal government, those tasks closest to the people and their property may soon be shifted back to the States. At the same time, the federal government must retain its authority and ability to perform its tasks. Consequently, Jeffersonian federalism may become as integral a part of America’s polity in the twenty-first century as it was during his own day.

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<sup>75</sup> "First Annual Message 8 December 1801," Peterson 504.

<sup>76</sup> "Solemn Declaration and Protest of the Commonwealth of Virginia on the principles of the constitution of the US of America and on the violation of them," Ford X: 350.

## Works Consulted

- Boyd, Julian P., et al., eds. *The Papers of Thomas Jefferson* (1760-93). 26 vols. Princeton: Princeton University Press, 1950+.
- Foley, John P., ed. *The Jeffersonian Cyclopaedia*. 2 vols. New York: Russell & Russell, 1967.
- Ford, Paul Leicester, ed. *The Writings of Thomas Jefferson*. 10 vols. New York: Putnam's, 1892-99.
- Lipscomb, Andrew A., and Albert Ellery Bergh, eds. *The Writings of Thomas Jefferson*. 20 vols. Washington: The Thomas Jefferson Memorial Association, 1903.
- Malone, Dumas. *Jefferson and His Time*. 6 vols. Boston: Little, Brown and Co., 1948-81.
- . *Jefferson the Virginian*. Vol. 1. Boston: Little, Brown and Co., 1948.
- . *Jefferson and the Rights of Man*. Vol. 2. Boston: Little, Brown and Co., 1951.
- . *Jefferson and the Ordeal of Liberty*. Vol. 3. Boston: Little, Brown and Co., 1962.
- . *Jefferson the President, First Term 1801-1805*. Vol. 4. Boston: Little, Brown and Co., 1970.
- . *Jefferson the President, Second Term 1805-1809*. Vol. 5. Boston: Little, Brown and Co., 1974.
- . *Jefferson and His Time: The Sage of Monticello*. Vol. 6. Boston: Little, Brown and Co., 1970.
- Mason, Alpheus Thomas and Gordon E. Baker. *Free Government in the Making: Readings in American Political Thought*. 4th ed. New York: Oxford UP, 1985.
- Mayer, David N. *The Constitutional Thought of Thomas Jefferson*. Charlottesville, VA: University Press of Virginia, 1994.
- O'Brien, Conor Cruise. "Thomas Jefferson: Radical and Racist." *The Atlantic Monthly* Oct 1996: 53-74.
- Patterson, Caleb P. *The Constitutional Principles of Thomas Jefferson*. Gloucester, MA: Peter Smith, 1967.
- Peterson, Merrill D., ed. *Thomas Jefferson: Writings*. New York: The Library of America, 1984.
- Sheldon, Garrett Ward. *The Political Philosophy of Thomas Jefferson*. Baltimore: Johns Hopkins University Press, 1991.
- Wilson, Douglas L. "Thomas Jefferson and the Character Issue," *The Atlantic Monthly* Nov 1992: 57+.