2. *The Federalist* No. 37 and No. 38
3. Thomas Jefferson, Opinion on the National Bank, 15 February 1791
4. Alexander Hamilton, Opinion on the National Bank, 23 February 1791
5. James Madison, “Parties,” 23 January 1792
6. Thomas Jefferson to George Washington, 23 May 1792
7. Alexander Hamilton to Edward Carrington, 26 May 1792
9. Thomas Jefferson to James Monroe, 5 May 1793
10. Pacificus-Helvidius Letters, 1793
11. Thomas Jefferson to Phillip Mazzei, 24 April 1796
12. Michael Allen Gillespie, “Political Parties and the American Founding” (recommended)
Letters from the Federal Farmer to the Republican, No. II, October 9, 1787

The essential parts of a free and good government are a full and equal representation of the people in the legislature, and the jury trial of the vicinage in the administration of justice — a full and equal representation, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled — a fair representation, therefore, should be so regulated, that every order of men in the community, according to the common course of elections, can have a share in it — in order to allow professional men, merchants, traders, farmers, mechanics, etc. to bring a just proportion of their best informed men respectively into the legislature, the representation must be considerably numerous — We have about 200 state senators in the United States, and a less number than that of federal representatives cannot, clearly, be a full representation of this people, in the affairs of internal taxation and police, were there but one legislature for the whole union. The representation cannot be equal, or the situation of the people proper for one government only — if the extreme parts of the society cannot be represented as fully as the central — It is apparently impracticable that this should be the case in this extensive country — it would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government…

There are other considerations which tend to prove that the idea of one consolidated whole, on free principles, is ill-founded — the laws of a free government rest on the confidence of the people, and operate gently — and never can extend their influence very far — if they are executed on free principles, about the centre, where the benefits of the government induce the people to support it voluntarily; yet they must be executed on the principles of fear and force in the extremes — This has been the case with every extensive republic of which we have any accurate account.

There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed — a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed unperceived by the former, and without giving a general alarm — These rights should be made the basis of every constitution: and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only. — I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact. If so, we proceed to consolidate the states on no solid basis whatever.

But I do not pay much regard to the reasons given for not bottoming the new constitution on a better bill of rights. I still believe a complete federal bill of rights to be very practicable. Nevertheless I acknowledge the proceedings of the convention furnish my mind with many new and strong reasons, against a complete consolidation of the states. They tend to convince me, that it cannot be carried with propriety very far — that the convention have gone much farther in one respect than they found it practicable to go in another; that is, they propose to lodge in the
general government very extensive powers — powers nearly, if not altogether, complete and unlimited, over the purse and the sword. But, in its organization, they furnish the strongest proof that the proper limbs, or parts of a government, to support and execute those powers on proper principles (or in which they can be safely lodged) cannot be formed. These powers must be lodged somewhere in every society; but then they should be lodged where the strength and guardians of the people are collected. They can be wielded, or safely used, in a free country only by an able executive and judiciary, a respectable senate, and a secure, full, and equal representation of the people. I think the principles I have premised or brought into view, are well founded — I think they will not be denied by any fair reasoner. It is in connection with these, and other solid principles, we are to examine the constitution. It is not a few democratic phrases, or a few well formed features, that will prove its merits; or a few small omissions that will produce its rejection among men of sense; they will enquire what are the essential powers in a community, and what are nominal ones; where and how the essential powers shall be lodged to secure government, and to secure true liberty.

In examining the proposed constitution carefully, we must clearly perceive an unnatural separation of these powers from the substantial representation of the people. The state governments will exist, with all their governors, senators, representatives, officers and expenses; in these will be nineteen-twentieths of the representatives of the people; they will have a near connection, and their members an immediate intercourse with the people; and the probability is, that the state governments will possess the confidence of the people, and be considered generally as their immediate guardians.

The general government will consist of a new species of executive, a small senate, and a very small house of representatives. As many citizens will be more than three hundred miles from the seat of this government as will be nearer to it, its judges and officers cannot be very numerous, without making our governments very expensive. Thus will stand the state and the general governments, should the constitution be adopted without any alterations in their organization; but as to powers, the general government will possess all essential ones, at least on paper, and those of the states a mere shadow of power. And therefore, unless the people shall make some great exertions to restore to the state governments their powers in matters of internal police; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long; but the state governments must be annihilated, or continue to exist for no purpose.

It is however to be observed, that many of the essential powers given the national government are not exclusively given; and the general government may have prudence enough to forbear the exercise of those which may still be exercised by the respective states. But this cannot justify the impropriety of giving powers, the exercise of which prudent men will not attempt, and imprudent men will, or probably can, exercise only in a manner destructive of free government. The general government, organized as it is, may be adequate to many valuable objects, and be able to carry its laws into execution on proper principles in several cases; but I think its wannest friends will not contend, that it can carry all the powers proposed to be lodged in it into effect, without calling to its aid a military force, which must very soon destroy all elective governments in the country, produce anarchy, or establish despotism. Though we cannot have now a complete idea of what will be the operations of the proposed system, we may, allowing things to have their common course, have a very tolerable one. The powers lodged in the general government, if exercised by it, must intimately effect the internal police of the states,
as well as external concerns; and there is no reason to expect the numerous state governments, and their connections, will be very friendly to the execution of federal laws in those internal affairs, which hitherto have been under their own immediate management. There is more reason to believe, that the general government, far removed from the people, and none of its members elected oftener than once in two years, will be forgot or neglected, and its laws in many cases disregarded, unless a multitude of officers and military force be continually kept in view, and employed to enforce the execution of the laws, and to make the government feared and respected. No position can be truer than this, that in this country either neglected laws, or a military execution of them, must lead to a revolution, and to the destruction of freedom. Neglected laws must first lead to anarchy and confusion; and a military execution of laws is only a shorter way to the same point — despotic government.

The Federalist No. 37

IN REVIEWING the defects of the existing Confederation, and showing that they cannot be supplied by a government of less energy than that before the public, several of the most important principles of the latter fell of course under consideration. But as the ultimate object of these papers is to determine clearly and fully the merits of this Constitution, and the expediency of adopting it, our plan cannot be complete without taking a more critical and thorough survey of the work of the convention, without examining it on all its sides, comparing it in all its parts, and calculating its probable effects. That this remaining task may be executed under impressions conducive to a just and fair result, some reflections must in this place be indulged, which candor previously suggests.

It is a misfortune, inseparable from human affairs, that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good; and that this spirit is more apt to be diminished than promoted, by those occasions which require an unusual exercise of it. To those who have been led by experience to attend to this consideration, it could not appear surprising that the act of the convention, which recommends so many important changes and innovations, which may be viewed in so many lights and relations, and which touches the springs of so many passions and interests, should find or excite dispositions unfriendly, both on one side and on the other, to a fair discussion and accurate judgment of its merits. In some, it has been too evident from their own publications that they have scanned the proposed Constitution, not only with a predisposition to censure, but with a predetermination to condemn; as the language held by others betrays an opposite predetermination or bias, which must render their opinions also of little moment in the question. In placing, however, these different characters on a level with respect to the weight of their opinions I wish not to insinuate that there may not be a material difference in the purity of their intentions. It is but just to remark in favor of the latter description that as our situation is universally admitted to be peculiarly critical, and to require indispensably that something should be done for our relief, the predetermined patron of what has been actually done may have taken his bias from the weight of these considerations as well as from considerations of a sinister nature. The predetermined adversary, on the other hand, can have been governed by no venial motive whatever. The intentions of the first may be upright, as they may on the contrary be culpable. The views of the last cannot be upright, and must be culpable. But the truth is that these papers are not addressed to persons falling under either of these
characters. They solicit the attention of those only who add to a sincere zeal for the happiness of their country, a temper favorable to a just estimate of the means of promoting it.

Persons of this character will proceed to an examination of the plan submitted by the convention, not only without a disposition to find or to magnify faults; but will see the propriety of reflecting that a faultless plan was not to be expected. Nor will they barely make allowances for the errors which may be chargeable on the fallibility to which the convention, as a body of men, were liable; but will keep in mind that they themselves also are but men and ought not to assume an infallibility in rejudging the fallible opinions of others.

With equal readiness will it be perceived that besides these inducements to candor, many allowances ought to be made for the difficulties inherent in the very nature of the undertaking referred to the convention.

The novelty of the undertaking immediately strikes us. It has been shown in the course of these papers that the existing Confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it the superstructure resting upon it. It has been shown that the other confederacies which could be consulted as precedents have been vitiated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the convention could do in such a situation was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors, as future experiences may unfold them.

Among the difficulties encountered by the convention, a very important one must have lain in combining the requisite stability and energy in government with the inviolable attention due to liberty and to the republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public; yet that it could not be easily accomplished will be denied by no one who is unwilling to betray his ignorance of the subject. Energy in government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws which enter into the very definition of good government. Stability in government is essential to national character and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation is not more an evil in itself than it is odious to the people; and it may be pronounced with assurance that the people of this country, enlightened as they are with regard to the nature, and interested, as the great body of them are, in the effects of good government, will never be satisfied till some remedy be applied to the vicissitudes and uncertainties which characterize the State administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once the difficulty of mingling them together in their due proportions. The genius of republican liberty seems to demand on one side not only that all power should be derived from the people, but that those intrusted with it should be kept in independence on the people, by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands. Stability, on the contrary, requires that the hands in which power is lodged should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men: whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand.
How far the convention may have succeeded in this part of their work, will better appear on a more accurate view of it. From the cursory view here taken, it must clearly appear to have been an arduous part.

Not less arduous must have been the task of marking the proper line of partition between the authority of the general and that of the State governments. Every man will be sensible of this difficulty in proportion as he has been accustomed to contemplate and discriminate objects extensive and complicated in their nature. The faculties of the mind itself have never yet been distinguished and defined with satisfactory precision by all the efforts of the most acute and metaphysical philosophers. Sense, perception, judgment, desire, volition, memory, imagination are found to be separated by such delicate shades and minute gradations that their boundaries have eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and controversy. The boundaries between the great kingdom of nature, and, still more, between the various provinces, and lesser portions, into which they are subdivided, afford another illustration of the same important truth. The most sagacious and laborious naturalists have never yet succeeded in tracing with certainty the line which separates the district of vegetable life from the neighboring region of unorganized matter, or which marks the eminence of the former and the commencement of the animal empire. A still greater obscurity lies in the distinctive characters by which the objects in each of these great departments of nature have been arranged and assorted.

When we pass from the works of nature, in which all the delineations are perfectly accurate and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself as from the organ by which it is contemplated, we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. Experience has instructed us that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces - the legislative, executive, and judiciary; or even the privileges and powers of the different legislative branches. Questions daily occur in the course of practice which prove the obscurity which reins in these subjects, and which puzzle the greatest adepts in political science.

The experience of ages, with the continued and combined labors of the most enlightened legislatures and jurists, has been equally unsuccessful in delineating the several objects and limits of different codes of laws and different tribunals of justice...Besides the obscurity arising from the complexity of objects and the imperfection of the human faculties, the medium through which the conceptions of men are conveyed to each other adds a fresh embarrassment. The use of words is to express ideas. Perspicuity, therefore, requires not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriate to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is delivered. And this unavoidable inaccuracy must be greater or less, according to the complexity and novelty of the objects defined. When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the cloudy medium through which it is communicated.
Here, then, are three sources of vague and incorrect definitions: indistinctness of the object, imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The convention, in delineating the boundary between the federal and State jurisdictions, must have experienced the full effect of them all.

To the difficulties already mentioned may be added the interfering pretensions of the larger and smaller States. We cannot err in supposing that the former would contend for a participation in the government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose that neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise. It is extremely probable, also, that after the ratio of representation had been adjusted, this very compromise must have produced a fresh struggle between the same parties to give such a turn to the organization of the government and to the distribution of its powers as would increase the importance of the branches, in forming which they had respectively obtained the greatest share of influence. There are features in the Constitution which warrant each of these suppositions; and as far as either of them is well founded, it shows that the convention must have been compelled to sacrifice theoretical propriety to the force of extraneous considerations.

Nor could it have been the large and small States only which would marshal themselves in opposition to each other on various points. Other combinations, resulting from a difference of local position and policy, must have created additional difficulties. As every State may be divided into different districts, and its citizens into different classes, which give birth to contending interests and local jealousies, so the different parts of the United States are distinguished from each other by a variety of circumstances, which produce a like effect on a larger scale. And although this variety of interests, for reasons sufficiently explained in a former paper, may have a salutary influence on the administration of the government when formed, yet every one must be sensible of the contrary influence which must have been experienced in the task of forming it.

Would it be wonderful if, under the pressure of all these difficulties, the convention should have been forced into some deviations from that artificial structure and regular symmetry which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination? The real wonder is that so many difficulties should have been surmounted, and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance without partaking of the astonishment. It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution...

The history of almost all the great councils and consultations held among mankind for reconciling theirdiscordant opinions, assuaging their mutual jealousies and adjusting their respective interests, is a history of factions, contentions, and disappointments, and may be classed among the most dark and degraded pictures which display the infirmities and depravities of the human character. If in a few scattered instances a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect to which they are contrasted. In revolving the causes from which these exceptions result, and applying them to the particular instances before us, we are necessarily led to two important conclusions. The first is that the convention must have enjoyed, in a very singular degree, an exemption from the pestilential influence of party animosities - the disease
most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion is that all the deputations composing the convention were satisfactorily accommodated by the final act, or were induced to accede to it by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good, and by a despair of seeing this necessity diminished by delays or by new experiments.

The Federalist No. 38

Is it an unreasonable conjecture that the errors which may be contained in the plan of the convention are such as have resulted rather from the defect of antecedent experience on this complicated and difficult subject, than from a want of accuracy or care in the investigation of it; and, consequently, such as will not be ascertained until an actual trial shall have pointed them out? This conjecture is rendered probable, not only by many considerations of a general nature, but by the particular case of the Articles of Confederation. It is observable that among the numerous objections and amendments suggested by the several States, when these articles were submitted for their ratification, not one is found which alludes to the great and radical error which on actual trial has discovered itself. And if we except the observations which New Jersey was led to make, rather by her local situation than by her peculiar foresight, it may be questioned whether a single suggestion was of sufficient moment to justify a revision of the system. There is abundant reason, nevertheless, to suppose that immaterial as these objections were, they would have been adhered to with a very dangerous inflexibility in some States, had not a zeal for their opinions and supposed interests been stilled by the more powerful sentiment of self-preservation.

One State, we may remember, persisted for several years in refusing her concurrence, although the enemy remained the whole period at our gates, or rather in the very bowels of our country. Nor was her pliancy in the end effected by a less motive than the fear of being chargeable with protracting the public calamities and endangering the event of the contest. Every candid reader will make the proper reflections on these important facts.

A patient who finds his disorder daily growing worse, and that an efficacious remedy can no longer be delayed without extreme danger, after coolly revolving his situation and the characters of different physicians, selects and calls in such of them as he judges most capable of administering relief, and best entitled to his confidence. The physicians attend; the case of the patient is carefully examined; a consultation is held; they are unanimously agreed that the symptoms are critical, but that the case, with proper and timely relief, so far from being desperate, that it may be made to issue in an improvement of his constitution. They are equally unanimous in prescribing the remedy by which this happy effect is to be produced. The prescription is no sooner made known, however, than a number of persons interpose, and, without denying the reality or danger of the disorder, assure the patient that the prescription will be poison to his constitution, and forbid him, under pain of certain death, to make use of it. Might not the patient reasonably demand, before he ventured to follow this advice, that the authors of it should at least agree among themselves on some other remedy to be substituted? And if he found them differing as much from one another as from his first counselors, would he not act prudently in trying the experiment unanimously recommended by the latter, rather than be hearkening to those who could neither deny the necessity of a speedy remedy, nor agree in proposing one?
Such a patient and in such a situation is America at this moment. She has been sensible of her malady. She has obtained a regular and unanimous advice from men of her own deliberate choice. And she is warned by others against following this advice under pain of the most fatal consequences. Do the monitors deny the reality of her danger? No. Do they deny the necessity of some speedy and powerful remedy? No. Are they agreed, are any two of them agreed, in their objections to the remedy proposed, or in the proper one to be substituted? Let them speak for themselves. This one tells us that the proposed Constitution ought to be rejected because it is not a confederation of the States, but a government over individuals. Another admits that it ought to be a government over individuals to a certain extent, but by no means to the extent proposed. A third does not object to the government over individuals, or to the extent proposed, but to the want of a bill of rights. A fourth concurs in the absolute necessity of a bill of rights, but contends that it ought to be declaratory, not of the personal rights of individuals, but of the rights reserved to the States in their political capacity. A fifth is of opinion that a bill of rights of any sort would be superfluous and misplaced, and that the plan would be unexceptionable but for the fatal power of regulating the times and places of election. An objector in a large State exclaims loudly against the unreasonable equality of representation in the Senate. An objector in a small State is equally loud against the dangerous inequality in the House of Representatives. From this quarter we are alarmed with the amazing expense from the number of persons who are to administer the new government. From another quarter, and sometimes from the same quarter, on another occasion, the cry is that the Congress will be but a shadow of a representation, and that the government would be far less objectionable if the number and the expense were doubled. A patriot in a State that does not import or export discerns insuperable objections against the power of direct taxation. The patriotic adversary in a State of great exports and imports is not less dissatisfied that the whole burden of taxes may be thrown on consumption. This politician discovers in the Constitution a direct and irresistible tendency to monarchy; that is equally sure it will end in aristocracy. Another is puzzled to say which of these shapes it will ultimately assume, but sees clearly it must be one or other of them; whilst a fourth is not wanting, who with no less confidence affirms that the Constitution is so far from having a bias towards either of these dangers, that the weight on that side will not be sufficient to keep it upright and firm against its opposite propensities. With another class of adversaries to the Constitution the language is that the legislative, executive, and judiciary departments are intermixed in such a manner as to contradict all the ideas of regular government and all the requisite precautions in favor of liberty. Whilst this objection circulates in vague and general expressions, there are but a few who lend their sanction to it. Let each one come forward with his particular explanation, and scarce any two are exactly agreed upon the subject. In the eyes of one the junction of the Senate with the President in the responsible function of appointing to offices, instead of vesting this executive power in the Executive alone, is the vicious part of the organization. To another, the exclusion of the House of Representatives, whose numbers alone could be a due security against corruption and partiality in the exercise of such a power, is equally obnoxious. With another the admission of the President into any share of a power which ever must be a dangerous engine in the hands of the executive magistrate is an unpardonable violation of the maxims of republican jealousy. No part of the arrangement, according to some, is more inadmissible than the trial of impeachments by the Senate, which is alternately a member both of the legislative and executive departments, when this power so evidently belonged to the judiciary department. "We concur fully," reply others, "in the objection to this part of the plan, but we can never agree that a reference of impeachments to the judiciary authority would be an amendment of the error. Our principal
dislike to the organization arises from the extensive powers already lodged in that department." Even among the zealous patrons of a council of state the most irreconcilable variance is discovered concerning the mode in which it ought to be constituted. The demand of one gentleman is that the council should consist of a small number to be appointed by the most numerous branch of the legislature. Another would prefer a larger number, and considers it as a fundamental condition that the appointment should be made by the President himself…

It is a matter both of wonder and regret that those who raise so many objections against the new Constitution should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect: it is sufficient that the latter is more imperfect. No man would refuse to give brass for silver or gold, because the latter had some alloy in it. No man would refuse to quit a shattered and tottering habitation for a firm and commodious building because the latter had not a porch to it, or because some of the rooms might be a little larger or smaller, or the ceiling a little higher or lower than his fancy would have planned them…

Thomas Jefferson, Opinion on the Constitutionality of a National Bank, 15 February 1791

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

1. To form the subscribers into a corporation.
2. To enable them in their corporate capacities to receive grants of land…
3. To make alien subscribers capable of holding lands, and so far is against the laws of Alienage.
4. To transmit these lands, on the death of a proprietor, to a certain line of successors; and so far changes the course of Descents…
7. To give them the sole and exclusive right of banking under the national authority; and so far is against the laws of Monopoly.
8. 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 control 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 United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." 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 the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.
I. They are not among the powers specially enumerated: for these are: 1st A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its 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 proprietors of the bank will be just as free as any other money holders, to lend or not to lend their money to the public. The operation proposed in the bill first, to lend them two millions, and then to 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. He who erects a bank, creates a subject of commerce in its bills, so does he who makes a bushel of wheat, or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make 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 remain 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. Accordingly the bill does not propose the measure as a regulation of trade, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. 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 United States, 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, 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 United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

   It is an established rule of construction where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was, that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. 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 authorized by this phrase.

   If has been 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 everyone, 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.

But let us examine this convenience and see what it is. The report on this subject, page 3,
states the only *general* convenience to be, the preventing the transportation and re-transportation
of money between the States and the treasury, (for I pass over the increase of circulating
medium, ascribed to it as a want, and which, according to my ideas of paper money, is clearly a
demerit.) Every State will have to pay a sum of tax money into the treasury; and the treasury will
have to pay, in every State, a part of the interest on the public debt, and salaries to the officers of
government resident in that State. In most of the States there will still be a surplus of tax money
to come up to the seat of government for the officers residing there. The payments of interest and
salary in each State may be made by treasury orders on the State collector. This will take up the
greater part of the money he has collected in his State, and consequently prevent the great mass
of it from being drawn out of the State. If there be a balance of commerce in favor of that State
against the one in which the government resides, the surplus of taxes will be remitted by the bills
of exchange drawn for that commercial balance. And so it must be if there was a bank. But if
there be no balance of commerce, either direct or circuitous, all the banks in the world could not
bring up the surplus of taxes, but in the form of money. Treasury orders then, and bills of
exchange may prevent the displacement of the main mass of the money collected, without the aid
of any bank; and where these fail, it cannot be prevented even with that aid.

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.

Besides, the existing banks will, without a doubt, enter into arrangements for lending
their agency, and the more favorable, as there will be a competition among them for it; whereas
the bill delivers us up bound to the national bank, who are free to refuse all arrangement, but on
their own terms, and the public not free, on such refusal, to employ any other bank. That of
Philadelphia I believe, now does this business, by their post-notes, which, by an arrangement
with the treasury, are paid by any State collector to whom they are presented. This expedient
alone suffices to prevent the existence of that *necessity* which may justify the assumption of a
non-enumerated power as a means for carrying into effect an enumerated one. The thing may be
done, and has been done, and well done, without this assumption, therefore it does not stand on
that degree of *necessity* which can honestly justify it.

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.

Can it be thought that the Constitution intended that for a shade or two of *convenience*,
more or less, Congress should be authorized to break down the most ancient and fundamental
laws of the several States; such as those against Mortmain, the laws of Alienage, the rules of
descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly?
Nothing but a necessity invincible by any other means, can justify such a prostitution of laws,
which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-
laced to carry the Constitution into honest effect, unless they may pass over the foundation-laws
of the State government for the slightest convenience of theirs?
The negative of the President is the shield provided by the Constitution to protect against the invasions of the legislature: 1. The right 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 consequently one of those intended by the Constitution to be placed under its protection.

It must be added, however, that unless the President's mind on a view of everything which is urged for and against this bill, is tolerably clear that it is unauthorized by the Constitution; if the pro and the con hang so even as to balance his judgment, a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President.

Alexander Hamilton, Opinion on the National Bank, 23 February 1791

THE SECRETARY OF THE TREASURY, having perused with attention the papers containing the opinion 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...

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. The latter, indeed expressly admits that if there be anything in the bill which is not warranted by the Constitution, it is the clause of incorporation.

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 contrary to the essential ends of political society...

The circumstance that the powers of sovereignty are in this country divided between the national and state governments does not afford the distinction required. It does not follow from this that each of the portion of powers delegated to the one or to the other is not sovereign with regard to its proper objects. It will only follow from it that each has sovereign power as to certain things and not as to other things. 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 10th section of the 1st 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 soveriegnty, or of a people governed without government.

If it would be necessary to bring proof to a proposition so clear as that which affirms that the powers of the federal government, as to its objects, were sovereign, there is a clause of its Constitution which would be decisive. It is that which declares that the Constitution, and the laws of the United States made in pursuance of it, and all treaties made, or which shall be made, under their authority, shall be the supreme law of the land. The power which can create the supreme law of the land in any case is doubtless sovereign as to such case.
This general and indisputable principle puts at once an end to the abstract question whether the United States have power to erect a corporation; that is to say, to give a legal or artificial capacity to one or more persons, distinct from the natural. For it is unquestionably incident to sovereign power to erect corporations, and consequently to that of the United States, in relation to the objects entrusted to the management of the government. The difference is this: where the authority of the government is general, it can create corporations in all cases; where it is confined to certain branches of legislation, it can create corporations only in those cases.

Here then, as far as concerns the reasonings of the secretary of state and the attorney general, the affirmative of the constitutionality of the bill might be permitted to rest. It will occur to the President that the principle here advanced has been untouched by either of them.

For a more complete elucidation of the point, nevertheless, the arguments which they had used against the power of the government to erect corporations, however foreign they are to the great and fundamental rule which has been stated, shall be particularly examined....

The first of these arguments is that the foundation of the Constitution is laid on this ground: "that all powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved for the states, or to the people," Whence it is meant to be inferred that Congress can in no case exercise any power not included in those not enumerated in the Constitution. And it is affirmed that the power of erecting a corporation is not included in any of the enumerated powers....

It is not denied that there are implied as well as express powers and that the former are as effectually delegated as the latter....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 mean 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 mean 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. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to regulate the police of that city. But one may be erected in relation to the collection of taxes, or to trade with foreign countries, or to trade between the states, or with Indian tribes; because it is the province of the federal government to regulate those objects, and because 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.

Through this mode of reasoning respecting the right of employing all the means requisite to the execution of the specified powers of the government, it is objected that none but necessary and proper means are to be employed; and the secretary of the state maintains that no means are to be considered as NECESSARY but those without which the grant of the power would be be nugatory...

It may he truly said of every government, as well as that of the United States, that it has only a right to pass such laws as are necessary and proper to accomplish the objects entrusted to it; for no government has a right to do MERELY WHAT IT PLEASES. Hence, by a process of reasoning similar to that of the secretary of state, it might be proved that neither of the state governments has a right to incorporate a bank. It might be shown that all the public business of the state could be performed without a bank, and inferring thence it was unnecessary, it might be argued that it could not be done, because it is against the rule which has been just mentioned. A like mode of reasoning would prove that there was no power to incorporate the inhabitants of a town, with a view to a more perfect police. For it is certain that an incorporation may be dis-
pensed with, though it is better to have one. It is to be remembered that there is no EXPRESS
power in any state constitution to erect corporations. . . .

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, defense, etc., ought to be construed liberally in advancement of the public good. This rule
does not depend on the particular form of a government, or on the particular demarcation of the
boundaries of its powers, but on the nature and objects of government itself. The means by which
national exigencies are to be provided for, national inconveniences obviated, national prosperity
promoted, are of such infinite variety, extent, and complexity that there must of necessity be
great latitude of discretion in the selection and application of those means. Hence, consequently,
the necessity and propriety of exercising the authorities entrusted to a government on principles
of liberal construction. . . .

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 a particular provision of the Constitution, it may safely be
deemed to come within the compass of the national authority …

James Madison, “Parties,” 23 January 1792

In every political society, parties are unavoidable. A difference of interests, real or
supposed, is the most natural and fruitful source of them. The great object should be to combat
the evil: 1. By establishing a political equality among all; 2. By withholding unnecessary
opportunities from a few to increase the inequality of property by an immoderate, and especially
an unmerited, accumulation of riches; 3. By the silent operation of laws which, without violating
the rights of property, reduce extreme wealth towards a state of mediocrity and raise extreme
indigence towards a state of comfort; 4. By abstaining from measures which operate differently
on different interests, and particularly such as favor one interest at the expense of another; 5. By
making one party a check on the other so far as the existence of parties cannot be prevented nor
their views accommodated. If this is not the language of reason, it is that of republicanism.

In all political societies, different interests and parties arise out of the nature of things,
and the great art of politicians lies in making them checks and balances to each other. Let us then
increase these natural distinctions by favoring an inequality of property; and let us add to them
artificial distinctions, by establishing kings and nobles and plebians. We shall then have the
more checks to oppose to each other: we shall then have the more scales and the more weights to
perfect and maintain the equilibrium. This is as little the voice of reason as it is that of
republicanism.

From the expediency, in politics, of making natural parties mutual checks on each other,
to infer the propriety of creating artificial parties, in order to form them into mutual checks, is
not less absurd than it would be, in ethics, to say that new vices ought to be promoted, where
they would counteract each other, because this use may be made of existing vices.
Thomas Jefferson to George Washington, 23 May 1792

I have determined to make the subject of a letter what for some time past has been a subject of inquietude to my mind without having found a good occasion of disburthening itself to you in conversation during the busy scenes which occupied you here. Perhaps too you may be able, in your present situation, or on the road, to give it more time & reflection than you could do here at any moment.

When you first mentioned to me your purpose of retiring from the government, tho’ I felt all the magnitude of the event, I was in a considerable degree silent. I knew that to such a mind as yours, persuasion was idle & impertinent: that before forming your decision, you had weighed all the reasons for & against the measure, had made up your mind on full view of them, & that there could be little hope of changing the result. Pursuing my reflections too I knew we were some day to try to walk alone; and if the essay should be made while you should be alive & looking on, we should derive confidence from that circumstance & resource if it failed. The public mind too was calm & confident, and therefore in a favorable state for making the experiment. Had no change of circumstances intervened, I should not, with any hope of success, have now ventured to propose to you a change of purpose. But the public mind is no longer confident and serene; and that from causes in which you are in no ways personally mixed. Tho these causes have been hackneyed in the public papers in detail, it may not be amiss, in order to calculate the effect they are capable of producing, to take a view of them in the mass, giving to each the form, real or imaginary, under which they have been presented.

It has been urged then that a public debt, greater than we can possibly pay before other causes of adding new debt to it will occur, has been artificially created…That though the calls for money have been no greater than we must generally expect for the same or equivalent exigencies, yet we are already obliged to strain the impost till it produces clamor and will produce evasion & war on our own citizens to collect it: and even to resort to an Excise law, of odious character with the people, partial in its operation, unproductive unless enforced by arbitrary & vexatious means, and committing the authority of the government in parts where resistance is most probable & coercion least practicable. They cite propositions in Congress and suspect other projects on foot still to increase the mass of debt…That the banishment of our coin will be completed by the creation of 10 millions of paper money in the form of bank bills, now issuing into circulation. They think the 10 or 12 percent annual profit paid to the lenders of this paper medium taken out of the pockets of the people, who would have had without interest the coin it is banishing. That all the capital employed in paper speculation is barren & useless, producing, like that on a gaming table, no accession to itself, and is withdrawn from commerce & agriculture where it would have produced addition to the common mass: That it nourishes in our citizens habits of vice and idleness instead of industry & morality: That it has furnished effectual means of corrupting such a portion of the legislature as turns the balance between the honest voters whichever way it is directed: 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. That this was contemplated in the Convention is no secret, because its partisans have made none of it. To effect it then was impracticable, but they are still eager after their object, and are predisposing everything for its ultimate attainment. So many of them have got into the
legislature that, aided by the corrupt squadron of paper dealers, who are at their devotion, they make a majority in both houses. The republican party, who wish to preserve the government in its present form, are fewer in number. They are fewer even when joined by the two, three, or half dozen anti-federalists, who, tho they dare not avow it, are still opposed to any general government: but being less so to a republican than a monarchical one, they naturally join those whom they think pursuing the lesser evil.

Of all the mischiefs objected to the system of measures before mentioned, none is so afflicting and fatal to every honest hope as the corruption of the legislature... Some of the new members will probably be, either in principle or interest, with the present majority, but it is expected that the great mass will form an accession to the republican party. They will not be able to undo all which the two preceding legislatures, & especially the first, have done. Public faith & right will oppose this. But some parts of the system may be rightfully reformed; a liberation from the rest unremittingly pursued as fast as right will permit, & the door shut in future against similar commitments of the nation. Should the next legislature take this course, it will draw upon them the whole monarchical & paper interest...

True wisdom would direct that they should be temperate & peaceable, but the division of sentiment & interest happens unfortunately to be so geographical that no mortal can say that what is most wise & temperate would prevail against what is most easy & obvious. I can scarcely contemplate a more incalculable evil than the breaking of the union into two or more parts. Yet when we review the mass which opposed the original coalescence, when we consider that it lay chiefly in the Southern quarter, that the legislature have availed themselves of no occasion of allaying it, but on the contrary whenever Northern & Southern prejudices have come into conflict, the latter have been sacrificed & the former soothed; that the owners of the debt are in the Southern & the holders of it in the Northern division; that the Antifederal champions are now strengthened in argument by the fulfilment of their predictions; that this has been brought about by the Monarchical federalists themselves, who, having been for the new government merely as a stepping stone to monarchy, have themselves adopted the very constructions of the Constitution of which, when advocating its acceptance before the tribunal of the people, they declared it insusceptible; that the republican federalists, who espoused the same government for its intrinsic merits, are disarmed of their weapons, that which they denied as prophecy being now become true history: who can be sure that these things may not proselyte the small number which was wanting to place the majority on the other side? And this is the event at which I tremble, & to prevent which I consider your continuance at the head of affairs as of the last importance. The confidence of the whole union is centered in you. Your being at the helm will be more than an answer to every argument which can be used to alarm & lead the people in any quarter into violence or secession. North & South will hang together if they have you to hang on; and, if the first correction of a numerous representation should fail in its effect, your presence will give time for trying others not inconsistent with the union & peace of the states.

I am perfectly aware of the oppression under which your present office lays your mind & of the ardor with which you pant for retirement to domestic life. But there is sometimes an eminence of character on which society have such peculiar claims as to control the predilection of the individual for a particular walk of happiness, & restrain him to that alone arising from the present & future benedictions of mankind. This seems to be your condition & the law imposed on you by providence in forming your character & fashioning the events on which it was to operate; and it is to motives like these, & not to personal anxieties of mine or others who have no right to call on you for sacrifices, that I appeal from your former determination & urge a revisal
of it, on the ground of change in the aspect of things. Should an honest majority result from the new & enlarged representation; should those acquiesce whose principles or interest they may control, your wishes for retirement would be gratified with less danger as soon as that shall be manifest, without awaiting the completion of the second period of four years. One or two sessions will determine the crisis; and I cannot but hope that you can resolve to add one or two more to the many years you have already sacrificed to the good of mankind. . . .

Alexander Hamilton to Edward Carrington, 26 May 1792

Believing that I possess a share of your personal friendship and confidence and yielding to that which I feel towards you—persuaded also that our political creed is the same on two essential points, 1st the necessity of Union to the respectability and happiness of this Country and 2. the necessity of an efficient general government to maintain that Union—I have concluded to unbosom myself to you on the present state of political parties and views. I ask no reply to what I shall say. I only ask that you will be persuaded the representations I shall make are agreeable to the real and sincere impressions of my mind. You will make the due allowances for the influence of circumstances upon it—you will consult your own observations and you will draw such a conclusion as shall appear to you proper.

When I accepted the office I now hold, it was under a full persuasion that from similarity of thinking, conspiring with personal goodwill, I should have the firm support of Mr. Madison in the general course of my administration. Aware of the intrinsic difficulties of the situation and of the powers of Mr. Madison, I do not believe I should have accepted under a different supposition.

I have mentioned the similarity of thinking between that gentleman and myself. This was relative not merely to the general principles of national policy and government but to the leading points which were likely to constitute questions in the administration of the finances...

Under these circumstances, you will naturally imagine that it must have been a matter of surprise to me when I was apprised that it was Mr. Madison’s intention to oppose my plan...

While the change of opinion avowed on the point of discrimination diminished my respect for the force of Mr. Madison’s mind and the soundness of his judgment— and while the idea of reserving and setting afloat a vast mass of already extinguished debt as the condition of a measure the leading objects of which were an accession of strength to the national government and an assurance of order and vigour in the national finances by doing away the necessity of thirteen complicated and conflicting systems of finance—appeared to me somewhat extraordinary: Yet my previous impressions of the fairness of Mr. Madison’s character and my reliance on his good will towards me disposed me to believe that his suggestions were sincere; and even, on the point of an assumption of the debts of the states as they stood at the peace, to lean towards a cooperation in his view; ’till on feeling the ground I found the thing impracticable, and on further reflection I thought it liable to immense difficulties. It was tried and failed with little countenance.

At this time and afterwards repeated intimations were given to me that Mr. Madison, from a spirit of rivalship or some other cause, had become personally unfriendly to me; and one gentleman in particular, whose honor I have no reason to doubt, assured me that Mr. Madison in a conversation with him had made a pretty direct attempt to insinuate unfavorable impressions of me. Still I suspended my opinion on the subject. I knew the malevolent officiousness of mankind...
too well to yield a very ready acquiescence to the suggestions which were made, and resolved to
wait 'till time and more experience should afford a solution.

It was not 'till the last session that I became unequivocally convinced of the following
truth—“That Mr. Madison cooperating with Mr. Jefferson is at the head of a faction decidedly
hostile to me and my administration, and actuated by views in my judgment subversive of the
principles of good government and dangerous to the union, peace and happiness of the
Country.”

These are strong expressions; they may pain your friendship for one or both of the
gentlemen whom I have named. I have not lightly resolved to hazard them. They are the result of
a Serious alarm in my mind for the public welfare, and of a full conviction that what I have
alleged is a truth, and a truth which ought to be told and well attended to by all the friends of
Union and efficient National Government. The suggestion will, I hope, at least awaken attention,
free from the bias of former prepossessions. This conviction in my mind is the result of a long
train of circumstances; many of them minute. To attempt to detail them all would fill a volume. I
shall therefore confine myself to the mention of a few.

First—As to the point of opposition to me and my administration. Mr. Jefferson with very
little reserve manifests his dislike of the funding system generally, calling in question the
expediency of funding a debt at all. Some expressions which he has dropped in my own presence
(sometimes without sufficient attention to delicacy) will not permit me to doubt on this point
representations which I have had from various respectable quarters. I do not mean that he
advocates directly the undoing of what has been done, but he censures the whole on principles
which, if they should become general, could not but end in the subversion of the system.

In various conversations with foreigners as well as citizens, he has thrown censure on my
principles of government and on my measures of administration. He has predicted that the
people would not long tolerate my proceedings & that I should not long maintain my ground.
Some of those, whom he immediately and notoriously moves, have even whispered suspicions of
the rectitude of my motives and conduct. In the question concerning the Bank he not only
delivered an opinion in writing against its constitutionality & expediency; but he did it in a style
and manner which I felt as partaking of asperity and ill humour towards me…

I find a strong confirmation in the following circumstances. Freneau, the present printer
of the National Gazette, who was a journeyman with Childs & Swain at New York, was a known
anti-federalist. It is reduced to a certainty that he was brought to Philadelphia by Mr. Jefferson to
be the conductor of a newspaper. It is notorious that cotemporarily with the commencement of
his paper he was a clerk in the department of state for foreign languages. Hence a clear inference
that his paper has been set on foot and is conducted under the patronage & not against the views
of Mr. Jefferson. What then is the complexion of this paper? Let any impartial man peruse all the
numbers down to the present day; and I never was more mistaken, if he does not pronounce that
it is a paper devoted to the subversion of me & the measures in which I have had an agency; and
I am little less mistaken if he do not pronounce that it is a paper of a tendency generally
unfriendly to the Government of the U States. . . .

With regard to Mr. Madison—the matter stands thus. I have not heard, but in the one
instance to which I have alluded, of his having held language unfriendly to me in private
conversation. But in his public conduct there has been a more uniform & persevering opposition
than I have been able to resolve into a sincere difference of opinion. I cannot persuade myself
that Mr. Madison and I, whose politics had formerly so much the same point of departure,
should now diverge so widely in our opinions of the measures which are proper to be pursued…
In almost all the questions great & small which have arisen since the first session of Congress, Mr. Jefferson & Mr. Madison have been found among those who were disposed to narrow the Federal authority. The question of a National Bank is one example…In the Militia bill & in a variety of minor cases he has leaned to abridging the exercise of federal authority, & leaving as much as possible to the states, & he has lost no opportunity of *sounding the alarm* with great affected solemnity at encroachments meditated on the rights of the states, & of holding up the bugbear of a faction in the government having designs unfriendly to liberty.

This kind of conduct has appeared to me the more extraordinary on the part of Mr. Madison as I know for a certainty it was a primary article in his creed that the real danger in our system was the subversion of the national authority by the preponderancy of the state governments. All his measures have proceeded on an opposite supposition. I recur again to the instance of Freneau’s paper. In matters of this kind one cannot have direct proof of man’s latent views; they must be inferred from circumstances. As the coadjutor of Mr. Jefferson in the establishment of this paper, I include Mr. Madison in the consequences imputable to it.

In respect to our foreign politics the views of these gentlemen are in my judgment equally unsound & dangerous. *They have a womanish attachment to France and a womanish resentment against Great Britain.* They would draw us into the closest embrace of the former & involve us in all the consequences of her politics, & they would risk the peace of the country in their endeavors to keep us at the greatest possible distance from the latter. This disposition goes to a length particularly in Mr. Jefferson of which, till lately, I had no adequate idea. Various circumstances prove to me that if these gentlemen were left to pursue their own course there would be in less than six months *an open War between the U States & Great Britain.* I trust I have a due sense of the conduct of France towards this country in the late Revolution, & that I shall always be among the foremost in making her every suitable return; but there is a wide difference between this & implicating ourselves in all her politics; between bearing good will to her, & hating and wrangling with all those whom she hates. The neutral & the pacific policy appear to me to mark the true path to the U States.

Having now delineated to you what I conceive to be the true complexion of the politics of these gentlemen, I will now attempt a solution of these strange appearances. Mr. Jefferson, it is known, did not in the first instance cordially acquiesce in the new constitution for the U States; he had many doubts and reserves. He left this country before we had experienced the imbecilities of the former. In France he saw government only on the side of its abuses. He drank deeply of the French Philosophy, in religion, in science, in politics. He came from France in the moment of a fermentation which he had had a share in exciting, & in the passion and feelings of which he shared both from temperament and situation. He came here probably with a too partial idea of his own powers, and with the expectation of a greater share in the direction of our councils than he has in reality enjoyed. I am not sure that he had not peculiarly marked out for himself the department of the Finances. He came electrified *plus* with attachment to France and with the project of knitting together the two countries in the closest political bonds.

Mr. Madison had always entertained an exalted opinion of the talents, knowledge and virtues of Mr. Jefferson. The sentiment was probably reciprocal. A close correspondence subsisted between them during the time of Mr. Jefferson’s absence from this country. A close intimacy arose upon his return. Whether any peculiar opinions of Mr. Jefferson concerning the public debt wrought a change in the sentiments of Mr. Madison (for it is certain that the former is more radically wrong than the latter) or whether Mr. Madison seduced by the expectation of popularity and possibly by the calculation of advantage to the state of Virginia was led to change
his own opinion—certain it is, that a very material change took place, & that the two gentlemen were united in the new ideas. Mr. Jefferson was indiscreetly open in his approbation of Mr. Madison’s principles, upon his first coming to the seat of government. I say indiscreetly, because a gentleman in the administration in one department ought not to have taken sides against another, in another department. The course of this business & a variety of circumstances which took place left Mr. Madison a very discontented & chagrined man and begot some degree of ill humour in Mr. Jefferson. Attempts were made by these gentlemen in different ways to produce a commercial warfare with Great Britain. In this too they were disappointed. And as they had the liveliest wishes on the subject their dissatisfaction has been proportionally great; and as I had not favored the project, I was comprehended in their displeasure. These causes and perhaps some others created, much sooner than I was aware of it, a systematic opposition to me on the part of those gentlemen. My subversion, I am now satisfied, has been long an object with them. Subsequent events have encreased the spirit of opposition and the feelings of personal mortification on the part of these Gentlemen.

A mighty stand was made on the affair of the Bank. There was much commitment in that case. I prevailed. On the Mint business I was opposed from the same quarter, & with still less success. In the affair of ways & means for the Western expedition—on the supplementary arrangements concerning the debt except as to the additional assumption, my views have been equally prevalent in opposition to theirs. This current of success on one side & defeat on the other have rendered the opposition furious, & have produced a disposition to subvert their competitors even at the expence of the Government.

Another circumstance has contributed to widening the breach. 'Tis evident beyond a question, from every movement, that Mr. Jefferson aims with ardent desire at the Presidential Chair. This too is an important object of the party-politics. It is supposed, from the nature of my former personal & political connexions, that I may favor some other candidate more than Mr. Jefferson when the question shall occur by the retreat of the present gentleman. My influence therefore with the community becomes a thing, on ambitious & personal grounds, to be resisted & destroyed…It is possible too (for men easily heat their imaginations when their passions are heated) that they have by degrees persuaded themselves of what they may have at first only sported to influence others—namely that there is some dreadful combination against state government & republicanism; which according to them, are convertible terms. But there is so much absurdity in this supposition that the admission of it tends to apologize for their hearts, at the expense of their heads.

Under the influence of all these circumstances, the attachment to the Government of the U States, originally weak in Mr. Jefferson’s mind, has given way to something very like dislike; in Mr. Madison’s, it is so counteracted by personal feelings as to be more an affair of the head than of the heart—more the result of a conviction of the necessity of Union than of cordiality to the thing itself. I hope it does not stand worse than this with him. In such a state of mind, both these gentlemen are prepared to hazard a great deal to effect a change. Most of the important measures of every government are connected with the Treasury. To subvert the present head of it they deem it expedient to risk rendering the Government itself odious; perhaps foolishly thinking that they can easily recover the lost affections & confidence of the people, and not appreciating as they ought to do the natural resistance to Government which in every community results from the human passions, the degree to which this is strengthened by the organized rivalry of state governments, & the infinite danger that the national government once rendered odious will be
kept so by these powerful & indefatigable enemies. They forget an old but a very just, though a coarse, saying—That it is much easier to raise the Devil than to lay him…

In giving you this picture of political parties, my design is, I confess, to awaken your attention, if it has not yet been awakened to the conduct of the gentlemen in question. If my opinion of them is founded, it is certainly of great moment to the public weal that they should be understood. I rely on the strength of your mind to appreciate men as they merit—when you have a clue to their real views.

A word on another point. I am told that serious apprehensions are disseminated in your state as to the existence of a monarchical party mediating the destruction of state & republican government. If it is possible that so absurd an idea can gain ground it is necessary that it should be combatted. I assure you on my private faith and honor as a man that there is not in my judgment a shadow of foundation of it. A very small number of men indeed may entertain theories less republican than Mr. Jefferson & Mr. Madison; but I am persuaded there is not a man among them who would not regard as both criminal & visionary any attempt to subvert the republican system of the country. Most of these men rather fear that it may not justify itself by its fruits than feel a predilection for a different form; and their fears are not diminished by the factions & fanatical politics which they find prevailing among a certain set of gentlemen and threatening to disturb the tranquillity and order of the government.

As to the destruction of state governments, the great and real anxiety is to be able to preserve the national from the too potent and counteracting influence of those governments. As to my own political creed, I give it to you with the utmost sincerity. I am affectionately attached to the republican theory. I desire above all things to see the equality of political rights exclusive of all hereditary distinction firmly established by a practical demonstration of its being consistent with the order and happiness of society. As to state governments, the prevailing bias of my judgment is that if they can be circumscribed within bounds consistent with the preservation of the national government they will prove useful and salutary. If the states were all of the size of Connecticut, Maryland or New Jersey, I should decidedly regard the local governments as both safe & useful. As the thing now is, however, I acknowledge the most serious apprehensions that the Government of the U States will not be able to maintain itself against their influence. I see that influence already penetrating into the national councils & perverting their direction. Hence a disposition on my part towards a liberal construction of the powers of the national government and to erect every fence to guard it from depredations, which is, in my opinion, consistent with constitutional propriety.

As to the combination to prostrate the state governments, I disavow and deny it. From an apprehension lest the judiciary should not work efficiently or harmoniously I have been desirous of seeing some rational scheme of connection adopted as an amendment to the Constitution; otherwise I am for maintaining things as they are, though I doubt much the possibility of it, from a tendency in the nature of things towards the preponderancy of the state governments.

I said that I was affectionately attached to the republican theory. This is the real language of my heart which I open to you in the sincerity of friendship; & I add that I have strong hopes of the success of that theory; but in candor I ought also to add that I am far from being without doubts. I consider its success as yet a problem. It is yet to be determined by experience whether it be consistent with that stability and order in government which are essential to public strength & private security and happiness. On the whole, the only enemy which republicanism has to fear in this country is in the spirit of faction and anarchy. If this will not permit the ends of government to be attained under it—if it engenders disorders in the community, all regular & orderly minds
will wish for a change—and the demagogues who have produced the disorder will make it for their own aggrandizement. This is the old story.

If I were disposed to promote monarchy & overthrow state governments, I would mount the hobby horse of popularity—I would cry out usurpation—danger to liberty etc., etc.—I would endeavor to prostrate the national government—raise a ferment—and then “ride in the Whirlwind and direct the Storm.” That there are men acting with Jefferson & Madison who have this in view I verily believe. I could lay my finger on some of them. That Madison does not mean it I also verily believe, and I rather believe the same of Jefferson; but I read him upon the whole thus—“A man of profound ambition & violent passions.”

You must be by this time tired of my epistle. Perhaps I have treated certain characters with too much severity. I have however not meant to do them injustice—and from the bottom of my soul believe I have drawn them truly and that it is of the utmost consequence to the public weal they should be viewed in their true colors. . . .

James Madison, “A Candid State of Parties,” 22 September 1792

As it is the business of the contemplative statesman to trace the history of parties in a free country, so it is the duty of the citizen at all times to understand the actual state of them. Whenever this duty is omitted, an opportunity is given to designing men, by the use of artificial or nominal distinctions, to oppose and balance against each other those who never differed as to the end to be pursued, and may no longer differ as to the means of attaining it. The most interesting state of parties in the United States may be referred to three periods. Those who espoused the cause of independence and those who adhered to the British claims formed the parties of the first period, if, indeed, the disaffected class were considerable enough to deserve the name of a party. This state of things was superseded by the treaty of peace in 1783. From 1783 to 1787 there were parties in abundance, but being rather local than general, they are not within the present review.

The Federal Constitution, proposed in the latter year, gave birth to a second and most interesting division of the people. Everyone remembers it, because everyone was involved in it. Among those who embraced the Constitution, the great body were unquestionably friends to republican liberty, tho’ there were, no doubt, some who were openly or secretly attached to monarchy and aristocracy, and hoped to make the Constitution a cradle for these hereditary establishments. Among those who opposed the Constitution, the great body were certainly well affected to the union and to good government, tho’ there might be a few who had a leaning unfavorable to both. This state of parties was terminated by the regular and effectual establishment of the federal government in 1788; out of the administration of which, however, has arisen a third division, which being natural to most political societies, is likely to be of some duration in ours.

One of the divisions consists of those who, from particular interest, from natural temper, or from the habits of life, are more partial to the opulent than to the other classes of society; and having debauched themselves into a persuasion that mankind are incapable of governing themselves, it follows with them, of course, that government can be carried on only by the pageantry of rank, the influence of money and emoluments, and the terror of military force. Men of those sentiments must naturally wish to point the measures of government less to the interest
of the many than of a few, and less to the reason of the many than to their weaknesses; hoping perhaps in proportion to the ardor of their zeal, that by giving such a turn to the administration, the government itself may by degrees be narrowed into fewer hands and approximated to a hereditary form.

The other division consists of those who, believing in the doctrine that mankind are capable of governing themselves and hating hereditary power as an insult to the reason and an outrage to the rights of man, are naturally offended at every public measure that does not appeal to the understanding and to the general interests of the community, or that is not strictly conformable to the principles and conducive to the preservation of republican government.

This being the real state of parties among us, an experienced and dispassionate observer will be at no loss to decide on the probable conduct of each. The antirepublican party, as it may be called, being the weaker in point of numbers, will be induced by the most obvious motives to strengthen themselves with the men of influence, particularly of moneyed, which is the most active and insinuating influence. It will be equally their true policy to weaken their opponents by reviving exploded parties and taking advantage of all prejudices, local, political, and occupational, that may prevent or disturb a general coalition of sentiments.

The Republican party, as it may be termed, conscious that the mass of people in every part of the union, in every state, and of every occupation must at bottom be with them, both in interest and sentiment, will naturally find their account in burying all antecedent questions, in banishing every other distinction than that between enemies and friends to republican government, and in promoting a general harmony among the latter, wherever residing or however employed.

Whether the republican or the rival party will ultimately establish its ascendance is a problem which may be contemplated now; but which time alone can solve. On one hand experience shows that in politics as in war, stratagem is often an overmatch for numbers: and among more happy characteristics of our political situation, it is now well understood that there are peculiarities, some temporary, others more durable, which may favor that side in the contest. On the republican side, again, the superiority of numbers is so great, their sentiments are so decided, and the practice of making a common cause, where there is a common sentiment and common interest, in spight of circumstantial and artificial distinctions, is so well understood, that no temperate observer of human affairs will be surprised if the issue in the present instance should be reversed, and the government be administered in the spirit and form approved by the great body of the people.

**Thomas Jefferson to James Monroe, 5 May 1793**

The fiscal party having tricked the House of Representatives out of the negative vote they obtained, seem determined not to lose the ground they gained by entering the lists again on matters of fact and reason; they, therefore, preserve a triumphant silence…They show their wisdom in this, if not their honesty. The war between France and England seems to be producing an effect not contemplated. All the old spirit of 1776, rekindling the newspapers from Boston to Charleston, proves this; and even the monocrat papers are obliged to publish the most furious philippics against England. A French frigate took a British prize off the capes of Delaware the other day, and sent her up here. Upon her coming into sight, thousands and thousands of the
yeomanry of the city crowded and covered the wharves. Never before was such a crowd seen there; and when the British colors were seen reversed, and the French flying above them, they burst into peals of exultation. I wish we may be able to repress the spirit of the people within the limits of a fair neutrality. In the meantime, H. is panic-struck, if we refuse our breech to every kick which Great Britain may choose to give it. He is for proclaiming at once the most abject principles, such as would invite and merit habitual insults; and indeed every inch of ground must be fought in our councils to desperation, in order to hold up the face of even a sneaking neutrality, for our votes are generally two and a half against one and a half. Some propositions have come from him which would astonish Mr. Pitt himself with their boldness. If we preserve even a sneaking neutrality, we shall be indebted for it to the President, and not to his counsellors…

**Pacificus (Hamilton) and Helvidius (Madison) letters (excerpts)**

“Pacificus” No. 1, June 29, 1793

The objections which have been raised against the proclamation of neutrality, lately issued by the President, have been urged in a spirit of acrimony and invective, which demonstrates that more was in view than merely a free discussion of an important public measure…

The objections in question fall under four heads:
1. That the proclamation was without authority.
2. That it was contrary to our treaties with France.
3. That it was contrary to the gratitude which is due from this to that country, for the succors afforded to us in our own revolution.
4. That it was out of time and unnecessary.

In order to judge of the solidity of the first of these objections, it is necessary to examine what is the nature and design of a proclamation of neutrality.

It is to **make known** to the Powers at war, and to the citizens of the country whose government does the act, that such country is in the condition of a nation at peace with the belligerent parties, and under no obligations of treaty to become an **associate in the war** with either, and that this being its situation, its intention is to observe a corresponding conduct by performing towards each the duties of neutrality; to warn all persons within the jurisdiction of that country to abstain from acts that shall contravene those duties, under the penalties which the laws of the land, of which the **jus gentium** is part, will inflict.

This, and no more, is conceived to be the true import of a proclamation of neutrality…

If this be a just view of the force and import of the proclamation, it will remain to see whether the President, in issuing it, acted within his proper sphere, or stepped beyond the bounds of his constitutional authority and duty.

It will not be disputed that the management of the affairs of this country with foreign nations is confided to the Government of the United States.

It can as little be disputed that a proclamation of neutrality, when a nation is at liberty to decline or avoid a war in which other nations are engaged, and means to do so, is a **usual** and a **proper** measure. **Its main object is to prevent the nation's being responsible for acts done by its citizens, without the privity or connivance of the government, in contravention of the principles**
of neutrality; an object of the greatest moment to a country whose true interest lies in the preservation of peace.

The inquiry, then, is, what department of our government is the proper one to make a declaration of neutrality, when the engagements of the nation permit, and its interests require that it should be done?

A correct mind will discern at once, that it can belong neither to the legislative nor judicial department, and therefore of course must belong to the executive.

The legislative department is not the *organ* of intercourse between the United States and foreign nations. It is charged neither with *making* nor *interpreting* treaties. It is therefore not naturally that member of the government which is to pronounce on the existing condition of the nation with regard to foreign powers, or to admonish the citizens of their obligations and duties in consequence; still less is it charged with enforcing the observance of those obligations and duties.

It is equally obvious, that the act in question is foreign to the judiciary department. The province of that department is to decide the litigation in particular cases...

It must, then, of necessity belong to the executive department to exercise the function in question, when a proper case for it occurs.

It appears to be connected with that department in various capacities:—As the *organ* of intercourse between the nation and foreign nations; as the *interpreter* of the national treaties, in those cases in which the judiciary is not competent—that is, between government and government; as the *power* which is charged with the execution of the laws, of which treaties form a part; as that which is charged with the command and disposition of the public force.

This view of the subject is so natural and obvious, so analogous to general theory and practice, that no doubt can be entertained of its justness, unless to be deduced from particular provisions of the Constitution of the United States.

Let us see, then, if cause for such doubt is to be found there.

The second article of the Constitution of the United States, section first, establishes this general proposition, that "the EXECUTIVE POWER shall be vested in a President of the United States of America."

The same article, in a succeeding section, proceeds to delineate particular cases of executive power. It declares, among other things, that the President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; that he shall have power, by and with the advice and consent of the Senate, to make treaties; that it shall be his duty to receive ambassadors and other public ministers, *and to take care that the laws be faithfully executed*.

It would not consist with the rules of sound construction, to consider this enumeration of particular authorities as derogating from the more comprehensive grant in the general clause, further than as it may be coupled with express restrictions or limitations; as in regard to the cooperation of the Senate in the appointment of officers and the making of treaties; which are plainly qualifications of the general executive powers of appointing officers and making treaties. The difficulty of a complete enumeration of all the cases of executive authority would naturally dictate the use of general terms, and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the Constitution, in regard to the two powers, the legislative and the executive, serves to confirm this inference. In the article which gives the legislative powers of the government, the expressions are: "All legislative powers herein granted shall be vested in
a Congress of the United States." In that which grants the executive power, the expressions are: "The executive power shall be vested in a President of the United States."

The enumeration ought therefore to be considered as intended merely to specify the principal articles implied in the definition of executive power; leaving the rest to flow from the general grant of that power, interpreted in conformity with other parts of the Constitution, and with the principles of free government.

The general doctrine of our Constitution, then, is, that the executive power of the nation is vested in the President; subject only to the exceptions and qualifications which are expressed in the instrument…

With these exceptions, the executive power of the United States is completely lodged in the President…It will follow, that if a proclamation of neutrality is merely an executive act, as, it is believed, has been shown, the step which has been taken by the President is liable to no just exception on the score of authority.

It may be said, that this inference would be just, if the power of declaring war had not been vested in the Legislature; but that this power naturally includes the right of judging whether the nation is or is not under obligations to make war.

The answer is, that, however true this position may be, it will not follow that the executive is in any case excluded from a similar right of judgment, in the execution of its own functions.

If, on the one hand, the Legislature have a right to declare war, it is on the other, the duty of the executive to preserve peace till the declaration is made; and in fulfilling this duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government; and when it has concluded that there is nothing in them inconsistent with neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the nation. The executive is charged with the execution of all laws, the law of nations, as well as the municipal law, by which the former are recognized and adopted. It is consequently bound, by executing faithfully the laws of neutrality, when the country is in a neutral position, to avoid giving cause of war to foreign Powers.

This is the direct end of the proclamation of neutrality. It declares to the United States their situation with regard to the contending parties, and makes known to the community, that the laws incident to that state will be enforced. In doing this, it conforms to an established usage of nations, the operation of which, as before remarked, is to obviate a responsibility on the part of the whole society, for secret and unknown violations of the rights of any of the warring Powers by its citizens…

This serves as an example of the right of the executive, in certain cases, to determine the condition of the nation, though it may, in its consequences, affect the exercise of the power of the Legislature to declare war. Nevertheless, the executive cannot thereby control the exercise of that power. The Legislature is still free to perform its duties, according to its own sense of them; though the executive, in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decisions.

The division of the executive power in the Constitution creates a concurrent authority in the cases to which it relates.

Hence, in the instance stated, treaties can only be made by the President and Senate jointly; but their activity may be continued or suspended by the President alone.

No objection has been made to the President's having acknowledged the republic of France, by the reception of its minister, without having consulted the Senate; though that body is
connected with him in the making of treaties, and though the consequence of his act of reception is to give operation to those heretofore made with that country. But he is censured for having declared the United States to be in a state of peace and neutrality with regard to the Powers at war, because the right of changing that state, and declaring war, belongs to the Legislature.

It deserves to be remarked, that as the participation of the Senate in the making of treaties, and the power of the Legislature to declare war, are exceptions out of the general "executive power" vested in the President, they are to be construed strictly, and ought to be extended no further than is essential to their execution.

While, therefore, the Legislature can alone declare war, can alone actually transfer the nation from a state of peace to a state of hostility, it belongs to the "executive power" to do whatever else the law of nations, co-operating with the treaties of the country, enjoin in the intercourse of the United States with foreign Powers.

In this distribution of authority, the wisdom of our Constitution is manifested. It is the province and duty of the executive to preserve to the nation the blessings of peace. The Legislature alone can interrupt them by placing the nation in a state of war.

But though it has been thought advisable to vindicate the authority of the executive on this broad and comprehensive ground, it was not absolutely necessary to do so. That clause of the Constitution which makes it his duty to "take care that the laws be faithfully executed," might alone have been relied upon, and this simple process of argument pursued:

The President is the Constitutional EXECUTOR of the laws. Our treaties, and the laws of nations, form a part of the law of the land. He who is to execute the laws must first judge for himself of their meaning. In order to the observance of that conduct which the laws of nations, combined with our treaties, prescribed to this country, in reference to the present war in Europe, it was necessary for the President to judge for himself, whether there was any thing in our treaties incompatible with an adherence to neutrality. Having decided that there was not, he had a right, and if in his opinion the interest of the nation required it, it was his duty as executor of the laws, to proclaim the neutrality of the nation, to exhort all persons to observe it, and to warn them of the penalties which would attend its non-observance…

“Helvidius” No. 1, 24 August 1793

Several pieces with the signature of Pacificus were lately published, which have been read with singular pleasure and applause by the foreigners and degenerate citizens among us, who hate our republican government and the French Revolution… The substance of the first piece, sifted from its inconsistencies and its vague expressions, may be thrown into the following propositions:

That the powers of declaring war and making treaties are, in their nature, executive powers:

That being particularly vested by the constitution in other departments, they are to be considered as exceptions out of the general grant to the executive department:

That being, as exceptions, to be construed strictly, the powers not strictly within them remain with the executive:

That the executive consequently, as the organ of intercourse with foreign nations and the interpreter and executor of treaties and the law of nations, is authorized to expound all articles of treaties, those involving questions of war and peace, as well as others; to judge of the obligations
of the United States to make war or not, under any casus federis or eventual operation of the contract relating to war; and to pronounce the state of things resulting from the obligations of the United States as understood by the executive:

That in particular the executive had authority to judge whether in the case of the mutual guaranty between the United States and France, the former were bound by it to engage in the war:

That the executive has, in pursuance of that authority, decided that the United States are not bound:

And, That its proclamation of the 22nd of April last is to be taken as the effect and expression of that decision.

The basis of the reasoning is, we perceive, the extraordinary doctrine that the powers of making war and treaties are in their nature executive; and therefore comprehended in the general grant of executive power, where not specially and strictly excepted out of the grant.

Let us examine this doctrine; and that we may avoid the possibility of mistating the writer, it shall be laid down in his own words: a precaution the more necessary, as scarce anything else could outweigh the improbability that so extravagant a tenet should be hazarded, at so early a day, in the face of the public.

His words are… “It deserves to be remarked, that as the participation of the Senate in the making of treaties and the power of the legislature to declare war are exceptions out of the general executive power vested in the President, they are to be construed strictly, and ought to be extended no farther than is essential to their execution.”

If there be any countenance to these positions, it must be found either 1st, in the writers of authority on public law; or 2nd, in the quality and operation of the powers to make war and treaties; or 3rd, in the Constitution of the United States…

1. Writers such as Locke and Montesquieu, who have discussed more particularly the principles of liberty and the structure of government… are evidently warped by a regard to the particular government of England, to which one of them owed allegiance and the other professed an admiration bordering on idolatry. Montesquieu, however, has rather distinguished himself by enforcing the reasons and the importance of avoiding a confusion of the several powers of government than by enumerating and defining the powers which belong to each particular class. And Locke, notwithstanding the early date of his work on civil government and the example of his own government before his eyes, admits that the particular powers in question, which, after some of the writers on public law, he calls federative, are really distinct from the executive, though almost always united with it and hardly to be separated into distinct hands. Had he not lived under a monarchy, in which these powers were united; or had he written by the lamp which truth now presents to lawgivers, the last observation would probably never have dropped from his pen…

2. If we consult for a moment the nature and operation of the two powers to declare war and make treaties, it will be impossible not to see that they can never fall within a proper definition of executive powers. The natural province of the executive magistrate is to execute laws, as that of the legislature is to make laws. All his acts therefore, properly executive, must pre-suppose the existence of the laws to be executed. A treaty is not an execution of laws: it does not pre-suppose the existence of laws. It is, on the contrary, to have itself the force of a law and to be carried into execution, like all other laws, by the executive magistrate. To say then that the power of making treaties, which are confessedly laws, belongs naturally to the department which
is to execute laws, is to say that the executive department naturally includes a legislative power…

The power to declare war is subject to similar reasoning. A declaration that there shall be war is not an execution of laws: it does not suppose pre-existing laws to be executed: it is not in any respect an act merely executive. It is, on the contrary, one of the most deliberative acts that can be performed; and when performed, has the effect of repealing all the laws operating in a state of peace, so far as they are inconsistent with a state of war; and of enacting as a rule for the executive a new code adapted to the relation between the society and its foreign enemy. In like manner a conclusion of peace annuls all the laws peculiar to a state of war and revives the general laws incident to a state of peace. These remarks will be strengthened by adding that treaties, particularly treaties of peace, have sometimes the effect of changing not only the external laws of the society, but operate also on the internal code, which is purely municipal, and to which the legislative authority of the country is of itself competent and compleat.

From this view of the subject it must be evident that, although the executive may be a convenient organ of preliminary communications with foreign governments on the subjects of treaty or war, and the proper agent for carrying into execution the final determinations of the competent authority, yet it can have no pretensions from the nature of the powers in question compared with the nature of the executive trust, to that essential agency which gives validity to such determinations…

3. It remains to be enquired whether there be any thing in the constitution itself which shows that the powers of making war and peace are considered as of an executive nature and as comprehended within a general grant of executive power.

It will not be pretended that this appears from any direct position to be found in the instrument.

If it were deducible from any particular expressions it may be presumed that the publication would have saved us the trouble of the research…

In the general distribution of powers, we find that of declaring war expressly vested in the Congress, where every other legislative power is declared to be vested, and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be that it is of a legislative and not an executive nature.

This conclusion becomes irresistible when it is recollected that the constitution cannot be supposed to have placed either any power legislative in its nature entirely among executive powers or any power executive in its nature entirely among legislative powers, without charging the constitution with that kind of intermixture and consolidation of different powers which would violate a fundamental principle in the organization of free governments. If it were not unnecessary to enlarge on this topic here, it could be shown that the constitution was originally vindicated, and has been constantly expounded, with a disavowal of any such intermixture [Madison makes reference to The Federalist Nos. 47-48 – editor]…

“The President shall be commander in chief of the army and navy of the United States, and of the militia when called into the actual service of the United States.”…Those who are to conduct a war cannot in the nature of things be proper or safe judges whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws…

“He shall take care that the laws shall be faithfully executed and shall commission all officers of the United States.” To see the laws faithfully executed constitutes the essence of the
executive authority. But what relation has it to the power of making treaties and war, that is, of determining what the *laws shall be* with regard to other nations? No other certainly than what subsists between the powers of executing and enacting laws; no other consequently, than what forbids a coalition of the powers in the same department…

Thus it appears that by whatever standard we try this doctrine, it must be condemned as no less vicious in theory than it would be dangerous in practice. It is countenanced neither by the writers on law, not by the nature of the powers themselves, not by any general arrangements or particular expressions, or plausible analogies, to be found in the constitution. Whence then can the writer have borrowed it? There is but one answer to this question. The power of making treaties and the power of declaring war are *royal prerogatives* in the *British government*, and are accordingly treated as Executive prerogatives by *British commentators*…
The aspect of our politics has wonderfully changed since you left us. In place of that noble love of liberty, & republican government which carried us triumphantly thro' the war, an Anglican monarchical, & aristocratical party has sprung up, whose avowed object is to draw over us the substance, as they have already done the forms, of the British government. The main body of our citizens, however, remain true to their republican principles; the whole landed interest is republican, and so is a great mass of talents. Against us are the Executive, the Judiciary, two out of three branches of the legislature, all the officers of the government, all who want to be officers, all timid men who prefer the calm of despotism to the boisterous sea of liberty, British merchants & Americans trading on British capitals, speculators & holders in the banks & public funds, a contrivance invented for the purposes of corruption, & for assimilating us in all things to the rotten as well as the sound parts of the British model. It would give you a fever were I to name to you the apostates who have gone over to these heresies, men who were Samsons in the field & Solomons in the council, but who have had their heads shorn by the harlot England. In short, we are likely to preserve the liberty we have obtained only by unremitting labors & perils. But we shall preserve them; and our mass of weight & wealth on the good side is so great, as to leave no danger that force will ever be attempted against us. We have only to awake and snap the Lilliputian cords with which they have been entangling us during the first sleep which succeeded our labors.