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# THE REVOLUTIONARY THINKER

## Developing a Brief Contextual Understanding for Jefferson's Perspectives on Administration and Constitutional Theory during the Early Stages of His Political Career

### INTRODUCTION

THOMAS JEFFERSON'S CONTRIBUTION to the development of American public administration does not begin in the early stages of his political career when he was writing some of his most important works, including the Declaration of American Independence and the Virginia Statute for Religious Freedom. Scholars of the Founding Period often consider the Virginia Statute as one of Jefferson's great contributions to the development of republican thought.<sup>1</sup> While this document is exquisitely written and clearly demonstrates the important connections between religious freedom, the natural rights of man, and republican government, it falls far short from being classified as a great administrative text because Jefferson does not tell us how this freedom should be implemented within the American constitutional regime.

This chapter provides a brief introduction to Jefferson's early thinking on matters affecting constitutional theory and administrative practice, which constitutes the years 1770–1800. A careful examination of his public documents and private correspondence reveals that his appreciation for the political, administrative, and constitutional complexities associated with governing a republican state was deficient at best, especially when compared to Madison and Hamilton. What occupied most of Jefferson's intellectual energies during this period concerned how individuals secured the rights of self-government, what events and circumstances constituted revolution against the state, and,

among others, how religious freedom and public education were essential for the establishment and preservation of good government (Malone 1948, 1951; Bowers 1945; Koch 1964; Beloff 1949; Ellis 1996, 2001; Ferling 2000). The necessary and practical details regarding the establishment and implementation of these ideas was not an area of theoretical or practical interest for the young statesman. Historians have thoroughly documented Jefferson's biographical journey at this point in his life and these events do not need further elaboration here (Malone 1948, 1951; Bowers 1945; Koch 1964; Beloff 1949; Ellis 1996, 2001; Ferling 2000; Mayo 1998).

Scholars interested in Jefferson's administrative thought, however, have only examined limited periods of his life when making their case that he was a nonsubstantive figure within the historical development of American public administration. White (1951) and Caldwell (1988), for example, only examined the presidential years when making their assertions of what characteristics constituted Jeffersonian administrative theory. Kettl (2002), more recently, built on their conclusions and argued that the ideas Jefferson espoused, in conjunction with those of Hamilton, Madison, and Wilson, contributed to the theoretical and practical transformation of American governance.

On a broader investigative level, no public administration scholar has ever examined Jefferson's distinctive approach to executive branch management fully. This is especially perplexing considering that political scientists and historians have long championed the nation's third presidential administration for its handling of national and international affairs as well as establishing sound administrative management within the executive departments and with Congress (see Cunningham 1978; Johnstone 1978; Malone 1970, 1974; McDonald 1976; Skowronek 1997; Steinberg 1967). The field has also ignored Jefferson's administrative and political role in creating the University of Virginia. In this position, he established a state institution whose fundamental purpose was to educate students with an intellectual and practical knowledge for how to preserve the nation's constitutional tradition so that after graduation they could assume roles as responsible, constitutionally educated leaders in either elected positions or as civil servants.

This chapter provides an overview of the key points and areas of interest that highlight Jefferson's lack of understanding for the way good government is dependent on good administration. Jefferson's initial opinions on the proposed Constitution of 1787,<sup>2</sup> his thoughts on periodic and ad hoc conventions,<sup>3</sup> and his support for an energetic, majority-ruled government<sup>4</sup> lacked the type of sophisticated reasoning commonly equated with Madison and Hamilton. However, as he progressed in his public service career, first as secretary of state and then as vice president in the Adams administration, we begin to see how his professional experience created an important window of opportunity that allowed him during his presidency and throughout retire-

ment to alter the administrative and constitutional landscape of the United States. Jefferson's vehement critique over the establishment of a national bank in the Washington administration and the Alien and Sedition Acts in the Adams administration reveal the beginning stages of how and why his opinions on preserving the U.S. Constitution and advancing sound administrative practice changed.

JEFFERSON'S CONSTITUTIONAL POSITION  
AGAINST THE ESTABLISHMENT OF A NATIONAL BANK:  
A STRICT CONSTRUCTIONIST PERSPECTIVE

Although Jefferson's early understanding of constitutional theory was not as developed as Madison's, his analysis of Hamilton's plan to establish a national bank and his critique of the Alien and Sedition Acts demonstrated a more thoughtful level of constitutional thinking than what he had expressed a decade earlier and certainly from what public administration scholars have credited him with understanding at this point in his career. Jefferson's argument over Hamilton's reliance on the "necessary and proper clause" and his concern over what constituted the advancement of the "general welfare" provided the foundation for his constitutional dispute over this proposal while emphasizing his adamant support for a strict constructionist governing philosophy.

Hamilton, in his administrative capacity as secretary of the treasury, proposed to Congress a bill to establish a Bank of the United States. He modeled his proposal after the Bank of England where capital came from public securities that could be converted into bank stock (Smith 1995, 665). Hamilton argued the necessary and proper clause of the Constitution (Article I, section 8, clause 18)<sup>5</sup> afforded Congress the implied power to create a Bank of the United States. This position is one that supported the principle of broad construction and implied constitutional power. It laid the foundation for the nation's first secretary of the treasury to argue: "The proposition relied upon is, that the *specified powers* of Congress are in their nature sovereign—that it is incident to sovereign power to erect corporations; & that therefore Congress have a right within the *sphere & in relation to the objects of their power, to erect corporations* (Syrett and Cooke 1965, 114, emphasis in original).<sup>6</sup> The Hamiltonian model, therefore, supported the notion that because Congress had the constitutional authority to coin money, tax the citizenry, and borrow money, it must also have the power to establish a bank for implementing these legislative responsibilities.

Due to his belief in strict constructionist principles, Secretary of State Jefferson fiercely disagreed with Hamilton. In his *Opinion on the Constitutionality of a National Bank*,<sup>7</sup> Jefferson, like Hamilton, relied on Article I, section

8, clause 18, to make his case *against* the establishment of a national bank: “To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.”<sup>8</sup> He argued that the Constitution did not delegate to Congress the power to establish a bank because it was not enumerated in the text. If Congress did not need a bank to borrow or coin money; tax the citizenry; regulate commerce with foreign nations, the States, and Indian tribes; or any of the other enumerated powers the Constitution grants the legislative branch, a bank was not *necessary*.<sup>9</sup>

While Jefferson conceded a national bank might be suitable and convenient for helping Congress perform its constitutional obligations of coining and borrowing money as well as taxing the citizenry that is not the same as being *necessary*: “Perhaps, indeed, bank bills may be a more *convenient* vehicle than treasury orders. But a little *difference* in the degree of *convenience*, cannot constitute the necessity which the constitution makes the ground for assuming any non-enumerated power.”<sup>10</sup> This perspective demonstrates one of Jefferson’s earlier positions on how matters of constitutional significance affected the nation in practical terms.

In addition to the debate concerning the necessary and proper clause, Jefferson also asserted that establishing a national bank undermined the Constitution’s protection to provide for the general welfare of the nation. In one of his most famous letters to President Washington, he expressed his utter contempt over Hamilton’s decisionmaking in this matter:

For, in a Report on the subject of manufactures (still to be acted on) it was expressly assumed that the general government has a right to exercise all powers which may be for the *general welfare*, that is to say, all the legitimate powers of government: since no government has a legitimate right to do what is not for the welfare of the governed. There was indeed a sham-limitation of the universality of this power *to cases where money is to be employed*. But about what is it that money cannot be employed? Thus the object of these plans taken together is to draw all the powers of government into the hands of the general legislature, to establish means for corrupting a sufficient corps in that legislature to divide the honest votes & preponderate, by their own, the scale which suited, & to have that corps under the command of the Secretary of the Treasury for the purpose of subverting step by step the principles of the constitution, which he has so often declared to be a thing of nothing which must be changed.<sup>11</sup>

As the debate between Hamilton and Jefferson continued, Madison joined the discussion, but unlike the days when he and Hamilton authored *The Federalist*, he disagreed with his colleague from New York and supported

Jefferson's interpretation of the Constitution (Cunningham 1957, 9). Despite Madison and Jefferson's bitter disagreement with Hamilton over this proposal, Washington ultimately sided with the Secretary of the Treasury, and Hamilton won the argument, paving the way for Congress to establish the First Bank of the United States.

Hamilton's critique of Jefferson's understanding of the word "necessary" largely influenced Washington's decision to establish a national bank. According to Hamilton, "*Necessary*, as it is commonly used, 'often means no more than *needful, requisite, incidental, useful, or conducive to.*' To understand the word as Jefferson did 'would be to give it the same force as if the word *absolutely* or *indispensably* had been prefixed to it'" (Mayer 1994, 195). Hamilton, quite interestingly, overlooked perhaps the best argument that legitimated his case. In Article I, section 10, the Constitution states: "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be *absolutely necessary* for exceeding it's [*sic*] inspection Laws" (emphasis added). The Constitution makes a distinction between what is necessary (that is, Article I, section 8, clause 18) and what is *absolutely* necessary (that is, Article I, section 10). Because the Framers omitted the word "absolute" from Article I, section 8, it infers a more relaxed interpretation of the word "necessary." Hamilton could have made a convincing case in support of his constitutional argument if he had illustrated this point. Curiously, however, he did not.

Scholars and practitioners of public administration, nevertheless, should take this opportunity to remind themselves that the American Founders had no difficulty distinguishing from constitutional powers and responsibilities that were necessary and those that were *absolutely* necessary. In Jefferson's critique of Hamilton's position, he acted as though Article I, section 8, clause 18, says "absolutely necessary." His point, all the same, can still be thought of as an important area of discussion for those interested in the constitutional development of American administration and for emphasizing how Jefferson's administrative and constitutional thinking shifted from earlier points in his career, such as when he first discussed the proposed Constitution of 1787 with John Adams and when he advocated for citizens to revolt against their governments and abolish their respective constitutions every twenty years in an effort to preserve liberty and the natural rights of man.

#### THE VICE PRESIDENCY: ANOTHER TURNING POINT IN JEFFERSON'S CONSTITUTIONAL THINKING

Jefferson's opinions on serving as vice president were detailed and specific. He deemed it one of the least important positions in American government.

Writing to Elbridge Gerry, he claimed: "I consider my office as constitutionally confined to legislative functions, and that I could not take any part whatever in executive consultations, even were it proposed, their fears may perhaps subside, & their object be found not worth a machination."<sup>12</sup> Whether Jefferson had ambition to govern men or not would become an irrelevant point. His political future as vice president, president, and as founder of the University of Virginia would be synonymous with making decisions that would directly affect the nation and its citizenry for future generations.

During this time, Jefferson's constitutional objections to the Alien and Sedition Acts destroyed his friendship with President Adams to the extent that neither would speak or write to the other until their retirement from public office. On November 16, 1798, the state legislature of Kentucky passed resolutions, anonymously written by Jefferson and sponsored by John Breckinridge, denouncing the Alien and Sedition Acts,<sup>13</sup> and on December 24, 1798, the Virginia state legislature passed similar resolutions anonymously authored by Madison. The Kentucky Resolutions addressed the federal government's intent to deny Americans, citizens and aliens alike, many of their constitutional rights and protections. According to McDonald: "Quite accurately, the Kentucky Resolutions pointed out that the Constitution gave Congress power to punish treason, counterfeiting, piracies, and felonies on the high seas, and offenses against the laws of nations and no other crimes whatever, and all other crimes were reserved exclusively to the states" (2000, 41). Jefferson was particularly concerned with both Congress and the president's disregard for the Tenth Amendment, and these Resolutions reminded all those who seemed to have forgotten that powers not enumerated to Congress were left either to the states or to the people. His anonymous authorship, nevertheless, knowingly undermined the administration he served, and yet he relished the opportunity to support and defend the Constitution against blatant violations by the second administration and by the majority of Congress.

This document also addressed the importance of natural rights, and unlike the Virginia Resolutions, called for a complete nullification of the Alien and Sedition Acts. According to Jefferson, the freedoms of speech and press were natural rights and the government, especially one based on republican principles, did not have the authority to infringe on these freedoms. Madison, on the other hand, argued that Jefferson's language was too harsh and urged other states to concur with Virginia "in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional" (Koch 1964, 120). Jefferson and Madison's differences over nullification are symbolic of their earlier debates on constitutional theory, which occurred after Jefferson read and analyzed the proposed Constitution of 1787 while in France. Jefferson's desire to protect the natural rights of man, which included the freedoms of speech and press, allowed him to justify his position regarding the

nullification of these legislative acts. Madison, by contrast, viewed the Alien and Sedition Acts in purely constitutional terms. He removed all mentions of nullification from the Virginia Resolutions and simply encouraged other states to declare them unconstitutional. Jefferson disagreed and thought the states needed to take more extreme action. As a matter of American historical perspective, Jefferson's support of nullification was not particularly helpful when President Lincoln was trying to hold the nation together during the Civil War because the southern states relied on it as constitutional justification to secede from the Union.

While Jefferson's critique over the establishment of a national bank complemented Madison's constitutional position on this issue, the constitutional differences between the Virginia Resolutions and Kentucky Resolutions illustrate important intellectual and institutional differences between the two statesmen at this point in their careers. In this context, Jefferson's perspective underscores his inability to separate his objections to public policy from his responsibilities to support and defend the nation's constitutional order. It further indicates that he was unaware of the intermediate dynamics of administrative practice, particularly for a vice president who made the conscious decision to undermine and criticize the very administration in which he served.

An analysis of the Kentucky Resolutions, as a result, would be incomplete if a discussion of Jefferson's role as vice president was left unaddressed. He was keenly aware that if it were made public that he authored these resolutions he might be charged with violating the Sedition Act.<sup>14</sup> Wills correctly observed, "His part in the operation had to be kept secret. He was, after all, a vice-president secretly trying to defeat the regime he belonged to. He would also be a target of the laws he was attacking if his actions were discovered" (2002, 48). Despite these legal and political risks, Jefferson embraced the opportunity to denounce the president and Congress for violating the Constitution, infringing on states' rights, and most disturbingly, for depriving individuals of their natural rights. Defending the Constitution and principles he believed were fundamental for the preservation of republican government trumped all other concerns and practical considerations. Little did he realize that such efforts would become a central theme in his presidency. And interestingly, his anonymity remained secret until 1821, five years before his death.

## CONCLUSION

This chapter demonstrated, albeit briefly, Jefferson's understanding of American constitutional theory prior to assuming the presidency. The development of his intellectual understanding of constitutional theory from the time he

wrote his *Notes on the State of Virginia* in the 1780s to the time he published the Kentucky Resolutions in 1795 should invoke meaningful discourse for those interested in the development of constitutional theory within the American administrative state. Jefferson's views in the Kentucky Resolutions point to the fact that he was often excessive in his opinions on ways to maintain the people's confidence in their government. He was inclined to reach too far too fast, as his opinion on nullification indicates. It would take not only eight years as president to instruct him on the importance of acting more cautiously and prudently but also the majority of his retirement when he was establishing the University of Virginia for him to become more amenable to the nuances and complexities of administration. Exactly how and why this occurred is the primary subject of this book, which aims at casting Jefferson in a more historically accurate role with regard to his contribution to American constitutional theory, administrative practice, and the democratic governance process.