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The Republican Executive: Thomas Jefferson and the Development of Presidential Power

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Thomas Jefferson was the first president to bring to the office a theory of executive power. By examining Jefferson's constitutional thought and his presidential administration with an eye to his understanding of executive power, this paper aims to modify current interpretations of the creation and development of presidential power.¹

Jefferson's theory of the Executive rests on three connected principles. First, the Executive ought to be republican. This means that it is essentially a popular office, both in its mode of election and its scope of action, which includes executing the majority will. This implies that the Executive requires a certain amount of energy. Second, the Executive abides by the constitutional framework as understood by

¹ See Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan* (New York: Free Press, 1990); Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush* (Cambridge, MA: Belknap, 1993); Jeffrey K. Tulis, *The Rhetorical Presidency* (Princeton: Princeton UP, 1987); and Harvey C. Mansfield, Jr., *Taming the Prince: The Ambivalence of Modern Executive Power* (Baltimore: The Johns Hopkins UP, 1993).

Jefferson's constitutional interpretation, often called "strict construction." Central to this approach is a reluctance to ground executive discretion within the Constitution, leaving the necessary and occasional practice of it to a sphere outside the law. Third, to ensure that the Executive not tread too far upon popular liberty, the people's rights are enshrined in "declarations." These declarations, much like the Declaration of Independence and Bill of Rights, serve to remind both the people and their leaders of their rights and thus provide a standard against which the Executive's actions may be judged.

Jefferson saw his election as a kind of refounding of the presidential office. It is well known that Jefferson changed the office by stopping presidential levees and birthday celebrations, holding dinners in his republican attire, and delivering his addresses to Congress in writing rather than in person. Likewise, Jefferson's efforts to shape Washington's decision to retire after two terms into a precedent colored the horizon of presidential power, not to mention party politics and elections, as the recent election illustrates. But this is not all. Because Jefferson was convinced that republican government, at least in a new and extensive republic, required a strong Executive, he focused his efforts not only on preventing what he believed to be Hamilton's monarchical designs but also on strengthening the presidential office.² Paradoxically, the two are nearly the same. Consequently, his "Revolution of 1800" was a victory for the republican principle and for a certain kind of executive strength.

Energy.

Thomas Jefferson's distrust of an energetic Executive is well known. Thus, Jefferson's remark to Madison, "I own I am not a friend to a very energetic government ... It is always oppressive," would seem to serve as a summary of Jefferson's theory of executive power.³ But as some historians, beginning with Henry Adams, have

² Jefferson was anxious that the Treasury would dominate later presidents lacking Washington's authority, *The Anas*, in *Thomas Jefferson: Writings* (New York: Library of America, 1984), 674. Later, he feared that the Executive was being encroached upon by the Judiciary, "Jefferson to Kerchaval," 12 July 1816, *Writings*, 1395-1402.

³ Jefferson to Madison, 20 December 1787. John Adams, for one, predicted that Jefferson's "administration will be quoted by Philosophers, as a model, of profound wisdom; by Politicians as weak, superficial, and shortsighted," Adams to Jefferson, 3 July 1813. John Marshall wrote privately, "Mr. Jefferson appears to me to be a man who will embody himself in the house of representatives. By weakening the office of the President he will increase his personal power," Marshall to Hamilton, 1 January 1801.

documented, Jefferson's administration—including the Louisiana Purchase and the Embargo—rivals many administrations, before and after, as a prime example of lodging power in the Executive.⁴ This is not to say that Jefferson provides yet another example of the difference between theory and practice, but it to suggest that Jefferson's theory of executive power has been misunderstood. Jefferson came to see, long before he was president, that a single, energetic Executive was required for securing liberty over a large republic. It was for good reason, after all, that the famous advocate of an energetic executive, Alexander Hamilton, reassured partisans of the executive branch that Jefferson was not "an enemy to the power of the Executive."⁵ As early as 1787, Jefferson classified views on the proposed constitution into two camps: those who consider it "an elective monarchy" and those who "view it as an energetic republic."⁶ Jefferson, who was no monarchist, sided with those who believed that the republic would have to be energetic.⁷

Jefferson's early constitutional efforts include his attempts to strengthen and rationalize the executive branch in Virginia. As he explained in an often cited letter to Samuel Kerchaval, his own 1783 draft of a constitution suffered a theoretical limitation caused by a misunderstanding of the executive.⁸ More to the point, Jefferson believed that republican government required execution of the majority will, and one way to do this would be to "Render the Executive more desirable to men of abilities."⁹ Making the office desirable requires removing the executive council to make the Executive unitary. To place the executive power in one person is to make it more accountable and therefore more energetic: "Responsibility is a tremendous

⁴ Adams remarks that it would be "hard to see how any President could be more Federalist than Jefferson himself." Adams, *History of the United States of America during the Administration of Thomas Jefferson* (New York: Library of America, 1986), 354.

⁵ Hamilton to James A. Bayard, 16 January, 1801. From his dealings with Jefferson in Washington's cabinet, Hamilton concluded that Jefferson was "generally for a large construction of the Executive authority."

⁶ Jefferson to James Sullivan, 9 February 1787.

⁷ See, for instance, Jefferson's criticisms of two systems with insufficient energy: the American Indians (Jefferson to Madison, 30 January 1787) and the Jacobins (Jefferson to Madison, 29 June 1792).

⁸ "In truth, the abuses of monarchy had so filled the space of political contemplation, that we imagined everything republican which was not monarchy," Jefferson to Kerchaval, 12 July 1816.

⁹ Jefferson to Archibald Stuart, 23 December 1791. This letter was written after Jefferson confessed to Madison that the *Federalist* "rectified me in several points," Jefferson to Madison 17 November 1788.

engine in a free government.”¹⁰ As he explained later, unity of office provides a “tranquil and steady tenor” to administrating human affairs that would otherwise be lacking due to limitations incident to human nature.¹¹

Jefferson’s belief in an energetically executed government was not confined to constitutional tinkering, for it revealed itself in his national policy recommendations as well. Jefferson, who had once cleared rivers around his own Monticello, frequently urged Congress to pass an amendment authorizing the executive to lead the government in undertaking “internal improvements.”¹² Also, his proposed system to make coinage, weights, and measures uniform was aimed at facilitating commerce within the states, strengthening trade with Europe, and, most importantly, disestablishing the colonial system inherited from royal edict.¹³ In matters of foreign policy, Jefferson argued that the Senate could not negative the “grade” of persons nominated to foreign service by a president since, “The transaction of business with foreign nations is Executive altogether ... Exceptions are to be construed strictly.”¹⁴ Further, Jefferson’s public handwringing over the appointment and removal powers only obscured what he had previously argued in private, that the powers are “inherent in the Executive” because watching over ministerial offices requires “energetic superintendence.”¹⁵

¹⁰ Ibid.

¹¹ Jefferson to Tracy, 26 January 1811.

¹² Jefferson’s concern with effective government is also reflected in his desire to unite state agricultural societies into “a central society.” See Jefferson to Robert Livingston, 16 February 1801.

¹³ Jefferson, “Plan for Establishing Uniformity in the Coinage, Weights, and Measures of the United States,” communicated to House of Representatives on 13 July 1790. Consider also Jefferson’s appreciation of Bacon, Locke, and Newton. Jefferson to John Trumbull, 15 February 1789.

¹⁴ Jefferson, “Opinion on whether Senate has Right to Negative the Grade of Persons Appointed,” 24 April 1790. On a matter where a private citizen petitioned the House to resolve a claim disputed in Nova Scotia, Jefferson was more explicit: “The legislature should never shew itself in a matter with a foreign nation, but where the case is very serious and they mean to commit the nation on it’s issue,” Jefferson to Madison, 11 November 1791. Compare, however, to Jefferson’s criticisms of Pacificus’ arguments and his later argument that treaties involving appropriations of money would have to subject to later approval or rejection by the House, Jefferson to Monroe, 21 March 1796.

¹⁵ “Notes concerning the Right of Removal from Office,” [1780]*Papers of Thomas Jefferson*, ed., Julian Boyd, (Princeton, New Jersey: Princeton UP, 1950-), 281-2. See also Madison’s concern that some were hoping to introduce lifetime tenure into administration by requiring the Senate’s consent for removal, Madison to Jefferson, 11 February 1797. See also Jefferson’s

The most important way Jefferson increased the power of the Executive was by explicitly harnessing it to its popular foundations. As Marc Landy and Sidney Milkis have pointed out, expansions in presidential power are often associated with presidents who claim authority based on the fact that the president enjoys a unique position as a nationally elected leader.¹⁶ Jefferson himself claimed this privilege in his First Inaugural when he appealed to the means by which he was elected in order to reassure his audience that he deserved its confidence even though he lacked the reputation of Washington:

*I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground.*¹⁷

In other words, Jefferson anticipates times in which his actions will be criticized by other officers in the government, times when citizens may not know whose judgment to trust. Jefferson here preempts such conflicts by reminding his audience that he alone is nationally elected. His election, then, serves two purposes: it decides a “contest of opinion,” and it implies “approbation” for Jefferson’s service in the past. The coincidence of the two, announced as the “voice of the nation, according to the rules of the Constitution,” sets Jefferson on a foundation for popular leadership.¹⁸

Prerogative.

If Jefferson’s aim was, to borrow a phrase of Henry Adams, make the machinery of government work more easily every day,¹⁹ it was also to ensure that the government be strong enough to meet the necessities which interrupt everyday routine. This includes the prerogative power.

criticism of Monroe’s signing an early civil service law, Jefferson to Madison, 29 November 1820.

¹⁶ Landy, Marc and Sidney Milkis, *Presidential Greatness* (Lawrence, Kansas: University of Kansas Press, 2000). See introduction and pp. 61-67 on Jefferson. Jefferson’s assertion of popular leadership has been assumed by modern presidents. See for instance, George W. Bush’s claim that the presidency is “the final point of decision in the American government,” in “Acceptance Speech at the Republican National Convention,” as reprinted in *The New York Times*, August 4, 2000.

¹⁷ Jefferson, “First Inaugural Address” in *Writings*, 492-6.

¹⁸ *Ibid.*

¹⁹ Henry Adams, *History*, 1030.

There are at least three theories of executive prerogative as applied to the American presidency. All three agree that certain discretionary powers are required by necessity and that the Executive—because of the duration and unity of his office as well as his energy²⁰—is the most convenient and the safest repository of these powers. They differ according to the degree to which the federal Constitution acknowledges and grants these powers. The first position, articulated by Alexander Hamilton writing as *Pacificus*, asserts that the Constitution grants the Executive with discretionary powers to meet future emergencies. The second position, preferred by Jefferson, argues that the Constitution is silent concerning the prerogative and therefore must be pushed aside, albeit temporarily, during times of necessity. Lastly, the third position, charted by Lincoln, finds a middle ground between Hamilton and Jefferson's extremes, arguing that certain provisions of the Constitution—the oath of office in particular—enable the President to violate other, lesser provisions.²¹

As a wartime governor, Jefferson quickly arrived at a working theory of executive prerogative. Because of the material losses due to a British invasion of Virginia, Jefferson had been unable had been unable to enforce several previous acts of the assembly. The acts, which provided for the recruiting of men and procuring supplies, had expired before Jefferson could order county magistrates to execute them. But rather than waiting for the Assembly to convene and write more legislation, Jefferson ordered county magistrates to enforce the expired legislation as quickly as possible.²²

But the problem was that some people may have “legal scruples” which would get in the way of strictly extralegal activity, so Jefferson offered three reasons to convince officers to carry out the expired law. First, he assured them that the Assembly, “influenced by the necessity which induced them to pass the act,” would approve of the actions after the fact. Second, he pointed to the purpose of the act, arguing the principles of law and policy agree that “substance” (procuring supplies)

²⁰ Jefferson's phrases “constant agency” and “always engaged” suggest more activity than Locke's “Power always in being.” See Jefferson to George Hay, 20 June 1807; John Locke, *Second Treatise*, section 143.

²¹ Here, I am indebted to Harvey Mansfield's *Taming the Prince: The Ambivalence of Modern Executive Power* (Baltimore: The Johns Hopkins UP, 1993), 5-15, 255; Larry Arnhart's “‘The God-Like Prince’: John Locke, Executive Prerogative, and the American Presidency.” *Presidential Studies Quarterly* IX (Spring, 1979), 121-130; and especially to the seminars conducted by Robert Scigliano at Boston College.

²² “Jefferson to the First Magistrate of Each Council.” January 20, 1781. Boyd, ed., Vol 4, pp. 414-415.

was more important than “circumstance” (the schedule of carrying out the law). Third, Jefferson identified a kind of patriotism which would undergird the triumph of substance over circumstance:

*While we have so many foes in our bowels and environing us on every side, he is but a bad citizen who can entertain a doubt whether the law will justify him in saving his country, or who will scruple to risk himself in support of the spirit of a law where unavoidable accidents have prevented a literal compliance with it.*²³

To these three arguments, Jefferson added a more general qualification, pointing out that departing from the letter of the law in this would not cause private harm—“no man can say this will be an injury to him” since later compliance would mean that a person would not have to sacrifice his person or property earlier. The General Assembly then must make good on the promise Jefferson made to county executives. The “zealous citizen” would follow Jefferson’s order and execute the substance of the law, but the “unwilling citizen” would find “much room for objection.”²⁴ The “authority of the legislature” would convince the unwilling and remove the possibility of conflicts between the unwilling and the zealous.²⁵

Jefferson presented his understanding of executive prerogative even more clearly in a private letter to John Colvin.²⁶ In this letter, Jefferson answers Colvin’s question, whether “circumstances do not sometimes occur, which do not make it a duty in officers of high trust to assume authorities beyond the law.” Jefferson first answers by offering a general principle:

A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-

²³ Ibid.

²⁴ “Circular Letter to Members of the Assembly.” January 23, 1781. *Papers*, Boyd, ed. Vol 4, 433-4.

²⁵ One magistrate in particular hoped for such an approval by the legislature: “Wee directed such orders as to put the act to purchass the waggon &c. compleat in execution, and then with the same court thought it expedient, according to the spirit of the Law: tho Not Literally so: with the present pressing call and &c. to direct farther that the Beef and clothing act with out Loss of time should be put in execution allso. We hope to have your Excellencys Aprobation, and could Wish to Remove future scruple the ensuing assembly may confirm what in such case May have been dun for the publick good &c.” “Robert Ewing to Thomas Jefferson.” February 12, 1781. Boyd, ed., Vol 4, 587-8.

²⁶ Jefferson to Colvin, 10 September 1810. “I have indulged freer views on this question, on your assurances that they are for your own eye only, and that they will not get into the hands of the newswriters.”

*preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.*²⁷

But because principles “are sometimes embarrassing in practice,” Jefferson offers examples to demonstrate the reasonableness of his position. Jefferson’s first four examples deal with executives, mostly military, who seize private property since “the unwritten laws of necessity, of self-preservation, and of the public safety, control the written laws of *meum* and *tuum*.”²⁸

But Jefferson complicates this seemingly simple principle by offering an additional hypothetical, posing a scenario involving something less than necessity. “Suppose it had been made known to the Executive in the autumn of 1805, that we may have the Florida’s for a reasonable sum,” ought the president transcend his authority and make the purchase?²⁹ In this case, Jefferson advises that the president should leave the matter to Congress to decide since “reverence for law” would override the “public advantage” –especially if Congress would probably appropriate the funds for the purchase anyway. But sometimes the distinction between necessity and advantageous policy can be blurred by politics. What if, for instance, it were known that a powerful member of Congress, “a John Randolph,” would stall debate on the treaty until the opportunity passed. Put differently, what if the Executive believed that the great advantage gained would be lost because a committee chair meant to pursue another agenda?

*Ought the Executive, in that case, and with that foreknowledge, to have secured the good of his country, and to have trusted to their justice for the transgression of the law? I think he ought, and that the act would be approved.*³⁰

In other words, the Executive could be justified for acting against the law only insofar as he trusted Congress, and perhaps the public, to eventually approve his actions.³¹

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Later in the letter, Jefferson offers a standard by which the public ought to judge the Executive. See the example regarding General Wilkinson’s handling of the Burr conspiracy.

The hypothetical presents a wider latitude for executive prerogative than the previous military examples suggest: in overstepping the authority of Congress to acquire Florida, the Executive protects the public advantage not by saving the country from a foreign aggressor or internal rebellion but by making an advantageous bargain. Under circumstances deemed appropriate by the Executive himself, the military leader's obedience to the law of self-preservation becomes the president's preference for good policy.

Curiously absent in Jefferson's expansion of the prerogative are questions about constitutionality and whether such actions are executive in nature.³² Rather than appealing to a broad construction of executive authority—an argument with which he was particularly familiar³³—Jefferson recommends that the Executive assume authority outside the law under the calculation that the public will approve of such a course of action. Rather than carving exceptions within the law, Jefferson's recommendation places the Executive's prerogative within the people or their representatives. The dazzle of the Executive's prerogative, which exposes execution to popular judgment rather than muting it with constitutional rhetoric, becomes the very guarantee that the power will be used for the public good.

Jefferson's peculiar defense of the prerogative becomes more clear when compared to the rhetoric of Abraham Lincoln. In a "Special Message to Congress,"³⁴ Lincoln justified his suspending the privilege of habeas corpus by employing two arguments. First, Lincoln's actions were legal since the Constitution provides for the suspension during times of rebellion. More broadly, his actions, if illegal since the Constitution does not explicitly lodge the power to suspend in the executive, were justifiable because they accorded with his oath to faithfully execute the laws:

³² Jefferson's theoretical position outlined in his letter to Colvin parallels his practical justification for stepping outside the law to acquire the Louisiana territory. "The Executive, in seizing, the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution. The Legislature, in casting behind them metaphysical subtleties and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them what we know they would have done for themselves had they been in a situation to do it." As cited in Adams, *History*, 359. For a more moderate choice of words, see Jefferson to Dickinson, 9 August 1803.

³³ Alexander Hamilton, *Pacificus* 1. According to *Pacificus*, some powers are, in their nature, executive powers. Further, though there is a "concurrent authority" on cases with foreign nations, the executive enjoys a special latitude as the "organ of intercourse" with other nations. Lastly, even if the executive does not enjoy authority on these grounds, his discretionary power comes from the nature of his task: "He, who is to execute the laws, must first judge for himself their meaning."

³⁴ Lincoln, "Special Message to Congress," 4 July 1861.

*To state the question more directly, are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated? Even in such a case, would not the official oath be broken, if the government should be overthrown, when it was believed that disregarding the single law would tend to preserve it?*³⁵

For Lincoln, both justifications settle the question whether a republic can be strong enough to protect and maintain liberty. Jefferson's position, then, might be summarized as agreeing with Lincoln's broader understanding of executive power but not with the narrower legal one. Put another way, Jefferson grounded Executive prerogative in a source outside the law, that is, Congressional and popular judgment, whereas Lincoln rested his justification on specific constitutional provisions. Like Lincoln, Jefferson understood that necessity will often demand extraordinary actions from those in high offices, but, unlike Lincoln, he also believed that the very extraordinariness of such actions would be obscured if brought within the sanction of the law.

Declarations.

If the Executive can discard the law when he thinks it is required, what protects the other branches of government and the people against an Executive who is eager to step outside the law often? Jefferson's solution is suggested in a letter to his friend Madison. To meet the objection, made by Madison and others,³⁶ that since a bill of rights could not enumerate every right the bill would necessarily limit personal liberty, Jefferson offers an approach to lawmaking that addresses both the question of a bill of rights and executive discretion:

*My idea then is, that tho' proper exceptions to these general rules are desirable and probably practical, yet if the exceptions cannot be agreed on, the establishment of the rules in all cases will do ill in very few. I hope therefore a bill or rights will be formed to guard the people against the federal government, as they are already guarded against their state governments in most instances.*³⁷

³⁵ Ibid.

³⁶ Madison to Jefferson, 17 October 1788. Hamilton, *Federalist* 84. See also James Wilson's speech at a public meeting in Philadelphia, "Every Thing Which Is Not Given Is Reserved," 6 October 1787.

³⁷ Jefferson to Madison, 31 July 1788.

In the place of “exceptions,” which are built into the law because of the law’s incompleteness in regard to the future, Jefferson offers “declarations,” which point the law and its executives toward its most fundamental principles. Even though such declarations can in fact be violated “in moments of passion,” they furnish a text to which the most “watchful” can appeal in order to moderate the public. In particular, declarations provide the means by which the three branches can guard against each other in addition to adjudicating conflicts between federal and state governments. Put simply, declarations, like written constitutions, “fix too for the people the principles of their political creed.”³⁸

The connection between Executive rule and the Bill of Rights, implied by the structure of the dialogue between Jefferson and Madison, was not a new one.³⁹ Jefferson’s understanding of the potential for executive leadership was nonetheless prescient. The new office of the president is dangerous because of its power, but not all of its power lies in the fact that it is the chief executive. This Executive is a peculiarly republican one and therefore finds some of its power in its republican sources. Jefferson hinted as much to Madison:

*The executive in our governments is not the sole, it is scarcely the principal object of my jealousy. The tyranny of the legislatures is the most formidable dread at present, and will be for long years. That of the executive will come its turn, but it will be at a remote period. I know there are some among us who would now establish a monarchy. But they are inconsiderable in number and weight of character. The rising race are all republicans: no wonder if some of us retain that idolatry still. Our young people are educated in republicanism. An apostasy from that to royalism is unprecedented and impossible.*⁴⁰

³⁸ Jefferson to Priestley, 19 June 1802. Jefferson’s lifelong belief in the power of declarations suggests a hopefulness that deserves closer scrutiny. Madison, for one, criticized Jefferson’s letter, remarking that “restrictions however strongly marked on paper” will never be adequate in that such “parchment barriers” would be ill equipped to handle the dangers presented by insurrection or rebellion. Declarations, once violated, lose their “ordinary efficacy.” Madison to Jefferson, 17 October 1788. See also Madison’s essay as Publius in *Federalist* 48.

³⁹ Hamilton’s admonition in *Federalist* 70, that the “enlightened well wishers” of republican government had better “hope” that republican government was compatible with a “vigorous executive,” was perhaps addressed to Jefferson. Jefferson’s argument to Madison was that the inconveniences of a declaration, which included hampering executive administration, were less permanent than the conveniences, Jefferson to Madison, 15 March 1789.

⁴⁰ Jefferson to Madison, 15 March 1789.

In this passage, Jefferson predicts two things: first, some sort of executive tyranny would come, and second, that the monarchical principal would lose significance since future generations would be republican. Taken together, the predictions imply that something about republican governance, or government over republicans, makes executive tyranny more likely than legislative tyranny.⁴¹ More precisely, Jefferson suggests that the tyranny of the Executive will come after the people have been so republicanized that they have forgotten about monarchy.⁴² It is for this reason that a declaration of rights is so necessary.

Conclusion

The connection between Executive power, popular leadership, and declarations is one theme of Jefferson's First Inaugural.⁴³ This speech, famous for its inclusive proclamation "We are all Republicans, we are all Federalists," also offers an explanation of how Jefferson will perform the "duties of the first executive office." First, Jefferson reassures his audience that he will look to the members of Congress on which he can "rely under all difficulties."

*To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associated with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked amidst the conflicting elements of a troubled world.*⁴⁴

The Executive must carry out the law, which is itself sovereign in that it comes from the will of the people. But contingencies, which necessarily arise in a world less certain than the law especially because some nations "feel power and forget right," might give the Executive pause as to whether he is able to effect his task. In reminding legislators that he will look to them for assistance during troubled times, Jefferson also reminds them that there might be times in which there is a need to be

⁴¹ This poses another question in light of Jefferson's contention in Query XIII of *Notes on the State of Virginia*, in *Writings*, 245 (and cited in *Federalist* 48)—"173 despots would surely be as oppressive as one."

⁴² Perhaps Jefferson's anxiety here stemmed from his "astonishment" that the majority approved a permanently eligible president. See Jefferson to Williams Stephen Smith, 2 February 1788.

⁴³ I have followed the capitalization used by the Library of America,. (Library of America: New York, 1984), 492-496.

⁴⁴ *Ibid.*

assisted.⁴⁵ Put less strongly, Jefferson's suggestion that the executive has at least one hand on the wheel carves a niche for some executive privilege.

But if the Executive must steer the state, who decides its destination? Jefferson anticipates this question by enunciating what he sees to be the "essential principles of our government." As the "bright constellation" guiding the republic through both "revolution and reformation," the principles serve as the "touchstone by which to try the services of those we trust." Though political life requires that Jefferson and his audience "wander" in moments of "error" or "alarm," the Executive is responsible for leading the people and their representatives back to the "creed of our political faith."⁴⁶

George Washington once privately summarized his Farewell Address as an attempt to strengthen the "confidence" of the "Yeomanry of this Country" in "the Executive part of the Government" in "language that was plain & intelligible to their understanding."⁴⁷ Jefferson, who included the Farewell Address as one of four American documents required for study in the University of Virginia's school of law,⁴⁸ might not have objected to such a statement as a starting point for evaluating his own contribution to the American Executive.

⁴⁵ Jefferson's First Inaugural was anticipated by his "Message Accepting Election as Governor." *Papers*, Vol. 2, 277-8: "My great pain is, lest my poor endeavors should fall short of the kind expectations of my country; so far as impartiality, assiduous attention, and sincere affection to the great American cause, shall enable me to fulfill the duties of my appointment, so far I may, with confidence undertake; for all beyond, I must rely on the wise counsels of the General Assembly, and of whom they have appointed for my aid in those duties."

⁴⁶ *Library of America*, 492-6. The Executive is required to be, according to a private explanation, in "constant agency in the concerns of 6. millions of people," Jefferson to George Hay, 20 June 1807. In this letter, explaining why a president cannot be subject to subpoena, Jefferson claims that the Constitution has granted more "effectual and diversified means" of protecting itself against encroachment than to the other branches.

⁴⁷ Washington to Alexander Hamilton, 25 August 1796.

⁴⁸ Minutes of the Board of Visitors, University of Virginia. March 4, 1825 in *Writings*, 479. The other three were Declaration of Independence, the Federalist, and Virginia Resolutions of 1799.

Bibliography.

- Adams, Henry. *History of the United States of America during the Administrations of Thomas Jefferson*. New York: Library of America, 1986.
- . *History of the United States of America during the Administrations of James Madison*. New York: Library of America, 1986.
- . *John Randolph: A Biography*. Armonk, NY: M. E. Sharpe, 1996.
- Appleby, Joyce. "What is Still American in the Political Philosophy of Thomas Jefferson?" *William and Mary Quarterly*, 3rd ser., 39 (1982): 287-309.
- Arnhart, Larry. "'The God-Like Prince': John Locke Executive Prerogative, and the American Presidency." *Presidential Studies Quarterly*. IX (Spring, 1979): 121-130.
- Beard, Charles. *The American Party Battle*. New York: The Book League of America, 1929.
- . *Economic Origins of Jeffersonian Democracy*. New York: Free Press, 1915.
- Becker, Carl L. *The Declaration of Independence*. New York: Vintage Books, 1958.
- Faulkner, Robert. *The Jurisprudence of John Marshall*. Princeton, NJ: Princeton Univ. Press, 1968.
- Genovese, Eugene D. *The Southern Tradition: The Achievements and Limitations of an American Conservatism*. Cambridge, MA: Harvard Univ. Press, 1994.
- Goldwyn, Robert A. *From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution*. Washington, D. C. : AEI Press, 1997.
- Hartz, Louis. *The Liberal Tradition in America: An Interpretation of American Thought since the Revolution*. San Diego: Harvest, 1955.
- Johnstone, Robert M., Jr. *Jefferson and the Presidency: Leadership in the Young Republic*. Ithaca: Cornell Univ. Press, 1978.
- Koch, Adrienne. *Jefferson and Madison: the Great Collaboration*. New York: Oxford Univ. Press, 1970.
- Landy, Marc and Sidney M. Milkis. *Presidential Greatness*. Lawrence: Univ. of Kansas Press, 2000.
- Lerner, Ralph. *The Thinking Revolutionary: Principle and Practice in the New Republic*. Ithaca, N.Y.: Cornell Univ. Press, 1987.
- Loss, Richard. introduction to *The Letters of Pacificus and Helvidius (1845) with The Letters of Americanus*. Delmar, N. Y.: Scholars' Facsimiles and Reprints, 1976.
- McCoy, Drew. *The Elusive Republic: Political Economy in Jeffersonian America*. Chapel Hill: Univ. of North Carolina Press, 1908.
- . *The Last of the Fathers: James Madison and the Republican Legacy*. New York: Cambridge Univ. Press, 1989.
- McDonald, Forrest. *Novus Ordo Seclorum: The Intellectual Origins of the Constitution*. Lawrence: Univ. of Kansas Press, 1985.
- . *The Presidency of Thomas Jefferson*. Lawrence: Univ. Press of Kansas, 1976.
- McWilliams, Wilson Carey. "The Anti-Federalists, Representation and Party," *Northwestern University Law Review* 84, no.1 (1989): 24-25.
- . *The Idea of Fraternity in America*. Berkeley: Univ. of California Press, 1973.

- Malone, Dumas. *Jefferson and His Time*. 6 vols. Boston: Little, Brown, 1948-81.
- Mansfield, Harvey C., Jr. "Thomas Jefferson." in *American Political Thought: The Philosophic Dimension of American Statesmanship*. Morton J. Frisch and Richard G. Stevens, eds., F.E. Peacock, 1983.
- . *Taming the Prince: The Ambivalence of Modern Executive Power*. Baltimore: Johns Hopkins Univ. Press, 1993.
- Matthews, Richard K. *The Radical Politics of Thomas Jefferson: A Revisionist View*.
- Mayer, David M. *The Constitutional Thought of Thomas Jefferson*. Charlottesville: Univ. of Virginia Press, 1994.
- Miller, Perry. *The Life of the Mind in America: From the Revolution to the Civil War*. New York: Harcourt, 1965.
- Milkis, Sidney M. *The President and the Parties: The Transformation of the American Party System since the New Deal*.
- Milkis, Sidney M. and Michael Nelson. *The American Presidency: Origins and Development, 1776-1993. Second Edition*. Washington, D. C. : CQ Press, 1994.
- Miller, John C. *The Wolf by the Ears: Thomas Jefferson and Slavery*. New York: Free Press, 1977.
- Neustadt, Richard E. *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. New York: Free Press, 1990.
- Nichols, David K. *The Myth of the Modern Presidency*. University Park, Pennsylvania: Penn State Univ. Press, 1994.
- Parrington, Vernon Louis. *Main Currents in American Thought: An Interpretation of American Literature from the Beginnings to 1920. Volume Two: The Romantic Revolution in America, 1800-1860*. New York: Harcourt, 1927.
- Patterson, Caleb Perry. *The Constitutional Principles of Thomas Jefferson*. Austin: Univ. of Texas Press, 1953.
- Peterson, Merrill. *Thomas Jefferson and the New Nation*. New York: Oxford Univ. Press, 1970.
- Rahe, Paul. *Republics Ancient and Modern, Volume III, Inventions of Prudence: Constituting the American Regime*. Chapel Hill: Univ. of North Carolina Press, 1994.
- Sandel, Michael J. *Democracy's Discontent: America in Search of a Public Philosophy*. Cambridge, MA: Belknap, 1996.
- Skowronek, Stephen. *The Politics Presidents Make: Leadership from John Adams to George Bush*. Cambridge, MA: Belknap, 1993.
- . "Presidential Leadership in Political Time." in Michael Nelson, ed. *The Presidency and the Political System: Fourth Edition*. Washington, D. C. : CQ Press, 1995, pp. 124-170.
- Scigliano, Robert. "The Presidency and the Judiciary." in Michael Nelson, ed. *The Presidency and the Political System: Third Edition*. Washington, D. C. : CQ Press, 1990, pp. 471-500.
- . "The War Powers Resolution and the War Powers." in Joseph Bessette and Jeffrey Tulis, eds., *The Presidency in the Constitutional Order*. Baton Rouge: Louisiana State Univ. Press, 1981, pp. 115-53.
- Sheldon, Garret Ward. *The Political Philosophy of Thomas Jefferson*. Baltimore: Johns Hopkins Univ. Press, 1991.
- Styron, Arthur. *The Last of the Coked Hats: James Monroe and the Virginia Dynasty*. Norman, OK: Univ. of Oklahoma Press, 1945.

Tulis, Jeffrey K. *The Rhetorical Presidency*. Princeton: Princeton Univ. Press, 1987.

--. "The Two Constitutional Presidencies." in Michael Nelson, ed. *The Presidency and the Political System: Fourth Edition*. Washington, D. C. : CQ Press, 1995, pp. 91-123.

White, Leonard D. *The Jeffersonians: A Study in Administrative History, 1801-1829*. New York: Macmillan, 1951.

Young, James Sterling. *The Washington Community, 1800-1828*. New York: Columbia Univ. Press, 1966.

Zuckert, Michael. *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition*. South Bend: Notre Dame Univ. Press, 1996.

The Development of Political Parties. Third Parties in American Politics. The Structure of Political Parties. Presidential authority has expanded through the concept of inherent powers (see the section on inherent powers later in this chapter) as well as through legislative action. Treaty power. The president has the authority to negotiate treaties with other nations. Under executive privilege, the president decides when information developed within the executive branch cannot be released to Congress or the courts. A claim of executive privilege is based on the separation of powers, the need to protect diplomatic and military secrets, and the notion that people around the president must feel free to give candid advice. Jefferson, who distrusted executive power and told John Adams in 1787 that the president proposed by the new Constitution was a "bad edition of a Polish king," was not reassured by his experience in the Cabinet. The Secretary of State fumed about monarchists, Tories, courtly trappings, British finance, and corruption. The combination of fear and hope shaped Jefferson's development of a style of leadership in 1799-1801. Jefferson and the Republicans took full advantage of Federalist incompetence by widening their circle to embrace disaffected Federalists and urging them back into their "natural home" of traditional republican principles. In January 1799 he wrote a lengthy and moving letter to Elbridge Gerry of Massachusetts.