

THOMAS JEFFERSON’S DECLARATION
OF INDEPENDENCE AND U.S. CONSTITUTION: ONE
PEOPLE ADVANCING TOWARD A MORE PERFECT UNION

JULIA L. ERNST*

I.	INTRODUCTION.....	146
II.	LIFE AND TIMES OF THOMAS JEFFERSON	153
III.	DECLARATION OF INDEPENDENCE: ONE PEOPLE UNITED	163
	A. CONTEXT OF THE DECLARATION	163
	B. THOMAS JEFFERSON’S DECLARATION OF INDEPENDENCE	182
	C. TEXT OF THE DECLARATION	196
IV.	U.S. CONSTITUTION: WE THE PEOPLE ADVANCING TOWARD A MORE PERFECT UNION	201
	A. CONTEXT OF THE U.S. CONSTITUTION	201
	B. JEFFERSON’S KALEIDOSCOPIC VIEWS ON THE U.S. CONSTITUTION IN HIS DIFFERENT ROLES.....	207
	1. <i>From Paris During the Constitutional Convention</i>	209
	2. <i>As the Republican Leader Chafing Under Federalist Rule</i> .	219
	3. <i>As an Adaptable and Pragmatic President</i>	236
	4. <i>As an Elder Statesman During Retirement</i>	261
V.	CONCLUSION	271

*Professor, University of North Dakota School of Law, with thanks to my research assistant, Lillian Crume, as well as Jonathan Voigt, Assistant Dean of the Thormodsgard Law Library, for their invaluable research assistance in developing this article. Additionally, I deeply appreciate the steadfast encouragement and support from our daughter, Cosette JiaYin Ernst Clement. Cosette, along with my husband, Richard Clement, have always cheered on my efforts to try to make the world a better place, never hesitating to tell me to “go for it,” despite these endeavors impacting our family time. Moreover, Cosette has inspired me by her kind and compassionate heart, her abounding generosity towards strangers as well as friends, and her commitment to volunteering through formal programs and on her own initiative. I also admire her service to others, such as serving in leadership positions with Alpha Kappa Delta Phi and the Chinese Student Association (including as president) at Thomas Jefferson’s University of Virginia (UVA), a Resident Tutor/Advisor with the University of North Dakota’s Upward Bound Program, a GG (student mentor) for the Grand Cities Children’s Choir—including their trip to New York City to sing in Carnegie Hall, a church school teacher for elementary students at Sharon Lutheran Church, and so much more. As a student double-majoring in psychology and economics at UVA, Cosette provided the spark for this article about Thomas Jefferson, founder of UVA and lifelong proponent of a strong public education system. Thank you, Coco—I love you with all my heart!

I. INTRODUCTION

The year 2026 marks the 250th anniversary of the establishment of the United States—hailed by Thomas Jefferson’s Declaration of Independence on July 4, 1776—generating momentous celebrations throughout the nation.¹ The Fourth of July 2026 is also the 200th anniversary of Jefferson’s death on July 4, 1826, along with that of his longstanding political partner and rival, John Adams.² This article joins in the commemorations of these seminal moments in our nation’s history, highlighting both the Declaration’s place as America’s creed³ and Thomas Jefferson’s place as a leading actor in the United States saga, including his role in shaping our understanding of the U.S. Constitution.⁴

One of the most famous of our founding fathers, Thomas Jefferson is frequently mistaken as an author of the U.S. Constitution.⁵ In fact, during the Constitutional Convention of 1787, Jefferson was an ocean away, serving as a U.S. diplomat in Paris, where he was attempting to obtain favorable trade agreements and garner additional support for his nascent nation.⁶ Although Jefferson played no direct role in creating the U.S. Constitution, he certainly influenced the context in which it was written, as well as the manner in which

1. See, e.g., *Freedom 250*, WHITE HOUSE, <https://www.whitehouse.gov/freedom250/> [<https://perma.cc/5HQX-LW7E>] (last visited Mar. 7, 2026).

2. JON MEACHAM, *THOMAS JEFFERSON: THE ART OF POWER* 494 (2013) (“At ten minutes before one o’clock on Tuesday, July 4, 1826, Thomas Jefferson died in his bed, three miles from Shadwell, where he had been born a subject of the British Empire eight decades before.”); *id.* at 496 (“Six hundred miles away, John Adams, ninety years old, had died on the same day as Jefferson, also at home in bed, a coincidence . . . [Eulogized by Daniel Webster]: ‘On our fiftieth anniversary, the great day of national jubilee, in the very hour of public rejoicing, in the midst of echoing and reechoing voices of thanksgiving, while their own names were on all tongues, they took their flight together to the world of spirits.’ On his own deathbed some of John Adams’s final words were said to be about his old rival and friend: ‘Thomas Jefferson survives.’”).

3. GARRY WILLS, *INVENTING AMERICA: JEFFERSON’S DECLARATION OF INDEPENDENCE*, at xx-xxi (2d ed., Vintage Books 2018) (1978). According to Gilbert Chesterton, who visited the United States in 1921, “America is the only nation in the world that is founded on a creed. That creed is set forth with dogmatic and even theological lucidity in the Declaration of Independence, perhaps the only piece of practical politics that is also theoretical politics and also great literature.” *Id.* at xxi; see also JOSEPH J. ELLIS, *AMERICAN SPHINX: THE CHARACTER OF THOMAS JEFFERSON* 10 (1996) (“These are the core articles of faith in the American Creed.”).

4. See generally DAVID N. MAYER, *THE CONSTITUTIONAL THOUGHT OF THOMAS JEFFERSON* (Kermit Hall & David O’Brien eds., 1994) (exploring Thomas Jefferson’s philosophy of government and constitutional perspectives).

5. See, e.g., David Boaz, *Jefferson Was a Great Man, But He Didn’t Write the Constitution*, CATO INST. (June 27, 2006, at 15:33 CT), <https://www.cato.org/blog/jefferson-was-great-man-he-didnt-write-constitution> [<https://perma.cc/WM42-DW9K>]; Anna Berkes, *Top 10: Misconceptions about Jefferson*, MONTICELLO (Jan. 23, 2010), <http://monticello.org/stories/top-10-misconceptions-about-jefferson> [<https://perma.cc/4F2J-F7CF>].

6. See generally MEACHAM, *supra* note 2, at 179-226 (discussing Thomas Jefferson’s life from 1785 to 1789).

it was interpreted during its first decades in operation.⁷ For example, he corresponded from France with James Madison—the primary drafter of the U.S. Constitution—surrounding the Constitutional Convention,⁸ served in President George Washington’s cabinet upon his return from France⁹ and later as vice president under President John Adams,¹⁰ applied his own interpretation of the Constitution while serving as president from 1801 through 1809,¹¹ and continued to make his views known about the document throughout his life.¹²

In breaking away from Britain, revolutionary Americans were “united” as “one people”—terms Jefferson used in the first sentence of the Declaration of Independence to signal and help construct a unified national identity throughout the thirteen colonies.¹³ As a preeminent Jefferson historian has

7. MAYER, *supra* note 4, at ix (“Jefferson was a central figure in virtually every significant constitutional issue of his age, from the time of the outbreak of the American Revolution to the crisis over states’ rights at the time of the Missouri Compromise.”).

8. *See, e.g.*, MEACHAM, *supra* note 2, at 192, 207-08, 211, 214.

9. *See id.* at 231-33.

10. *Id.* at 311 (“Jefferson’s vice presidency, which ran from 1797 to 1801, unfolded in a fevered climate.”).

11. *See generally* JOYCE APPLEBY, THOMAS JEFFERSON 54-55 (2003) (“Jefferson’s election threw into high relief the unpleasant reality that all constitutions are open to interpretation. With Federalists and Republicans split over political fundamentals, the Constitution became a political football. Its newness exacerbated the situation. It had yet to be determined who had the definitive power to decide constitutional cases. The Constitution itself had not invested that power anywhere . . . Jefferson’s reading of the document—no doubt bolstered by conversations with James Madison—convinced him that the listing of Congressional powers in Article One was meant to restrict legislative authority.”); *id.* at 56 (“Like Hamilton, Jefferson sought occasions for expounding the meaning of the Constitution.”); *id.* at 68-69 (“Looking back we can see that these controversies sculpted American government, giving life to the inert words of the Constitution. Blessed with a brilliant Supreme Court chief justice, the Federalists continued to exercise power through the federal courts while Jefferson put his impress on the executive and legislative branches. If Marshall’s lode-star was unquestioned federal authority, Jefferson’s was limiting the scope of that authority. To achieve both goals required discipline and persistence, qualities each man possessed to a rare degree. And their work prevailed over decades. Jefferson’s influence continued through his successors Madison and Monroe, who shared his admiration for a small, frugal federal government. Marshall sat on the Supreme Court until his death ended his tenure in 1835. One might credit the two men with sketching the two faces of American liberalism: minimalist federal rule in deference to the realm of personal freedom and local initiative, and the supremacy of law protecting that Jeffersonian realm of private, voluntary activities.”).

12. *See, e.g.*, MEACHAM, *supra* note 2, at 456, 460; MAYER, *supra* note 4, at 120 (“This was the constitutional theory to which Jefferson adhered with remarkable scrupulousness . . . and which he continued strenuously to advance after his retirement from public office.”); *id.* (noting “Jefferson’s mature constitutional theory, developed by the time of his presidency and further articulated in its clearest terms after retirement”).

13. *See generally* THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776) (“The unanimous Declaration of the thirteen *united* States of America, When in the Course of human events, it becomes necessary for *one people* to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.” (emphasis added)); PETER S. ONUF, THE MIND OF THOMAS JEFFERSON 75-76 (2007) (“[T]he Declaration boldly proclaimed the birth of a new people. In declaring themselves independent, the Americans launched a

noted: “The Revolutionaries were not simply founding new republics; they hoped to construct a new order for the ages, a federal republican regime that would preserve peace (in the world, among the states), sustain republican government (in the states), and secure the liberty and natural rights of individual citizens.”¹⁴ Through hard-fought compromises, they coalesced around the U.S. Constitution to initiate this new order: “Americans disagreed on what the Constitution meant, but all venerated the document itself. They framed disagreements about public policy in constitutional language. In the United States, all politics would be constitutional politics.”¹⁵

Yet as southern plantation owners, Jefferson and many of his founding colleagues walked a fine line between expanding civic and political freedoms to an ever-widening circle of White males, on the one hand, and maintaining their own affluent way of life as slave-owning descendants of immigrants from Europe who had taken over ancestral lands of the original inhabitants, on the other.¹⁶ Jefferson’s conceptualization—of one people united into a self-governing polity of rights-holding individuals jointly exercising their civil and political rights with the consent of the governed—excluded the majority of the population, including women, free and enslaved Blacks, Indigenous people, and other subordinated groups.¹⁷

Moreover, among the rights-holding, self-governing coterie, the vision of society and governance in the new nation differed between those who

new epoch in the history of Western political civilization, offering glimpses of the awesome and unprecedented power of nationalist regimes to mobilize people and resources.”).

14. ONUF, *supra* note 13, at 87.

15. MICHAEL LES BENEDICT, *THE BLESSINGS OF LIBERTY: A CONCISE HISTORY OF THE CONSTITUTION OF THE UNITED STATES* 99 (4th ed. 2023).

16. ONUF, *supra* note 13, at 21-22 (“The dissonance of planter privilege with enlightened theory constitutes an illuminating text for this broad political and ideological transformation. The ways in which Jefferson resolved, or perhaps more accurately simply lived with, these conflicting demands constitute his ‘character.’ That character, for all its fascination, many present-day scholars find discomfiting, if not repellent. Jefferson’s inner life, insofar as it can be recovered, manifests little evidence of distress, so thoroughly did he rationalize and repress his wants and griefs,” as well as the wants and griefs of those around him, such as the people he enslaved.); *see also* MEACHAM, *supra* note 2, at 3 (“The first half of the eighteenth century was a thrilling time to be young, white, male, wealthy, and Virginian. Money was to be made, property to be claimed, tobacco to be planted and sold. There were plenty of ambitious men about—men with the boldness and the drive to create farms, build houses, and accumulate fortunes in land and slaves in the wilderness of the mid-Atlantic.”).

17. APPLEBY, *supra* note 11, at front flap (2003) (“The contradictions in his populism are striking and make Jefferson the most controversial of presidents: he spoke of inalienable human rights, but he taught his daughters that women were created for men’s pleasure, and he believed that whites and blacks could never coexist peacefully in freedom. Even though his egalitarianism was limited to white men, it represented a sharp break with the outlook and policies of his predecessors.”); *see also* ONUF, *supra* note 13, at 21 (“The Revolutionary period was a crucial transitional moment for Western moral theory and practice. This was the time when a universal human nature became recognized—or constructed—and when natural philosophers naturalized racial (and gender) differences. ‘Equality’ and ‘nature,’ the key premises of Jeffersonian thought, were contemporaneous constructs.”).

would become known as “Federalist” and those who would become known as “Republican” in the decades after the Revolutionary War. As a generalization, Federalists initially believed in a strong central government with expansive powers under the new Constitution, along with an elite ruling class of gentrified White males from highborn lineage elected to guide the new nation on a virtuous traditionalist course they deemed proper,¹⁸ similar to conservatives in England but as an independent nation.¹⁹ Again generalizing, Republicans initially believed in a strong²⁰ yet more limited central government²¹ with narrowly construed powers under the Constitution, along with more expansive participation in government by a continuously growing sphere of White males²² who had previously been treated by the elite as subordinates incapable of governance and civic participation.²³ Yet each party’s advocacy for broad versus strict constitutional interpretations would change over time, as the two parties went in and out of power in the federal government, as discussed in greater detail below.

In an additional break with the past, the progressive nature of the Republican vision for the nation undermined the traditional authority of the upper class,²⁴ the established churches (primarily Congregationalist in the north and

18. APPLEBY, *supra* note 11, at 2, 21 (“From the Federalists’ point of view, widespread white male suffrage was laudable exactly as long as the common people deferred to the political wisdom of their superiors. . . . An elite leadership, filtered by successive screens for talent, probity, and virtue, would reclaim America’s political institutions from the excesses of wartime democracy. The decorum, formality, even secretiveness of the Washington administration embodied the political mores of the American gentry, who deliberately distanced themselves from those who simply voted.”).

19. *Id.* at 18 (“Members of Washington’s official family and Federalist congressmen railed at the disorderly tendencies of ordinary men and congratulated themselves at having saved the American experiment in self-government from a dangerous slide toward democracy. Like the French conservatives, they looked to Britain’s constitutional monarchy for guidance in the difficult task of balancing liberty and order.”).

20. MEACHAM, *supra* note 2, at 252 (“[Jefferson] feared monarchy or dictatorship, which is different from fearing a strong national government, though Jefferson is often thought to have believed them the same thing. One of the terms he used to describe his opponents—‘Monocrats’—is telling, for the word means government by the one.”).

21. APPLEBY, *supra* note 11, at 5 (discussing Jefferson’s “radical commitment to limiting government”).

22. *Id.* at 14 (stating Jefferson “dreamed of expanding suffrage for white men”).

23. *Id.* at 2 (“According to conventional wisdom, the world was divided between the few and the many, the talented few who led and the ordinary many who labored. Privilege had a special, social bite. Plain men and women deferred to ladies and gentlemen when they entered a room or passed them on the road. Assumptions of superiority and inferiority lodged in children’s minds and grew into the unexamined assumptions that silently supported adult attitudes.”).

24. *Id.* at 30 (“What [the Jeffersonians] evidently wanted they got: a leader who believed in their capacity to govern themselves and would liberate ordinary white men from the thrall of their social superiors.”).

Anglican/Episcopalian in the south),²⁵ and even patrilineal dominance,²⁶ threatening their privileged position in society²⁷ and the conservative values they embodied.²⁸ Embraced by great numbers of White men who had previously been excluded from political participation due to their status (e.g., indentured servants),²⁹ occupation (e.g., laborers, artisans),³⁰ minority religions outside of established churches in their regions (e.g., Baptists, Presbyterians, Quakers, Methodists),³¹ or lack of property,³² their newly energized participation in the classical liberal mode of republican governance—both through

25. See *id.* at 59 (“In religious matters, the United States was an anomaly; most countries conferred a monopoly of religious authority upon a state church. The American colonies had two such establishments: The Congregational churches that the Puritans founded throughout New England, and the Church of England, which the mother country had put in place in the southern colonies and the city of New York.”); *id.* at 88 (“Popular dislike of the Federalists’ conservative stance tended to neutralize attacks on Jefferson’s irreligion. Though Federalist clergy fulminated at the president’s heterodoxy, what they really objected to was his opposition to church establishments. The Virginia Statute for Religious Freedom of 1786, which ended the Episcopal Church’s privileges in that state, had attracted national attention and made Jefferson a hero with the Methodists and Baptists. Flourishing after the Revolution, these two upstart sects had suffered at the hands of the established Congregational churches in the North and the Episcopalians in the South. Getting the state out of religious matters would be a boon to them. Distinguishing between their civil liberties and their quest for righteousness, most Baptists and Methodists endorsed Jefferson, who was actually a believing freethinker, because he had so crisply defined the differing domains of state and church.”).

26. *Id.* at 47 (“By removing the customary props to a structure of ranks and degrees, Jefferson hoped to weaken the entire edifice of existing hierarchies of family, government, and religion.”). The day of his inauguration, he claimed, “buried levees [royal receptions], birthdays, royal parades, processions with white wands, and the arrogance of precedence in society, by certain self-styled friends of order, but truly styled friends of privileged orders.” *Id.*

27. ONUF, *supra* note 13, at 2 (“Jefferson’s language continues to resonate, but its radical edge has been lost. In an eighteenth-century world where all men were self-evidently created unequal, the principle of equality threatened to turn the world upside down, subverting social and political order, even family governance. But what does ‘equality’ mean now, when most right-thinking Americans take it for granted, assuming it to be compatible with—and even to make legitimate—the glaring inequalities in contemporary society that we also take for granted?”).

28. APPLEBY, *supra* note 11, at 145 (“The very extravagance of Jefferson’s affirmation of freedom has generated critics who, not unlike Federalists two centuries ago, fear the neglect of good order, common sense, and sensitivity to other social values. Equally suspect to them is the social engineering that Jefferson engaged in when he pursued policies that undermined the existing hierarchical authority of magistrates, ministers, legislators, and, inferentially, fathers. The true conservatives are those who view as dangerous the man or woman who resists the conventions, most of which have stood the critical test of time. Perhaps because America has so long figured as a blank canvas for visionary designs, it has abounded in both reformers and their critics, their ascendancy oscillating over time.”).

29. Mark R. Brown, *Ballot Fees as Impermissible Qualifications for Federal Office*, 54 AM. U. L. REV. 1283, 1291 (2005).

30. Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 STAN. L. REV. 335, 338 (1989) (stating “artisans . . . may have agitated for a broadening of the suffrage on the ground that all men were by nature equally free and independent”); *id.* at 352 (“Almost as soon as the Revolution broke out, groups of artisans and mechanics began to agitate for suffrage reform.”); *id.* at 352 n.56 (“Needless to say, support for suffrage reform came not only from the laboring sections of the population.”).

31. See APPLEBY, *supra* note 11, at 59, 88.

32. See generally Steinfeld, *supra* note 30 (discussing the relationship between property ownership and personal independence in the decades after the Revolution).

voting and through other ways of making their views known to their representatives in government, such as participation in political party operations³³—swept Jefferson and his Jeffersonian successors into power throughout the country for decades after the initial Federalist powerbrokers had been toppled.³⁴

Jefferson's Republican vision set the United States on a course of ever-expanding participation in the nation's polity throughout subsequent decades and centuries, eventually extending civil and political rights to people of different religious beliefs, people of color, women, people with disabilities, and other previously disenfranchised people. Jefferson pragmatically yet optimistically wrote in 1790 "that the ground of liberty is to be gained by inches, that we must be contended to secure what we can get from time to time, and eternally press forward for what is yet to get."³⁵ His commitment to expanding equality among White males,³⁶ eschewing the traditional hierarchy to which the conservative Federalists were tenaciously clinging, aimed the nation's trajectory toward equality for all people, both under the law and increasingly in the hearts and minds of individuals throughout society.³⁷ The famous words in the second sentence of Jefferson's Declaration foreshadow these universal rights: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.— That to secure these rights, Governments are instituted among Men, deriving

33. APPLEBY, *supra* note 11, at 20 ("[Jefferson] reached out to the public. . . . To appeal to voters outside of elections was to give them a political role they had never had before. . . . With Madison as his principal ally, Jefferson tapped into this exuberance, mounting a campaign to change the direction of the government by cultivating a critical stance toward the Federalists, in preparation for voting them out of office."); *id.* at 21 (stating some of these political party building activities included "[b]anquets, bonfires, parades, and liberty poles," as well as creating "an informal political network of clubs and newspapers, an utterly new phenomenon in America").

34. *Id.* at 83 ("The new access to politics that Jefferson championed thrilled those weary of the contempt shown them by their social superiors."); MEACHAM, *supra* note 2, at xix ("Judged by the raw standard of the winning and the keeping of power . . . Thomas Jefferson was the most successful political figure of the first half century of the American republic. For thirty-six of the forty years between 1800 and 1840, either Jefferson or a self-described adherent of his served as president of the United States: James Madison, James Monroe, Andrew Jackson, Martin Van Buren. (John Quincy Adams, a one-term president, was the single exception.) This unofficial and little-noted Jeffersonian dynasty is unmatched in American history.").

35. MEACHAM, *supra* note 2, at 225.

36. APPLEBY, *supra* note 11, at 3 ("Jefferson sought political equality solely for ordinary white men and disguised that limitation in the rhetoric of universal rights.").

37. *Id.* at front flap ("Few presidents embody the American spirit as fully as Thomas Jefferson. He was possessed of an unrivaled political imagination, and his vision accounts for the almost utopian zeal of his two administrations. Jefferson alone among his American peers anticipated the age of democracy and bent every effort toward hastening its peaceful, consensual arrival. He realized that the spirit of democracy required not only a political revolution, but also a social one.").

their just powers from the consent of the governed.”³⁸ And Jefferson’s partners in nation-building who crafted the Constitution similarly capped it with a preamble that echoes the optimistic forward movement of Jefferson’s conceptualization of one people endowed with natural rights,³⁹ proclaiming a nation of “We the people” who will forever continue to make progress toward “a more perfect Union.”⁴⁰

This article examines Jefferson’s contributions to these seminal manuscripts—two bedrocks of American democracy. More specifically, it highlights Jefferson’s effective and pragmatic kaleidoscopic approach to constitutional interpretation as he resolutely fosters his lofty vision—embodied in the Declaration—of “one people” working together to establish “a more perfect union” toward which the Constitution continually strives.⁴¹ This piece further explores how Jefferson’s perspectives—demonstrated through his writings and his actions—provide insights into how the original founders of our country may have viewed these keystone documents, which too may offer insights into their interpretation in the present day. It proposes that, instead of being an ardent strict constructionist regarding constitutional interpretation as some historians surmise,⁴² Jefferson instead adopted a malleable approach to the U.S. Constitution to serve what he considered to be in the best interests of the new nation. The article concludes by suggesting that Jefferson’s kaleidoscopic constitutional interpretation may validate his abiding optimism about our nation’s future, as the United States has continued to move forward, despite inevitable fits and starts, toward that “more perfect union” promised in the Constitution’s Preamble.⁴³

38. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

39. WILLS, *supra* note 3, at 359-60 (“Jefferson was always more optimistic . . .”).

40. U.S. CONST. pmb. (“*We the People* of the United States, in Order to form *a more perfect Union*, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” (emphasis added)).

41. *See id.*; *see also* MEACHAM, *supra* note 2, at xx (“To realize his vision, he compromised and improvised. The willingness to do what he needed to do in a given moment makes him an elusive historical figure. Yet in the real world, in real time, when he was charged with the safety of the country, his creative flexibility made him a transformative leader.”).

42. *See, e.g.*, APPLEBY, *supra* note 11, at 133 (noting “Jefferson’s strict construction of the Constitution”).

43. MEACHAM, *supra* note 2, at xx (“More than any of the other early presidents—more than Washington, more than Adams—Jefferson believed in the possibilities of humanity. He dreamed big but understood that dreams become reality only when their champions are strong enough and wily enough to bend history to their purposes.”). *See generally supra* note 40 and accompanying text.

II. LIFE AND TIMES OF THOMAS JEFFERSON

A glimpse into Thomas Jefferson's background will enhance an understanding of his approach to the project of nation-building he and his contemporary revolutionaries were undertaking in creating the United States of America. Thomas Jefferson was America's most prolific president—a tireless writer⁴⁴ who generated voluminous scholarship in his own time, along with being the subject of numerous first-person and historical accounts of his personal and professional experiences and ruminations throughout both his own and subsequent generations.⁴⁵ Notoriously self-contradictory throughout his life, Jefferson attempted to tell each audience what they wanted to hear, valuing conciliation over consistency.⁴⁶ Moreover, his actions frequently contradicted his prior words and behaviors.⁴⁷ Not surprisingly,

44. RICHARD K. MATTHEWS, *THE RADICAL POLITICS OF THOMAS JEFFERSON: A REVISIONIST VIEW*, at vii (1984) (noting “the enormous mass of Jefferson’s known writings, which exist in the form of thousands of letters, dozens of speeches, treatises, and tracts, and a single book”).

45. *See id.* at 1; ELLIS, *supra* note 3, at 17.

46. *See, e.g.*, ONUF, *supra* note 13, at 23 (“At his death . . . his eulogists were hard-pressed to make sense out of him: ‘he remained an enigma, a figure of contradiction, a man of many faces.’”); ELLIS, *supra* note 3, at 390 n.24 (citing MATTHEWS, *supra* note 44) (highlighting Jefferson’s contradictions as sounding like a conservative, a liberal, and a radical); *id.* at 82 (noting Jefferson was prone to exaggeration, e.g., regarding foreign languages); *id.* at 101 (“In his letters he could modulate his message to fit his different audiences.”); *id.* at 105 (“In sum, the considerable diplomatic experience Jefferson acquired during his years in France was accompanied by what we might call a diplomacy of the interior regions. . . . At the most obvious and well-intentioned level, this internal diplomacy derived from his genuine desire to tell different correspondents what they wanted to hear. Jefferson always regarded candor and courtesy as incompatible, and when forced to choose, he invariably picked courtesy, thereby avoiding unpleasant confrontations. . . . Jefferson saw himself as modulating his message to suit his audience, adjusting his own views to accord better with the attitudes of his correspondents. This was not so much duplicity as politeness.”); *id.* (“Honesty for Jefferson . . . was a more complicated internal negotiation.”); *id.* at 106 (“What his critics took to be hypocrisy was not really that at all. In some cases it was the desire to please different constituencies, to avoid conflict with colleagues. In other cases it was an orchestration of his internal voices, to avoid conflict with himself. Both the external and internal diplomacy grew out of his deep distaste for sharp disagreement and his bedrock belief that harmony was nature’s way of signaling the arrival of truth. More self-deception than calculated hypocrisy, it was nonetheless a disconcerting form of psychological agility that would make it possible for Jefferson to walk past the slave quarters on Mulberry Row at Monticello thinking about mankind’s brilliant prospects without any sense of contradiction. Though it made him deaf to most forms of irony, it had the decided political advantage of banishing doubt or disabling ambiguity from his mental process. He had the kind of duplicity possible only in the pure of heart.”); *id.* at 161 (“In the Jeffersonian family code, one not only kept secrets from outsiders; one kept secrets from oneself.”).

47. *See generally, e.g.*, HIDDEN BRAIN: *The Founding Contradiction: Thomas Jefferson’s Stance on Slavery*, at 0:44 (NPR, June 29, 2020) (“The gulf between his professed values and his behavior is rich psychological terrain.”); MICHAEL HARDT, *THOMAS JEFFERSON, THE DECLARATION OF INDEPENDENCE*, at viii-ix (Michael Hardt & Garnet Kindervater eds., 2019); *id.* at ix (“Jefferson not infrequently contradicts himself in both his writings and his actions as a politician.”).

Jeffersonian enthusiasts and detractors⁴⁸—as well as those who take a more nuanced approach⁴⁹—likewise take a multitude of approaches when examining Jefferson’s legacies, often reaching vastly different and opposing conclusions.⁵⁰ This article does not purport to encompass the entire corpus of works by and about this larger-than-life figure in American lore. Instead, it provides a glimpse into certain aspects of Jefferson’s rich and complicated life and legacy to our nation, focusing on areas that still resonate strongly within our country’s social, cultural, political, legal, and constitutional structures today.⁵¹

Born in 1743,⁵² growing up on a plantation in Virginia, and enjoying a privileged life as a wealthy member of the elite social class,⁵³ Jefferson followed his parents’ expectations and society’s intentions for him to become a well-educated and influential shaper of other people’s lives.⁵⁴ His first

48. See generally ONUF, *supra* note 13, at 20-21 (“[W]ell-received studies by respected scholars also questioned Jefferson’s standing in the pantheon.”); *id.* at 205 (“Getting to know Jefferson better can be a demoralizing experience.”).

49. See generally ELLIS, *supra* note 3, at xvi (“[A]ffection and criticism toward Jefferson are not mutually exclusive postures The best and the worst of American history are inextricably tangled together in Jefferson, and anyone who confines his search to one side of the moral equation is destined to miss a significant portion of the story.”).

50. See ONUF, *supra* note 13, at 19-21 (describing scholarship about Jefferson as contested, controversial, and voluminous); *id.* at 193 (“[T]he ‘Jefferson image’ has been appropriated and reshaped by successive generations of Americans for a dizzying array of often conflicting purposes. Jefferson should not be seen merely as a passive victim of this process of image construction. Although he strained to sustain an overarching commitment to the republican principles he articulated so eloquently in the heady days of the American Revolutionary crisis, his positions on many fundamental issues changed dramatically over the course of his career. Anxiety about preserving the proper balance between liberty and power—and, particularly, between states’ rights and federal authority—would be the crucial pivot for many of these changes.” (footnote omitted)).

51. Booklist (starred review), *Foreword* to MEACHAM, *supra* note 2 (“Jefferson . . . is a figure worthy of continued study and appreciation.”).

52. See, e.g., *Timeline of Jefferson’s Life*, MONTICELLO, <https://www.monticello.org/jefferson-timeline> [<https://perma.cc/VVU8-C3MH>] (last visited Mar. 8, 2026).

53. MEACHAM, *supra* note 2, at 8 (“It was a world of leisure for well-off white Virginians.”); see also *id.* (“[T]he Virginia into which Jefferson was born offered lives of privilege to its most fortunate sons.”).

54. *Id.* at 4-5 (“He was raised to wield power. By example and perhaps explicitly he was taught that to be great—to be heeded—one had to grow comfortable with authority and with responsibility. An able student and eager reader, Jefferson was practical as well as scholarly, resourceful as well as analytical. . . . An eldest son in the Virginia of his time grew up expecting to lead—and to be followed. Thomas Jefferson came of age with the confidence that controlling the destinies of others was the most natural thing in the world. He was born for command. He never knew anything else.”); *id.* at 351 (“Whether seeking the approval of his father, his mother, his teachers, his contemporaries, or his countrymen, Jefferson had moved through life at once exhilarated and exhausted by the role of patriarch. Raised to be responsible for the lives and welfare of others, he knew nothing else.”); *id.* at xxiii (“[H]e long sought to play the part of a patriarch, accepting—even embracing—the accompanying burdens of responsibility.”). See generally ROBERT MCCOLLEY, *SLAVERY AND JEFFERSONIAN VIRGINIA* 48 (1964) (“[T]he planter could always spare more time for public affairs than could the wealthy men of the North, who came increasingly to rely on the professional politician to represent their interests.”).

memory recalled riding atop a pillow on a horse in front of a person his parents had enslaved, who was charged with his care on a family excursion to visit the denizens of a neighboring estate.⁵⁵ His family's privileged lifestyle resulted from the enslavement of other families, and Jefferson later described the inheritance of this tragic institution from one generation to the next:

The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it; for man is an imitative animal. . . . The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities.⁵⁶

Before his father Peter Jefferson's untimely death,⁵⁷ young Thomas revealed in his father's library, developing his life-long love of reading.⁵⁸ Upon becoming the "man of the house" at fourteen,⁵⁹ Jefferson shouldered the responsibilities and advantages society placed on the eldest male scion of the well-to-do, who by law would inherit the entire landholdings and become the master of the family domain.⁶⁰ In the meantime, his mother efficiently ran the estate⁶¹ and ensured that Thomas continued his education, becoming a

55. MEACHAM, *supra* note 2, at 9 ("Jefferson believed his first memory was of being handed up to a slave on horseback and carried, carefully, on a pillow for a long journey: an infant white master being cared for by someone whose freedom was not his own. Jefferson was two or three at the time.").

56. MEACHAM, *supra* note 2, at 10 (omission in original).

57. See generally *Timeline of Jefferson's Life*, *supra* note 52 (noting Peter Jefferson's death in 1757); MEACHAM, *supra* note 2, at 10.

58. MEACHAM, *supra* note 2, at 8 ("Peter Jefferson's library included Shakespeare, Jonathan Swift, Joseph Addison, and Paul de Rapin-Thoyras's *History of England*. 'When young, I was passionately fond of reading books of history, and travels,' Thomas Jefferson wrote.").

59. See generally *Timeline of Jefferson's Life*, *supra* note 52; MEACHAM, *supra* note 2, at 6 (noting "Peter Jefferson's death when his son was fourteen"); *id.* at 10 (referring to Thomas Jefferson as the "man of the house").

60. MEACHAM, *supra* note 2, at 121 ("Jefferson's first significant initiative in Williamsburg in the fall of 1776 was a strike against entail and primogeniture, ancient conventions under which large landowners were compelled to pass their property to a single heir, creating, in Jefferson's words 'a distinct set of families, who, being privileged by law in the perpetuation of their wealth were thus formed into a patrician order, distinguished by the splendor and luxury of their establishments.' Jefferson had benefited from just this system but believed that greater good demanded reform."); see also *id.* at 14 (noting "the estate his father left him").

61. *Id.* at 11 ("On the death of her husband Jane Jefferson became both mistress and master at Shadwell."); *id.* ("To all appearances, Jane ran things as she saw fit. Literate, social, fond of cultivated things—from fancy plate and crockery to well-made furniture to fine clothing—she was to endure the death of a husband, cope with the deaths of children, and remain in control to the end, immersed in the universe around her and in the lives of those she loved."); *id.* ("That her eldest son grew to become just such an unflinching, resilient aristocrat is no surprise. Thomas Jefferson's

student at William and Mary,⁶² where he was mentored by several influential leaders of the colony of Virginia, including the acting royal governor, two prominent lawyers, and one of his professors.⁶³ They included him in countless conversations, introducing him to Enlightenment ideas about politics, governance, ethics, and ideals.⁶⁴ In addition to long hours engrossed in diligent study,⁶⁵ Jefferson also found time for pleasures of the upper class, such as gambling, horseback riding, hunting, socializing at dinner parties, dancing at lavish festivities, playing the violin, enjoying fine wine, and courting women.⁶⁶

Thomas Jefferson began studying law under George Wythe in 1762 and became a lawyer in 1767,⁶⁷ practicing for a relatively short number of years.⁶⁸

bravery in the face of domestic tragedy and his determination to have his own way on his own land among his own people could owe something to the example of a mother from whom he learned much about negotiating the storms of life.”).

62. ELLIS, *supra* note 3, at xiv (stating Jefferson “graduated from the College of William and Mary”); *see also* *Timeline of Jefferson’s Life*, *supra* note 52 (noting Jefferson attended the College of William and Mary from 1760 to 1762); MEACHAM, *supra* note 2, at 14-23.

63. MEACHAM, *supra* note 2, at 16 (discussing “professor William Small, the lawyer George Wythe, the royal governor Francis Fauquier, and the statesman Peyton Randolph, all of whom became critical in Jefferson’s life”); *id.* at 20-21 (discussing mentorship from Dr. William Small, “Francis Fauquier, the royal governor of the colony of Virginia,” and “George Wythe, one of Virginia’s greatest lawyers”); *id.* at 22 (“In this elite number Jefferson also included his cousin Peyton Randolph, attorney general of Virginia, Speaker of the House of Burgesses, and the first president of the Continental Congress.”); *id.* (“Small, Wythe, Fauquier, and Peyton Randolph established the standards by which Jefferson judged everyone else. They represented a love of engaging company, a devotion to the life of the mind, and a commitment to the responsible execution of political duties for the larger good.”).

64. *Id.* at 18 (“[At William and Mary, c]onversant with the thought of Bacon, Locke, Newton, Adam Smith, and the philosophers of the Scottish Enlightenment, [Dr. William] Small introduced Jefferson to the key insight of the new intellectual age: that reason, not revelation or unquestioned tradition or superstition, deserved pride of place in human affairs. Under Small’s influence Jefferson came to share Immanuel Kant’s 1784 definition of the spirit of the era: ‘Enlightenment is man’s emergence from his self-imposed immaturity,’ Kant wrote. ‘Immaturity is the inability to use one’s understanding without guidance from another. This immaturity is self-imposed when its cause lies not in lack of understanding, but in lack of resolve and courage to use it without guidance from another.’”).

65. *Id.* at 17 (“For Jefferson, William and Mary was largely about what university life is supposed to be about: reading books, enjoying the company of the like-minded, and savoring teachers who seem to be ambassadors from other, richer, brighter worlds. Jefferson believed Williamsburg ‘the finest school of manners and morals that ever existed in America.’”); *id.* at 19 (“It was said that Jefferson studied fifteen hours a day, rising at dawn and reading until two o’clock each morning.”).

66. *Id.* at 8 (“Thomas Jefferson . . . grew up as the eldest son of a prosperous, cultured, and sophisticated family. They dined with silver, danced with grace, entertained constantly.”); *id.* (“It was a world of leisure for well-off white Virginians.”); *id.* at 9 (“The food was good and plentiful, the drink strong and bracing, the company cheerful and familiar.”); *id.* at xxvi (“He pursued two women before he met his future wife.”); *id.* at 16 (“Jefferson gambled on horses and hunted foxes; he gossiped and courted and danced.”).

67. *See* *Timeline of Jefferson’s Life*, *supra* note 52 (indicating Jefferson began his legal studies with Wythe in 1762).

68. MEACHAM, *supra* note 2, at 21 (“Wythe taught Jefferson in the law and other subjects for five years, an unusually long period of time.”); *id.* at 22 (“In 1767, Wythe introduced Jefferson to the practice of law at the bar of the General Court, inaugurating Jefferson’s legal career—a phase

Wythe opposed slavery on moral grounds; he “was willing to reason from the fundamental principle of the [enslaved Black person’s] rights as a human being, and to allow the claims of planters to suffer if they must,”⁶⁹ influencing Jefferson’s early antislavery perspectives.⁷⁰ Although Jefferson’s family had owned slaves for generations, in one of his lawsuits he argued for freedom on behalf of an enslaved man who had both enslaved Black heritage and free White heritage, noting that “[u]nder the law of nature, all men are born free [and] everyone comes into the world with the right to his own person which includes the liberty of moving and using it at his own will,”⁷¹ foreshadowing his language in later drafting the Declaration of Independence.⁷² This was the beginning of numerous attempts Jefferson made during the early years of his life against the institution of slavery in his country.⁷³

First exposed to politics in Williamsburg, not only was Jefferson taken under the wing of the royal governor, but he also observed debates in the House of Burgesses—colonial Virginia’s legislative branch.⁷⁴ Young Jefferson was swept away by the lofty rhetoric of Patrick Henry, among other delegates.⁷⁵ When he was twenty-five years old, his district in Albemarle County elected him as a member of the Virginia legislative assembly, where he served from 1769 to 1775.⁷⁶ His attempt to limit slavery in the colony

of Jefferson’s life that consumed him from 1767 until 1774, when the work of the Revolution drew him into politics and diplomacy.”); WILLS, *supra* note 3, at 14; (“As a lawyer Jefferson was competent, but not devoted to his calling.”); *id.* (“After delaying his law practice as long as he could, he cut it off by 1774, to live in a Palladian temple of learning on his private mountaintop.”).

69. MCCOLLEY, *supra* note 54, at 36.

70. *Id.* at 125 (“In the company of liberal intellectuals abroad, Jefferson freely expressed, in the 1780’s, the antislavery thoughts that he had developed in association with his former teacher, George Wythe, before the American Revolution.”).

71. MEACHAM, *supra* note 2, at 40 (second alteration in original) (quoting Jefferson in *Howell v. Netherland*, 1 Jeff. 90 (Va. Gen. Ct. 1770)); *see also id.* at 48-49 (discussing an argument in the *Howell* slavery case positing that people of mixed races should be born free).

72. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”).

73. MEACHAM, *supra* note 2, at 48-49.

74. *Id.* at 16 (“Williamsburg, the colonial capital, suited Jefferson wonderfully. . . . Above all, Williamsburg had an ethos that was to enthrall Jefferson: the drama and glamour of politics.”); *id.* at 17 (“Farther down Duke of Gloucester sat the brick capitol, home to the House of Burgesses and the General Court. There, then, in not quite half a square mile [including the College of William and Mary] . . . was the whole structure of public power in Jefferson’s Virginia. No one could have loved it all more than Jefferson himself.”); *id.* at 20 (discussing the royal governor); *id.* at 32 (discussing Jefferson watching the House of Burgesses).

75. WILLS, *supra* note 3, at 14 (“Our first vivid glimpse of Jefferson finds him at the door, not fully part of the scene, as he watched Patrick Henry in the Stamp Act crisis.”); ELLIS, *supra* note 3, at 32 (noting Jefferson was reticent and disliked public speaking or the spotlight).

76. MEACHAM, *supra* note 2, at 44 (discussing Jefferson’s first election to public office, a representative of his district to the Virginia House of Burgesses); WILLS, *supra* note 3, at 14 (“Jefferson was twenty-two years old then It would be another four years before he entered the House himself, representing Albermarle County . . .”).

regrettably failed.⁷⁷ On the eve of the Revolution, Jefferson was sent by Virginia to the Second Continental Congress to help determine the fate of the colonies and their relationship with Britain, serving in Philadelphia between 1775 and 1776.⁷⁸ There, he was chosen to draft the renowned document announcing the separation of the colonies from the British empire, discussed in greater detail below. In his spare time, he also drafted versions of a constitution for the state of Virginia.⁷⁹ He was subsequently engaged in a number of governmental positions, including as a member of the Virginia legislature from 1776 to 1779,⁸⁰ as governor of the newly established state of Virginia from 1779 to 1781,⁸¹ as a delegate to the Confederate Congress in 1783,⁸² as a U.S. diplomat to France from 1784 to 1789,⁸³ as the first secretary of state under President George Washington from 1790 to 1793,⁸⁴ and as vice president under President John Adams from 1797 to 1801.⁸⁵ Throughout the 1790s, he cultivated his antipathy toward Alexander Hamilton, John Adams,⁸⁶ and other Federalists who advocated for a strong central government and strong national executive. During his two terms as president from 1801 to 1809,⁸⁷ Thomas Jefferson paradoxically both narrowed and expanded the

77. MEACHAM, *supra* note 2, at 48 (“In 1769 in the House of Burgesses, Jefferson recalled, ‘I made one effort in that body for the permission of the emancipation of slaves, which was rejected.’”).

78. WILLS, *supra* note 3, at 12-13 (“Not till the second Congress was held in 1775 were they joined—late—by an eighth man. Mr. Jefferson attended the Revolution in his finest coach and pair. . . . He came to substitute for Peyton Randolph, who was needed in Williamsburg to preside over the reconvened House of Burgesses.”); *id.* at 15 (“[I]n Philadelphia, . . . Jefferson kept to himself while others engaged in rather feverish politicking and socializing.”). An early proponent of vaccines, Jefferson had visited Philadelphia once previously for an inoculation. *See id.* at 43-44.

79. MATTHEWS, *supra* note 44, at 77-78 (“In June and July of 1776, while composing the Declaration of Independence, Jefferson found it relaxing to spend time drafting constitutions for his home state, which would soon be holding its own constitutional convention.”).

80. *See* MEACHAM, *supra* note 2, at 114-15 (explaining that in 1776, after briefly returning to Monticello, “Jefferson decided he could serve in Williamsburg and still be attentive to his family”); *id.* at 121 (“October 1776 marked the beginning of Jefferson’s pursuit of a remarkable legislative agenda in Virginia. With Patty in Williamsburg with him, he fought to transform the promise of the Declaration of Independence into reality in a series of bills in the new General Assembly.”).

81. *See* ELLIS, *supra* note 3, at 77.

82. *Timeline of Jefferson’s Life*, *supra* note 52.

83. *See* ELLIS, *supra* note 3, at 75, 78-80.

84. *See id.* at 142.

85. *Timeline of Jefferson’s Life*, *supra* note 52.

86. *See generally* ELLIS, *supra* note 3, at xv (“Adams . . . disagreed profoundly with Jefferson’s version of the American Revolution. Indeed he thought that Jefferson’s entire political vision rested on a seductive set of attractive illusions.”).

87. *See generally id.* at 200, 206-07, 272 (elected in 1800 and 1804); *Timeline of Jefferson’s Life*, *supra* note 52 (president from 1801 to 1809).

federal government's powers, employing expedience and pragmatism instead of a consistent philosophy of governance and constitutional construction.⁸⁸

Jefferson spent much of the intervals between his public service⁸⁹—as well as his retirement years from 1809 until his death in 1826⁹⁰—at Monticello, overseeing the men, women, and children he enslaved, who were constructing, reconstructing, and providing the labor to run his plantation.⁹¹ He took advantage of his vast amount of leisure time to go horseback riding, experiment with botany and mechanics, welcome and entertain abundant visitors, read, and write a copious number of letters.⁹²

Throughout his life, Thomas Jefferson overcame numerous personal losses and challenges, in addition to the death of his father as a young teenager, as mentioned above.⁹³ In 1770, Jefferson's home at Shadwell plantation burned to the ground, destroying his legal papers and the library his father had previously accumulated.⁹⁴ Death plagued his family, including several sisters,⁹⁵ his brother-in-law and best friend from childhood Dabny Carr,⁹⁶

88. MEACHAM, *supra* note 2, at 254 (“Whereas some saw hypocrisy, others saw political agility. As long as a political leader has some core strategic belief—and Jefferson did, in his defense of republicanism—then tactical flexibility can be a virtue.”).

89. *See, e.g., id.* at 291 (“He was finding rest and refuge at Monticello.”).

90. *See generally id.* at 442-96 (detailing Thomas Jefferson's retirement at Monticello, personal life, and public influence).

91. *Id.* at 48 (discussing the number of enslaved people Jefferson owned and noting that throughout the course of his life, “Thomas Jefferson would own more than 600 slaves”); *id.* at 90 (stating “Jefferson eventually tore down the house and started anew”); *id.* at 285 (“The estate was undergoing constant construction and renovation. . . . While construction at Monticello progressed through the years, Mulberry Row . . . expanded to meet his needs. . . . [H]e added new slave quarters, a smokehouse, dairy, blacksmith's shop, carpenter's shop, wash house, sawpit, and . . . a nailery, where enslaved boys produced as many as 10,000 nails a day.”); *id.* at 286 (discussing Jefferson's enslaved people as “cabinet-makers, carpenters, masons, bricklayers, smiths,” and clothing spinners).

92. *Id.* at xx-xxi (discussing Jefferson's interests in horseback riding and other hobbies, being a “philosopher and a scientist, a naturalist and a historian”); *id.* at xxi (“Jefferson never tired of invention and inquiry, . . . [h]e delighted in archaeology, paleontology, astronomy, botany, and meteorology,” and enjoyed music and gardening.); *id.* at 286-87 (discussing Jefferson's love of horses, hunting, fishing, and corresponding through letters); *id.* at 463 (“At home Jefferson was under constant siege from the public. Patsy guessed she had at least once been asked to find beds for fifty overnight guests.”).

93. ELLIS, *supra* note 3, at 30-31 (noting Jefferson's father's death); *see also* MEACHAM, *supra* note 2, at 11 (“There was death and fire and family tragedy.”).

94. ELLIS, *supra* note 3, at 28 (“So much that we know about young Jefferson derives from later recollections, when memories . . . were realigned to fit various personal and political agenda.” Additionally, the Shadwell fire in 1770 “destroyed most of Jefferson's personal papers in 1770, making the recovery of his formative years an exercise in inspired guesswork.”); *see also* MEACHAM, *supra* note 2, at 12, 45-47.

95. *See, e.g.,* MEACHAM, *supra* note 2, at 37 (discussing the death of his sister Jane); *id.* at 67 (discussing the death of his sister Elizabeth); *id.* at 11 (discussing his mother's “coping with the deaths of children”).

96. *Id.* at 13-14 (discussing Dabny Carr); *id.* at 60-61.

several of his children before they reached adulthood,⁹⁷ and his beloved wife.⁹⁸ Jefferson had married Martha Wayles Skelton in 1772,⁹⁹ and they reportedly cherished a blissful marriage.¹⁰⁰ It is said that on her deathbed, suffering ill effects of numerous difficult childbirths, Martha—who had likely experienced negative repercussions of two stepmothers in childhood after her own mother died young—extracted a promise that her husband would never remarry, thus sparing her own children a similar fate.¹⁰¹ In April 1804, near the beginning his second term as president, his adult daughter Maria also died in childbirth, leaving his older daughter Martha as the only remaining member of his acknowledged immediate family.¹⁰² At times, the string of tragedies sent Jefferson into months of grief and despair, and his recurring headaches that had emerged upon the death of his mother resurfaced periodically during subsequent times of stress.¹⁰³

Like many of the elite members of Virginia high society, Thomas Jefferson was perpetually in debt, spending well beyond his means as a young man until his demise at eighty-three years of age.¹⁰⁴ For example, as a college

97. *See id.* at 125 (“She was to become the only child of Mr. and Mrs. Thomas Jefferson other than her older sister Patsy to survive into adulthood.”).

98. *See id.* at 144-48.

99. *Timeline of Jefferson’s Life*, *supra* note 52; *see also Martha Jefferson*, WHITE HOUSE HIST. ASS’N, <https://www.whitehousehistory.org/bios/martha-jefferson> [<https://perma.cc/AHG5-3H8S>] (last visited Apr. 4, 2026).

100. MEACHAM, *supra* note 2, at xxvi (“[H]is marriage was the source of more than a decade of domestic happiness.”).

101. *Id.* at 145-46.

102. ELLIS, *supra* note 3, at 272 (stating Maria died in April 1804 during childbirth, leaving Martha as Jefferson’s only surviving immediate family member). *But see* MEACHAM, *supra* note 2, at 216 (noting that while in France, “Jefferson apparently began a sexual relationship with his late wife’s enslaved half sister,” with whom he reportedly had several children); *Slavery at Jefferson’s Monticello: Exhibition Overview*, NAT’L CONST. CTR., at add four, <https://constitution-center.org/media/files/jeffersonwalkthrough.pdf> [<https://perma.cc/K3FB-MBG7>] (last visited Apr. 4, 2026) (“Elizabeth Hemings and her children (including Sally Hemings) arrived at Monticello around 1774 as part of Jefferson’s inheritance from his father-in-law, John Wayles, who was likely the father of six of Elizabeth’s Hemings’ children. . . . Most historians now believe that Jefferson, long after his wife’s death, was the father of Sally Hemings’ six children. The 10 people freed by Jefferson were all members of the Hemings family.”); MEACHAM, *supra* note 2, at 217 (“Jefferson was always at Monticello at the times she was likely to have conceived the children she is known to have borne.”); *id.* at 55 (“Such arrangements were not uncommon in slave-owning states. In the nineteenth century, South Carolinian Mary Boykin Chesnut noted something about white women that was equally true in the eighteenth century: ‘Any lady is able to tell who is the father of all the mulatto children in everybody’s household but their own. Those she seems to think drop from the clouds.’ It was a world of desire and denial. Sex across the color line—sex between owner and property—was pervasive yet rarely directly addressed or alluded to.”).

103. MEACHAM, *supra* note 2, at 98-99.

104. *See* ELLIS, *supra* note 3, at 15 (“[M]ost of the furnishings that had been dispersed starting in 1827, when Jefferson’s crushing debts forced his descendants to auction off the estate.”); *see also* Martha Salazar Cantu, *Liberty, Equality, Indebtedness: Thomas Jefferson, John Adams and the Problem of Debt in a Revolutionary Age* 4 (2015) (M.A. thesis, University of Texas Rio Grande Valley) (ScholarWorks @ UTRGV) (“This system of indebtedness leads to another paradox in the

student, he incurred debts necessitating a letter to the man administering his inheritance, requesting the funds to pay the liability and apologizing for his profligacy.¹⁰⁵ Throughout adulthood, he threw sumptuous dinner parties for friends at Monticello.¹⁰⁶ During his public service living in seats of power in the United States and in France, he lived extravagantly¹⁰⁷ and entertained lavishly.¹⁰⁸ As a young adult, Jefferson's indebtedness to creditors in the British Isles, along with his chafing against the increase in taxes imposed by the monarchy to help pay for England's wars with other European countries, fomented his hatred toward England leading up to the Revolution.¹⁰⁹ Jefferson's antipathy toward England continued to flare after the war of independence, in part because his debts to creditors across the Atlantic continued to balloon.¹¹⁰ Once he finally retreated from public life, his retirement years were plagued with the knowledge that he would leave his family destitute upon his death, when his creditors would call in the debts upon his estate.¹¹¹

life of Thomas Jefferson: a burdensome debt that would plague him for decades. While Jefferson publicly denounced debt as a precursor to the loss of the independence he so valued, he lived the majority of his life in debt. In fact, once he became indebted in 1777 as a result of an 'inheritance' from his father-in-law John Wayles, he was never debt free again."); MCCOLLEY, *supra* note 54, at 22-23 ("[Jefferson] might still have operated at a profit, but his affection for good books and fine wines, and his generosity to friends and relatives, usually caused him to live beyond his sizable income.").

105. MEACHAM, *supra* note 2, at 19 ("Jefferson wrote a guardian offering to charge the whole of his bills to his separate share of the estate. (More amused than alarmed, the guardian declined Jefferson's offer.) Later in life, Jefferson wrote: 'I was often thrown into the society of horse racers, and card players, fox hunters, scientific and professional men.'").

106. *See id.* at 463-65 (discussing Jefferson entertaining his many guests).

107. HOWARD C. RICE, JR., THOMAS JEFFERSON'S PARIS 39 (1976) (stating Thomas Jefferson "soon found that his 'first expences, or Outfit'—household furniture, carriage, apparel, 'all plain'—exceeded his year's salary" as U.S. Minister to France); *see also id.* at 39-41 (providing additional descriptions of Jefferson's expenses, including servants, food, entertaining guests, and remodeling the house); *see also id.* at 40 (noting artwork and "many of the books and household furnishings purchased in Paris, followed Jefferson back to America and can be seen at Monticello today"); *id.* at 42 (stating that after a year, Jefferson moved "to a more sightly and stately mansion, the Hotel de Langeac"); *id.* at 51-52 (discussing his expenses at the Hotel de Langeac); *id.* at 121-22 (describing the "considerable shipment of baggage" Jefferson brought home with him from Paris, and "[t]he next year, when Jefferson knew he would not be returning, an even weightier cargo of *souvenirs de Paris* followed"); APPLEBY, *supra* note 11, at 34 ("It took more than forty pieces of luggage, including bulky crates, to bring back to the United States the wine, books, musical instruments, art objects, and carriage equipment he had acquired during five years in Paris.").

108. ELLIS, *supra* note 3, at 82 (explaining Jefferson rented a "lavish and expensive" dwelling and "constructed an extensive support system of servants, secretaries and acolytes"); MEACHAM, *supra* note 2, at 394 ("He entertained constantly, handsomely, and with a purpose.").

109. ELLIS, *supra* note 3, at 148 (discussing Jefferson's hatred of England); *see also* Cantu, *supra* note 104, at 7.

110. ELLIS, *supra* note 3, at 148-49 (explaining that even after the Revolution, Jefferson would, "along with a sizable portion of Virginia's planter class, still find himself deeply in debt to English and Scottish creditors, who were busy compounding the interest on those debts at rates that made personal independence increasingly problematic"); *see also* Cantu, *supra* note 104, at 7.

111. ELLIS, *supra* note 3, at 344 ("He was about \$100,000 in debt; in modern equivalents, several million dollars."); *id.* (drafting to the legislature, due to his debt, "I am overwhelmed at the

Despite his failings, Jefferson was in many ways at the vanguard of the movement for expanding human rights in the new United States and around the world.¹¹² Ever optimistic about human nature,¹¹³ he sincerely believed in the capacity of people to expand their knowledge and evolve into more conscientious, civic-minded, and community-oriented members of society. Jefferson's faith in the promise of humankind to become thoughtful, engaged, contributing citizens rests on their capacity to achieve a well-rounded education, which Jefferson believed to be a primary responsibility of government to provide, in order to foster a well-functioning democracy: "Jefferson harbored a real hope in the good sense of the people. His belief in democracy was not a pose, but a conviction: Educate the public, he believed, and by and large a majority would find its way to the right place."¹¹⁴ Among his social justice causes, Jefferson advocated at various times in his life for the abolition of the slave trade,¹¹⁵ abolition of the death penalty,¹¹⁶ freedom of religion,¹¹⁷ freedom of speech and of the press,¹¹⁸ consent of the governed,¹¹⁹ and his well-known championship of equality, life, liberty, and the pursuit of happiness enshrined in his Declaration of Independence.¹²⁰

prospect of the situation in which I may leave my family"); *id.* at 345 ("Knowing that auctioneers would claim many, if not most, of his slaves, he chose to free five members of the Hemings family: Burwell, his personal servant, immediately upon his death; John Hemings and Joe Fossett one year later; Madison and Eston Hemings, sons of Sally, who would be apprenticed to John Hemings until they were twenty-one, then freed. Sally herself was not freed or mentioned in the will.").

112. MEACHAM, *supra* note 2, at xxiv (stating "Jefferson . . . defined human rights for a new age"); ELLIS, *supra* note 3, at 151 (stating he "envisioned the American Revolution as merely the opening shot in a global struggle that was eventually destined to sweep over the world"); *see also* APPLEBY, *supra* note 11, at 112 ("Not content just to serve the national interest, Jefferson aspired to set new standards for a world indifferent to transcendent values. When he became chief executive of America's diplomacy in 1801, his grandiose plans to expand the realm of human freedom became policy goals.").

113. MATTHEWS, *supra* note 44, at 11 ("Madison embraces a fatalistic view of the demise of the republic, while Jefferson possesses and unwavering faith in humanity's ability to make its own history.").

114. MEACHAM, *supra* note 2, at 324.

115. APPLEBY, *supra* note 11, at 131 ("Before he left office, Jefferson had an opportunity to strike a blow against the hideous international slave trade. . . . At the earliest possible moment, Jefferson placed before Congress legislation that would end American participation in this cruelest of all commercial undertakings. Despite the conspicuous flaws in his diplomacy, Jefferson's foreign policy in this one act did more to extend the realm of freedom than any deed of his contemporaries in the age of democratic revolutions.").

116. *See* THOMAS JEFFERSON, *Note G from the Appendix to Jefferson's Memoir*, in JEFFERSON ON FREEDOM 68, 70 (2011) (noting his opposition to the death penalty "[w]hen I drew mine, public labor was thought the best punishment to be substituted for death," and stating he approved of solitary confinement as a substitute for the death penalty).

117. APPLEBY, *supra* note 11, at 58-61.

118. *Id.* at 58.

119. *See generally* ONUF, *supra* note 13, at 37 ("[C]ommitted to the fundamental principles of equality and consent, the triumphant Republicans would exercise power only to secure the broader sphere of natural society and free exchange against the depredations of the privileged and corrupt.").

120. *See generally* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

III. DECLARATION OF INDEPENDENCE: ONE PEOPLE UNITED

A. CONTEXT OF THE DECLARATION

Since the English colonizers first crossed the Atlantic to establish permanent settlements in the New World, the colonists had governed themselves in accordance with written documents, such as the 1606 charter from the king founding the settlement of Jamestown in 1607,¹²¹ and the Mayflower Compact drawn up by the colonists later known as the Pilgrims creating a system of self-governance in Plymouth Colony in 1620.¹²² As the colonies grew and their societies advanced throughout the 1600s and 1700s, the legislative assemblies and leaders of the colonies became increasingly accustomed to complying with these written documents establishing their structures of government.¹²³ Their judiciaries, in addition to adjudicating disputes among various parties, employed judicial review to prevent their governments from taking actions outside of their powers as delineated by their governing instruments.¹²⁴ In addition to outlining the structure and power of government,

121. See BENEDICT, *supra* note 15, at 50; WILLS, *supra* note 3, at 38 (“Each colony traced its freedom’s lineage through separate documents and cherished its particular descent. . . . The principal colonies had developed, defended, and interpreted their charters in such a way that they were regularly referred to as ‘our constitutions.’”); see also BENEDICT, *supra* note 15, at 25 (“As the law stood in the early 1600s, settlers were subject to the royal prerogative, not to Parliament.”).

122. BENEDICT, *supra* note 15, at 50 (discussing the Mayflower Compact); see also MEACHAM, *supra* note 2, at xxvi (“The power of America’s founding myth—or myths, if one divides the stories into a seventeenth-century one of Jamestown and Plymouth and an eighteenth-century one of the Revolution—is such that it is difficult to envision the story of the country as it actually unfolded. By force of nearly two and a half centuries of habit, we tend to view our history as an inevitable chain of events leading to a sure conclusion. There was, however, nothing foreordained about the American experiment.”). Similarly, there is nothing foreordaining that the American experiment will continue to succeed, as Benjamin Franklin succinctly noted at the conclusion of the Constitutional Convention that the United States has “[a] republic, if you can keep it.” See *September 17, 1787: A Republic, If You Can Keep It*, NAT’L PARK SERV., <https://www.nps.gov/articles/000/constitutionalconvention-september17.htm> [<https://perma.cc/X9D2-4U98>] (last visited Apr. 4, 2026).

123. See generally BENEDICT, *supra* note 15, at 27-28 (discussing the development of colonies); WILLS, *supra* note 3, at 38 (“It seems clear to us that they were brokering our own ‘birth,’ initiating a history. They stand at the beginning. But they saw themselves as defenders of a history accomplished; taking risks that might end, rather than launch, a noble experiment. They were speaking for deliberative assemblies of great antiquity—some nearly a century old; one that had held its sessions in unbroken sequence for over one hundred and fifty years. And each of these provincial legislatures traced its patent overseas, and back in time, to Magna Carta at the latest. Freedom, for whigs of the eighteenth century, always had a pedigree. It was a child of paper, a *chartered* liberty.”); *id.* at 39 (“Emphasis on the charter, on the written sign of men’s legal standing, was taken—in America, as in England—to authorize all the standing liberties men had experienced in their charters.”).

124. BENEDICT, *supra* note 15, at 47 (“Court decisions could also be appealed from colonial courts to the Privy Council sitting in a judicial capacity; the council was authorized to reverse decisions repugnant to English law and to overturn laws on which such decisions were based. Thus a dissatisfied colonist could appeal to authorities in London to override a colonial law or a court

some colonial charters included rights that must be protected by the governments.¹²⁵ For the first century and a half of colonialization, a division of government arose whereby the monarchy in Britain handled external issues such as foreign policy, war, foreign trade, and the like, leaving the colonial governments to control all internal matters.¹²⁶ Thus, the American subjects increasingly understood their governmental structure much like a federal system, where one level of government had power over certain aspects of governance, and another level of government had power over other aspects of governance.¹²⁷ Moreover, the colonists thought of themselves as Englishmen with the same rights, liberties, and constitutional protections as their counterparts in Britain.¹²⁸ Of course, some important rights in the colonies—particularly the right to vote and to participate in colonial governance—were primarily enjoyed by the elites of colonial society, i.e., wealthy White males who were generally from an established lineage of well-to-do families.¹²⁹ As noted above, most White males were excluded from political participation, as well most people of color, women, and other marginalized populations.¹³⁰

judgment as inconsistent with English law. By the early 1700s, some were persuading local courts to overturn laws on the same grounds. In effect, Americans were getting experience with what would become known as judicial review.”)

125. *See id.* at 32 (stating Massachusetts codified its “Laws and Liberties” in 1648); *id.* (noting New Jersey and Pennsylvania followed Massachusetts’s lead by establishing formal documents that, “[b]esides instituting processes of government, both listed rights”); *see also* WILLS, *supra* note 3, at 38 (“The charters were conduits of British freedom, derivable from Magna Carta by way of the Declaration of Rights.”).

126. *See* BENEDICT, *supra* note 15, at 24 (“During the 150-year history of colonial British America, a practice developed in which the British government regulated war, foreign policy, trade, and other external matters, while the colonial governments took care of internal concerns.”).

127. *Id.* at 50 (“They presumed a federal system, with the British government taking care of imperial concerns like war and trade and the colonial government handling local matters.”); *id.* at 62-63 (“Americans were groping toward the idea that the British empire was a federal system in which different governments fulfilled different functions.”).

128. *See id.* at 60 (“When disputes over the authority of Parliament in the colonies arose in the 1760s, Americans thought of themselves as fighting in common with other Englishmen for the British constitution and for British liberty.”); *see also* WILLS, *supra* note 3, at 38 (“Samuel Adams’s father would describe, in 1731, ‘the great privileges we enjoy by the English Constitution and the Royal Charter’; and he called impressment of colonial citizens ‘breaches of Magna Charta, the Charter of this Province, and an Act of Parliament’—the proper order of basic, incorporating, and applied rights.”).

129. M. Isabel Medina, *Real Differences and Stereotypes—Two Visions of Gender, Citizenship, and International Law*, 7 N.Y.C. L. REV. 315, 325 (2004) (“Suffrage, it noted, had been restricted since the founding of the republic; all states restricted suffrage to white males of certain ages and some states restricted suffrage to only white, male, property owners.”); WILLS, *supra* note 3, at 35 (“The government of each colony was a relatively closed affair, indeed, a family affair. That fact is suggested in the replication of names among those at the first Congresses. . . . Of the twelve men who rode up to the first two Congresses from Virginia, nine were interconnected by blood or marriage. Leadership down to the lowest offices was stable and inbred.”).

130. *Who Voted in Early America?*, COLONIAL WILLIAMSBURG (Nov. 6, 2024), <https://www.colonialwilliamsburg.org/discover/civics/who-voted-in-early-america/> [<https://perma.cc/D22F-3VAL>].

Similarly, colonists who were not members of the established churches, such as Congregationalist churches in the north and Anglican (later Episcopal) churches in the south, were excluded in some colonies.¹³¹ Therefore, only a small fraction of colonists participated in colonial self-governance.

Many colonists in the pre-Revolutionary era were influenced by principles of the Enlightenment, otherwise known as the Age of Reason, which built upon rationalist methodologies established by the Scientific Revolution through systematic inquiry popularized by Francis Bacon and Isaac Newton—both of whom Thomas Jefferson revered, alongside John Locke.¹³² In 1637, René Descartes published *Discourse on Method*, analytically questioning everything unless sound evidence and logic provided a substantiated reason for believing something, and featuring his famous maxim, “I think, therefore I am.”¹³³ Enlightenment thinkers prioritized methodological proof over superstition and ignorance that had previously mollified unquestioning subjects under the absolute authority of monarchs who had claimed the divine right of kings.¹³⁴ They provided the indispensable intellectual foundation for American revolutionaries by emphasizing rationalism, individualism, and a rejection of unquestioned traditional sources of power.¹³⁵

With the spread of knowledge and Enlightenment philosophy came the widespread adoption of principles of liberty such as rule of law, freedom from arbitrary power, limited government, equality under the law, no one is above the law, and laws must be transparent and publicly known.¹³⁶ Some of

131. Steven B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 COLUM. L. REV. 2083, 2099-101 (1996) (“The citizens of colonial America were ‘virtually all Christians,’ the ‘overwhelming majority’ of whom were Protestants. . . . By the time of the American Revolution, there were established churches in ten of the thirteen colonies . . . [and] eleven of the thirteen states restricted office holding to Protestants or Christians.” (footnotes omitted)).

132. MEACHAM, *supra* note 2, at 260 (“Jefferson had decorated the walls of his quarters with a collection of portraits that included Sir Francis Bacon, John Locke, and Sir Isaac Newton, all men of the Enlightenment. Hamilton asked Jefferson who they were. ‘I told him they were my trinity of the three greatest men the world had ever produced, naming them,’ Jefferson recalled.”). See WILLS, *supra* note 3, at 170-72.

133. See Phillip Greenwalt, *Age of Enlightenment*, AM. BATTLEFIELD TR. (May 21, 2025), <https://www.battlefields.org/learn/articles/age-enlightenment> [https://perma.cc/MS8H-RMCN]. See generally RENÉ DESCARTES, DISCOURSE ON METHOD 35-36 (John Veitch trans., Open Ct. Pub. Co. 1962).

134. See BENEDICT, *supra* note 15, at 19 (“The Enlightenment rejected the notion that supernatural forces continued to operate in the universe. Natural laws governed, and people had to use reason to determine what they were and how they worked. Such ideas undermined claims based on divine authority and exalted human capacity for self-government.”).

135. Greenwalt, *supra* note 133.

136. See BENEDICT, *supra* note 15, at 9 (“By the seventeenth century, when most of the North American colonies were established, English people had come to see themselves as entitled to liberty. Liberty meant freedom from arbitrary power and governance under the rule of law. The rule of law required that laws be publicly known, that no one was above the law, and that all were equal before it.”).

these longstanding principles had been introduced in a limited manner in England by the Magna Carta in 1215.¹³⁷ Debates over sovereignty challenged historic deference to the unlimited power of rulers.¹³⁸ In 1689, the Glorious Revolution heralded the rise of King William and Queen Mary, Protestant monarchs who replaced the Catholic King James.¹³⁹ William and Mary (the namesake of William and Mary College in Virginia) triumphed with the adoption of a Declaration of Rights including “the independence and centrality of Parliament,” as well as some religious tolerance for Protestants of different beliefs and an act establishing an independent judiciary.¹⁴⁰ Following their lead, several colonies enacted a similar Declaration of Rights in the New World.¹⁴¹ Moreover, the colonists increasingly viewed their colonial legislatures as equivalent to Parliament in England, each legislature having a direct relationship with the monarchy.¹⁴² Therefore, the British Parliament should have only limited control over the colonies, since the colonists had representation in their colonial legislatures and not in the British Parliament.¹⁴³

John Locke published his *Second Treatise of Civil Government* and his *Essay on Human Understanding* shortly after William and Mary took the throne.¹⁴⁴ Along with Bacon and Newton, Locke held primacy of place as the

137. See generally *id.* at 11 (providing a description of rights English people in England and America believed to be guaranteed under the Magna Carta); *id.* at 12 (noting that the main purpose of the Magna Carta “was to protect the landed aristocracy from [King] John’s arbitrary actions”).

138. See generally *id.* at 13 (“Sovereignty, these political philosophers wrote, was the final, indivisible source of law and authority in any state. Theorists of absolutism argued that monarchs could not be bound by laws whose very authority arose out of their sovereign will.”).

139. See generally *id.* at 18 (“James was formally deposed and William and Mary enthroned in 1689.”); WILLS, *supra* note 3, at 335.

140. BENEDICT, *supra* note 15, at 18; see also WILLS, *supra* note 3, at 335.

141. BENEDICT, *supra* note 15, at 30 (stating the American colonies declared allegiance to William and Mary and several adopted “imitations of the Declaration of Rights between 1691 and 1696”).

142. See *id.* at 30-31; see also MEACHAM, *supra* note 2, at 29-30 (“Jefferson and like-minded Americans were guarding against the abridgement of the personal liberties or of the representation Englishmen had won for themselves as a result of the Glorious Revolution.”).

143. MEACHAM, *supra* note 2, at 31 (describing that consent and representation were important to the elite colonists); see also BENEDICT, *supra* note 15, at 31 (“The Glorious Revolution had confirmed the principle that legitimate government required the consent of the governed, especially for the imposition of taxes. The colonial assemblies were the only place where colonists were represented, and, therefore, the only place where colonial governments secured the necessary consent. Because Americans elected no representatives to Parliament, and Parliament did not levy direct taxes on Americans, more and more Americans thought of their colonial assemblies as colonial Parliaments. These assemblies themselves demanded and secured rights similar to the privileges claimed by Parliament. These included absolute freedom of speech for statements made in the assembly, freedom from arrest while the legislature was in session, and the rights to determine qualifications for members, to decide disputed elections, and to punish anyone who attacked or insulted members of the legislature as a whole.”).

144. See generally BENEDICT, *supra* note 15, at 18-19 (noting William and Mary were enthroned in 1689 and John Locke published his *Second Treatise of Civil Government* in 1690);

third member of Jefferson's trinity of great thinkers.¹⁴⁵ Thomas Hobbes, John Locke, and Jean-Jacques Rousseau built upon one another's writings to develop a social contract theory postulating that people naturally join together in organized societies under systems of governance as a means of self-preservation.¹⁴⁶ Hobbes formulated the rationale that people must live under rulers who bring order, stability, and security to an otherwise chaotic anarchy under which life would be "nasty, brutish, and short."¹⁴⁷ Locke surmised that each human is born with their mind as a blank slate—a *tabula rasa*—and develops knowledge through experience using the senses.¹⁴⁸ He acknowledged that people must form societies, which ideally should include their consent to governments whose purposes should entail "promoting prosperity and . . . protecting life, liberty, and property"; otherwise, people may withdraw their consent and rebel against governments that do not fulfill these functions.¹⁴⁹ Rousseau maintained that sovereignty—the ultimate authority for governance—lies with the people who comprise a society; therefore, the laws

WILLS, *supra* note 3, at 229-39; *id.* at 170 (stating that in the eighteenth century, Locke's *Essay on Human Understanding* was much better known than the *Second Treatise*).

145. WILLS, *supra* note 3, at 170, 181.

146. See generally Michel Rosenfeld, *Contract and Justice: The Relation Between Classical Contract Law and Social Contract Theory*, 70 IOWA L. REV. 769, 847-48 (1985) ("What most unifies these otherwise divergent political philosophies [of Hobbes, Locke, Rousseau, and Kant] is their commitment to individualism and their use of the social contract device to elaborate a deep-level, philosophical justification of the institutions of civil society and of the individual's obligations toward society.").

147. BENEDICT, *supra* note 15, at 17 ("Thomas Hobbes . . . argued in his famous exegesis *Leviathan* (1651) that men entered into social compacts in order to escape the 'state of nature,' in which the strong and ruthless terrorized the rest. People surrendered final authority over their lives to a sovereign in exchange for the protection he afforded through government."); Rosenfeld, *supra* note 146, at 852-53.

148. Daniel Lambright, Comment, *Man, Morality, and the United States Constitution*, 17 U. PA. J. CONST. L. 1487, 1492 & n.40 (2015); John A. Powell & Stephen M. Menendian, *Remaking Law: Moving Beyond Enlightenment Jurisprudence*, 54 ST. LOUIS U. L.J. 1035, 1050-51 (2010).

149. See BENEDICT, *supra* note 15, at 19 ("Like Hobbes, Locke posited that people had lived in 'a state of nature' before joining together in societies. People established societies and governments as they realized that they could do many things better as a group than they could individually—especially protecting their lives and property from others and resolving disagreements over property among themselves. Upon creating a society, Locke wrote, its members entered a compact to delegate lawmaking power to a 'supreme Legislative,' which could be a king, a legislature, or any institution agreed on. People exchanged 'natural liberty' for 'civil liberty.' They gave up the right to do whatever they wanted for the right to live in an ordered society. It was crucial to define some limit to the power of the supreme Legislative, or else civil liberty would turn into slavery. . . . Nor did one have the right arbitrarily to take another's life, liberty, or property. One could only protect oneself from the wrongful acts of others. Government's powers were therefore limited to promoting prosperity and to protecting life, liberty, and property. It could not deprive people of that trinity without their consent. In England this consent was given by the people's representatives in Parliament. Thus 'civil liberty' meant the right to live under laws designed to protect one's life, liberty, and property from being infringed on arbitrarily by others. It meant living under the rule of law.").

governing society should reflect the will of the people.¹⁵⁰ In addition to being influenced by these political philosophers, Jefferson gleaned even greater inspiration from the Scottish Enlightenment thinkers, including Francis Hutcheson, David Hume, Lord Kames, Thomas Reid, Adam Ferguson, William Small, and Adam Smith.¹⁵¹ Jefferson's professor, William Small, was "[c]onversant with the thought of Bacon, Locke, Newton, Adam Smith, and the philosophers of the Scottish Enlightenment . . . [and] introduced Jefferson to key insight of the new intellectual age: that reason, not revelation or unquestioned tradition or superstition, deserved pride of place in human affairs."¹⁵²

Yet despite advancements brought by the Scientific Revolution and the Enlightenment, troubles were brewing in the colonies in the mid-1700s. Part of the problem stemmed from the lavish lifestyle of the plantation owners in the southern colonies.¹⁵³ For example, elite settlers, particularly in the southern colonies,¹⁵⁴ shared a propensity to acquire luxury goods from British merchants and credit from British banks, contributing to a massive indebtedness by many of the aristocratic colonists to capitalists in the mother country.¹⁵⁵

150. See Rosenfeld, *supra* note 146, at 859 ("For Rousseau, civil society's legitimate social relations are governed by this general will, which is not found in the state of nature, but emerges as the essential produce of Rousseau's social contract.").

151. WILLS, *supra* note 3, at 175-76, 200-06 (discussing the influence of the Scottish Enlightenment thinkers on Jefferson); see also *id.* at 180 ("We have enough evidence of his reading, and of his conclusions from that reading, to establish that the real lost world of Thomas Jefferson was the world of William Small, the invigorating realm of the Scottish Enlightenment at its zenith."); MEACHAM, *supra* note 2, at 17 ("Dr William Small, a Scottish layman and professor . . . brought an Enlightenment worldview to Williamsburg.").

152. MEACHAM, *supra* note 2, at 18.

153. MCCOLLEY, *supra* note 54, at 54 ("[T]he planters continued many habits that are undeniably characteristic of aristocracies. They avoided manual and menial labor, they owned large landed estates, they sustained the romantic attitude toward their women, and they furnished their houses with such luxurious articles as silverware, china, crystal, musical instruments, and libraries. Furthermore, they cultivated military skills, participated in sports (with special attention to those involving blooded horses), and maintained a courtly sense of honor and an uncalculating generosity [toward their peers] which made constant headaches for the merchants upon whose credit they often lived. They were receptive to the literary, decorative, and musical arts, but did not themselves normally produce authors, artists, and musicians.").

154. Cantu, *supra* note 104, at 11-12 ("The particular ideological strain, which the early colonists of the seventeenth century cultivated in the separate regions of Virginia and New England, had far-reaching effects on future generations. The colonies on the eve of the Revolution did not share the same concerns or culture when it came to fiscal responsibility. In Virginia, the gentry lifestyle centered on the production of tobacco, which was dependent on the vagaries of agriculture and foreign markets. In sharp contrast, the Puritan ethos of commercial New England encouraged a lifestyle of industry, frugality and faithful financial stewardship.").

155. See generally *id.* at 2 ("The web of indebtedness was tied to British merchants, the planters' consumption of luxury items, and the tobacco trade."); *id.* at 19 (examining "the indebtedness of the Virginia gentry[, including] the financial troubles of other Virginia statesmen, such as James Madison, James Monroe, Edmund Randolph, and Harry Lee[, and stating that m]any of the members of the Virginia gentry, according to Sloan, fell victims to debt and bankruptcy"); MCCOLLEY, *supra* note 54, at 184 ("Virginia statecraft had always held that any depressions that beset the planters resulted from the selfish and monopolistic policies of British traders, rather than from maladjustments within the Virginia economy itself.").

Rather than selling their lands or the people they had enslaved—which comprised the bulk of their wealth¹⁵⁶—when a debt was called in, highborn Virginians frequently simply transferred their debt from one creditor to another, borrowing from relatives or friends.¹⁵⁷ Their chafing under the heavy yoke of debt contributed to a patrician drive toward revolution, which they hoped would relieve them from the burden of fulfilling their financial obligations to their British creditors.¹⁵⁸ Being on the wrong side of the capitalist equation as a result of profligate spending habits,¹⁵⁹ the extravagant lifestyle of the colonial gentry¹⁶⁰ was also threatened by taxes imposed by the British Parliament on the colonies to help pay for Britain’s wars and the defense of the expansive British empire, including in the Americas.¹⁶¹ Similarly, settlers of

156. MCCOLLEY, *supra* note 54, at 26 (“The obvious reason for the enduring high value of the slave was the enduring presence of great planters who flourished with the aid of their labor.”).

157. *Id.* at 32 (stating “practically every man of consequence in the state became enmeshed in the resulting web of indebtedness”).

158. MEACHAM, *supra* note 2, at 69 (“For the elite, revolution was the shrewdest economic choice. . . . [T]here was the inescapably personal issue of the money that planters owed creditors in Britain. In Jefferson’s words, such debts were now ‘hereditary from father to son for many generations, so that the planters were a species of property annexed to certain mercantile houses in London.’”); *id.* at 113 (“Succeeding generations have sometimes tried to isolate one of these phenomena as the origin of the Revolution. It seems most convincing, though, to think of Lockean liberalism, classical republicanism (via the Renaissance), the Great Awakening, the promise of capitalism, and the *hatred of debt* (and the *British merchants and banks who were owed the debts*) as tributaries that all helped form the larger rushing river of the American Revolution.” (emphasis added)); *id.* at 70 (“In Virginia the impetus to rebel came from the propertied elements of society; the middle and lower classes were slower to follow the lead of men such as Jefferson. It was a rich man’s revolution, and Jefferson was a rich man.”); MCCOLLEY, *supra* note 54, at 87 (“[I]t is perfectly clear that Virginians were happy, after the war, to find any excuse to avoid paying their heavy debts to British merchants.”).

159. Cantu, *supra* note 104, at 5 (“[T]he tobacco culture of the Chesapeake region, which was based on appearances, conspicuous consumption, and consignment, marked the life of Thomas Jefferson.”); *id.* at 9 (“[T]he debt issue that began years before the American Revolution would continue to preoccupy them into the years of the Early Republic and, in the case of Jefferson, for the rest of his life. Most colonists knew that the Virginian planters before the Revolution became heavily indebted to British merchants. It was an international truth that played out in the British Parliament, as it tried to force the United States government to compel the Virginia planters to pay their overwhelming amounts of debt. It was also an inconvenient truth in the House of Burgesses, as it attempted to block any legislation aimed at collecting the debt. Perhaps most embarrassing for the planters was the well-known fact about how they became indebted: their extravagant lifestyles and their gross mismanagement of their business affairs.”).

160. MCCOLLEY, *supra* note 54, at 27 (referencing “the happy self-image of southern aristocrats as a relaxed and cultivated rural gentry,” along with the fact that “Virginians were bound to trade and speculation with an intensity unsurpassed in the North”); *id.* (“The very profits of these activities . . . tempted many bold Virginians to plunge into them on borrowed capital, creating the inevitable cycles of boom and bust typical of entrepreneurial economies.”).

161. *See generally* BENEDICT, *supra* note 15, at 55-56 (“People fight to defend their rights only when their violation would have serious practical consequences.”); *id.* at 60-61 (stating “the French and Indian War in America . . . was expensive” and explaining the British government was determined “to secure more revenue from the colonies” by including taxes on goods such as alcoholic beverages, molasses, and legal documents).

more modest means also felt the pinch of British taxes.¹⁶² Thus, the financial stage was set for a revolt of disgruntled subjects on the western side of the Atlantic.¹⁶³

Of course, such a decadent way of life by the propertied upper crust had been enabled as a result of the pervasive practice of European land-grabbing,¹⁶⁴ where plantation owners had acquired enormous tracts of land that had been cleared of original inhabitants¹⁶⁵ through violence,¹⁶⁶ enslavement,¹⁶⁷ and spread of disease,¹⁶⁸ as well as relentless “buying up of Indian land,”¹⁶⁹ including unscrupulous “purchases” of acreage from tribal members,¹⁷⁰ along with persistent violations of land agreements by the

162. *Id.* at 64 (noting “[o]rdinary people again took to the streets” in protest of British attempts to raise money from the colonies).

163. Cantu, *supra* note 104, at 17 (“Everyday practices that involve concrete actions, such as finances and debt, are just as important as ideological ideas of liberty, equality, and independence. On the eve of the Revolution, tobacco and debt consumed the planters’ thoughts.”).

164. MCCOLLEY, *supra* note 54, at 8 (“[T]he economic surplus which permitted so much gracious living in the Old South was itself the product of an agrarian capitalism intensely exploitative of land and labor. This agrarian capitalism was based on the raising of staple crops for export, and used Negro slaves for labor. It flourished and grew, with a minimum of minor and local setbacks, from the Declaration of Independence to the firing on Fort Sumter.”); *id.* at 29 (“The notorious land system of Virginia allowed buyers of public lands to secure title to a given number of acres and then locate them with their own surveys. This was a generous system, allowing the purchaser to make sure that each of his acres was as valuable as the region would yield, but it naturally led to infinite litigation.”); *id.* at 53 (“In early America . . . the supply of available land seemed unlimited, and the aristocratic planters early discovered that they could, by appropriate business and political acumen, form comfortable estates not for just one, but for all of their children.”).

165. APPLEBY, *supra* note 11, at 117 (stating Americans’ “colonial forebears had virtually swept into oblivion the native tribes that had once lived along the Atlantic Coast”). *See generally* DAVID TREUER, *THE HEARTBEAT OF WOUNDED KNEE: NATIVE AMERICA FROM 1890 TO PRESENT* 27-42 (2019).

166. MCCOLLEY, *supra* note 54, at 139 (“During colonial times warfare of the most savage kind raged intermittently between Virginians and Indians within the Old Dominion. During the early national period the migrants and soldiers of Virginia continued to endure the cruelties of Indian warfare *and to return them with interest* along the spreading frontiers of the Old Southwest . . . willing to avenge Indian raids, to seize and exploit Indian lands, and to drive Indians to the deserts beyond the Mississippi . . .” (emphasis added)).

167. *Native Americans in Colonial America*, NAT’L GEOGRAPHIC (Mar. 24, 2026), <https://education.nationalgeographic.org/resource/native-americans-colonial-america/> [<https://perma.cc/EPY8-UAPJ>] (“Following the wars between the European nations, Native Americans that allied with the losing side were often enslaved or forcibly removed from their land. In South Carolina, for example, some Native Americans were captured and sold into slavery in places such as Canada, threatening their culture and very existence.”).

168. *Id.* (“Native Americans in the Caribbean and other areas responded to the seizure and settlement of their land in various ways. Some cooperated with the Europeans, while others responded with violent resistance. However, because of disease brought by the European colonizers, Native American populations were decimated.”).

169. APPLEBY, *supra* note 11, at 118 (discussing the policy of land acquisition in the Ohio River Valley).

170. *See generally* BENEDICT, *supra* note 15, at 28 (discussing the ambiguous relationship Indian tribes had with royal authority, colonial versus Indian laws, and the colonists’ transition to land speculators); Michael Burger & Paul Frymer, *Property Law and American Empire*, 34 U. HAW. L. REV. 471, 486-87 (2012) (explaining how European land acquisition practices—facilitated by

government and settlers.¹⁷¹ As with other plantation owners in the south, Jefferson's family had benefited from this freewheeling land acquisition scheme by European Americans, accumulating thousands of acres of pristine land that Thomas Jefferson eventually inherited.¹⁷² Thomas Jefferson shared this hunger for Native American lands along with his White compatriots.¹⁷³ This

doctrines of competing title, judicial validation of speculative purchases, and preemption—enabled speculators to amass vast tracts of land through coercive and often unscrupulous transactions with Native Americans); Michael C. Blumm, *Retracing the Discovery Doctrine: Aboriginal Title, Tribal Sovereignty, and Their Significance to Treaty-Making and Modern Natural Resources Policy in Indian Country*, 28 VT. L. REV. 713 (2004) (discussing how the discovery doctrine, by vesting exclusive preemption rights in European sovereigns and enabling later judicial and congressional expansion of federal authority, facilitated the consolidation and transfer of tribal lands into colonists' hands through legally sanctioned acquisition practices).

171. See, e.g., *Native Americans in Colonial America*, *supra* note 167 (“Some Native American nations made wartime alliances, such as during the French and Indian War, and land-sharing agreements with European colonizers, but neither government leaders nor individual settlers kept their promises to keep off Native American land. . . . The English won the war and claimed all of the land east of the Mississippi River. At the end of the war, the British and the Native Americans agreed to the Proclamation of 1763, which limited European settlement to east of the Appalachian Mountains. The Iroquois and other allied Native American groups expected that this would end European expansion. However, the British government and settler-colonizers did not follow the Proclamation of 1763 and continued push west and take land from Native Americans. Some of the broken treaties may have resulted from misunderstandings, as many Native American nations had a communal view of land ownership and may have assumed that the agreements provided access to the land rather than an exclusive right to it. However, many treaties were knowingly and purposefully broken by the European colonial governments that had signed them as part of the ongoing seizure of Native American land and resources.”).

172. APPLEBY, *supra* note 11, at 102 (stating “his father had been a pioneer of Albemarle County”); MEACHAM, *supra* note 2, at 3 (“Peter Jefferson had amassed large tracts of land and scores of slaves in and around what became Albemarle County, Virginia.”); Nancy Verell, *Peter Jefferson*, MONTICELLO (Apr. 14, 2015), <https://www.monticello.org/encyclopedia/peter-jefferson> [<https://perma.cc/ZUF2-T7XD>] (“[Peter] Jefferson continued to add to his landed estate and would hold over 7,200 acres at the time of his death. . . . More than sixty enslaved servants helped to support the Jeffersons’ lifestyle.”); see also APPLEBY, *supra* note 11, at 102-03 (“Jefferson’s birthplace, Charlottesville, was close to the Virginia frontier; his father had been a pioneer of Albemarle County. Growing up among the planter elite of Virginia, Jefferson himself had plenty of experience with colonial efforts to push settlement into Indian territory. Officials in seventeenth-century Virginia had been the first to set up reservations for dispossessed Indians. . . . Virginia land speculation had triggered the French and Indian war of 1754-63, which in turn unleashed a succession of surprise attacks on American settlements along the frontier. . . . Talk of fighting the Indians absorbed the energies of young Virginians, who could not have imagined that their descendants might one day condemn their belligerence toward the native inhabitants of the continent.”); MEACHAM, *supra* note 2, at 5 (“The family had immigrated to Virginia from England in 1612, and in the New World they had moved quickly toward prosperity and respectability. A Jefferson was listed among the delegates of an assembly convened at Jamestown in 1619.”); *id.* at 6 (“William Randolph soon prospered in shipping, raising tobacco, and slave trading.”).

173. MEACHAM, *supra* note 2, at 110-11 (“Jefferson shared the prevailing views of white land-owners: that Indian lands were destined to belong to whites . . .”); *id.* at 392 (“Though he would not live to see the Trail of Tears of the 1830s, Jefferson was among the architects of Indian removal. He eagerly acquired lands from the tribes throughout the American interior—up to two hundred thousand square miles—and, as in the case of the Louisiana Purchase, did all he could to encourage white settlement even farther west and south. In 1803, writing to William Henry Harrison, then governor of the Indiana Territory, Jefferson said that he believed the Indians ‘will in time either incorporate with us as citizens of the United States or remove beyond the Mississippi.’ He threatened to retaliate against any attacking tribes by ‘seizing . . . the whole country of that tribe, and

pattern enabled a few opportunists to exploit the natural resources for themselves, while many of the original inhabitants had been either exterminated, enslaved, or forced off their ancestral land, resulting in impoverishment and other devastating consequences.¹⁷⁴ Land speculators¹⁷⁵ during Jefferson's day resented royal governmental efforts on behalf of the crown to curb their ability to acquire land for a pittance, or simply to evacuate the lands of their original inhabitants through violence, and then sell it for exorbitant profits.¹⁷⁶ Concerned that it did not have the resources to protect an ever-expanding colonial population, the monarchy had attempted to limit further settlement to the west, much to the chagrin of those who would profit from continued expansion.¹⁷⁷ This, too, fostered increasing resentment against the king.

driving them across the Mississippi, as the only condition of peace.” (omission in original)); *see also* TREUER, *supra* note 165, at 32-34.

174. *See generally* *Native Americans in Colonial America*, *supra* note 167; TREUER, *supra* note 165, at 450 (“At the time of first contact, around 1500 CE, Indian populations in North America had been, according to sober estimates, around five million. There were more than five hundred distinct tribes spread over the entire continent—from the Florida Keys to the Aleutian Islands. The deserts of the American Southwest hosted some of the most advanced social groups, who built cities that still stand today. At the confluence of the Missouri and the Mississippi, where St. Louis now stands, was a city of more than twenty thousand. Along the resource-rich Eastern Seaboard, the coast was populated, without break, from Florida to Newfoundland. But four hundred years of warfare, disease, and starvation had taken its toll. According to the U.S. Census, there were only 237,000 Indians in the United States in 1900.”).

175. MCCOLLEY, *supra* note 54, at 27 (discussing land speculation as a “profitable if risky enterprise”); *see also* BENEDICT, *supra* note 15, at 28 (“The situation became worse as colonists transitioned from settlers to land speculators—people who bought land without intending to settle there but rather to sell at higher prices to those who did. This prospect became a central feature of what historians now call ‘settler colonialism.’ For many colonists, Indian land possession would become an intolerable obstacle to wealth creation. That attitude would continue all the way through the nineteenth century.”).

176. *See, e.g.*, BENEDICT, *supra* note 15, at 61 (“Americans chafed at the Proclamation of 1763, by which King George . . . closed western lands to European settlement—and therefore to the influential colonists who wanted to buy the closed-off real estate for low prices now and sell it to settlers at high prices later.”).

177. *See id.*; *see also* Blumm, *supra* note 170, at 722 (“After the war was won, the Crown concluded that it could not trust the colonists to not encroach on Indian lands, so it promulgated King George III’s Royal Proclamation of 1763. The proclamation continued the wartime prohibition on settlement west of the mountains in an effort to avoid costly frontier wars.” (footnote omitted)).

Likewise, the excessive opulence of the plantation proprietors¹⁷⁸ was extracted from the brutal forced labor¹⁷⁹ of people who had been kidnapped from their homes in Africa,¹⁸⁰ transported under inhumane conditions across the Atlantic,¹⁸¹ and worked under the whip¹⁸² and cruel treatment¹⁸³ to

178. See, e.g., *Archaeologists Unearth Garden in Virginia Owned by Martha Washington's First Father-in-Law, Find Clues About Slavery*, CBS NEWS (Aug. 23, 2024, at 10:56 ET), <https://www.cbsnews.com/news/archaeologists-colonial-garden-williamsburg-clues-slavery/> [<https://perma.cc/QGP3-RJZN>] (“Archaeologists in Virginia are uncovering one of colonial America’s most lavish displays of opulence: An ornamental garden where a wealthy politician and enslaved gardeners grew exotic plants from around the world. Such plots of land dotted Britain’s colonies and served as status symbols for the elite. They were the 18th-century equivalent of buying a Lamborghini. . . . ‘The garden may have been Custis’ vision, but he wasn’t the one doing the work,’ said Jack Gary, executive director of archaeology at Colonial Williamsburg, a living history museum that now owns the property. ‘Everything we see in the ground that’s related to the garden is the work of enslaved gardeners, many of whom must have been very skilled.’”).

179. See, e.g., WILLS, *supra* note 3, at 146 (discussing Jefferson’s calculation the value of an enslaved laborer by estimating his death at 30 years of age); MCCOLLEY, *supra* note 54, at 5 (“[T]he palpable exploitation of slaves . . . flourished and grew through the Jeffersonian era.”); *id.* at 58 (“Certain of the visiting foreigners emphasized the brutality of the slave’s existence.”); *id.* at 64 (regarding punishments of enslaved people, “[b]urning, maiming, and whipping were all public spectacles, intended to edify the slave population generally”); *id.* at 65-66 (indicating that until 1788, Virginia law “had virtually permitted the master to kill his own slave if he saw fit”). Of course, exceptions occurred where some owners treated enslaved people somewhat more humanely, but they were still denied their freedom and full humanity. See *id.* at 58.

180. MCCOLLEY, *supra* note 54, at 139-40 (“The Negro slave, if he were a native of Africa, would typically have been captured by a coastal tribe of Africa from his native territory, and then transported to the West Indies. By the time he reached Virginia he would have long since been separated from any familiar lands or people . . .”).

181. Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: European Slaving Corporations, the Papacy and the Issue of Reparations*, 26 WILLAMETTE J. INT’L L. & DISP. RESOL. 173, 174-75 (2019) (stating the slave trade was “characterized by inhumane practices including torture, kidnapping, rape, involuntary sodomy and oft-times death” (footnotes omitted)); *id.* at 189 (discussing “the separation of African families through capture, the mental and social abuses or their long-term impact, the branding, the lack of adequate food and proper hygiene, and the forced deprivation of shelter”); *id.* at 195 (“[S]ubjecting Africans . . . to a lifetime of branding, slavery, rape, kidnapping, and torture as participants reduced African slaves’ humanity to commodities for transport and auction.”); *id.* at 197 (“Since African slaves were considered commodities . . . , they were stocked in the holds of ships. . . . [M]any captured Africans died en route to the West Indies and the Americas, of melancholy, squalor, and disease, as they were forced into inhumane conditions. By the time Africans reached the shores of the New World, many rapidly aged due the harsh conditions of their physical environment and due to depression. The warehouses were actually fortresses on the shore used as holding quarters until the time of transport and auction. The conditions of these warehouses were not any better than the ships, as disease and poor sanitation affected the captive Africans while they awaited their lugubrious fate. Ship captains, auctioneers, and some merchants attempted to disguise slaves’ physical defects, including age, by dyeing slaves’ hair, covering scars, which silently relayed the brutal treatment they endured at the hands of their original captors.”).

182. See Lea VanderVelde, *The Last Legally Beaten Servant in America: From Compulsion to Coercion in the American Workplace*, 39 SEATTLE U. L. REV. 727, 768-75 (2016) (referencing Section II.B.4. of the VanderVelde article titled “Whipping Slaves in the Antebellum South to Discipline Them to Work”); see also MCCOLLEY, *supra* note 54, at 6 (stating slaves were not only “starved and beaten” but also “bound forever to their master’s will”); *id.* at 91 (“The frequent run-aways . . . might be regarded as evidence of mistreatment.”); BENEDICT, *supra* note 15, at 44 (“The slave codes granted broad discretion to masters to use physical force to discipline slaves.”).

183. MCCOLLEY, *supra* note 54, at 6 (“Negro slavery, at any stage of American history, was a tragic and vicious system which warped to some extent everyone having occasion to become

support the sumptuous lifestyles of their enslavers.¹⁸⁴ Plantation owners in the south found it more profitable to own and exploit Black people than to pay White laborers to work in their fields and serve in their homes.¹⁸⁵ State governments also enslaved people to extract their labor.¹⁸⁶ By the end of the eighteenth century, “[e]nslaved men and women composed one fifth of [the] population ([forty] percent to [sixty] percent in southern states).”¹⁸⁷ In the plantation system of the south, enslaved people “accounted for most of the work that was accomplished,”¹⁸⁸ leaving their White enslavers, such as Jefferson, with extensive leisure time to devote to other pursuits at the expense of those forced to labor on their behalf.¹⁸⁹ Although slavery was more common in the southern colonies, a substantial number of northern colonists also enslaved their fellow human beings¹⁹⁰—both Africans and Indigenous Americans.¹⁹¹ Moreover, shippers from the northern colonies profited greatly by

involved with it.”); *id.* at 57 (“If, as was sometimes said, the average survival of a slave introduced into the rice swamps of South Carolina was only three years, Virginia’s slavery could be comparatively milder and still be grim.”).

184. See, e.g., Erin Blakemore, *The Shocking Photo of ‘Whipped Peter’ That Made Slavery’s Brutality Impossible to Deny*, HIST. (Sep. 17, 2025), <https://www.history.com/articles/whipped-peter-slavery-photo-scourged-back-real-story-civil-war> [<https://perma.cc/46CQ-B8CH>]; MCCOLLEY, *supra* note 54, at 54 (“The aristocratic habits of the planters simply could not be maintained without their Negro slaves.”); *id.* at 183 (“It was usually agreed that slavery tempted the owning class to luxury, vice, and a tyrannical disposition.”).

185. MCCOLLEY, *supra* note 54, at 30 (“[T]he planter did not in fact have the alternative of hiring free white labor in any quantity. . . . [s]lave labor replaced hired and indentured servants in Virginia originally because of this economic fact.”); *id.* at 54 (“The very abundance of land which made the [aristocratic] class open and growing precluded their commanding the services of a white peasantry, nor could they extend any meaningful degree of freedom to their Negroes without running the risk of the former slaves developing independent ambitions. The planter required a peasantry, but he could maintain one only by preserving the legal forms of chattel slavery.”).

186. *Id.* at 20 (“During the American Revolution the state of Virginia used publicly owned slaves In times of peace slaves were equally conspicuous in public works.”).

187. APPLEBY, *supra* note 11, at 1.

188. MCCOLLEY, *supra* note 54, at 21; see also *id.* at 20 (“In Virginia east of the Blue Ridge slaves filled practically all the jobs available to skilled as well as to unskilled labor.”); *id.* at 58 (“David Montague Erskine . . . wrote in a travel diary . . . ‘One half or more of the inhabitants [of Norfolk] are black, and slaves, moreover, in a country calling itself a free Republic. Out of ten thousand inhabitants five thousand are slaves who work for the white people, who think it beneath them to stir themselves.’” (alteration in original)).

189. *Id.* at 22 (“A planter could generally afford to turn over the direct supervision of his slaves to an overseer if he owned more than ten of them. This freed his time for leisure, politics, or a profession”).

190. Noah Robertson & Lindsey McGinnis, *Plantation Tours Bypass the ‘Big House’ to Focus on the Enslaved*, CHRISTIAN SCI. MONITOR (Jan. 28, 2021, at 9:09 ET), <https://www.csmonitor.com/USA/2021/0115/Plantation-tours-bypass-the-big-house-to-focus-on-the-enslaved> [<https://perma.cc/TQ3J-ATXT>] (“Records show slavery is central to Northern states’ histories. Benjamin Franklin, John Jay, and other influential figures in the North who supported abolition owned slaves”).

191. Becky Little, *Slavery Persisted in New England Until the 19th Century*, HIST. (May 27, 2025), <https://www.history.com/articles/slavery-new-england-rhode-island> [<https://perma.cc/SC8T-ASQX>] (“[S]tarting in 1703, the Colony of Rhode Island and Providence Plantations supplanted them with new laws codifying the enslavement of African and Native people.

transporting people kidnapped from Africa to be sold into the colonies in the south.¹⁹² Thus, many wealthy merchants, traders, and shippers in the north also had incentive to perpetuate the institution of slavery and the subordination of Blacks throughout the colonies.¹⁹³ Therefore, when the royal monarchy threatened to free enslaved people who sided with the crown against any recalcitrant colonists, colonial antipathy continued to build.¹⁹⁴

Moreover, differences of opinion regarding the proper role of government widened on both sides of the Atlantic.¹⁹⁵ Although the colonies were used to constitutional documents ordering the proper structure and functioning of their governments, Britain had drifted away from central reliance on instruments such as the Magna Carta, William and Mary's Declaration of Rights, and so on. Relying additionally on the basic structure of the English government—its constitution, i.e., how it was “constituted”—to protect English liberties,¹⁹⁶ British sovereignty was thought to reside in the King-in-

By 1750, the Colony of Rhode had the highest percentage of enslaved people in New England, and was a dominant player in the global slave trade.”).

192. See generally MEACHAM, *supra* note 2, at 106 (“[Jefferson noted,] ‘Our Northern brethren also I believe felt a little tender under those censures [denouncing the slave trade]; for though their people have very few slaves themselves yet they had been pretty considerable carriers of them to others.’”); Robertson & McGinnis, *supra* note 190 (“New England colonies played a critical role in the transatlantic slave trade. There were enslaved people in every Rhode Island township, historians say, and local merchants bankrolled more than 500 voyages to West Africa during the Colonial period. All the other colonies combined sent 189.”).

193. See MEACHAM, *supra* note 2, at 106; Little, *supra* note 191.

194. ELLIS, *supra* note 3, at 52 (noting “the governor of Virginia, Lord Dunmore, declared martial law and infuriated the Tidewater leadership by inviting all slaves to join him as free men in war against the planter class”); MEACHAM, *supra* note 2, at 81-82 (discussing reactions to Lord Dunmore’s threat to free slaves who fought with the British against recalcitrant colonists and stating “[c]olonists with slaveholding sympathies either began or accelerated their preparations for war, Jefferson among them”).

195. See generally BENEDICT, *supra* note 15, at 55 (“Most Americans continued to believe firmly that Parliament’s power was limited by the organic constitution of the empire and that it did not represent constituencies that were unable to vote for its members. Over time, most Britons reached the opposite conclusion.”).

196. See generally *id.* at 20 (“After the Glorious Revolution, most English people no longer looked only to such documents [the Magna Carta, the Petition of Right, the Declaration of Rights, etc.] to protect their liberty. They claimed that the whole constitution of the English government guaranteed liberty. By ‘constitution’ they meant the fundamental structure of the system taken as a whole—the way it was ‘constituted.’ Not only did such basic ordinances at the Magna Carta and the Bill of Rights proclaim the rights of British subjects, but England’s ‘balanced’ government also protected liberty. In Parliament, the king, the House of Lords, and the House of Commons acted together. Each represented different elements of the community, providing the virtues of each element while checking its vices. The king, as a single chief executive, provided energy, efficiency, and a clear vision of the general welfare. The Lords provided an educated, intelligent, and conservative elite, trained to leadership and statesmanship. The House of Commons represented the ordinary people, primarily the landed gentry and wealthy townspeople, protecting their liberty and interests against the danger of an overly ambitious king or a greedy aristocracy. In turn, the conservative king and House of Lords promoted stability by checking the impulsiveness of the common people.” (emphasis omitted)).

Parliament, in other words, in both entities acting in concert.¹⁹⁷ The prevailing thought in England was that King George III, along with Parliament had sole sovereignty over the colonies, including over internal taxes as well as external tariffs, regulation of land acquisition and westward expansion, and other areas.¹⁹⁸ England thought the colonists should pay their fair share of the debts the country had incurred in the French and Indian War (1756-1763), when Britain was defending the English colonies in the New World from encroachments by the French and the Native American nations who fought with them.¹⁹⁹ Furthermore, the king did not want settlers to continue expanding westward, which would necessitate even greater expenditures by Britain to subdue the Native American nations in the west and to protect the White settlers who were encroaching upon the Native American homelands.²⁰⁰ Yet the colonists despised the new taxes, the restrictions placed on their land speculation, and the more involved governance Britain had begun to impose

197. *See id.* at 18-20; *see also supra* note 196 and accompanying text.

198. BENEDICT, *supra* note 15, at 61. The Sugar Act of 1764, also known as the American Revenue Act, “increased customs duties on molasses,” which was the main ingredient in rum. *Id.* The Currency Act of 1751, which only applied to New England, was extended to the other American colonies by the Currency Act of 1764, which “forbade colonists from paying debts owed to English creditors in depreciated colonial currency and limited their authority to provide substitutes for gold and silver. *Id.* Additionally, King George closed western lands to European settlement with the Proclamation of 1763. *Id.* These laws were not favorable to the American colonists who interpreted them as extensions of British rule. *Id.* “Moreover, the new system for enforcing customs laws deprived Americans of the common-law right to a jury trial and subjected them to general search warrants.” *Id.* The 1765 Stamp Act taxed Americans directly, not just imports, by “requir[ing] all legal documents and publications in the colonies to bear a stamp bought from the government,” which implied Parliament could also legislate Americans internally. *See id.* at 61, 64. “As it repealed the Stamp Act in 1766, Parliament passed the Declaratory Act The act announced that Parliament had the power to pass laws binding the colonies ‘in all cases whatsoever’ and declared colonial resolutions to the contrary null and void.” *Id.* at 64. “Imperial-minded Court Whigs and their opponents in Britain, Ireland, and the colonies fought bitterly over the British constitution. The conflict centered on two related issues: the existence of a ‘fixed constitution’ that protected liberty by limiting the powers even of Parliament, and the nature of parliamentary representation. The Court Whigs argued that Parliament had complete and absolute governmental authority in the British empire, an authority that they saw as essential to governing it efficiently. To sustain their position, they pointed to the accepted definition of sovereignty: the final, unlimited, indivisible locus of authority in any political system. They insisted that, since sovereignty resided in Parliament, its authority must be unlimited. The Magna Carta, Petition of Right, Bill of Rights, and other fundamental ordinances listed rights that the king could not infringe unless he received the assent of Parliament; they did not bind Parliament itself. The constitution did suggest principles that ought not to be contravened, but it was up to Parliament to decide how to carry them out. To say otherwise was to deny that Parliament was sovereign, and if sovereignty did not lie in Parliament, where did it lie? What institution could determine that a law of Parliament was unconstitutional? No court claimed the power.” *Id.* at 58 (emphasis omitted). Some thought Parliament was constrained by the above documents [“a fixed British constitution”], but “even Pitt thought that it was up to Parliament to remedy its own violations of the constitution, constrained to do so by a vigilant electorate.” *See id.* at 58-59.

199. *Id.* at 60 (discussing what Americans called the French and Indian War (1756-1763) between the British empire and France where Britain ousted the French from their control of parts of North America, and “the British government had borrowed heavily to finance it”).

200. *See supra* notes 176-77 and accompanying text.

upon the colonies to enforce its new regulations, believing that Parliament had only limited power over the colonies since the colonists had no part in its election.²⁰¹ Leaders of the colonies began meeting with one another to develop a unified response in protest, resulting in petitions to the king, boycotts of British goods, and other forms of resistance.²⁰² Meanwhile, the king installed royal governors loyal to Britain, who dissolved the colonial legislatures and imposed harsher edicts on the colonial subjects, limiting the rights they had previously enjoyed under common law in favor of the king's authority to impose laws on the colonies.²⁰³

In 1774, Thomas Jefferson wrote a missive for the Virginia delegates to the First Continental Congress, urging Virginia's leaders to instruct their delegates to reject the absolute authority claimed by the British crown and

201. See generally BENEDICT, *supra* note 15, at 48 ("British officials continued to look at Indian relations differently than colonists did, but it was not easy to control colonists' aggressions, especially as so many colonists began to see land speculation as the road to wealth. That required the displacement of Indian law, and thus Indians themselves, with English law that recognized property rights. The British government continued to negotiate treaties with Indian nations, implicitly treating them as equals despite their legal subordination in theory. The treaties guaranteed Native Americans control of the territories they occupied. But colonists continually found ways around British authority on the frontier. They exploited the inability of the royal government, and even the colonial governments, to project power in the hinterland. There were constant, violent collisions between Native Americans and white settlers. Outright racial hatred grew on both sides. As whites gained power, that hatred would have devastating effects on Indian nations and individuals."); *id.* at 55 ("Most Americans continued to believe firmly that Parliament's power was limited by the organic constitution of the empire and that it did not represent constituencies that were unable to vote for its members. Over time, most Britons reached the opposite conclusion."); *id.* at 62 ("The colonists protested that as British subjects they could not be subjected to laws and taxation without the consent of their representatives; 'no taxation without representation,' they declared."); *id.* at 63 ("Most Americans simply denied Parliament's power to levy internal taxes on the colonists, arguing that taxation without representation was beyond Parliament's authority under the British constitution. The fact that no formal sanction existed to prevent the enforcement of an unconstitutional law made no difference. Parliament might have the *naked* power to enforce such a law, but that did not mean it had the *right* to do so.").

202. See generally *id.* at 62 ("For the first time, the colonies sent representatives to a common meeting, or 'congress,' which forwarded protest resolutions to the king and Parliament. . . . The arguments were legal and constitutional. Lawyers played an outsized role in developing them—a pattern that would continue throughout American history. These arguments were read and repeated by an increasing number of people with growing interest in public questions. Ordinary Americans were quick to feel the grievance that an outside power was intruding on their lives, and they felt it surprisingly passionately. They knew it was wrong, but lawyers like Otis, Dulany, John Dickinson, John Adams, Patrick Henry, and Thomas Jefferson told them why it was wrong."); *id.* at 64 ("To be effective, the boycott required the cooperation of women, and to get it, revolutionary activists had to bring them into the public conversation. A number of women began to assert an interest in public life that would persist throughout the war that followed."); *id.* at 65 (discussing the Boston Tea Party); *id.* at 66 ("In response to the Coercive Acts, the colonies convened a Continental Congress called not by the colonial legislatures (many of which were reluctant to defy Britain in defense of lawbreaking New Englanders) but by extra-legal local 'committees of correspondence.' Like the Stamp Act Congress, it sent a formal protest to Parliament, declaring the right of Americans to internal self-government."); *id.* at 63 (discussing the location of sovereignty).

203. See *id.* at 30-31 (describing clashes between royal governors and colonial parliaments); *id.* at 31-32 (highlighting that the king thought he had dominion over colonies (not common law)); *id.* at 33 ("Americans identified the common law with liberty rather than authority.").

Parliament over the colonies.²⁰⁴ His pamphlet entitled *A Summary View of the Rights of British America* made an unprecedented departure from previous colonial assumptions that Parliament retained some authority over the colonies, even though the colonies had no representation in Parliament.²⁰⁵ Jefferson made the radical leap, claiming that Parliament had no authority over the colonies whatsoever.²⁰⁶ Moreover, he accused the king of subjugating the colonies.²⁰⁷ He proposed that the colonies enter into a new constitution or treaty with the king, delineating the separate authority of the colonial governments and clarifying that the colonies were part of a British confederation, each with independent legislatures.²⁰⁸ Although Jefferson's perspectives were not heeded by the Virginia leadership, which gave more moderate instructions to its delegates to the First Continental Congress, his comments

204. ELLIS, *supra* note 3, at 34-35; *see also* WILLS, *supra* note 3, at 16 (“[In 1774, Jefferson’s] first published work, the pamphlet *A Summary View of the Rights of British America* . . . was written (unsolicited, so far as we know) as an instruction to the first delegation going to Philadelphia. Jefferson, who was averse to arguing his own views in public, fell conveniently ill when the convention met to choose and instruct its delegates. Still, he had two fair copies ready to send on.”).

205. ELLIS, *supra* note 3, at 34-35.

206. *See generally id.* (“What most readers noticed, however, and Jefferson later claimed was his chief contribution, was the constitutional argument that Parliament had no right *whatsoever* to exercise authority over the colonies. While this position had been implicit in the colonial protest literature ever since the Stamp Act crisis in 1765, the clarity of the colonial case had fallen afoul of several complicating distinctions. Granted, Parliament had no right to *tax* the colonists without their consent, but did it not have the power to *regulate* trade? Well, yes, it did, but not when the intent of the trade regulation was to raise revenue. But, then, how was intent to be gauged? And what about Parliament’s other legislative actions, like quartering troops in colonial cities and closing Boston’s port? These nagging questions made for a somewhat convoluted constitutional problem. Could Parliament do some of these things but not others? If so, how did one decide which was which? The core appeal of the *Summary View* was that Jefferson cut through the tangle with one sharp thrust: The British parliament has no right to exercise authority over us.” (citation modified)); *id.* at 35 (“But Jefferson staked out the constitutional ground just as it was becoming the only tenable position for the opponents of British imperial policy to stand on.”); *id.* (noting John Adams and John Wilson “were simultaneously reaching the same conclusion about Parliament’s lack of authority in the colonies”).

207. *See generally id.* at 34 (“Single acts of tyranny may be ascribed to the accidental opinion of the day; but a series of oppressions, begun at a distinguished period, and pursued unalterably thro’ every change of ministers, too plainly prove a deliberate, systematical plan of reducing us to slavery.” (quoting THOMAS JEFFERSON, *A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA* (1774))); *id.* at 35 (“Jefferson had already moved forward to the next target, the monarchy, which was in fact the only remaining obstacle to the assertion of American independence.”); *id.* at 35-36 (“The king is not some specially endowed ruler but merely the chief officers of the people, appointed by the laws, and circumscribed with definite powers, to assist in working the great machine of government erected for their use, and consequently subject to their superintendence.” (citation modified)); *id.* at 36 (“George III had perpetuated the existence of chattel slavery by repeatedly blocking colonial efforts to end the African slave trade.”).

208. *See generally* ONUF, *supra* note 13, at 88 (“Jefferson’s first sustained piece of political writing, *A Summary View of the Rights of British America* (1774), constituted a ‘plan for federal union’ in a reformed British empire. . . . In effect, Jefferson, John Adams, James Wilson, and other patriot writers argued for a new imperial constitution or treaty—the words were used interchangeably—that would guarantee the autonomy and fundamental rights of the empire’s far-flung member states in return for a perpetual alliance, or union.”).

were widely circulated and “put him in the vanguard of the revolutionary movement in America.”²⁰⁹ *A Summary View* was a draft for the Declaration of Independence two years later.²¹⁰ It also raised Jefferson’s stature throughout the colonies, and resulted in his being assigned as a delegate to the Second Continental Congress, where he served from 1775 to 1776.²¹¹

Shortly after the Battle of Lexington and Concord in April 1775, the following month the Second Continental Congress convened in Philadelphia.²¹² At the request of the leadership in Congress, Jefferson drafted the *Declaration of the Causes of Necessity for Taking Up Arms* in 1775.²¹³ The Congress chose George Washington as the General of the Continental Army,²¹⁴ and the congressional delegates “were busy raising an army, instructing colonial legislatures on ways to draw up new state constitutions, investigating foreign alliances, [and] overseeing an ongoing war.”²¹⁵ Jefferson rejuvenated at Monticello from December 1775 through the spring of 1776, when the royal governor of Virginia declared martial law and threatened to grant liberty to any enslaved people in the colony who would join him against rebellious plantation owners.²¹⁶ At the beginning of 1776, Thomas Paine had published

209. ELLIS, *supra* note 3, at 34. *But see* WILLS, *supra* note 3, at 77-78 (arguing it was more likely that Jefferson’s assistance in drafting the Virginia House of Burgesses’ response to Lord North’s conciliatory proposal was probably the manuscript which made Jefferson’s writing of note to the members of the Second Continental Congress).

210. ELLIS, *supra* note 3, at 36.

211. *See* sources cited *supra* note 209 and accompanying text.

212. BENEDICT, *supra* note 15, at 68 (noting a second Continental Congress in 1775 and “fighting erupted at Lexington and Concord”); ELLIS, *supra* note 3, at 46.

213. *See* ELLIS, *supra* note 3, at 46-47 (“At the purely constitutional level Jefferson’s argument in *Causes and Necessity* represented a slight retreat from the position advanced in *Summary View*. Instead of denying Parliament any legitimate authority in the colonies, Jefferson conceded that ‘some occasional assumptions of power by the parliament of Great Britain, however unacknowledged by the constitution of our governments, were finally acquiesced in thro’ warmth of affection.’ This was undoubtedly a concession to the moderates in the Congress and a reflection of Jefferson’s realization that he needed to accommodate perspectives different from his own. The expatriation theme was also presented in muted form. ‘Our forefathers . . . left their native land,’ he wrote, ‘to seek on these shores a residence for civil and religious freedom.’”).

214. *See* BENEDICT, *supra* note 15, at 68; ELLIS, *supra* note 3, at 46; *see also* WILLS, *supra* note 3, at 361 (“Chance removed [Washington] from the scene of the Declaration (where he would certainly have been a signer if he had not been on the battlefield), just as chance removed Jefferson from America when the Constitution was being drafted. A fortuitous symmetry was thus established—Jefferson as the man of the Declaration, the ideal, the dream; Washington the man of the Constitution, of the real, of power.”).

215. ELLIS, *supra* note 3, at 47; *see also* WILLS, *supra* note 3, at 26 (“Randolph and Harrison, Washington and Pendleton, once committed to a course of resistance, would use their military pride and experience, along with their legislative skill, to supply the army—the most urgent congressional task after its very first session.”).

216. *See* MCCOLLEY, *supra* note 54, at 82 (discussing in late “1775, an embattled Lord Dunmore had declared all slaves of insubordinate Virginians free”); MEACHAM, *supra* note 2, at 81-82 (discussing Lord Dunmore’s statements about freeing slaves); *id.* at 95-96 (“November 7, 1775, . . . [Lord Dunmore] directly challenged white Virginia, ordering that any slave or indentured servant who took up arms against the American Revolutionaries would be granted their freedom. Frightened

Common Sense, arguing for the American colonies to form a government and constitution of their own, which swept through the colonies stirring up sentiments for a break with Britain.²¹⁷ Upon his return to Philadelphia in May,²¹⁸ the Second Continental Congress passed a resolution urging each state to draft its own constitution in preparation for complete independence from England.²¹⁹ During that timeframe, colonial legislatures were adopting instruments declaring the protection of rights within the colonies as well as drafting new state constitutions.²²⁰

In addition to his congressional duties, Jefferson focused on composing a new state constitution for Virginia, as drafting the new state constitution was deemed to be much more important than the goings-on in Congress.²²¹

white Virginians—and sympathetic whites in other colonies—suddenly saw their most fevered visions of slaves turning against masters threatening to become real. The announcement drove a number of those who had been previously lukewarm about independence into the Revolutionary camp.”). See generally ELLIS, *supra* note 3, at 52 (“Throughout the winter and spring [of 1776], . . . the governor of Virginia, Lord Dunmore, declared martial law and infuriated the Tidewater leadership by inviting all slaves to join him as free men in war against the planter class . . .”).

217. Malea Walker, *250 Years Ago: Thomas Paine’s Common Sense*, LIBR. OF CONG. BLOGS (Jan. 9, 2026), <https://blogs.loc.gov/headlinesandheroes/2026/01/250-years-ago-thomas-paines-common-sense/> [https://perma.cc/V24V-9VHH]; ELLIS, *supra* note 3, at 58 (“Thomas Paine’s *Common Sense*, published in January, had swept through the colonies like a firestorm, destroying any final vestige of loyalty to the British crown.”).

218. ELLIS, *supra* note 3, at 53.

219. *Id.* at 58 (“In May the Congress had charged each colony to draft new state constitutions, an explicit act of political independence that Adams always regarded as the decisive move.”).

220. See generally BENEDICT, *supra* note 15, at 77 (“Inspired by revolutionary fervor, the Virginia assembly passed a ‘Declaration of Rights’ in June 1776. Although not incorporated into the commonwealth’s constitution, it provided a model for many of the other states. Prepared by George Mason, it declared the people to be the source of all power, with the government their trustees and servants. It discounted the creation of ‘exclusive or separate emoluments or privileges,’ except for nonhereditary ones in recognition of public services. It prescribed proper principles for the organization of republican government, such as separation of powers among the legislature, executive, and judiciary. It defined rights in criminal trials, declared jury trials in both criminal and civil trials ‘sacred,’ and pronounced freedom of the press ‘one of the great bulwarks of liberty’ that was restrained only by ‘despotick governments.’ It declared that all were ‘equally entitled to the free exercise of religion.’”).

221. See generally ELLIS, *supra* note 3, at 53 (wanted to help draft Virginia state constitution (state constitution drafting was presumed more important than national Congress)); *id.* at 55 (“Jefferson, for his part, remained focused on events back in Virginia. Throughout the weeks of late May and early June he devoted the bulk of his energies to producing three different drafts of a new constitution for his home state. Clearly influenced by the John Adams pamphlet *Thoughts on Government*, Jefferson emphasized the separation of powers, an independent judiciary and a bicameral legislature, with a weak executive (called the Administrator in order to signify his lack of governing power). Every political paper that Jefferson had written up to this point in his life had been a protest statement against some aspect of British policy. Therefore it is interesting to note that his initial effort at a positive and practical vision of government recommended a constitutional structure that adopted the general form of the old colonial governments, the exception being the diminution of executive authority, clearly a lesson rooted in the colonial resistance to gubernatorial claims of royal prerogative.”); *id.* at 292 (“In the Adams version of the true story, however, the culminating moment was not July 4, 1776, and the decisive document was not the Declaration of Independence. The war itself was already raging by that time. Most of the delegates to the Continental Congress regarded the Declaration as a ceremonial confirmation of what had already occurred; its chief practical value,

In his models for the Virginia constitution, Jefferson proposed that land be distributed at fifty acres to each landless adult White male, which would enable them to meet the property requirements for voting, significantly expanding suffrage within the state.²²² He provided for freedom of religion, in line with his longstanding advocacy for the separation of church and state.²²³ He would have the populace vote on ratification of the constitution, conscientiously locating sovereignty with the people rather than with the state legislatures.²²⁴ In several iterations he included a list of grievances against King George III, which ultimately were inserted into the Declaration of Independence he penned shortly thereafter.²²⁵ Although Jefferson's drafts were not ultimately adopted as the state constitution of Virginia, they provided him with a mechanism to hone his thoughts about independence from Britain and the importance of equality, liberty, and self-governance that he would incorporate into his monumental next project.²²⁶

apart from publicizing a foregone conclusion in lyrical terms, was to enhance the prospects of a wartime alliance with France, and all the revolutionary leaders understood the French alliance to be the urgent issue at the time. Jefferson's Declaration was like the thunder in an electrical storm; it made much noise, but the lightning had flashed earlier and already done the real work."); *id.* ("For Adams the culminating moment had occurred on May 15, 1776, when the Continental Congress passed a resolution—not so coincidentally, he had proposed it—calling for new constitutions in each of the states."); WILLS, *supra* note 3, at 32 ("[E]ven during the tense latter days of May and the whole month of June, when the excitement at the impending vote for independence filled the letters of other delegates, he was working out his own ideas on a new constitution for Virginia.").

222. ELLIS, *supra* note 3, at 55-56 ("Anyone on the lookout for more avowedly progressive features in Jefferson's thinking could have found them. Although he required a property qualification for all voters, he also proposed a land distribution policy that would provide fifty acres for each resident."); APPLEBY, *supra* note 11, at 70 ("His draft constitution for Virginia, written in 1776, included a fifty-acre property qualification for voting while simultaneously proposing a gift of fifty acres to all landless adult white men."); *see also* WILLS, *supra* note 3, at 134 (referring to "the fifty acres Jefferson wanted to give to each free male in Virginia").

223. ELLIS, *supra* note 3, at 55-56 ("He quietly inserted a radical provision for complete religious freedom.").

224. *Id.* ("And he urged that the new constitution be ratified by a special convention called exclusively for that purpose rather than by the sitting legislature, a democratic idea that John Adams had also proposed as a way of implementing the principle of popular sovereignty.").

225. *See generally id.* ("An aspect of his thinking proved directly relevant for the task he was about to assume. In his preamble to the first and third drafts of the Virginia constitution, he composed a bill of indictment against George III. One could see the glimmerings of these charges against the British monarch in *Summary View*, then even more explicit accusations in *Causes and Necessities*. But the lengthy condemnation of the king in his draft constitution extended the list of crimes against colonial rights. It was in effect his penultimate draft for the list of grievances that became the longest section of the Declaration of Independence.").

226. *See George Mason, the Man*, ANTONIN SCALIA L. SCH., GEORGE MASON UNIV., https://www.law.gmu.edu/about/mason_man [<https://perma.cc/7B6A-69KS>] (last visited Mar. 15, 2026). *See generally* ELLIS, *supra* note 3, at 55-56 ("All in all, Jefferson's prescriptions for the new Virginian republic were an impressive blend of traditional forms and selective reforms. They establish the historically correct, if unorthodox, context for answering the proverbial question: What was Jefferson thinking about on the eve of his authorship of the Declaration of Independence? The answer is indisputable. He was not thinking, as some historians have claimed, about John Locke's theory of natural rights or Scottish commonsense philosophy. He was thinking about Virginia's new constitution.").

B. THOMAS JEFFERSON'S DECLARATION OF INDEPENDENCE

Following Locke's encouragement in his *Second Treatise* to revolt against a government that was violently betraying its responsibilities to the people, and at the urging of colonial leaders, the Second Continental Congress decided to adopt a proclamation announcing the sovereignty, unification, and liberation from Britain of the thirteen colonies.²²⁷ In June, Richard Henry Lee, a delegate from Virginia, "moved the resolution 'that these United Colonies are, and of right ought to be, free and independent States,'"²²⁸ which John Adams seconded.²²⁹ Upon the resolution's adoption, the Congress appointed a committee including John Adams, Benjamin Franklin, Robert Livingston, Roger Sherman, and Thomas Jefferson to draft the document.²³⁰ The committee delegated Jefferson to write the initial version, in part because a document drafted by a Virginian would carry more weight with the southern states, and also because Jefferson's outstanding craftsmanship with words in his previous publications was well recognized.²³¹

This Declaration of Independence was thought to be a mere formality articulating what had already happened, as military hostilities had been fulminating for over a year.²³² The newly formed states needed to have a formal document outlining their status as independent, sovereign, and united, so they could jointly enter into treaties with other nations, in order to facilitate their negotiations attempting to form alliances with France and other potential

227. See generally BENEDICT, *supra* note 15, at 68 ("The delegates turned to the Whig justification of the Glorious Revolution articulated so influentially by John Locke nearly a century earlier. His argument that people could repudiate governments that deprived them of natural rights resonated with the philosophy of the Enlightenment that dominated European thought."); *id.* at 19 (articulating Locke's theory that governmental legitimacy rests on consent and that breaches of the social compact justify dissolving existing authority and establishing a new governmental scheme, a principle embraced by Whig thinkers and invoked to justify revolutionary action).

228. ELLIS, *supra* note 3, at 57.

229. WILLS, *supra* note 3, at 18 (discussing Lee making the motion for independence and Adams seconding it).

230. *Id.* ("The committee [to draft a document that implemented the Lee resolution] convened shortly after it was appointed on June 11. (Besides Adams and Jefferson, it included Benjamin Franklin, Robert Livingston and Roger Sherman.) The rest of the committee delegated the drafting to Adams and Jefferson."); see also BENEDICT, *supra* note 15, at 69 ("The Congress delegated the job of framing the appropriate language to a committee chaired by Thomas Jefferson, whose original language was revised by the other members, especially John Adams and Benjamin Franklin. All three were well versed in Enlightenment philosophy."); *id.* at 84 (noting Benjamin Franklin had proposed a "Plan of Union" in 1754).

231. ELLIS, *supra* note 3, at 57.

232. WILLS, *supra* note 3, at 325 ("It was a necessary step for the securing of foreign aid in the ongoing war effort."); MEACHAM, *supra* note 2, at 104 ("[The Declaration] was produced in a particular moment by a politician to satisfy particular concerns for a particular complex of audiences: undecided Americans, soldiers in arms, and potential global allies."); see also ELLIS, *supra* note 3, at 292; *id.* at 54 ("[T]he writing of the Declaration of Independence did not seem nearly so important as other priorities, including the constitution-making of the states and the prospect of foreign alliances with France or Spain.").

allies who might assist them in the Revolutionary War.²³³ The intended audience also included the English ministry to convince Britain to allow this new union of states to secede from the mother country.²³⁴ Additionally, in an act of nation-building, the Declaration was an attempt to reach people throughout the colonies who had previously conceived of themselves as British subjects,²³⁵ soldiers in the Continental Army fighting for independence from Britain,²³⁶ as well as colonial leaders, to convince them of their new status as American citizens rather than either as British subjects (as many people were still loyal to the British crown)²³⁷ or as citizens solely of their individual states (as many thought of their individual states as the sole locus of sovereignty;²³⁸ e.g., many thought of themselves as Virginians or New Yorkers instead of as Americans).²³⁹

Despite the sentiment in Congress that the document was less consequential than other more pressing matters of the time,²⁴⁰ history has rendered Thomas Jefferson's Declaration of Independence of primary importance in United States tradition and folklore: "His authorship of the Declaration of Independence is regarded as one of those few quasi-religious episodes in American history, that moment when, at least according to the most romantic

233. ELLIS, *supra* note 3, at 292.

234. WILLS, *supra* note 3, at 341 (noting the Declaration was addressed in part to the King and the British); MEACHAM, *supra* note 2, at 104 ("Constituencies included readers in all of the colonies (especially in regions where opinion still tended against independence) and those in the armed service of the American cause."); ELLIS, *supra* note 3, at 47.

235. MEACHAM, *supra* note 2, at 104. *See generally id.* at 67 (stating an interpretation that "Jefferson intended the Declaration to be read aloud or performed"); ONUF, *supra* note 13, at 75 ("British colonists were not born but became 'American,' and the becoming—the professions and practices that signified active consent—followed no pre-ordained path.").

236. MEACHAM, *supra* note 2, at 104 ("[The Declaration] was produced in a particular moment by a politician to satisfy particular concerns for a particular complex of audiences: undecided Americans, soldiers in arms, and potential global allies.").

237. *Id.* at xxvi-xxvii ("Most Americans were, after all, of British descent, and American culture in the decades leading up to the Revolution was deferential to—and even celebratory of—the monarchy."). Of course, many were of African descent and other ancestry, and many were Native Americans.

238. *Id.* at 157 (stating that under the Articles of Confederation, "the states were essentially sovereign nations, which left the national government ill-equipped to create coherent foreign and commercial policies that might strengthen the young country").

239. WILLS, *supra* note 3, at 12 ("In Philadelphia, [Patrick] Henry startled the Congress with prophetic hints when he concluded: 'The distinctions between Virginians, Pennsylvanians, New Yorkers, and New Englanders are no more. I am not a Virginian, but an American.'"). Note that the other members of Congress were "startled" by this statement, because most thought of themselves as citizens of their states, and not as Americans. *See generally id.*

240. *Id.* at 325.

explanations, a solitary Jefferson was allowed a glimpse of the eternal truths and then offered the literary inspiration to inscribe them on the American soul.”²⁴¹

Thomas Jefferson’s expansive readings ensured his deep knowledge of history, political science, and philosophy, especially of the Enlightenment, upon which he relied heavily in crafting the Declaration.²⁴² He acknowledged that his ideas were not unique or original,²⁴³ but instead were a compilation drawn from historical and contemporary political thinkers to capture the

241. ELLIS, *supra* note 3, at 54; *see also id.* 58-59 (“The work [drafting the Declaration] had to be done alone, isolated from the public debates. It needed to possess an elevated quality that linked American independence to grand and great forces that transcended the immediate political crisis and swept the imagination upward toward a purer and more principled world. Finally, it needed to paint the scene in bright, contrasting colors of truth and falsehood, right and wrong, ‘ought’ and ‘is’ without any of the intermediate hues or lingering doubts. It is difficult to imagine anyone in America better equipped, by disposition and experience, to perform the task as well.”).

242. *See generally* BENEDICT, *supra* note 15, at 100 (emphasizing the founding fathers’ “intimate connection with the Enlightenment”); ONUF, *supra* note 13, at 73 (“For Jefferson, the claim to nationhood set forth in the Declaration’s opening paragraph depends, in theory, on the social contract principles of the second paragraph.”); ELLIS, *supra* note 3, at 66-67 (stating Jefferson was influenced by John Locke’s Second Treatise: “Jeffersonian thought was inherently liberal and individualistic and... fundamentally compatible with America’s emerging capitalistic mentality”); *id.* at 67 (“[Jefferson was also influenced by] the Scottish Enlightenment, especially the moral philosophy of Francis Hutcheson. The key insight here is that Jefferson’s belief in the natural equality of man derived primarily from Hutcheson’s doctrine of the ‘moral sense,’ a faculty inherent in all human beings that no mere government could violate. Moreover, the Scottish school of thought linked Jefferson to a more communal or collectivistic tradition that was at odds with Lockean liberalism and therefore incompatible with unbridled individualism, especially the sort of individualism associated with predatory behavior in the marketplace.”); *id.* (noting some have argued Jefferson was not thinking about the Enlightenment); *id.* at 55-56 (“What was Jefferson thinking about on the eve of his authorship of the Declaration of Independence? The answer is indisputable. He was not thinking, as some historians have claimed, about John Locke’s theory of natural rights or Scottish commonsense philosophy. He was thinking about Virginia’s new constitution.”); *id.* at 66-67 (noting, however, his influence by the Enlightenment and thinking about Virginia’s new constitution were certainly not mutually exclusive); MEACHAM, *supra* note 2, at xxi (“A philosopher and a scientist, a naturalist and a historian, Jefferson was a man of the Enlightenment, always looking forward, consumed by the quest for knowledge.”).

243. WILLS, *supra* note 3, at v-vi (regarding influences on the Declaration, Jefferson mentioned that “[a]ll its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc.”); *id.* at vi (demonstrating the influence of “the thinkers of the Scottish Enlightenment”); *see also* MEACHAM, *supra* note 2, at 103 (stating the Declaration was not comprised of original thoughts, but “an expression of the American mind”). *But see* WILLS, *supra* note 3, at 64 (“When Jefferson said he articulated an American mind in the Declaration, he was probably referring to this much-disputed list [of grievances], rather than to the preamble (on which later generations would fix their attention). The question of basic rights, obscure to their descendants, seemed clear to men like John Dickinson, who felt themselves the heirs of the [Glorious] Revolution, of the glory derived from 1688. Americans of the 1770s felt they were approaching a ‘centennial’ of their own, reliving memories of the English Bill of Rights. The points of conflict were not, in their eyes, doctrinal—they assumed their English mentors could read Blackstone as well as they did. The differences arose over the application of ‘fundamental law’ to particular acts, listed one by one, as part of a system at odds with the whole ethos of the British constitution.”).

prevailing sentiments of the new nation.²⁴⁴ For example, in the weeks before Jefferson wrote his famous manuscript, he was most certainly influenced by George Mason's authorship of the Virginia Constitution and Declaration of Rights adopted by the Virginia legislature, which provides: "All men are created equally free and independent and have certain inherent and natural rights . . . , among which are the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."²⁴⁵

The most recognized wording of the Declaration of Independence elevates as human rights the fundamental values of equality, life, liberty, and pursuit of happiness that together constitute the purpose of government, which is only legitimate with the consent of the people.²⁴⁶ The members of the Second Continental Congress adopted this famous phrase without debate and with one slight modification in its wording, in brackets below:

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain [inherent and] unalienable Rights; that among these are life, liberty & the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.²⁴⁷

This open-ended language about rights—noting that life, liberty, and the pursuit of happiness are three examples "among" the multiple "inherent and unalienable Rights"—expressly acknowledged the existence of additional

244. See generally ONUF, *supra* note 13, at 25 ("It was his responsiveness to the historical moment, not his originality, that brought him to the fore."); ELLIS, *supra* note 3, at 291 ("Jefferson went out of his way to disavow any pretense of philosophical originality in the Declaration. As Madison so succinctly put it, Jefferson's goal 'was to assert not to discover truths, and to make them the basis of the Revolutionary Act.'"); *id.* at 64 (explaining Jefferson did not plagiarize, but rather drew from his own previous writings, as well as from others).

245. ELLIS, *supra* note 3, at 65 (omission in original) ("On June 12 the Virginians unanimously adopted a preamble drafted by George Mason that contained these words: 'All men are created equally free and independent and have certain inherent and natural rights . . . , among which are the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.' . . . [It] strains credulity to deny the influence of Mason's language on his own." (first omission in original)).

246. *Id.* at 63 ("The most famous section of the Declaration, which has become the most quoted statement of human rights in recorded history as well as the most eloquent justification of [the] revolution on behalf of them These are, in all probability, the best known fifty-eight words in American history."); ONUF, *supra* note 13, at 1 ("[Jefferson's] eloquent formulations of 'self-evident . . . truths' constitute the American creed: 'all men are created equal'; 'they are endowed by their Creator with inherent and unalienable Rights,' including 'Life, Liberty, and the pursuit of Happiness'; and the governments men institute to secure these rights derive 'their just powers from the consent of the governed.'").

247. ELLIS, *supra* note 3, at 63 (alteration in original).

unalienable rights with the concomitant expectation that government would protect and secure all of them.²⁴⁸

Similarly, Jefferson's language affirming equality elicited no debate, despite distinct social hierarchies within the new states carried over from colonial times and from the mother country, which the American gentry expected to continue, yet which Jefferson wanted to tear down:

Most of the revolutionary elite saw few radical implications in this affirmation of natural rights. They expected continued deference; they supported the authority of patriarchal families, established churches, and legitimate governments. American independence for them appeared as a codicil to their grand English inheritance of freedom under the law. Jefferson espied something different: the possibility of freeing (white) men from constricting institutions. . . . Against the prevailing view that people were weak, unsteady, in need of guidance, Jefferson built a political program on the Enlightenment faith in the rational, self-improving, independent individual who could be counted on to take care of himself and his family provided that intrusive institutions did not interfere.²⁴⁹

Regarding another important aspect of the Declaration, and not surprisingly for an advocate of religious freedom, Thomas Jefferson included the terms "Nature's God," "Creator," and "divine Providence," and the Congress added the language "Supreme Judge of the world," carefully avoiding reference to any particular religion, implicitly acknowledging the plethora of religious beliefs at the emergence of the new nation and foreshadowing his advocacy for the right to freedom of religion eventually added through the Bill of Rights.²⁵⁰ Further along in the document, "safety" and "security" are added

248. See WILLS, *supra* note 3, at 63 ("The Committee of the Whole made only six slight changes in Jefferson's preamble. It must have read this as a more general description of those rights enumerated in the 1774 Bill of Rights. That Bill spoke of 'indubitable rights,' just as Jefferson based his unalienable rights on *self-evident* truths. The Bill opened its list with 'life, liberty, and property,' and then listed more specific rights under ten heads. By inserting 'certain' in the Declaration before Jefferson's 'inalienable rights,' Congress further emphasized (what 'among these' already said) that Jefferson's short list was offered *exempli gratia*, and stood for the longer one already agreed to by Congress."); see also *id.* at 182 ("Jefferson clearly hopes his 'self-evident truths' will lead to further truths, to a whole political system. That is why he says the named truths are 'among those' connected truths unspecified in his brief statement; and he has listed only 'certain' of the rights that self-evidently belong to men.").

249. APPLEBY, *supra* note 11, at 51.

250. See generally BENEDICT, *supra* note 15, at 69 ("Jefferson, Franklin, and Adams referred to a 'Creator' who endowed human beings with natural rights. The delegates added a reference, in the final paragraph, to the 'Supreme Judge of the world,' who would testify to their good intentions. The language reflected the idea that God was an active presence, a view endorsed even by those most strongly influenced by Enlightenment ideals. In fact, Franklin proposed including the words 'Rebellion to Tyrants Is Obedience to God' in the official seal of the United States. Jefferson liked the motto so much that he incorporated it into his personal seal some fifteen years later. As

to the list of purposes of government, as well as the enactment of laws deemed “wholesome and necessary for the public good,” “the right of Representation in the Legislature,” the right to elect legislators,²⁵¹ and the administration of justice by establishing an independent judiciary.²⁵² Furthermore, Jefferson and the Continental Congress provided a list of grievances against the king detailing other actions that a government may not legitimately take,²⁵³ such as the following examples:

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States . . .

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences . . .

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments . . .

Enlightenment thinkers, however, they eschewed identifying that Creator and Supreme Judge with any particular religion. More than that, they were suspicious of clerical involvement in government. That had always led to oppression.”).

251. THE DECLARATION OF INDEPENDENCE para. 3 (U.S. 1776) (“He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise.”).

252. *Id.* at paras. 10-11 (“He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers. He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.”).

253. ELLIS, *supra* note 3, at 59 (listing grievances accompanied by lofty language); *see also id.* at 60 (“As an elegant, if decidedly one-sided, version of recent Anglo-American history, this section of the Declaration [grievances against the king] has certainly stood the test of time, providing students of the American Revolution with a concise summary of the constitutional crisis from the colonists’ perspective at the propitious moment.”); WILLS, *supra* note 3, at 59 (“[The term] ‘grievance’ had a technical meaning for the purpose of petition. It meant the denial of a constitutional right.”).

He has abdicated Government here, by declaring us out of his Protection and waging War against us. . . .

He has excited domestic insurrections amongst us²⁵⁴

After listing recurrent offenses the king had taken against the people, the delegates to the Continental Congress then noted that their efforts to petition the government for redress of these grievances had been met with “repeated injury.”²⁵⁵ Although the delegates framed colonial actions in peaceful phraseology—“We have Petitioned for Redress in the most humble terms”²⁵⁶—the aggrieved colonists had indeed protested more vociferously, such as the Boston Tea Party.²⁵⁷ Having outlined the monarch’s numerous transgressions against his American subjects, the Declaration noted that “A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.”²⁵⁸ Jefferson’s distaste for England and for the tyrannical actions of King George is palpable throughout the document.²⁵⁹ He had noted earlier in the document “[t]hat whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government.”²⁶⁰ Of course, since the British monarch ruled for life and the monarchy was hereditary, precluding the British subjects from choosing—and therefore consenting to—their own ruler, the only way for subjects of the crown to install a new national leader was to revolt. The beauty of the system the founders of the United States eventually put into place under the U.S. Constitution is that the national leader holding executive power, as well as the representatives to the national legislature, are all elected, thus enabling the people of the United States to abolish their government peacefully if the people disagree with it and to institute a new government nonviolently through the electoral process established by the Constitution. Therefore, the people of the United States now do not need to engage in armed revolution in order to change their government whenever

254. THE DECLARATION OF INDEPENDENCE paras. 13-30 (U.S. 1776). *See generally* WILLS, *supra* note 3, at 67 (explaining the phrase “[he has] excited domestic insurrection amongst us” included loyalists, e.g., the king had been encouraging his loyalist followers to rise up in violence against those striving for representative government and respect for rights in America).

255. *See* THE DECLARATION OF INDEPENDENCE para. 31 (U.S. 1776).

256. *Id.*

257. WILLS, *supra* note 3, at 26 (“The tea ‘party’—trivialized by that name, as the earlier riot had been expanded into a ‘massacre’—took elaborate organization of the very sort Samuel had mastered in Boston.”); *id.* at 26-29 (discussing how Thomas Jefferson had bought into Samuel Adams’s distorted version of the Boston Tea Party, making the Bostonians out to be much more innocent than in reality).

258. THE DECLARATION OF INDEPENDENCE para. 31 (U.S. 1776).

259. ELLIS, *supra* note 3, at 148 (discussing Jefferson’s hatred of England); *see also id.* at 62 (stating “condemned ‘our British brethren’”).

260. BENEDICT, *supra* note 15, at 69.

the government becomes unresponsive to the will of the people, as they did under the tyranny of King George.

The Declaration announces in the first paragraph that the new union of states intends to “assume among the powers of the earth, the separate and equal station” as other nations.²⁶¹ Furthermore, in the final section, “the Representatives of the united States of America, in General Congress, Assembled . . . do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States . . . and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.”²⁶² This final phrase seems to indicate that the confederation of states—meaning the national governing body unifying the states—would have the power not only to conduct foreign policy related to war, peace, and alliances, but also would have the power to regulate commerce. One could argue that such regulation of commerce would be limited to foreign trade, but the phrase is also arguably ambiguous. As history would have it, the Articles of Confederation—the document initially adopted to govern the United States—made no mention as to whether the federal government had any powers over commerce. Notably, Thomas Jefferson, who included powers regarding commerce along with powers to “levy War, conclude Peace, [and] contract Alliances” in the Declaration, later serving as a member of the Confederation Congress asserted that the Articles of Confederation included an implied federal power over commerce, adopting a broad and flexible interpretation of the nation’s first constitutional document,²⁶³ yet his views did not prevail, leaving the federal government powerless in this regard. The lack of federal power over commerce proved disastrous to the young nation, leading to the establishment of the U.S. Constitution and its grant of the commerce power to Congress.

At any rate, one of Jefferson’s most significant contributions in the Declaration toward the nation-building image of a united polity throughout the colonies was his language establishing national sovereignty of the United States in “one people,” i.e., in the people as a whole instead of in the separate

261. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

262. *Id.* at para. 33.

263. ELLIS, *supra* note 3, at 80 (“He confided to friends his conviction that the Articles of Confederation, in giving the federal government power over foreign affairs, had implicitly given it power over all trade and commerce. (This endorsement of the doctrine of implied powers came back to haunt him a decade later.) He wanted to see treaties of amity and commerce negotiated with European nations, in part for the economic benefits they would generate but mostly because, as he put it, ‘the moment these treaties are concluded the jurisdiction of Congress over the commerce of the states springs into existence, and that of the particular states is superseded . . .’”).

governing bodies of each colony.²⁶⁴ A leading Jeffersonian scholar has noted that:

All America was assembled, in symbol, at the Congress—and for the very first time. [Jefferson] saw a unified people there, despite appearances; so that he could speak of “one people” dissolving the bond with another (an alien) people. It took discernment to find such unity beneath divided factions.²⁶⁵

At the same time, Jefferson’s rhetoric converted each colony into an independent and sovereign state, itself embodying governmental authority and rights within its own territory, again resting on the ultimate sovereignty of the people within that state’s territory.²⁶⁶ Regardless, in subsequent provisions of the Declaration, Jefferson clearly indicated that the rights of the people were self-evident and inherent to their nature as human beings.²⁶⁷ With their consent, they gave legitimacy to the representative governments of the state legislatures and the states, and ultimately they gave legitimacy to the representative government of Congress and the United States.²⁶⁸ Removal of the king from his authority over the colonies allowed for Congress to step into the void.²⁶⁹ Jefferson incorporated ideas from the arguments in Congress

264. ONUF, *supra* note 13, at 91 (“It is this identification of representatives with their colony communities and of Congress with the American ‘people’ that constitutes the most crucial rhetorical move in the Declaration.”).

265. WILLS, *supra* note 3, at 33 (regarding the diversity within the colonies); *see also id.* at 34 (“The delegates gathering in Philadelphia wrapped their deliberations in secrecy They were afraid of each other. ‘Here is a diversity of religions, educations, manners, interest, such as it would seem almost impossible to unite in one plan of conduct,’ wrote John Adams.”).

266. *See generally* ONUF, *supra* note 13, at 91 (“The challenge was to frame specific local grievances and customary claims in all-embracing, universal terms. This was Jefferson’s great achievement in the Declaration, and it depended on his assumption that colonies had constitutions, that they were ‘states’ that could claim rights.”); *id.* (“As ‘sovereignty’ was transferred from king to people, it traveled a circuitous route. Deposing the king created a vacuum of legitimate authority that representatives of the people quickly filled. The most significant consequence of this upheaval, and the great unrecognized achievement of the Declaration, was the invention of the American idea of state sovereignty, the conception of states as self-constituted, self-sufficient, and autonomous political communities. In practical, institutional terms, the invention of state sovereignty marked the final stage in the rise of the assemblies. Facing an increasingly uncertain future in the last years of imperial rule, the representatives gained expansive new powers under the first new state constitutions.”).

267. MEACHAM, *supra* note 2, at 103 (“Distilling an Enlightenment vision about the sanctity and centrality of the individual, he argued that self-government was part of the nature of things.”).

268. *Id.* at 92 (“According to Jefferson’s version, resistance moved in the opposite direction, beginning with the people—whose ‘rights’ were ‘self-evident’—proceeding through colonial governments whose ‘just powers’ were based on their ‘consent,’ and culminating with Congress itself.”).

269. *See generally id.* (“In 1776 the implicit model for Congress was an idealized conception of kingship. George III ‘has abdicated government here by declaring us out of his protection, and waging war against us.’ Congress must take his place.”); *id.* (“Congress could present itself as the legitimate successor to the British monarchy as long as it was seen to be faithfully representing the new state governments, and through them the American ‘people.’”); *id.* at 94 (“As a republicanized

by John Adams and others that the colonies were merely in a federal relationship with Britain through their mutual relationship with the king, meaning that the colonies and colonial legislatures were separate from and equal to the English people and parliament.²⁷⁰ Through the declaration that the colonies were now “united” together as a single national entity, they had voluntarily entered into a confederation with one another, giving legitimacy to their sovereign national government, which had the authority to engage with other foreign powers on the world stage, just as the king had previously done on their behalf.²⁷¹

Of course, it is important to note who was not represented in the bodies creating the states, the constitutions, the colonial and state legislative assemblies, the continental congresses, the Declaration, and so on, including disenfranchised White men,²⁷² enslaved and free African Americans,²⁷³ Native

and sentimentalized gloss on the monarchical principle of allegiance, Jefferson’s idea of union facilitated the transfer of legitimate authority from king to Congress. This was the Declaration’s most revolutionary implication.”).

270. *Id.* at 70 (“Jefferson recalled that John Adams and other congressional radicals insisted that the American colonies had always been ‘independent’ with respect ‘to the people or parliament of England,’ ‘that so far our connection had been *federal* only & was now dissolved by the commencement of hostilities.”).

271. *See generally id.* at 92 (“Congress could only assume the king’s prerogatives—most notably and pressingly over the conduct of war and diplomacy—if it was seen as completely different from the George III depicted in the Declaration. George, the bad father, was Congress’s reverse image: congressmen would never violate the trust of their constituents by pursuing their own interests at the people’s expense. This identification between governors and governed was, of course, the premise and design of republican governments.”). But note the interests of people who were enslaved, women, and other marginalized populations, who were excluded from such representation. *See id.*

272. Many disenfranchised White men did not enjoy full citizenship at the time the United States was established, so they would not have been represented during its founding. *See, e.g.,* James W. Fox Jr., *Citizenship, Poverty, and Federalism: 1787-1882*, 60 U. PITT. L. REV. 421, 424 (1999) (“During this era citizenship in America also shifted from the reservation of full citizenship for the propertied to a broader citizenship that included non-propertied white males, evident in the expansion of suffrage to unpropertied white males in the antebellum period.”).

273. Similarly, enslaved and free African Americans were not considered citizens with equal political or other rights, so they would not have been included in the initiatives founding the United States. *See generally* MCCOLLEY, *supra* note 54, at 71, 142 (“Some Negroes were free; enough, in fact, to give Virginia the largest free Negro population in the Union. In 1783 there had been only about 3,000 in this situation, but by 1790, when the law permitting emancipation had been operating for eight years, the number had swelled to over 12,000. At the same time there were 292,000 slaves, so that the proportion of freedmen remained small. By 1810 there were over 30,269 freedmen and over 392,000 slaves.” However, “[t]he limited manumission of the 1780’s and 1790’s led, not to wider manumission in the 1800’s, but rather to legal curtailment of the practice.”). Moreover, life was also extremely difficult for free African Americans. *Id.* at 72 (“[T]he weight of public opinion bore down so hard upon the free Negro that his situation was only a little better than that of the slave, and some thought that it was worse. . . . Then, in January of 1806, the General Assembly passed a law which provided that ‘if any slave hereafter emancipated shall remain within this commonwealth more than twelve months after his or her right to freedom shall have accrued, he or she shall forfeit all such right, and may be apprehended and sold by the overseers of the poor of any county or corporation in which he or she shall be found.’”).

Americans,²⁷⁴ other people of color,²⁷⁵ non-Christians,²⁷⁶ and all women.²⁷⁷ For example, Jefferson implicitly recognized that women were forbidden from exercising equality, liberty, justice, or independence on the same basis as men by ignoring women altogether in the Declaration.²⁷⁸ He did mention Native Americans²⁷⁹ and the enslavement of Black people²⁸⁰ in his draft, though only in the context of his grievances against the British monarch, and not as human beings within the new American states who may be entitled to

274. Although the founders of the United States borrowed governance concepts from Native Americans, Indigenous people were not included among the European Americans who established the state and federal governance frameworks in the United States. *See generally* Angelique Townsend EagleWoman (Wambdi A. WasteWin), *The Ongoing Traumatic Experience of Genocide for American Indians and Alaska Natives in the United States: The Call to Recognize Full Human Rights as Set Forth in the UN Declaration on the Rights of Indigenous Peoples*, 3 AM. INDIAN L.J. 424 (2015) (demonstrating how foundational narratives of the United States—constructed by European founders—excluded Native Americans from participation in governance despite selectively appropriating aspects of Native political thought).

275. Fox, *supra* note 272, at 424-25 (“By the Civil War, citizenship had come to be identified with male wage workers; the Founders’ egalitarianism was too wild a beast to remain exclusively in the small social class that created it. Thus many of the male working poor began to obtain some level of citizenship recognition. This expansion, however, produced and coincided with a tightening of the restrictions on full citizenship for the poorest of the poor—those working intermittently or not at all—as well as for African-Americans, *other racial minorities*, and women, all of whom were formally excluded from suffrage. This conflict between the egalitarian expansion of citizenship privileges and the erection of barriers to those same citizenship privileges simmered briskly until the Civil War.” (emphasis added)).

276. *See generally* Patrick N. Leduc, *Christianity and the Framers: The True Intent of the Establishment Clause*, 5 LIBERTY U. L. REV. 201, 203 (2011) (discussing the impact of Christianity on the creation of the nation’s founding documents).

277. APPLEBY, *supra* note 11, at 3 (“With respect to women and people of other races, [Jefferson] shared the prejudices of his peers.”); *see also* E. H. Deering, Note, *Coverture and Lasting Effects of Gender Inequality: An Analysis Through Equal Protection Jurisprudence*, 16 WASH. U. JURIS. REV. 296, 301 (2024) (“Deeply rooted in English common law, American law adopted the idea of coverture at its founding. Whilst the Founding Fathers debated idealistic principles, women were disenfranchised and legally shackled to the wills of their husbands. America’s Founding Fathers revolted against the British government to free white males with property but did not use their power to free their wives from the patriarchal bondage of coverture. One founding father, John Adams, was so troubled by the issue of coverture that he corresponded with other lawmakers regarding the ‘virtual representation’ of women by men. Nothing came from his concern, and women’s status as *feme covert* did not change with the American Revolution.” (footnotes omitted)).

278. *See generally* THE DECLARATION OF INDEPENDENCE (U.S. 1776); Edward McGlynn Gaffney, Jr., *Curious Chiasma: Rising and Falling Protection of Religious Freedom and Gender Equality*, 4 U. PA. J. CONST. L. 394, 422 (2002) (noting the Declaration is “silent about the deprivations of liberty suffered by women as a consequence of the English common law”); *id.* at 426 (“Neither Jefferson’s draft nor the final version of the Declaration of Independence listed the injuries that the common law of England had perpetrated against women among the grievances lodged against King George.”).

279. *See generally* THE DECLARATION OF INDEPENDENCE para. 30 (U.S. 1776).

280. *See generally* MEACHAM, *supra* note 2, at 105 (“Jefferson spared nothing in his attacks on England and on George III, including harsh language condemning the slave trade. Despite his defeats on antislavery measures in Virginia, both in court and in the House of Burgesses, Jefferson tried once more to lead an American institution—in this case, the Continental Congress—to a relatively progressive position on slavery. Yet he failed again.”).

any of the universal human rights he decisively claimed for his White male compatriots in the Declaration of Independence.²⁸¹

Jefferson was acutely aware of the irony of proclaiming the moral values of independence, justice, liberty, and equality while at the same time maintaining the institution of slavery—both personally and as a nation.²⁸² His original version included a scathing indictment of slavery in provisions some of his fellow delegates would not abide.²⁸³ In the removed text, Jefferson had

281. *Id.* at 107-08 (“The revolutionary nature of Jefferson’s words was, nevertheless, clear from the beginning. With the power of the pen, he had articulated a new premise for the government of humanity: that all men were created equal. He basically meant all white men, especially propertied ones, but the English philosopher Jeremy Bentham, for one, recognized the import of the document adopted in Philadelphia. Attacking the declaration from London, Bentham scoffed at the idea that every man had a natural, God-given right to ‘life, liberty, and the pursuit of happiness’; such assertions, Bentham said, were ‘absurd and visionary’ Ultimately, though, this *was* the essential American view.”).

282. WILLS, *supra* note 3, at 66 (discussing Jefferson’s version including the provision addressing slavery in contrast with the final version).

283. *See generally* ELLIS, *supra* note 3, at 60 (addressing the original version); *id.* (“[T]he Congress deleted the long passage blaming George III for waging ‘cruel war against human nature itself’ by establishing slavery in North America; Jefferson also accused the king of blocking colonial efforts to end the slave trade, then ‘exciting those very people to rise in arms against us . . . by murdering the people on whom he has obtruded them.’ Several complicated and even tortured ideas are struggling for supremacy here. One can surmise that the members of Congress decided to delete it out of sheer bewilderment, since the passage mixes together an implicit moral condemnation of slavery with an explicit condemnation of the British monarch for both starting it and trying to end it.”); *id.* at 60-61 (“In his own notes on the debate in Congress Jefferson claimed that the opposition was wholly political. Several southern delegations, especially those of South Carolina and Georgia, opposed any restraint on the importation of slaves, he reported, adding that their ‘Northern brethren also I believe felt a little tender under those censures; for tho’ their people have a very few slaves themselves, yet they had been pretty considerable carriers of them to others.’ Jefferson’s clear implication is that he was trying to take a principled stand against both slavery and the slave trade but that a majority of delegates were unprepared to go along with him.”); *id.* at 61 (“The truth was much messier. With regard to the trade, Jefferson knew from his experience in the House of Burgesses that many established slaveowners in the Tidewater region favored an end of imports because their own plantations were already well stocked and new arrivals only reduced the value of their own slave populations. Ending the trade in Virginia, in short, was not at all synonymous with ending slavery. With regard to slavery itself, Jefferson’s formulation made great polemic sense but historical and intellectual nonsense. It absolved slaveowners like himself from any responsibility or complicity in the establishment of an institution that was clearly at odds with the values on which the newly independent America was based. Slavery was another one of those vestiges of feudalism foisted upon the liberty-loving colonists by the evil heir to the Norman Conquest. This was complete fiction, of course, but also completely in accord with Jefferson’s urge to preserve the purity of his moral dichotomies and his romantic view of America’s uncontaminated origins. Slavery was the serpent in the garden sent there by a satanic king. But the moral message conveyed by this depiction was not emancipation so much as commiseration. Since the colonists had nothing to do with establishing slavery—they were the unfortunate victims of English barbarism—they could not be blamed for its continuance. This was less a clarion call to end slavery than an invitation to wash one’s hands of the matter.”); WILLS, *supra* note 3, at 67 (“He [the King] has waged cruel war against human nature itself, violating it’s most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of *infidel* powers, is the warfare of the *Christian* king of Great Britain. Determined to keep open a market where Men should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce.”); *id.* (“The ‘prostitution’ of the King’s

blamed the king for the institution of slavery in the colonies,²⁸⁴ which more likely reflected the Virginia slave owners' desire to limit the importation of new enslaved people, which would decrease the value of their own "property."²⁸⁵ His declaration also affirmed the rights to life, liberty, and the pursuit of happiness, as opposed to the wording used by his intellectual idol, John Locke, that a primary purpose of government is to guarantee the rights to life, liberty, and property.²⁸⁶ Jefferson's intentional wording has been attributed to his admiration for the moral philosophy of the Scottish Enlightenment thinkers, particularly Francis Hutcheson.²⁸⁷

Jefferson's Declaration contained only passing reference to Native Americans, specifically alleging that King George allowed Indigenous groups to engage in conflict with the European Americans who had colonized

negative refers to the repeated vetoing of Virginia's attempts to slow the slave trade with a colonial tariff. These efforts, begun with the century, led to bill after bill, all of them defeated. . . . The aims of the tariff were to limit the volatile slave population, equalize the balance of trade, sustain the price of slaves already arrived, and create revenue. It is true that by 1772 the colonists were also alleging humanitarian motives . . . ; but one of the most outspoken members in this vein was Richard Henry Lee—and he was simultaneously negotiating for slave consignments himself.”).

284. MCCOLLEY, *supra* note 54, at 116-17 (“The Virginia statesman saved himself from the charge of hypocrisy by acknowledging certain ‘truths’ about Negroes, slavery, and society. He developed a set of logical propositions which made it natural and consistent for him to denounce slavery in principle, yet satisfy his constituents in practice that he would do nothing to injure their interests. . . . One of the more dubious notions was that Virginians could not be held responsible for the existence of slavery among them, because it had been forced upon their ancestors by the tyranny of the English crown. The Virginia Constitution of 1776 mentioned how the King of England, ‘by an inhuman use of his negative,’ had prevented the colony from excluding slaves. Only the intervention of gentlemen from the Deep South kept Jefferson from including this count in his indictment of George III contained in the Declaration of Independence. But, of course, neither the Crown nor anybody else had ever forced a Virginian to buy a single slave. For over twenty years before the Revolution the British government had prevented Virginia from barring the further introduction of slaves, but this hardly represented either renunciation of slavery on the part of Virginia or a systematic policy of the Crown to force slavery into areas where it was not wanted.”).

285. *Id.* at 117 (“By the time colonial Virginia tried to prevent slave importation, her leading planters were faced with the problem of perennial overproduction, and of course owned more than enough slaves. . . . the value of slaves was likely to fall if slave traders were permitted to dump unlimited quantities of their merchandise into a Virginia market which had a limited capacity to absorb them . . . [nor] were they happy when the market value of their slaves declined. Another important reason for prohibiting the importation of slaves, even in colonial days, was an apprehension of slave rebellions. If the slave population were permitted to grow more rapidly than the white population, the danger of successful insurrection would be markedly increased. . . . They further felt, probably with justification, that imported slaves were likely to be less docile than those bred to their proper station in the Old Dominion. Therefore, the ruling class of colonial Virginia tried to control the size of their slave population.”).

286. ELLIS, *supra* note 3, at 65-70; *see also* BENEDICT, *supra* note 15, at 19 (discussing Locke's argument that government must protect “life, liberty, and property . . . [and it] could not deprive people of that trinity without their consent”); WILLS, *supra* note 3, at 240-55.

287. ELLIS, *supra* note 3, at 65-70; *see also* WILLS, *supra* note 3, at 229-55 (observing that Jefferson, drawing on but ultimately revising Locke's formulation, substituted “pursuit of happiness” for “property,” arguably suggesting a broader conception of natural rights in the Declaration of Independence).

their lands.²⁸⁸ The delegates to the Continental Congress apparently gave little thought to the independence, justice, liberty, and equality of the original inhabitants whose homeland had been colonized by the European incursion, which was continuing during the revolutionary timeframe as more settlers arrived from Europe and as people continued to move into the Native Americans' land within the colonies and to the west of the thirteen original colonies. Jefferson's vitriolic language about Native Americans in the Declaration reflects his views regarding those who fought alongside the redcoats: "He favored an all-out campaign against the Indians pursued without mercy: 'Nothing will reduce those wretches so soon as pushing the war into the heart of their country. But I would not stop there. I would never cease pursuing them while one of them remained on this side of the Mississippi.'"²⁸⁹

Interestingly, among the complaints in the Declaration of Independence is resentment that the king had restricted the states' ability to attract new immigrants: "[h]e has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither."²⁹⁰ The United States had been built upon a deeply rooted tradition of encouraging immigration of people from other continents—whether willingly like the settlers or coerced like those who were enslaved. The Declaration reflects this historic American tradition of immigration building the strength of the colonies and subsequently the states.²⁹¹ Indeed, during Jefferson's presidency, "[i]n 1802, Congress dropped the waiting period for becoming a United States citizen from fourteen years to five,"²⁹² and Jefferson, a proponent of encouraging citizenship for recently arrived immigrants, had previously advocated for a two-year path to citizenship.²⁹³

288. See generally THE DECLARATION OF INDEPENDENCE para. 9 (U.S. 1776) (alleging that King George "has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions").

289. ELLIS, *supra* note 3, at 72.

290. THE DECLARATION OF INDEPENDENCE para. 9 (U.S. 1776).

291. See AVA CHIN, *MOTT STREET: A CHINESE AMERICAN FAMILY'S STORY OF EXCLUSION AND HOMECOMING* (2023), for an excellent account of policies encouraging migrants from China to come to the United States in the 1850s to alleviate labor shortages in mining and to work on the Transcontinental Railroad, as well as laws subsequently discriminating against Chinese immigrants. See generally Walter Criswell, *55th Annual UND Writers Conference is March 20-22*, UNIV. N.D. (Mar. 14, 2024), <https://blogs.und.edu/und-today/2024/03/55th-annual-und-writers-conference-is-march-20-22> [<https://perma.cc/97E6-C78B>] (noting Ava Chin gave readings from her book during the University of North Dakota Writers Conference in 2024).

292. APPLEBY, *supra* note 11, at 32.

293. MEACHAM, *supra* note 2, at 121 (noting Jefferson advocated for legislation "speeding the naturalization of the foreign-born into citizens (Jefferson favored a two-year residence requirement)").

Reportedly distraught by Congress's changes to his original wording of the Declaration of Independence,²⁹⁴ Jefferson was too timid to defend it vociferously against amendments made by the members of the Second Continental Congress during their debates over the draft.²⁹⁵ The amendments may seem relatively minor, such as removing the more inflammatory segments discussing slavery noted above, as well as language excoriating their fellow British subjects in England more harshly for not supporting their cause for emancipation from the crown.²⁹⁶ The final version was approved on July 4, 1776, and delivered to the printer for publication.²⁹⁷ Although Jefferson later wrote that the members signed it that day, historians note that most delegates signed the document over the course of the coming months.²⁹⁸ Although the Declaration of Independence did not attain significance until later decades, it has subsequently become recognized as a "national charter" for the United States of America.²⁹⁹ Moreover, Jefferson clearly intended the Declaration to have worldwide implications: "the concept that the justice of their cause should 'be made known to the world.' This became: 'Let facts be submitted to a candid world.' Jefferson also used elements of Dickinson's draft [of a previous declaration], since the latter had spoken of 'obligations of respect to the rest of the world.' This became Jefferson's 'a descent respect to the opinions of mankind.' As he put it long after, the Declaration was intended as 'an appeal to the tribunal of the world.'"³⁰⁰

C. TEXT OF THE DECLARATION

On the 250th anniversary of the Declaration of Independence, penned largely by Thomas Jefferson, it is fitting to include the text of this document in its entirety. I always encourage the first-year law students in my Constitutional Law course to read the entire U.S. Constitution, as well as the entire North Dakota Constitution, in order to emphasize the importance of textual

294. WILLS, *supra* note 3, at 307 (discussing "Jefferson's disappointment at the treatment of his Declaration by Congress").

295. See generally ELLIS, *supra* note 3, at 45 ("[He was simply too shy and withdrawn to interact easily"]; *id.* at 73 ("Later in his career Jefferson learned to suffer in silence and to present a placid, impenetrable facade to his critics.").

296. WILLS, *supra* note 3, at 307 ("I have found no scholar who argues that the congressional changes altered Jefferson's message in any substantial way."). *But see id.* at 307-19 (explaining why Jefferson felt his original wording was so important to him).

297. See ELLIS, *supra* note 3, at 59 ("On July 4 the Congress approved its revised version and the Declaration of Independence was sent to the printer for publication.").

298. See *id.* ("Jefferson later recalled that it was signed by the members of Congress on that day, but that is almost surely not correct. The parchment copy was signed by most members on August 2."); see also WILLS, *supra* note 3, at xiii-xiv (noting the dates of "the signings on August 2 and continued . . . into November").

299. WILLS, *supra* note 3, at 324.

300. *Id.* at 334-35.

readings of these documents. Although space limitations do not allow for the entire U.S. Constitution to be included in this article, the Declaration of Independence³⁰¹ is succinct enough to allow for its full rendering, as follows:

In Congress, July 4, 1776

The unanimous Declaration of the thirteen united States of America, When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute

301. *America's Founding Documents: The Declaration of Independence: A Transcription*, NAT'L ARCHIVES (Feb. 25, 2026), <https://www.archives.gov/founding-docs/declaration-transcript> [<https://perma.cc/73CU-PSEY>] (“Note: The following text is a transcription of the Stone Engraving of the parchment Declaration of Independence (the document on display in the Rotunda at the National Archives Museum). The spelling and punctuation reflect the original.” (emphasis omitted)).

Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.³⁰²

302. *Id.* (listing signatures of delegates as follows, Georgia: Button Gwinnett, Lyman Hall, George Walton; North Carolina: William Hooper, Joseph Hewes; John Penn; South Carolina: Edward Rutledge, Thomas Heyward, Jr., Thomas Lynch, Jr., Arthur Middleton; Massachusetts: John Hancock; Maryland: Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton; Virginia: George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jr., Francis Lightfoot Lee, Carter Braxton; Pennsylvania: Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross; Delaware: Caesar Rodney, George Read, Thomas McKean; New York: William Floyd, Philip Livingston, Francis Lewis, Lewis Morris; New Jersey: Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark; New Hampshire: Josiah Bartlett, William Whipple; Massachusetts: Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry; Rhode Island:

IV. U.S. CONSTITUTION: WE THE PEOPLE ADVANCING TOWARD A MORE PERFECT UNION

Thomas Jefferson envisioned a united nation consisting of “one people” as set forth in the opening sentence of the Declaration of Independence.³⁰³ This unity of people within the national polity is echoed as “We the People” in the Preamble to the United States Constitution:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.³⁰⁴

Of course, the conceptualization of *who* is allowed to be included within the parameters of our nation as “one people” and “we the people”—and who has the power to define those parameters—has expanded dramatically since the time of our country’s founding. Moreover, Jefferson’s interpretation of the sovereignty of the people as stationing authority in the state governments, in the federal government, or with the people themselves, shifted in accordance with the personal roles he had variously undertaken with the government of Virginia, the government of the United States, and as a private individual presiding over his retreat at Monticello. This section explores the years leading up to the formation of the U.S. Constitution, as well as Thomas Jefferson’s role in interpreting and applying the Constitution during the early years of the republic as one of the United States’ most revered founding fathers. It suggests that Jefferson’s willingness to apply a kaleidoscopic interpretation of the Constitution to accomplish what he considered to be in the best interests of the nation might provide guidance for constitutional interpretation by subsequent generations.

A. CONTEXT OF THE U.S. CONSTITUTION

As noted above, shortly before they declared independence from Britain, the members of the Second Continental Congress had passed a resolution

Stephen Hopkins, William Ellery; Connecticut: Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott; New Hampshire: Matthew Thornton (emphasis omitted)).

303. See ONUF, *supra* note 13, at 66 (“For Jefferson the great, self-enacting claim of the Declaration is to be found in its opening sentence, where he asserts that the Americans constitute ‘one people.’”).

304. *America’s Founding Documents: The Constitution of the United States: A Transcription*, NAT’L ARCHIVES (Dec. 19, 2025), <https://www.archives.gov/founding-docs/constitution-transcript> [<https://perma.cc/Z9NR-YHQZ>] (“Note: The following text is a transcription of the Constitution as it was inscribed by Jacob Shallus on parchment (the document on display in the Rotunda at the National Archives Museum). The spelling and punctuation reflect the original.” (emphasis omitted)).

urging the colonies to create state constitutions and prepare themselves to become newly independent and sovereign states. The authority of these new states emanated from the people within each colony, under the new conceptualization of popular sovereignty intimated in the Declaration of Independence shortly thereafter, as opposed to the sovereignty of the monarchy.³⁰⁵ The “people”—in other words, primarily White male property owners who were entitled suffrage—at that time constituted only about six percent of the population, which does not sound very democratic by today’s standards but was revolutionary by theirs.³⁰⁶ By contrast, sovereignty in Great Britain’s government rested in the King-in-Parliament,³⁰⁷ which operated under an unwritten constitution, i.e., the customary manner in which the legislative branch (Parliament), executive branch (the monarch), and judicial branch (the various courts in Britain) were “constituted,” operated, and interacted with each other and with their subjects.³⁰⁸ People in the colonies were used to governing themselves in accordance with written instruments, such as colonial charters and covenants, and were accustomed to the process of judicial review whereby any governmental actions that violated those documents would be invalidated.³⁰⁹ Therefore, the creation of new state governments through the process of writing and adopting state constitutions was a natural outgrowth

305. See BENEDICT, *supra* note 15, at 76 (“From the beginning, the states rested their new constitutions on the authority of the people.”); MAYER, *supra* note 4, at 50 (“To Jefferson, sovereignty . . . properly resided only in ‘the People.’ Popular sovereignty was a matter Jefferson took seriously, for it was the heart of the American Revolution: the foundation of the American republic lay in the principle enunciated in the Declaration of Independence, that governments derive their just powers from ‘the consent of the governed.’”).

306. See BENEDICT, *supra* note 15, at 76 (“In most cases, the revolutionaries called special congresses or conventions to replace their colonial assemblies, often chosen by a broader electorate than the old legislatures.”); see also Renalia DuBose, *Voter Suppression: A Recent Phenomenon or an American Legacy?*, 50 U. BALT. L. REV. 245, 258 (2021) (“With few exceptions, women, enslaved African-Americans, Native Americans, Catholics, Jews, mulattoes, and non-property-owning adult white men were not able to vote when George Washington was elected President of the United States. Thus in 1789, approximately six percent of the population had the right to vote in the land where the American Revolution was launched with the stated belief that all men were created equal.” (footnote omitted)).

307. See BENEDICT, *supra* note 15, at 18, 20.

308. See *generally id.* at 20 (“With Parliament now supreme, it was no longer clear how such documents as the Magna Carta, the Petition of Right, and the Declaration of Rights fully protected English liberty and the rule of law. These declarations had been directed to the king and specified rights that could not be taken away without *the consent of Parliament*. It was uncertain how they limited the power of Parliament, since by definition Parliament gave the people’s consent to acts of government. After the Glorious Revolution, most English people no longer looked only to such documents to protect their liberty. They claimed that the whole constitution of the English government guaranteed liberty. By ‘constitution’ they meant the fundamental structure of the system taken as a whole—the way it was ‘constituted.’” (emphasis omitted)); *id.* at 59-60 (“No written documents had created the British government . . . the British Parliament itself had passed the great laws protecting liberty and perhaps could repeal them [N]o authority existed in England to which one could appeal a parliamentary decision . . .”).

309. See *id.* at 59-60.

of their colonial governmental history, institutions, and practices.³¹⁰ The new state constitutions reflected a tripartite separation of powers in a legislature comprised of two chambers, an executive headed by a governor, and a judiciary.³¹¹

Although each newly independent state was considered to be an individual center of sovereignty along the Atlantic seaboard,³¹² the state leadership agreed that a union among them would afford the best protection against continued encroachment by foreign nations, as well as fostering beneficial interactions such as trade and commerce between the states.³¹³ However, although the colonies had previously practiced a version of federalism with Great Britain and each other, political theory, and therefore thinking among the revolutionary leaders, had generally conceptualized a single level of sovereign power resting with each of the new state governments.³¹⁴ Moreover, the Declaration of Independence—even though it formulated a strong national identity with the union of the states—had excoriated the strong, increasingly centralized governmental power of the king, and the Revolutionary War was fought against such a tyrannical authority.³¹⁵ Therefore, the statesmen who crafted the initial agreement among the states, the Articles of Confederation, envisioned a very weak central coordinating body with very limited powers,³¹⁶ which the states had the discretion to ignore with relative impunity.³¹⁷

310. *See id.*

311. *See id.* at 76 (“Besides legislating, these congresses and conventions had the special task of framing a binding constitution. The new constitutions established governments that reflected the colonial experience. Most provided for a governor, a judiciary, and a legislature with two branches. They clearly indicated the revolutionaries’ fear of executive power and aristocracy.”).

312. *See id.* at 84-85; *see also id.* at 85 (“It seemed clear to all that with independence each of the colonies had become a sovereign, independent state. This conclusion comported with the common belief that only small countries were suitable for republican government.”).

313. *See id.* at 84 (“By 1776, most American leaders had decided that the union among the colonies ought to be made permanent.”); *id.* at 87 (“[James] Wilson, James Madison, and Alexander Hamilton, were convinced that economic prosperity and liberty itself depended on establishing central authority, not to mention the need to show the world that America was a respectable world power.”).

314. *See generally id.* at 84-85 (“One of the greatest obstacles to creating a more effective central government was the firm understanding that there could be only one sovereign in a political system—one final authority that everyone must obey and from which there could be no appeal.”).

315. *See* ONUF, *supra* note 13, at 73-74 (“The paradox of the Declaration is that the strong assertion of national *identity* should entail such a weakly articulated national *government*.”).

316. WILLS, *supra* note 3, at 332-33 (stating “the Articles were too cautious and could not be made to work”); *see also* BENEDICT, *supra* note 15, at 84 (“Nonetheless, no one imagined that Congress embodied a sovereign, national government, and it was no easy task to define just what the relationship among the states ought to be.”).

317. *See* ONUF, *supra* note 13, at 93 (“Set against the legitimating myth of spontaneous resistance—‘popular sovereignty’ in action—any formal assumption of authority was bound to generate suspicion. This may help explain why it proved to be so difficult to draft acceptable Articles of Confederation and why Congress’s prestige plummeted after 1781, when the Articles were finally ratified and Congress finally became a ‘constitutional’ government.”); *see also* WILLS, *supra* note 3, at 38 (“An interest in the diverse establishments of each colony would continue during and after

The Articles of Confederation went into effect in 1781, ushering in a period fraught with uncertainty about the status and sustainability of the new entity it created.³¹⁸

As the new republic was waging its war for independence, Thomas Jefferson returned to serve in the Virginia legislature, energetically undertaking a herculean attempt to overhaul the newborn state's statutory code from its colonial rendition.³¹⁹ He advocated for

the abolition of primogeniture and entail as the last vestiges of English feudalism, the reform of the criminal law so as to limit the use of the death penalty, the expansion of the suffrage to include more of the independent yeomen from the western counties, the expansion of the public school system of the state and, most important, the elimination of the Anglican establishment in favor of a complete separation of church and state.³²⁰

Although his attempted reforms were largely unsuccessful, with the exception of eliminating primogeniture and entail, Jefferson's efforts laid the groundwork for future progress in abolishing laws that inhibited individual freedom and human rights.³²¹ After a disastrous stint during the revolutionary hostilities as governor of Virginia from 1779 to 1781, which ended with his ignominious flight from British soldiers who descended upon him and his state cabinet first at Richmond and then at Monticello, he temporarily retreated from public office back to his plantation, in part to mourn the death of his wife, who had tragically died of childbirth the following year.³²²

the Revolution, at a time when the Articles of Confederation made the thirteen separate establishments the real government.”).

318. WILLIS, *supra* note 3, at xvii (“[T]he Confederation failed. It was more in the nature of a league between sovereignties than the creation of a new state. For that we have to wait not only six more years, to the drafting of the Constitution . . . ; but, more properly, eight years—to the Constitution’s final ratification, the seating of a Congress, and the inauguration of a President.”).

319. *See* ELLIS, *supra* note 3, at 79 (“From 1776 to 1779 he had almost single-handedly attempted the root-and-branch reform of the Virginia legal code . . .”).

320. *Id.*

321. *See generally id.* (“This phenomenal effort at legislative reform proved too visionary for his colleagues in the Virginia Assembly, who defeated all his proposals save the abolition of primogeniture and entail, which was on the verge of dying a natural death anyway. But the thrust of his political thinking was clear: to remove all legal and political barriers to individual initiative and thereby create what he called ‘an opening for the aristocracy of virtue and talent.’ It was in effect an attempt to implement the ideals articulated in the natural rights section of the Declaration. Just as clearly, his favorite ideas were several steps ahead of public opinion. He was more a prophet than a politician.”).

322. *See generally* MEACHAM, *supra* note 2, at 116-48 (discussing Jefferson’s personal and political experiences from late 1776 to 1782).

When the Revolutionary War finally concluded via the Treaty of Paris in 1783, Jefferson was elected to serve once again in the federal Congress.³²³ Beginning his term in 1784, he dove into reform efforts involving American monetary units, the metric system, the admission of new states into the federal union, and abolishing slavery in new states, some of which succeeded and some failed.³²⁴ Serving in the Congress under the Articles of Confederation, he recognized the importance of more centralized power and railed against the recalcitrance of the state governments.³²⁵ Notably, he adopted the stance that the federal government had implied powers under the Articles of Confederation, particularly under its authority to enter into foreign treaties, such as implied powers that would enable it to regulate trade and commerce.³²⁶ This broad interpretation of the initial constitutional document governing the United States comports with his inclusion of commerce in the Declaration of Independence among the powers of conducting war, concluding peace, and negotiating alliances, as described above.³²⁷ Yet, due in part to the prevailing perspective that Congress under the Articles of Confederation lacked powers over commerce, internecine trade disputes among the states, among other seemingly intractable problems, threatened to tear the young

323. *Id.* at 157 (“Jay and the incumbent American representatives in France had completed the draft of the Treaty of Paris with Great Britain, the document officially ending the Revolutionary War. . . . The Congress to which Jefferson was elected was the only institution of national government.”).

324. *See generally* ELLIS, *supra* note 3, at 79-80 (“The same pattern held true in the federal Congress at Philadelphia. Throughout the winter and spring of 1784 he threw himself into the reform of the coinage system, successfully urging the dollar and decimal units in lieu of the English pound and shilling. He also tried but failed to replace the English system of weights and measures with metric standards. He wrote the Ordinance of 1784, which established the principles on which all new states would be admitted to the Union on an equal basis with existing states. The final provision required the end of slavery in all newly created states by 1800. But it lost by one vote, prompting Jefferson to remark later that ‘the fate of millions unborn [was] hanging on the tongue of one man, and Heaven was silent in that awful moment!’ It was the most far-reaching proposal to end slavery that Jefferson ever wrote but also the high-water mark of his anti-slavery efforts, which receded afterward to lower levels of caution and procrastination.” (alteration in original)); APPLEBY, *supra* note 11, at 78; MCCOLLEY, *supra* note 54, at 171.

325. *See* ELLIS, *supra* note 3, at 80 (“Given his subsequent hostility to consolidated federal power in virtually every form, his impatience at this time with what he called ‘the petty justlings of states’ stands out as an indication of his temporary willingness to accept federal power as a corrective to local and regional bickering.”).

326. *See id.* (“He confided to friends his conviction that the Articles of Confederation, in giving the federal government power over foreign affairs, had implicitly given it power over all trade and commerce. (This endorsement of the doctrine of implied powers came back to haunt him a decade later.) He wanted to see treaties of amity and commerce negotiated with European nations, in part for the economic benefits they would generate but mostly because, as he put it, ‘the moment these treaties are concluded the jurisdiction of Congress over the commerce of the states springs into existence, and that of the particular states is superseded’” (omission in original)).

327. THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776) (stating that “as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce”).

nation apart.³²⁸ Therefore, Jefferson eventually agreed with his compatriots,³²⁹ who were arguing that a stronger central government was required in order to ward against the federation completely flying apart and destroying the independent union they had fought so hard to create during the Revolution a few years earlier.³³⁰ Later that year, he was invited to serve as a U.S. diplomat to France, and he jumped at the chance to experience the world he had only previously explored through his literary adventures.³³¹

As Jefferson sailed to Europe in 1784, he was leaving behind a nation facing an uncertain future.³³² Both insiders and outsiders were watching to see if the new nation would fail, with uncertain and changing allegiances.³³³ European monarchies continued to engage in their longstanding contests of warfare, posing ever-present threats to the nascent country in North America,³³⁴ especially in light of their continued sovereignty over North American regions still held by Britain and Spain, largely surrounding the freshly independent former British colonies.³³⁵ The economic conditions in the emergent

328. See BENEDICT, *supra* note 15, at 87 (“Lacking power to regulate commerce among the states, Congress proved unable to resolve these commercial and boundary disputes or to pass rules necessary for interstate trade.”); *id.* at 86-88 (discussing the multitude of problems facing the states under the Articles of Confederation).

329. See ELLIS, *supra* note 3, at 81 (“[Jefferson] had managed to combine his utopian vision of an American society of liberated individuals, freely pursuing happiness once the burden of English corruption and European feudalism had been removed, with a more practical recognition that an independent America required some kind of federal government to coordinate its burgeoning energies and excesses. Without surrendering his youthful radicalism, he had also become a dedicated nationalist.”).

330. See ONUF, *supra* note 13, at 71 (“In his ‘Vices of the Political System,’ James Madison described the Articles as a ‘federal constitution,’ an alliance of ‘independent and Sovereign States’ that could *not* preserve the union.”).

331. See MEACHAM, *supra* note 2, at 174-75.

332. See ONUF, *supra* note 13, at 38 (“[W]e should never assume that American independence, the union of American states, or the democratization of American political and social life were preordained. No one was more conscious of the fragility of the American experiment than Jefferson.”); see also *id.* at 100 (“Jefferson and his contemporaries understood that they stood at a crossroads, that the American experiment in republican self-government and the fragile federal union on which it depended could also easily fail.”).

333. See *id.* (“[Jefferson and his contemporaries] understood all too well that the loyalties of their countrymen . . . their own loyalties—were volatile and unpredictable.”).

334. See generally *id.* (highlighting a “dangerous world almost constantly at war”).

335. Edward J. Larson, *Building a Nation from Thirteen States: The Constitutional Convention and Preemption*, 33 PEPP. L. REV. 7, 8-9 (2005) (“[I]t quickly became evident to nearly everyone that the Articles of Confederation were an inadequate vehicle for guiding the fast-growing United States and its over three million people through a treacherous world. Foreign countries slapped restrictions on American shipping and the United States could not retaliate. Spain encroached on territory in the American South, while Britain continued to occupy forts in the old Northwest. Some desperate settlers in the rapidly expanding trans-Appalachian West hinted at forming their own states outside the union or joining Spain. Although the Articles left the national interest of the United States heavily dependent on state goodwill, the states conducted themselves by narrow standards of self-interest. They regularly ignored federal treaties, including provisions of the peace treaty with Britain, and built trade barriers against products from other states. Struggling to pay off huge war-bond obligations, the states increasingly ignored the Confederation’s urgent pleas for money.”).

states under the Articles of Confederation were so dire that impoverished citizens were ready to throw off the new government just as they had done with the old.³³⁶ One historian described the situation: “under the Confederation (1781-89), when the central government ground to a virtual halt and the union almost withered away before the new constitution saved the day.”³³⁷ During the midst of the crises caused by the multiple failings of the Articles of Confederation, leaders who had spearheaded the revolutionary efforts a few years prior began to call for a more closely knit federal union with a stronger national government that could address the problems and unify the states into a functioning nation that would stand the test of time.³³⁸

B. JEFFERSON’S KALEIDOSCOPIIC VIEWS ON THE U.S. CONSTITUTION IN HIS DIFFERENT ROLES

Regarding Thomas Jefferson’s contributions to the U.S. Constitution as our nation’s other foundational document, he did not hesitate to make his own mark on its meaning and application.³³⁹ Although he was absent from its drafting in 1787 during his service as a U.S. diplomat in France, he contributed from afar to the national debates about its development and adoption, expressing moderate trepidation about the extent of the consolidation of national powers and urging the inclusion of a bill of rights.³⁴⁰ His concern that the federal government was becoming too strong and centralized under the influence of his political rivals grew during the Federalist reign of President George Washington, for whom Jefferson served as the first U.S. Secretary of

336. *See generally* BENEDICT, *supra* note 15, at 81 (“Many Americans proved willing to disregard the standards of honor and integrity[—particularly of economic contractual obligations—]that the elite thought central to public and private virtue. It did not occur to them that ordinary people might simply interpret virtue differently than they did.”); *id.* (discussing economic spiral after the Revolution and calls for government responses); *id.* at 83 (“[I]f a modern commercial economy meant that speculators could take the farms and businesses of decent citizens, or profit from speculating in government debt at the expense of hard-working taxpayers, many Americans wanted no part of it. . . . All over America, spokesmen for farmers and artisans denounced aristocratic creditors, who would let the whole economy collapse rather than surrender some of their profits.”).

337. ONUF, *supra* note 13, at 100.

338. *See generally* BENEDICT, *supra* note 15, at 83 (“Discouraged by the first results of the republican experiment, many of the Revolution’s leaders began to revive the idea that a proper, balanced institutional arrangement might encourage popular virtue and protect liberty. John Adams of Massachusetts and James Wilson of Pennsylvania, both respected lawyers and revolutionary statesmen, provided the intellectual leadership. . . . [T]hey urged that the executive and judicial branches of government be given enough power to check and balance the legislative branch.”).

339. MAYER, *supra* note 4, at ix-x (“Although he was not present at the Constitutional Convention, Jefferson nevertheless properly may be regarded as one of the founders because of the central role he played in the key issues that surfaced during the first four decades of government under the Constitution—issues many of which persist to this day.”).

340. *See generally* MEACHAM, *supra* note 2, at 205-15 (discussing Thomas Jefferson’s diplomatic service in France and contributions to the proposed U.S. Constitution).

State, and John Adams, under whom he served as Vice President.³⁴¹ Shifting his perspective once he seized the reins of executive authority alongside that of his Republican colleagues who simultaneously swept into Congress, Jefferson subsequently provided his own gloss on constitutional interpretation as the third president of the United States from 1801 to 1809, finding that his selectively more energetic use of executive power to benefit the country was facilitated by a more flexible interpretation of the U.S. Constitution and adaptation of its federal delegation of powers than he had advocated when his political enemies held the power.³⁴² Upon his retirement to Monticello in 1809 through his death in 1826, Jefferson continued his commentary on the proper function of the federal government in his role as an elder statesman, once again shifting his constitutional interpretation to give primacy to states' rights, particularly against any federal attempts to curtail slavery.³⁴³ His vacillating approach to constitutional interpretation demonstrates that one of the leading founding fathers of our country not only believed in but also actively applied a kaleidoscopic constitutional construction, which intentionally fluctuated depending upon the context in which he was operating.³⁴⁴ As a lawyer trained under the tutelage of law professor George Wythe and influenced as a protégé of Virginia Attorney General Peyton Randolph,³⁴⁵ Jefferson undoubtedly looked upon the Constitution as a legal document and approached its interpretation using legal principles. Eager to leave his stamp upon

341. *See generally id.* at 228-342 (detailing Jefferson's term as Secretary of State from 1789 to 1793 and political career from 1793 to 1800).

342. *Id.* at 130 ("Like many legislators, Jefferson was ambivalent about executive power—until he bore executive responsibility."). *See generally id.* at 344-441 (discussing Jefferson's presidency from 1801 to 1809).

343. *See generally id.* at 442-96 (reflecting on Jefferson's life after his retirement in 1809 until his death in 1826 and his lasting legacy on American democracy).

344. *Id.* at xxiii ("Jefferson's political leadership is instructive, offering us the example of a president who can operate at two levels, cultivating the hope of a brighter future while preserving the political flexibility and skill to bring the ideal as close as possible to reality."); *see also* HARDT, *supra* note 47, at viii-ix ("Jefferson is not a systematic thinker and, although his complete works fill dozens of large volumes, he left no extended treatises or even essays on politics. The vast majority of his writings, and the most interesting ones, consist of his correspondence with friends and public figures. His letters are most often centered on contemporary events, using them as a point of departure for more general political and philosophical reflection."); *id.* at ix ("Furthermore, Jefferson not infrequently contradicts himself in both his writings and his actions as a politician.").

345. WILLS, *supra* note 3, at 6 (noting that George Wythe was "Virginia's first professor of law" and was "learned"); *id.* at 4-5 (noting Randolph was attorney general for Virginia); *id.* at 13 (regarding tutelage under Wythe and Randolph); *id.* at 17 (discussing Jefferson as a follower of Randolph); *id.* at 13 ("Orphaned at his father's Piedmont plantation (Shadwell) when he was fourteen, he soon yearned back toward James River amenities (and libraries). At the College of William and Mary, Jefferson became the protégé of the most powerful man in the province, whose plantation was in the Williamsburg area and whose house contained the library Jefferson used during Randolph's lifetime and bought after his death. Thus Jefferson linked Peyton Randolph with his other principal tutors: 'Under temptations and difficulties, I would ask myself what would Dr. Small, Dr. Wythe, Payton Randolph do in this situation?'").

constitutional construction as setting the course for the future of the young nation, “[I]ike Hamilton, Jefferson sought occasions for expounding the meaning of the Constitution” throughout his life.³⁴⁶

1. *From Paris During the Constitutional Convention*

Living in France from August 1784 to September 1789,³⁴⁷ Jefferson first functioned as a U.S. Commissioner in Paris alongside John Adams and Benjamin Franklin, who as U.S. Minister served as the primary ambassador to the French crown.³⁴⁸ The three men worked closely together, and Jefferson also became close friends of Adams’s wife Abigail and their son John Quincy Adams.³⁴⁹ A year later, once Franklin returned to the United States and Adams became U.S. Minister to England and moved to London, Jefferson assumed the lead role in Paris.³⁵⁰ He was an adept diplomat,³⁵¹ befriending and entertaining leading players in the French cultural and academic³⁵² as well as political aristocracy,³⁵³ convincing them of the many wonders and positive aspects of the United States,³⁵⁴ and negotiating for favorable terms of trade and commerce.³⁵⁵ Jefferson’s thoughts about U.S. foreign policy were honed

346. APPLEBY, *supra* note 11, at 56.

347. RICE, *supra* note 107, at vii.

348. *Id.* at 51.

349. *Id.* at 41 (“John Quincey Adams, then seventeen and living with his family at Auteuil, was a frequent visitor. Years later, when referring with pride to John Quincy’s election to the presidency, his father wrote to Jefferson: ‘I call him our John because, when you were at the Cul de sac at Paris, he appeared to be almost as much your boy as mine.’”).

350. *Id.* at 51.

351. *Id.* at 100 (“When recalling in his autobiography his mission to the French Court, Jefferson commented that he found the government ‘entirely disposed to befriend us on all occasions, and to yield us every indulgence, not absolutely injurious to themselves.’”).

352. *Id.* at 31-35 (discussing Jefferson’s interactions with the royal academies and salons).

353. *Id.* at 99-100 (according to one observer at a reception with the King, “although Mr. Jefferson was the plainest man in the room, and the most destitute of ribbands crosses and other insignia of rank, he was the most courted and most attended to (even by the Courtiers themselves) of the whole Diplomatic corps”).

354. *See, e.g., id.* at 78 (“[Jefferson] welcomed the opportunity of transmitting American news” to “a weekly ‘English and American gazette’ . . . as a corrective to the London newspapers—‘those infamous fountains of falsehood,’ [about America] as he characterized them.”); *id.* at 79-80 (regarding Jefferson’s limited distribution of his book, *Notes on the State of Virginia*).

355. APPLEBY, *supra* note 11, at 112-13 (“[Jefferson] assiduously promoted American trading interests.”); RICE, *supra* note 107, at 53 (detailing the American goods for which Jefferson negotiated favorable terms and describing Jefferson’s many other duties as U.S. Minister to France); *id.* at 81 (referencing the first treaty ratified by the U.S. Senate in 1789 that Jefferson had negotiated with France in 1788, as well as Jefferson’s negotiations for “preferential treatment for French imports of American whale oil”); *id.* at 91 (describing the presentation of Jefferson’s credentials to negotiate on behalf of the United States along with Franklin and Adams).

during these years,³⁵⁶ and he enthusiastically believed in free trade,³⁵⁷ spurning tariffs and approving open markets, in order to facilitate the free flow of cheaper raw materials and cheaper manufactured goods between nations.³⁵⁸

Through his correspondence while in Paris, Jefferson continued to formulate his perspectives about the basic core of human nature and the proper role of government corresponding to this vision of humanity. Here again Jefferson's musings were incohesive and contradictory. On the one hand, Jefferson portrayed human nature as fundamentally communal and prone to fostering the good of society, and on the other, as fundamentally either power-hungry and exploitative or meek and unable to act or think for themselves. He set forth his theory of three structures of society.³⁵⁹ In line with his benevolent view of human nature, he perceived that in the best of circumstances there should be no government at all, because the people would naturally work together for the good of the whole.³⁶⁰ However, he acknowledged that this ideal would likely only come about in small societies where people knew one another, and therefore would develop the bonds of good will toward each other that would make government unnecessary.³⁶¹ On the other hand, Jefferson portrayed people in leadership positions as naturally power-hungry—as “wolves” guarding over the “sheep”—to which he referred the bulk of people in society who would naturally follow the lead of the wolves

356. See ELLIS, *supra* note 3, at 96 (“From a historical perspective, his lifelong recognition that American foreign policy was the one area requiring a strong federal government congealed at this time.”).

357. APPLEBY, *supra* note 11, at 117 (“Jefferson made free trade and continental expansion the twin pillars of Republican foreign policy. Treaties were appraised and trades promoted under their aegis.”).

358. See generally ELLIS, *supra* note 3, at 88 (noting that while in Paris, in draft treaties with European nations, Jefferson’s “proposal envisioned reciprocal rights for citizens of all nations, complete freedom of trade and a reformed system of international law.”); *id.* at 94 (“Jefferson’s liberal faith in open markets and free trade . . .”); *id.* (“Jefferson drafted many lengthy memoranda designed to persuade the French ministry that if the United States and France could reach reciprocal agreements whereby all tariffs and duties were abolished between their respective countries, the net result would be a bonanza of cheaper raw materials for France and an equivalent cornucopia of cheaper manufactured goods for America.”); *id.* at 96 (noting “[a]ll the forward-looking Jeffersonian visions of a liberal international community, comprised of open markets and national cooperation” came to naught during Jefferson’s time in Paris, despite his best efforts).

359. *Id.* at 119 (“Jefferson was identifying three kinds of society in which human beings might arrange themselves.”).

360. *Id.* (“[Jefferson wrote] in a letter to Edward Carrington, . . . ‘I am convinced,’ he explained, ‘that those societies (as the Indians) which live without government enjoy in their gen’l mass an infinitely greater degree of happiness than those who live under European governments.’”); *id.* (“[T]here was Indian society, which managed itself without any formal government at all by remaining small and assuring the internalization of common values among all members. If forced to choose, Jefferson preferred the Indian solution, while admitting that it was ‘inconsistent with any degree of population.’”).

361. *Id.*

submissively and unquestioningly to their great detriment.³⁶² This vision of human nature also reflected Jefferson's skepticism of government, because he feared anyone in government would act as the powerful wolves and would take advantage of the people. Describing a middle-ground, which he perceived operating in the United States, the government would be "responsive to the populace as a whole, where 'the mass of mankind enjoys a precious degree of liberty & happiness.'"³⁶³ Under any of these three formulations, Jefferson portrayed government in a largely negative light, either as unnecessary (in small, communally minded societies), or as an unbridled evil (as in exploitative societies), or as [an unwelcome necessity] (in larger societies with republican governments in which the people participated). His utopian society "was a world in which individual citizens had internalized their social responsibilities so thoroughly" that no government would be needed.³⁶⁴

In line with his philosophy that government is inherently suspect, Jefferson was untroubled by periodic protests by the populace in any given society against their government.³⁶⁵ For example, he seemed to celebrate the protestors engaged in Shays's Rebellion in 1786,³⁶⁶ indicating that "I like a little

362. *Id.* ("Jefferson was identifying three kinds of society in which human beings might arrange themselves. There was European society, with governments that ruled by force, usually monarchical in form, what Jefferson described as 'a government of wolves over sheep.'").

363. *Id.* ("Then there was American and, to a slightly lesser extent, English society, with governments responsive to the populace as a whole, where 'the mass of mankind enjoys a precious degree of liberty & happiness.'").

364. MEACHAM, *supra* note 2, at 207-08 ("There were, he said, three kinds of societies: those without government . . . ; those 'wherein the will of everyone has a just influence'; and those 'of force: as is the case in all other monarchies and in most of the other republics.' . . . The second was where men should focus their attention and their care. 'The mass of mankind under that enjoys a precious degree of liberty and happiness. It has its evils too: the principal of which is the turbulence to which it is subject. But weigh this against the oppressions of monarchy, and it becomes nothing.'"); ELLIS, *supra* note 3, at 119-20 ("The Jeffersonian ideal, in short, was not a specific version of balanced republican government. It was a world in which individual citizens had internalized their social responsibilities so thoroughly that the political architecture Madison was designing was superfluous.").

365. MEACHAM, *supra* note 2, at 213-14 ("Regarding Shays's Rebellion, Jefferson mused, '*what country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon and pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.*' Jefferson acknowledged he was being hyperbolic. 'The want of facts worth communicating to you has occasioned me to give a little loose to dissertation. We must be contented to amuse, when we cannot inform.'" (emphasis added)). See generally ELLIS, *supra* note 3, at 120 ("And the elaborate reasoning about constitutional structure that so captivated political thinkers like Madison and the other delegates at the Constitutional Convention never animated the best energies of his mind, which drew its inspiration from a utopian vision of the liberated individual resisting all external coercion and regarding all forms of explicit government power as a necessary evil."); *id.* at 124 (according to Jefferson's wish, "God send that our country may never have a government, which it can feel").

366. See HARDT, *supra* note 47, at xii ("Jefferson celebrates the virtues of revolt against the government most clearly and radically in his letters about Shays' Rebellion. In the summer of 1786, while Jefferson is serving as US minister to France, a mere decade after the War of Independence

rebellion now and then.”³⁶⁷ Jefferson much preferred an engaged citizenry involved actively in making their views known about problems in society that government should attend, rather than a languishing and apathetic population who ignored the workings of government. His perspectives supporting violent protests were unfortunate and extreme, and they could be abused by people who support violence as a means for attaining their ends.³⁶⁸ That said, Jefferson’s encouragement of popular engagement with government underscores the importance of an informed citizenry willing to make their views known to their leaders and willing to participate in their democratic republic.

While Jefferson was sharpening his political thinking in Paris,³⁶⁹ he made a concerted effort to stay informed about the political developments in the United States,³⁷⁰ remaining to a certain extent involved in constitutional

breaks out, and only three years after the peace treaty with Britain is signed, a court in western Massachusetts rules to imprison farmers who cannot pay their debts, seizing their land and property. The farmers, many of whom are veterans of the Revolutionary War—including Daniel Shays, their leader—organize an armed resistance to block the courts, protect their property, and free their imprisoned comrades from jail. In the course of a year the rebels are defeated and hunted down, their leaders executed.”); *see also* ELLIS, *supra* note 3, at 117 (discussing Shays’s Rebellion).

367. *See* HARDT, *supra* note 47, at xiii (“‘The spirit of resistance to government,’ he responds to Abigail Adams, ‘is so valuable on certain occasions, that I wish it to be always kept alive. It will often be exercised when wrong, but better so than not to be exercised at all. I like a little rebellion now and then. It is like a storm in the Atmosphere.’ Rebellion against the government, he maintains, is so virtuous that it should not only be tolerated but even encouraged”); *see also* ELLIS, *supra* note 3, at 118 (“Jefferson’s response to the entire display was especially revealing both for its clear-sighted and even serene endorsement of popular resistance to government in almost any form and for its eventually famous phrasing: ‘I hope they pardoned them [i.e., the Shaysites],’ he told Abigail. ‘The spirit of resistance to government is so valuable on certain occasions, that I wish it to be always kept alive . . . I like a little rebellion now and then. It is like a storm in the atmosphere.’” (alteration in original) (omission in original)).

368. *See generally* ELLIS, *supra* note 3, at 118 (“[I]n a letter to Ezra Stiles, the president of Yale[, Jefferson wrote,] ‘If the happiness of the mass of the people can be secured at the expense of a little tempest now and then . . . or even of a little blood, it will be a precious purchase.’”); *id.* (“[Jefferson wrote to William Stephens Smith]: ‘What signify a few lives lost in a century or two? . . . The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.’ Moreover, those alleged statesmen who wished to use Shays’s Rebellion as an occasion to justify more coercive political institutions, he warned, ‘are setting up a kite [bird of prey] to keep the hen yard in order.’”); *id.* at 118-19 (“These were extremely radical statements, which taken literally—or, for that matter, taken at all seriously—placed Jefferson far to the left of any responsible political leader of the revolutionary generation. For his remarks suggested that his deepest allegiances were not to the preservation of political stability but to its direct opposite. Given the radical and even anarchistic consequences of the ideas he seemed to be advocating in response to the Shays scare, one is tempted to put them down as hyperbolic occasions, or perhaps as momentary excesses prompted by his genuine aversion to the overreaction of those condemning the Shays insurrection, an aversion rendered more plausible and comfortable by his distant and safe location in Paris. But there is reason to believe that Jefferson meant what he said, indeed that his entire way of thinking about government was different from that of any other prominent American leader of the time.”).

369. *See, e.g.*, RICE, *supra* note 107, at 115 (referring to Jefferson’s discussions of “declarations of rights and such doctrines as ‘The Earth belongs in Usufruct to the Living’”).

370. ELLIS, *supra* note 3, at 116 (“Madison and Monroe had kept him abreast of the growing dissatisfaction with the inherent weakness of the federal Congress in Philadelphia.”).

debates from afar. Part of his influence on the Constitutional Convention derived from his shipping political treatises by philosophical thinkers in Europe to leading advocates in the United States of a new constitutional framework and stronger national government to replace the Articles of Confederation and its weak central government, i.e., to those who wanted to ensure the survival of the United States, such as the volumes he sent to James Madison³⁷¹—his protégé and ultimately the primary author of the new Constitution.³⁷² Maintaining his diplomatic stance in France, Jefferson was careful not to inform his constituency in Europe about the political troubles brewing back home, maintaining the outward appearance of a strong and united American polity.³⁷³

However reluctantly, Jefferson conceded the necessity of a stronger national republican government in the United States to govern successfully such a large population spread across such an extensive geographical area.³⁷⁴ He remained in the dark about the details along with everyone else, as members of the Constitutional Convention had kept a tight lid on the deliberations until the new constitutional language had been finalized.³⁷⁵ Madison finally shared his thoughts with Jefferson about the new government the Constitutional Convention had proposed, describing the two levels of governmental authority carefully divided between the federal government and the state

371. RICE, *supra* note 107, at 77 (“‘Address yourself to me as your bookseller,’ Jefferson told James Madison when preparing to leave for Europe. Consequent to such offers, he served as an agent [of books] for Madison and other American friends throughout his stay in Paris.”).

372. ELLIS, *supra* note 3, at 116 (stating Jefferson sent to Madison “two trunks of books, including the collected works of David Hume, which Madison proceeded to study in preparation for the Constitutional Convention”).

373. *Id.* (“‘The politics of Europe render it indispensably necessary that with respect to everything external we be one nation only, firmly held together,’ he informed Madison, adding, ‘Interior government is what each state should keep to himself.’”); *see also id.* at 121 (“He concealed his worries about what was brewing in Philadelphia from all his European correspondents, preferring to play his customary role as America’s champion. ‘Our Federal convention is likely to sit till October,’ he wrote a French friend, ‘and we may be assured their propositions will be wise, as a more able assembly never sat in America. Happy for us, that when we find our constitutions defective and insufficient to secure the happiness of our people, we can assemble with all the coolness of philosophers and set it to rights, while every other nation on earth must have recourse to arms’” (omission in original)).

374. *Id.* at 120 (“Though prepared to acknowledge the need to make necessary compromises with his ideal for practical reasons—the size of the American population and the vastness of its territory obviously demanded some delegation of authority beyond the sovereign self—he did so grudgingly.”).

375. *See id.* at 117 (“Madison did not initially share his more critical assessment of the American government with Jefferson. . . . Given the deference that Madison customarily displayed toward Jefferson’s commands, it is not surprising that Jefferson remained unaware of the root-and-branch reforms Madison believed essential until after the Constitutional Convention had completed its work. In this one all-important instance their roles were reversed; Madison was in the lead.”).

governments,³⁷⁶ with national power divided between three branches of government.³⁷⁷

Jefferson wavered between support for and opposition to the proposed Constitution.³⁷⁸ He approved the diffusion of national authority among the president, legislature, and judiciary, and that the power to tax would rest with the legislative branch.³⁷⁹ However, he was unconvinced about the system of checks and balances³⁸⁰ along with the greater powers granted to the national level.³⁸¹ In light of the inevitability of a new constitutional structure to ensure the survival of his cherished country, while recognizing the need for a stronger central government, he scrutinized the document skeptically, concerned that it would place too much power in the national structure at the expense of the freedom of the people. Over time, he was able to digest the significance of ratification of the new Constitution for the stability of the United States.³⁸² Still waffling, he initially supported ratification of the Constitution to save the nation,³⁸³ and then threw his weight behind those

376. *Id.* at 121 (“Madison then went on to analyze the intricate and purposefully ambiguous layering of jurisdiction by the different branches of government and the different versions of representation.”).

377. APPLEBY, *supra* note 11, at xv (“Remembering the horrid example of the British monarchy, they invented a separation of powers in order, as Justice Brandeis later put it, ‘to preclude the exercise of arbitrary power.’ Accordingly, they divided the government into three allegedly equal and coordinate branches—the executive, the legislative, and the judiciary.”).

378. *See* ELLIS, *supra* note 3, at 123-24.

379. MEACHAM, *supra* note 2, at 214 (“Jefferson liked the division of powers into executive, legislative, and judicial branches, and he was impressed that the federal government would have sufficient autonomy and power to be effective ‘without needing continual recurrence to the state legislatures.’ He was pleased, too, by ‘the power given to the Legislature to levy taxes; and for that reason solely approve of the greater house being chosen by the people directly.’”).

380. ELLIS, *supra* note 3, at 122 (noting Jefferson’s statement, “it is my principle that the will of the Majority should always prevail”).

381. *Id.* (“Jefferson acknowledged . . . in his response to Madison[,] ‘I own I am not a friend to a very energetic government,’ he confessed. ‘It is always oppressive.’”); *see also id.* at 121 (stating the new Constitution “blurred the relative powers of federal versus state authority, but in terms that clearly extended federal jurisdiction over domestic policy in ways that Jefferson staunchly opposed.”).

382. *Id.* (“Jefferson’s location in Paris rather than Philadelphia proved a major advantage, by providing time to adjust to political ideas that ran counter to his own and that he would in all likelihood have opposed if present.”).

383. *See generally* ONUF, *supra* note 13, at 186 (“Jefferson had misgivings about the new Constitution drafted at Philadelphia, but he was convinced that a fundamental reform of the confederation was absolutely necessary.”); ELLIS, *supra* note 3, at 122 (“Despite deep reservations about an energetic federal government, especially a federal government empowered to tax, Jefferson decided to follow the advice of his most loyal lieutenant and endorse ratification of the new Constitution.”); *id.* (“[He wrote to Carrington] ‘there is a great mass of good in . . . , but there is also to me a bitter pill or two’” (first omission in original)); *id.* (“The new Constitution had his approval, even though he preferred specific limitations on the tenure of the president and an explicit bill or declaration of rights that defined those personal freedoms that no federal government could violate.”); *id.* at 123 (stating George Mason and Patrick Henry opposed ratification; Madison shared Jefferson’s positive views of the new Constitution during the Virginia debates).

opposed to it unless a Bill of Rights were added in order to provide explicit protections for individual rights.³⁸⁴ Ever enigmatic and walking a middle road, Jefferson took himself outside of the Federalist versus Anti-Federalist debates, instead preferring to comment on particular aspects of the Constitution that he approved or rejected. Answering a question put to him by a correspondent, he asserted:

I am not a Federalist, because I never submitted the whole system of my opinions to the creed of any party of men whatever in religion, in philosophy, in politics, or in anything else where I was capable of thinking for myself. Such an addiction is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go there at all. Therefore I protest to you I am not of the party of federalists. But I am much farther from that of the Antifederalists. I approved, from the first moment, of the great mass of what is in the new constitution, the consolidation of the government, the organization into Executive legislative & judiciary, the subdivision of the legislative, the happy compromise of interests between the great & little states by different manner of voting in the different houses, the voting by persons instead of states, the qualified negative on laws given to the Executive [veto power] . . . and the power of taxation.³⁸⁵

To claim he “approved, from the first moment, of the great mass of what is in the new constitution” runs contrary to some of his prior commentary, as noted above. Yet by the time Jefferson was writing this letter in March 1789,³⁸⁶ eleven states had already ratified the Constitution and the new government had recently begun operating, so he apparently acquiesced to the inevitable.³⁸⁷ He did provide a detailed list of components with which he still disagreed:

384. MEACHAM, *supra* note 2, at 214 (“Jefferson did not like the omission of a declaration (or bill) of rights to guarantee ‘freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury.’”). *See generally* ELLIS, *supra* note 3, at 123 (“Jefferson’s own remarks throughout the summer and fall of 1788 were inconsistent and contradictory. First he advocated support for the Constitution until nine states had ratified, then opposition so as to force amendments and acceptance of a bill of rights.”). Some claimed Jefferson was an antifederalist against the Constitution. *See id.* at 124 (“Then he backed away from that position, endorsing ratification but only on the condition that a bill of rights be added once the new government was in place.”).

385. THOMAS JEFFERSON, *Letter to Francis Hopkinson*, in JEFFERSON ON FREEDOM 75, 75-76 (2011).

386. MEACHAM, *supra* note 2, at 221 (“Jefferson replied to Hopkinson in March 1789.”).

387. *See* NCC Staff, *The Day the Constitution Was Ratified*, NAT’L CONST. CTR.: BLOG (June 21, 2024), <https://constitutioncenter.org/blog/the-day-the-constitution-was-ratified> [https://perma.cc/5MT8-W3V7] (“On June 21, 1788, the Constitution became the official framework of the government of the United States of America when New Hampshire became the ninth

What I disapproved from the first moment also was the want of a bill of rights to guard liberty against the legislative as well as executive branches of the government, that is to say to secure freedom in religion, freedom of the press, freedom from monopolies, freedom from unlawful imprisonment, freedom from a permanent military, and a trial by jury in all cases determinable by the laws of the land. I disapproved also the perpetual re-eligibility of the President. To these points of disapprobation I adhere.³⁸⁸

Jefferson particularly disliked the provision allowing continual reelection of the president, which he feared could end up enabling one person to act as a lifelong king of the United States, reinstating the monarchical tyranny against which the Americans fought the Revolution.³⁸⁹ He later wrote in favor of a constitutional amendment allowing a president only to serve for two terms, fearing that otherwise “[t]he danger is that the indulgence and attachments of the people will keep a man in the chair after he becomes a dotard.”³⁹⁰

In the end, each state ultimately ratified the new Constitution, and one of the first acts of the new government was to adopt a Bill of Rights, modeled after the British Declaration of Rights under King William and Queen Mary

of 13 states to ratify it. . . . After ratification, Congress set dates for the first federal elections and the official implementation of the Constitution. Elections were set to take place from Monday, December 15, 1788, to Saturday, January 10, 1789, and the new government was set to begin on March 4, 1789.”); *see also* 4.5 *Info Brief: Ratification Timeline*, NAT’L CONST. CTR., <https://constitution-center.org/education/classroom-resource-library/classroom/4.5-info-brief-ratification-timeline> [<https://perma.cc/2JEZ-L3Q8>] (last visited Apr. 18, 2026) (“[B]y the end of July 1788, 11 states had ratified the new Constitution, including critical states like Pennsylvania, Massachusetts, Virginia, and New York.”).

388. JEFFERSON, *supra* note 385, at 76-77 (“My first wish was that the 9. first conventions might accept the constitution, as the means of securing to us the great mass of good it contained, and that the 4. last might reject it, as the means of obtaining amendments. But I was corrected in this wish the moment I saw the much better plan of Massachusetts and which had never occurred to me. With respect to the declaration of rights I suppose the majority of the United states are of my opinion: for I apprehend all the antifederalists, and a very respectable proportion of the federalists think that such a declaration should now be annexed.”); *see also* ELLIS, *supra* note 3, at 123 (stating Jefferson only wanted presidents to serve for one term “[b]ut his preference for term limits—he favored one four-year term—did not place him outside the boundaries of respectable criticism”).

389. APPLEBY, *supra* note 11, at 116 (“The fact that the Constitution permitted the repeated reelection of the president troubled Jefferson.”). Many others shared this concern, which led to the adoption of the Twenty-Second Amendment, providing that “[n]o person shall be elected to the office of the President more than twice.” *See* U.S. CONST. amend. XXII, § 1; *see also* MEACHAM, *supra* note 2, at 213 (“The details of the presidency troubled him. ‘He may be reelected from 4 years to 4 years for life,’ Jefferson said. ‘Reason and experience prove to us that a chief magistrate, so continuable, is an officer for life. When one or two generations shall have proved that this is an office for life, it becomes on every succession worthy of intrigue, of bribery, of force, and even of foreign interference.’”).

390. MEACHAM, *supra* note 2, at 409 (“Genl. Washington set the example of voluntary retirement after 8 years. I shall follow it and a few more precedents will oppose the obstacle of habit to anyone after a while who shall endeavor to extend his term. Perhaps it may beget a disposition to establish it by an amendment of the Constitution.”).

in 1689,³⁹¹ for which Jefferson had vociferously advocated.³⁹² Yet despite this marked improvement, Jefferson never fully reconciled himself to the U.S. Constitution,³⁹³ at times railing against the powers it gave to the federal government when he was not in control, and then embracing and enhancing certain federal powers when he was in office while simultaneously reducing others. It is ironic that many Americans today mistake Thomas Jefferson as the author of the Constitution, despite the fact that Jefferson took great pains to disassociate himself from it in his day.³⁹⁴ Nonetheless, regardless of his misgivings, “Jefferson, though he criticized some aspects of the Constitution (no more than he had the defects of the Virginia state constitution), still thought it ‘unquestionably the wisest ever yet presented to men’” and “had Jefferson been a delegate to the convention, he would undoubtedly have voted with Madison, as did many who felt some objection to one or other parts of the document.”³⁹⁵

The success of the revolution by the people of the United States against the tyrannical monarch in England had inspired a similar drive toward increasing self-governance within France in the following decade.³⁹⁶ Thomas Jefferson witnessed first-hand this transformation during his diplomatic

391. WILLS, *supra* note 3, at 335.

392. MATTHEWS, *supra* note 44, at 77 (“The Constitution, with the promise of a Bill of Rights, for which Jefferson lobbied, was approved and implemented.”); *see also* ELLIS, *supra* note 3, at 124 (“Madison and most Federalists believed that the new American Constitution was admirable for precisely the energetic qualities Jefferson denounced. As for Jefferson, his mind and heart longed for a world where government itself had disappeared. Given the terms of the constitutional debate that raged in America in 1788, the one issue that best embodied his political convictions was the insistence on a bill of rights that transcended all the Madisonian complexities.”).

393. ELLIS, *supra* note 3, at 124 (“His lifelong attitude toward the constitutional settlement of 1787-88 remained ambiguous and problematic.”); *id.* (“[W]hen asked by Hopkinson if he was a staunch Federalist, meaning supporter of the Constitution, he gave an equivocal answer that was rescued from its inherent ambivalence by the lyrical quality of its concluding line: ‘I am not a Federalist, because I never submitted the whole system of my opinions to the creed of any party of men whatever Such an addiction is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go there at all.’ In a very real sense, this statement, albeit unintentionally, captured the essence of Jefferson’s ultimate position on the Constitution and indeed on all specific constitutional schemes.”).

394. MATTHEWS, *supra* note 44, at 77 (“In commenting on the United States Constitution of 1787, [Jefferson’s] response was usually cool”); *id.* at 77-84, 147 n.2 (“[I]n a letter to Dr. Joseph Priestley, 19 June 1802, *Works of TJ*, 9:318, Jefferson goes out of his way to see that history records the fact that he had no part to play in either the drafting or the passing of the Constitution of 1787.”).

395. WILLS, *supra* note 3, at 353.

396. RICE, *supra* note 107, at 120 (“‘It is impossible,’ Jefferson told Madison, ‘to desire better dispositions towards us, than prevail in this assembly. Our proceedings have been viewed as a model for them on every occasion; and tho’ in the heat of debate men are generally disposed to contradict every authority urged by their opponents, our has been treated like that of the bible, open to explanation but not to question.’”). *See generally* ELLIS, *supra* note 3, at 126-27 (“His shift from irreverent criticism to guarded optimism reflected his growing conviction that ‘the contagion of liberty’ released onto the world by the American Revolution was now spreading to Europe and that France was the first European country to experience its liberating consequences.”).

service in Paris,³⁹⁷ and through his friendships with central political figures, he also played a role in fostering the momentum toward liberty, equality, and fraternity in France. For example, Jefferson diligently helped craft a charter of rights in conjunction with his friend the Marquis de Lafayette,³⁹⁸ which “served as the basis for the Declaration of Rights that Lafayette presented to the National Assembly the following month.”³⁹⁹ Although the efforts to instill greater freedoms in France were initially largely peaceful and reforms promising,⁴⁰⁰ they later became brutally violent.⁴⁰¹ At least initially, Jefferson enthusiastically embraced his host country’s willingness to throw off its feudal system despite the bloodshed it was fomenting.⁴⁰² He and his

397. RICE, *supra* note 107, at 115 (“‘The change in this country since you left it,’ Jefferson wrote David Humphreys, ‘is such as you can form no idea of. The frivolities of conversation have given way entirely to politics—men, women and children talk of nothing else: and all, you know, talk a great deal.’”).

398. MEACHAM, *supra* note 2, at 222 (“[In June 1789,] Jefferson had sketched a charter of rights for the French and sent it to the Marquis de Lafayette. Jefferson’s draft was minutely practical. There was no rhetoric about human liberty, no rigorous listing of rights to free speech and the like. It was, rather, a document about process and the workings of power. (‘Laws shall be made by the [Estates-General] only, with the consent of the king,’ for example, and ‘The military shall be subordinate to the civil authority.’)”) (second alteration in original).

399. ELLIS, *supra* note 3, at 129 (“Characteristically, he devoted most of his time and energy to drafting the Charter of Rights, which called for the abolition of all pecuniary privileges and exemptions enjoyed by the nobility, civilian rule over the military, equal treatment under the law and a modified version of freedom of the press. With France as with America, his fondest political topic was not the artful arrangement of government power but rather the cordoning off of a region where no government power could exist.”); *id.* (stating Jefferson’s draft Charter of Rights “served as the basis for the Declaration of Rights that Lafayette presented to the National Assembly the following month.”); *see also* MEACHAM, *supra* note 2, at 223 (discussing Lafayette’s Declaration on the Rights of Man and of the Citizen adopted by the French National Assembly on August 26, 1789, then a dinner for National Assembly leaders hosted at Jefferson’s home to discuss a new French constitution).

400. ELLIS, *supra* note 3, at 126 (“[B]y the summer of 1787 . . . [Jefferson’s] reports to Jay, who still retained overall responsibility for American foreign policy, emphasized the steady progress France was making: Representative assemblies had been created in the various provinces; the infamous corvees, requiring peasants to perform unpaid labor for feudal lords, had been abolished; some kind of parliamentary system of government seemed inevitable, albeit one in which the power of the king would probably remain greater than the English constitutional model. ‘All together,’ he wrote Jay, these were impressive reforms that ‘constitute a vast improvement in the condition of this nation.’”); *see also* RICE, *supra* note 107, at 9 (discussing “the generally optimistic mood in which public opinion approached the beginning of the French Revolution”); *id.* at 115-17 (“Though Jefferson considered the public mind, as he observed it in Paris, ‘almost thoroughly ripe for a just decision of the great question of voting by orders or by persons,’ he foresaw some difficulties in the size of the projected assembly.”).

401. RICE, *supra* note 107, at 117-20 describing the storming of the Bastille and other initial violence; *see also* MEACHAM, *supra* note 2, at 268 (“Reports of rising violence in France grew in the autumn of 1792, reaching a historic height with the September 1793 declaration of the Reign of Terror by revolutionaries determined to slaughter those they viewed as enemies of the cause” resulting in “seemingly endless bloodshed.”).

402. RICE, *supra* note 107, at 121 (“[T]here is no mistaking his essentially optimistic frame of mind. . . . ‘Here is but the first chapter of the history of European liberty.’”); *id.* at 123 (“Jefferson himself only gradually and reluctantly abandoned the optimistic beliefs he held at the time he left the Paris scene.”).

household returned to the United States in 1789 as the revolt in Paris was boiling over into a full-blown revolution.⁴⁰³

The end of his diplomatic mission caused Jefferson a bit of angst over a provision in the new U.S. Constitution, inspiring him to devise an adaptive view of its language—one of numerous times he interpreted the Constitution flexibly. In accordance with French protocol, Jefferson was presented with gifts from the French government to honor the conclusion of his diplomatic service:

Acceptance of the gift had cost Jefferson considerable anguish, for he was acutely aware of both the European diplomatic custom and the proviso in the new U.S. Constitution (Art. I, Sec. 9) enjoining American officials from accepting presents from “any King, Prince, or foreign state” without the consent of Congress. Not wishing to have the matter “laid on the gridiron of debate in Congress,” [now Secretary of State Jefferson] resolved his dilemma by accepting the gift but having the brilliants removed from the box and the proceeds from their sale applied to the reciprocal presents customarily expected from departing diplomats at the Court of Versailles.⁴⁰⁴

This example of Jefferson’s imaginative adaptation of a constitutional provision was the first of numerous instances of his creative application of the U.S. Constitution.⁴⁰⁵

2. *As the Republican Leader Chafing Under Federalist Rule*

George Washington, who had been elected to the presidency under the newly adopted U.S. Constitution, asked Jefferson to join him as the nation’s first Secretary of State.⁴⁰⁶ For the next decade, much of the national government was under the Federalist influence of the nation’s first president,⁴⁰⁷ along with his Secretary of the Treasury Alexander Hamilton,⁴⁰⁸ Vice

403. MEACHAM, *supra* note 2, at 226 (“On the last Sunday in September 1789, Thomas Jefferson left Paris with his daughters and Sally and James Hemings to return to America.”); *see also id.* at 224 (noting that early September 1789 was “in the fevered context of the French Revolution”).

404. RICE, *supra* note 107, at 123.

405. Jefferson utilized creative interpretative methodologies in other contexts as well. *See, e.g.*, MEACHAM, *supra* note 2, at 163 (discussing Jefferson’s use of creative interpretive methodologies: “[w]ith lawyerly precision, Jefferson drafted a motion that took advantage of an earlier vote and extended its authority to the finished treaty”).

406. *See id.* at 231.

407. MCCOLLEY, *supra* note 54, at 55 (“[T]he early Federalists . . . had the advantage of being led by the greatest of all Virginians, George Washington.”).

408. ELLIS, *supra* note 3, at 180-85 (discussing the lead-up to Jefferson’s return to office, encouraging Madison, and despairing of Hamilton’s financial leadership).

President John Adams, and other leaders favoring a strong central government.⁴⁰⁹ At the outset, Jefferson, Washington, Adams, and Hamilton “shared . . . the fundamental recognition that the chief task facing the young republic was internal and domestic, stabilizing the freshly created political institutions and consolidating control over the North American continent.”⁴¹⁰

Under President Washington, Hamilton and his associates began building an “energetic” executive branch, implementing policies aimed at addressing the young nation’s enormous war debts and fiscal problems:⁴¹¹ “Hamilton’s kind of efficiency, expertly used by Washington, helped stave off that chaos from which dictatorships are bred.”⁴¹² As General Washington and his aide-de-camp Hamilton had experienced while leading the military throughout the Revolutionary War, the Congress under the Articles of Confederation had been impotent, unable even to adequately outfit and pay the troops who were fighting for the new nation.⁴¹³ Therefore, the U.S. Constitution set forth a fairly extensive framework for the new legislative branch. However, since everyone in the Constitutional Convention knew that extremely well respected George Washington would become the president under the new Constitution, the framers had outlined a very short Article II, trusting that Washington would fill in the details and flesh out the executive branch by

409. BENEDICT, *supra* note 15, at 105 (“In the opinion of the Federalists, the Constitution was still unfinished. No one knew just what its language meant. That would be settled by how the government exercised its powers. Establishing an energetic government would complete the transformation envisioned by those who had advocated a new Constitution.”); ELLIS, *supra* note 3, at 324 (“[N]either Hamilton nor Adams was really a monarchist, but rather advocates of a stronger executive and more energetic federal government.”).

410. ELLIS, *supra* note 3, at 146.

411. APPLEBY, *supra* note 11, at xv (“[A] system based on the tripartite separation of powers has an inherent tendency toward inertia and stalemate. One of the three branches must take the initiative if the system is to move. The executive branch alone is structurally capable of taking that initiative. The Founders must have sensed this when they accepted Alexander Hamilton’s proposition in the Seventieth Federalist that ‘energy in the executive is a leading character in the definition of good government.’ They thus envisaged a strong president—but within an equally strong system of constitutional accountability. (The term *imperial presidency* arose in the 1970s to describe the situation when the balance between power and accountability is upset in favor of the executive.)”); *see also* ELLIS, *supra* note 3, at 156 (“Hamilton’s plans for a proactive federal government empowered to shape markets and set both the financial and political agendas were . . . a precursor of twentieth-century New Deal values.”).

412. WILLS, *supra* note 3, at 359.

413. Peter Charles Hoffer, *Alexander Hamilton’s Constitutional Jurisprudence and the Bank Bill*, 64 AM. J. LEGAL HIST. 27, 30 (2024) (“The new nation’s problem in these years was the weakness of the Articles of Confederation Congress, a weakness that serving officers like Hamilton—who was serving under General George Washington—were well placed to notice. Here was an example of revolutionary lawmaking for which Hamilton’s admonitions to look ahead had failed: ‘Our whole system is in disorder; our currency depreciated, till in many places it will hardly obtain a circulation at all, public credit at its lowest ebb, our army deficient in numbers, and unprovided with every thing, the government, in its present condition, unable to command the means to pay, clothe, or feed their troops.’”).

establishing the precedents that future presidents would then follow.⁴¹⁴ Washington and his colleagues were eager to build the country into a strong nation that would be able to repel any advances made by foreign monarchs attempting to encroach upon the new United States.⁴¹⁵ They also wanted to strengthen the bonds among the states themselves, to reduce inter-state infighting and increase positive communication and ties, in part by fostering internal infrastructure to enhance domestic commerce among the states. Thus, a strong financial infrastructure, urban economic base, manufacturing core, transportation system, and military were required to ensure a strong nation ready to defend itself.⁴¹⁶

In order to give the new administration the ability to bring the nation back from the brink of failing, as almost happened under the Articles of Confederation, President George Washington and his administration embraced the extensive flexibility afforded to the executive branch under the new Constitution.⁴¹⁷ Washington and his colleagues also interpreted broadly the constitutional powers of the federal government as a whole, enabling Congress the discretion to select from a wide range of approaches in exercising its legislative power, as long as those measures were neither gratuitous or

414. See generally ONUF, *supra* note 13, at 36 (“The American founders are celebrated for their gritty realism Their revolutionary optimism was predicated not on the exercise but on the restraint of power.”); William P. Kladky & Zoie Horecny, *Constitutional Convention*, MOUNT VERNON LADIES’ ASS’N (Apr. 10, 2025), <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/constitutional-convention> [<https://perma.cc/36YA-UHFR>] (“[A] clear majority voted for a single executive based on the knowledge that Washington would probably be the first President. As a result, the presidency was written with Washington’s honor and patriotism in mind, permitting him to define the office more clearly once he was elected.”); Jackie McDermott, *George Washington’s Constitutional Legacy*, NAT’L CONST. CTR.: BLOG (Feb. 25, 2020), <https://constitutioncenter.org/blog/george-washingtons-constitutional-legacy> [<https://perma.cc/K8UH-HDM2>] (“Article II had described the powers of the president in broad terms, and the Constitution had not laid out solutions to every problem the new government would face; it was largely up to Washington to fill in the necessary powers and positions to make the presidency effective.”).

415. BENEDICT, *supra* note 15, at 105 (“Hamilton, Washington, and other Federalists were determined to build a modern, commercial state . . . that projected power effectively both at home and abroad. To achieve that goal, it was crucial to establish a stable, effective public administration. . . . The various bureaus and agencies would be housed in the Executive Department, which would be responsible for their supervision under the watchful eye of Congress.”).

416. MCCOLLEY, *supra* note 54, at 55 (“[I]f Jefferson was possessed by dreams of freedom, education, and rustic tranquility, Washington was equally, if less poetically, possessed with visions of roads, canals, factories, and cities, all knitted together in a richly varied, self-supporting, and powerful America.”).

417. See generally Lindsay M. Chervinsky, *George Washington: Domestic Affairs*, U. VA. MILLER CTR., <https://millercenter.org/president/washington/domestic-affairs> [<https://perma.cc/E5K7-5UL7>] (last visited Apr. 19, 2026) (illustrating how, in the absence of detailed constitutional guidance, Washington exercised broad discretion in shaping the executive branch by establishing the cabinet, relying on the guidance of skillful advisors, and appointing federal officials in order to effectively govern under the new Constitution).

unsuitable.⁴¹⁸ In order to achieve ratification, the Federalists had argued that the national government's powers were limited to those included in the Constitution—an assertion that was confirmed by the addition of the Tenth Amendment,⁴¹⁹ which states that: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁴²⁰ At the same time, according to the Federalist leaders in the Washington administration and the majority in Congress, the will of the people is to be implemented by those whom the people elect to serve in the federal government, and the broad and flexible powers that the Constitution delegates to the federal government give the elected branches wide discretion in choosing the laws and policies that fulfill the will of the people.⁴²¹ By taking steps to implement a strong federal government, the Washington administration was establishing the precedents for future generations of United States presidents and their executive branch leaders.⁴²²

As the 1790s progressed under Washington and his Federalist compatriots in the cabinet, Congress, and elsewhere, Jefferson and his like-minded cohorts developed their deep-seated antipathy for the Federalists and their centralist strategies.⁴²³ The Federalists' initiatives infuriated Jefferson,

418. See generally BENEDICT, *supra* note 15, at 105 (“Public administration had to be pragmatic and flexible, not rule bound. The government had to be free to choose the best means to carry out its responsibilities. Federalists insisted that the Constitution provided for this kind of flexibility.”); ONUF, *supra* note 13, at 100 (“Of course, everyone professed to be a patriot, dedicated to preserving American independence. But what did that mean? Federalists such as Alexander Hamilton preached fealty to a powerful, consolidated central government capable of doing the people's will (as they loosely construed it).”).

419. BENEDICT, *supra* note 15, at 109 (“Federalists had countered that the central government could exercise only those powers delegated to it. The Tenth Amendment, ratified in 1791, had confirmed that principle.”).

420. U.S. CONST. amend. X.

421. See BENEDICT, *supra* note 15, at 110 (“[M]ost members of Congress endorsed a broader view: the Constitution authorized Congress to enact legislation to carry out the general powers delegated by the Constitution. They did not have to be expressly delegated.”). At that time, the state governments chose the U.S. Senators, so the interests of the state governments were represented in the federal government, as well. See *id.*

422. See ELLIS, *supra* note 3, at 143 (“Jefferson's tenure as secretary of state coincided with the most uncharted era in American political history. Precisely because the new national government was new, every major decision set a precedent and every initiative in domestic or foreign policy threatened to establish a landmark principle. The distinguishing feature of the new Constitution was its purposeful ambiguity about the relationship between federal and state jurisdiction and about the overlapping authority of the respective branches of government. The Constitution, in short, did not resolve the long-standing political disagreements that existed within the revolutionary generation so much as establish a fresh and more stable context within which they could be argued out.”).

423. MEACHAM, *supra* note 2, at 241 (“As the Washington administration unfolded, Jefferson came to see Hamilton as the embodiment of the deepest of republican fears: as a man who might be willing to sacrifice the American undertaking in liberty to the expediency of arbitrary authority. And Hamilton came to see Jefferson as a man who might be willing to throw everything the Americans had built to the revolutionary winds blowing from France. It was an extreme, overheated view

particularly against Hamilton.⁴²⁴ For example, ever full of contradictions, Jefferson loathed spending by the national government and even more greatly despised national debt, despite the fact that his personal spending habits were extravagant and his personal debts were enormous.⁴²⁵ Furthermore, Jefferson feared that the southern states might secede due to Hamilton's monarchical policies, noting: "I can scarcely contemplate a more incalculable evil than the breaking of the union into two or more parts."⁴²⁶

In addition to centralizing power in the federal government vis-à-vis the states, Jefferson, James Madison, and others also feared the president was consolidating power that should rest with the legislative branch. For example, Washington's "Neutrality Proclamation also raised some Republican questions about an overreaching executive. 'It has been asked also,' Madison wrote Jefferson, 'whether the authority of the Executive extended by any part of the Constitution to a declaration of the disposition of the U.S. on the subject of war and peace? . . . The right to decide the question . . . [of] war or peace . . . [is] vested in the Legislature.' Was Washington acting too kingly? James Monroe thought the proclamation 'unconstitutional and improper.'"⁴²⁷

Jefferson frequently claimed that he preferred a non-intrusive government, asserting that government should never be felt by its citizens.⁴²⁸ His proclaimed ideal was that no government should be necessary at all, and that individuals should simply be left alone to govern themselves.⁴²⁹ He therefore railed against the energetic nationalist orientation Washington and his

of Hamilton (as of Jefferson), but it was a time of extreme and overheated views."); ONUF, *supra* note 13, at 84 (stating Jefferson and his Democratic-Republican party opposed "expansive interpretations of the federal Constitution that enhanced executive power" in ways that he believed were "at the people's expense").

424. ELLIS, *supra* note 3, at 152-58 (describing animosity with Hamilton); *id.* at 155 (stating Jefferson detested "the Hamiltonian vision of a proactive national government").

425. *See generally id.* at 185 (discussing Jefferson's "cavalier way with his personal debt" versus his obsession with no national debt, which would increase national powers); *id.* at 148-49 (stating that even after the Revolution, Jefferson, along with "a sizeable portion of Virginia's planter class, still find himself deeply in debt to English and Scottish creditors, who were busy compounding the interest on those debts at rates that made personal independence increasingly problematic"); *id.* at 135 (discussing America's Revolutionary War debt, the French monarchy's debt, and Jefferson's personal debt, both through his own spending, as well as "debts he had inherited from his father-in-law's estate were compounding at a rate that he might never be able to repay").

426. MEACHAM, *supra* note 2, at 263.

427. *Id.* at 273-74 (alterations in original) (omissions in original); *see also* MAYER, *supra* note 4, at 111 ("Although [Jefferson] acquiesced in Washington's Proclamation of Neutrality, he regarded it as an illegitimate exercise of executive powers and an impingement on the prerogatives of Congress.").

428. ELLIS, *supra* note 3, at 124 (according to Jefferson's wish, "God send that our country may never have a government, which it can feel"); *see also* MEACHAM, *supra* note 2, at 362 (discussing a traveler's perception of government neither seen nor felt).

429. ELLIS, *supra* note 3, at 56 ("Energetic governmental power of any sort was intolerable because it originated outside the individual; it therefore violated his romantic ideal of personal autonomy.").

colleagues brought as they were shaping the new government.⁴³⁰ Instead, Jefferson preferred that the primary internal government functions should be left to levels of government that are closer to the people, such as state, or even better, local governments.⁴³¹ He believed the state governments would help fend off any encroachments by the Federalist government upon the rights of the people⁴³² and advocated for a strict construction of the Constitution to protect the states and people from unwarranted intrusion by the central government under Federalist control.⁴³³ Although he would have liked such functions to be handled close to home in a system of local “wards” throughout the country, as he proposed in some of his writings, since the ward system did not exist throughout the nation, at least it would be better to have the state governments handle interior matters rather than the federal government.⁴³⁴ Jefferson argued the national government should largely be limited to handling foreign affairs, such as diplomatic relations, which should always strive for peace and non-involvement, as war would inevitably cause unwelcome intrusions on American citizens and an aggrandizement of the American government.⁴³⁵ It would also be appropriate for the national government to foster international commerce, which should strive for open markets and free trade

430. *Id.* (stating there was no middle ground regarding “the oppressive effects of political power”).

431. BENEDICT, *supra* note 15, at 109 (“Federalists had countered that the central government could exercise only those powers delegated to it. The Tenth Amendment, ratified in 1791, had confirmed that principle. Now Republicans insisted that this was the key to understanding the federal government’s powers.”).

432. *Id.* (“Jefferson . . . sincerely believed that national power was more likely to be abused than state power and that the Constitution intended the state governments to check federal usurpations.”).

433. ONUF, *supra* note 13, at 187 (highlighting the concerns of the Jeffersonian Republicans “about the pernicious implications of loose construction of the federal Constitution and the resulting expansion of the administration’s powers for the preservation of the union and peace among the states”); *id.* at 100 (“Republican oppositionists championed a strictly construed federal constitution that left power in the hands of the people’s (or peoples’) state governments.”).

434. Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413, 426 (2017) (“Beginning with Thomas Jefferson, these voices argued that plantation localism upheld aristocracy and that it should be replaced with a ‘ward system’ modeled on the New England town.”); *see also id.* at 430-31 (“In Thomas Jefferson’s view, the ideal base unit of government was the ‘ward republic,’ a small, self-governing, local entity modeled on the New England town. Although he first proposed a version of the ward system in 1779, Jefferson did not elaborate it until 1815, when a movement was afoot to rewrite the Virginia Constitution. In 1813, he wrote to John Adams saying that his wards were modeled on the New England town and that they represented ‘those portions of self-government for which [the people] are best qualified.’ They would be ‘the most fundamental measure for securing good government, and for instilling the principles and exercise of self-government into every fibre of every member of our commonwealth.’” (alteration in original) (footnotes omitted)).

435. *See, e.g.,* WILLS, *supra* note 3, at 160 (“The third great obstacle to happiness, in Chastellux’s view, is war. This depopulates a land, subjects the common folk to the vanity of rulers, and encourages a harsh temper. The eloquence of Chastellux on this point is striking, since he was a soldier himself. One reason Jefferson feared ‘entangling alliances’ with Europe was their tendency to bring the new country into a state of war.”).

to lower prices of raw materials and goods for all parties, as he had worked toward during his diplomatic mission in France.⁴³⁶ In most other matters, Jefferson felt individuals should be left to govern themselves, and only when essential should even the state or local governments step in to regulate affairs directly affecting the people.⁴³⁷

Therefore, particularly when his Federalist opponents were in power, Jefferson felt the central government should be restricted only to taking actions that were absolutely necessary to fulfill its powers delegated by the Constitution.⁴³⁸ He urged President Washington to take a strict construction of the Constitution and its Necessary and Proper Clause.⁴³⁹ However, Jefferson highlighted that this perspective was not a rigid interpretation: “Even in 1791 Jefferson was not doctrinaire about his opinion, closing his letter to Washington with pragmatic counsel: “If the pro and con hang so even as to balance [the president’s] judgment, a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion.”⁴⁴⁰

436. David Golove, *The American Founding and Global Justice: Hamiltonian and Jeffersonian Approaches*, 57 VA. J. INT’L L. 621, 638 (2018) (“Throughout their lives, Jefferson and Madison remained fiercely committed to the ideals of peace and free international commerce. These ideals undoubtedly played a major role in their foreign policy thinking, which, in this respect, was influenced by the writings of the French philosophes with whom Jefferson had interacted during his diplomatic tenure in France.”).

437. Clay S. Jenkinson, *The Jefferson Watch: On Jefferson and Leadership*, THOMAS JEFFERSON HOUR: BLOG (Aug. 14, 2018), <https://jeffersonhour.com/blog/leadership> [<https://perma.cc/7TN7-UULZ>] (“He believed in no formal government at all, that each of us would be a fully self actualized being who governed him or herself . . .”).

438. APPLEBY, *supra* note 11, at 54 (“Jefferson penned his famous explanation of why the ‘necessary and proper clause’ written into Article One’s enumeration of Congress’s powers strictly limited Congress’s legislative scope.”). Jefferson and Madison believed the necessary and proper clause was a limitation on federal power. BENEDICT, *supra* note 15, at 110 (“Jefferson advocated strict construction of the powers that the Constitution delegated to the federal government. The Constitution enumerated a group of powers that were expressly delegated to Congress. It added that Congress could pass laws ‘necessary and proper’ to carry these powers out. The Constitution did not expressly authorize Congress to charter a bank, nor was a bank necessary to carry out any of the powers enumerated. It might be convenient, Jefferson admitted, echoing Madison, but it was not necessary.”); *see also* MAYER, *supra* note 4, at 189-99.

439. MEACHAM, *supra* note 2, at 250 (“Washington privately asked Jefferson for his view on the bank bill’s constitutionality. Jefferson replied with an argument for strict construction—that any power not specifically mentioned in the Constitution was reserved for the states, not the federal government. ‘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,’ Jefferson wrote in February 1791.”).

440. *Id.* at 250 (alteration in original) (“An improviser and a nationalist, Jefferson would not prove dogmatic on such issues. Only when viewed in the light of the moment (as the only means available to register a protest against the triumph of Hamilton’s vision) and when considered with an appreciation for Jefferson’s interpretation of that vision (that it tended to create a climate more congenial to absolutism than to republican democracy) does the opinion fit into the whole of Jeffersonian thinking. Even in 1791 Jefferson was not doctrinaire about his opinion, closing his letter to Washington with pragmatic counsel: ‘If the pro and con hang so even as to balance [the president’s] judgment, a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion.’” (alteration in original)).

Washington decided to adopt Hamilton's position, giving the federal government broad implied powers under the Constitution.⁴⁴¹ Jefferson's dispute with Hamilton over a bill to create a national bank underscored these constitutional conflicts and the notion that "all constitutions are open to interpretation."⁴⁴² It also highlighted the fact that "the thirty-nine men who had actually signed the document . . . failed to form a consensus" about constitutional interpretation "during the very first session of Congress . . . Hamilton, Washington, Madison, and Attorney General Edmund Randolph—all members of the Constitutional Convention—could not agree on the bill's constitutionality."⁴⁴³ This instance illustrates that in many, if not most cases, it may be impossible to determine a single original intent held by all of the constitutional signers, let alone when considered in addition to the original intent of the hundreds of other people who were involved in the ratification process in each of the states, who may also be considered among the founding members of our nation.⁴⁴⁴

441. Charles J. Reid, *America's First Great Constitutional Controversy: Alexander Hamilton's Bank of the United States*, 14 U. ST. THOMAS L.J. 105, 107 (2018) ("The House and Senate both eventually enacted the Bill, but the controversy was not yet concluded. It entered its third and final stage when President George Washington requested that three members of his cabinet brief him on the Bank's constitutionality. Washington plainly took his role as constitutional interpreter seriously and thus he sought opinions on the Bank's constitutionality from Edmund Randolph, his Attorney General, his Secretary of State Thomas Jefferson, and from Alexander Hamilton. Having satisfied his own scruples, Washington finally signed the legislation into law. A careful examination of the three stages of this controversy provides an important window into how the Constitution was understood in its earliest years. Madison and his allies argued that the Constitution must be seen primarily as a restraining document. It was meant to limit the federal government. Consisting as it did of carefully enumerated powers, Madison maintained that Congress could not transgress these carefully-crafted boundaries. Hamilton and his allies, on the other hand, viewed the Constitution principally as an empowering document. The Constitution was created and ratified so as to preserve the Union from the chaos and disarray of the Articles of Confederation. Consistent with this history and purpose, the federal government, they maintained, possessed broad and extensive powers to build a powerful and unified nation. In back of these theories was yet another layer of more fundamental ideas about nationhood and sectionalism. Hamilton and his supporters stressed national unity as the Constitution's overarching goal, while Madison, and at a later stage Jefferson, contended for the primacy of the states. After careful deliberation, George Washington, himself a native Virginian, aligned with the Hamiltonian side of this debate.")

442. See generally MEACHAM, *supra* note 2, at 242 ("Hamilton had argued for a national financial system in which the central government would fund the national debt, assume responsibility for all state debts, and establish a national bank. Money for the federal government would be raised by tariffs on imports and excise taxes on distilled spirits."); APPLEBY, *supra* note 11, at 54.

443. APPLEBY, *supra* note 11, at 54.

444. See, e.g., Thomas B. Colby, *The Sacrifice of the New Originalism*, 99 GEO. L.J. 713, 720 (2011) ("[I]t is often impossible to uncover a single collective 'intent' of 'the [F]ramers' as a whole, insofar as different Framers were often motivated by different intentions. . . . [O]riginal intent is a self-defeating philosophy. The historical evidence shows that the Framers intended for future generations *not* to interpret the Constitution according to the intent of the Framers; as such, in order to follow the intent of the Framers, one must *not* follow the intent of the Framers." (second alteration in original) (footnote omitted)); *id.* at 723 ("[J]ust as with original intent—it is often impossible to determine the actual original understanding of a particular constitutional provision (even if we are willing to imagine that a single understanding in fact existed) because the historical record is

In light of these different philosophies of governance, partisan animosities between the Federalists and Jeffersonians sharpened throughout the 1790s.⁴⁴⁵ Not one to employ direct confrontation, Jefferson frequently used surrogates who agreed with him to propose his policies and malign his political enemies.⁴⁴⁶ Tension and distrust elevated to extreme heights throughout the nation's first years,⁴⁴⁷ as continuing repercussions of the massive upheaval the bloody Revolutionary War that had ravaged the countryside up and down the Atlantic Coast had caused everyone in the new nation—such as the loss of life, the demolished economy, the decimated infrastructure, and other devastating effects—along with the constant threats of invasion from other nations intent upon reclaiming the colonies, as well as the still uncertain loyalties of people within the United States, many of whom fought on opposite sides of the Revolutionary War,⁴⁴⁸ and many whose allegiances aligned more strongly with their states than the union as a whole, which had derived from their different histories as colonies.⁴⁴⁹

contradictory, incomplete, or severely compromised.” (footnotes omitted)); *id.* at 737 (“[T]he historical evidence may reveal a range of intentions (or understandings or expectations) among the various Framers because there may not have been a consensus at the time of the framing.”).

445. ONUF, *supra* note 13, at 100 (“[D]uring the 1790s, a tumultuous decade of partisan political strife between Federalists and Jefferson’s Republicans.”); ELLIS, *supra* note 3, at 142 (noting “the 1790s [as] one of the most rancorous and disputatious decades in American history”); *id.* at 155-56 (discussing conspiracy theories among the two opposing factions as “a secular way of explaining baffling social changes in terms that improved upon previous resorts to fate, providence or God’s will”).

446. ELLIS, *supra* note 3, at 142 (“[H]e dispensed political invective of his own, or rather had surrogates do it in his behalf, that made him the chief symbol of opposition to the government in which he served.”); *id.* at 145 (discussing how Jefferson would “oppose the fiscal policies of Alexander Hamilton” and “proposal for a national bank,” yet his younger protégé, “Madison actually led the fight”).

447. MEACHAM, *supra* note 2, at xxviii (“Jefferson’s fevered fears about a return of monarchy, which was often his shorthand for a restoration of British influence and an end to the uniquely American enterprise in self-government, were dismissed as fanciful by no less a figure than George Washington. But in the climate of the time—a time of revolution, of espionage, and of well-founded worries that the American republic might meet the dismal fate all other republics had ever met—Jefferson’s sense of Britain as a perennial foe is unsurprising and essential to understand.”).

448. *See generally* ELLIS, *supra* note 3, at 306-07 (“[T]he unprecedented and still-fragile character of political institutions in the 1790s generated a conspiratorial mentality on all sides, indeed a level of mutual suspicion and intrigue that looks utterly paranoid to us, at least until we recognize how uncertain and unstable the political world of postrevolutionary America looked to them.”); MEACHAM, *supra* note 2, at 69 (“Overall, about a fifth of White American colonists in these years, or 20 percent, sided with England.”); WILLS, *supra* note 3, at 49-50 (“The size of the loyalist and apathetic camps was the more fearful for being indeterminable. And we must not be anachronistic in posing the loyalist problem. These were not men choosing (or quietly preferring) England over America. They did not think of the former as separate from themselves, or of the latter as including themselves. They were choosing their own ‘country,’ with its traditional ties to London, over a set of new ties with an unmanageable collection of foreigners.”).

449. WILLS, *supra* note 3, at 40 (discussing “one can imagine the kind of rivalry that existed between colonies”); *id.* at 47 (quoting Thomas Pownall, who wrote: “the different manner in which they were settled, the different modes under which they live, the different forms of charters, grants, and frame of government which they possess, the various principles of repulsion that these create,

This rancorous partisanship contributed to the evolution of the Federalists and Republicans (sometimes referred to as Democratic Republicans)⁴⁵⁰ as two distinct political parties, which had not originally been contemplated as part of the political structure.⁴⁵¹ In fact, Jefferson avowedly disdained political partisanship even as he fomented it,⁴⁵² leading his opponents to proclaim publicly his deceit and disparage his character.⁴⁵³ Jefferson outwardly claimed he despised political parties, believing they simply represented narrow-minded and self-interested factions instead of the good of the country as a whole, which he thought all people elected to serve in government should keep at the forefront of their minds.⁴⁵⁴ He initially believed his Republican party was a necessary evil to oust the Federalists, after which all parties would dissolve as unnecessary.⁴⁵⁵ His Republican party, which he envisioned representing the vast majority of people throughout the United States, was therefore more broadly democratic, emphasizing a vision of increasingly expanding groups of people voting and participating in government, such as landless White males who were disenfranchised at that time, and whom Jefferson thought should participate in governance.⁴⁵⁶ He also envisioned his party as being more broadly republican, meaning the elected officials would

the different interests which they actuate, the religious interests by which they are actuated, the rivalry and jealousies which arise from hence, and the impracticability, if not impossibility, of reconciling and accommodating these incomparable ideas and claims, will keep the several provinces and colonies perpetually independent of, and unconnected with, each other and dependent on the mother country”).

450. See APPLEBY, *supra* note 11, at 81.

451. *Id.* at 5 (“Partisan campaigns had not been anticipated by the Founding Fathers fourteen years earlier.”); ELLIS, *supra* note 3, at 144 (“[At that time, a] ‘party,’ as the term was commonly understood, was nothing more than a ‘faction,’ meaning an organized minority whose very purpose was to undercut the public will, usually by devious and corrupt means. To call someone a member of a political party was to accuse him of systematic selfishness and perhaps even outright treason. The modern notion of a legitimate organized opposition to the elected government did not exist.”); see also Sarah Pruitt, *The Founding Fathers Feared Political Factions Would Tear the Nation Apart*, HIST. (Feb. 18, 2025), <https://www.history.com/articles/founding-fathers-political-parties-opinion> [<https://perma.cc/R782-YQZA>].

452. ELLIS, *supra* note 3, at 144 (discussing the creation of Democratic-Republican party roots in opposition to the Federalists).

453. *Id.* at 146 (describing Jefferson as deceptive and duplicitous); *id.* (“[M]ost of the unfriendly assessments of Jefferson’s elusive personality originated in the super-heated political climate of the 1790s. Here his character became controversial.”).

454. *Id.* at 144 (“To call someone a member of a political party was to accuse him of systematic selfishness and perhaps even outright treason. The modern notion of a legitimate organized opposition to the elected government did not exist. Indeed it would have struck most members of the revolutionary generation as a contradiction in terms.”).

455. ONUF, *supra* note 13, at 83 (“Having vindicated the principles of 1776—and of 1798—the triumphant Republicans would themselves cease to be a ‘party.’”).

456. See ELLIS, *supra* note 3, at 157-58; APPLEBY, *supra* note 11, at 23 (discussing “a grand debate about free speech and popular political participation . . . [and how] the Jeffersonians articulated a political philosophy that took popular sovereignty literally, insisting on the people’s right to engage in vigorous politicking”).

represent the will of the broader mass of ordinary people instead of the smaller number of wealthy elites, which he claimed the Federalists truly represented.⁴⁵⁷ Jefferson envisioned himself as the leader of the majority of people in the United States, made up of patriotic American property owners and landless workers, who opposed the minority Federalist faction of elite “former loyalists and Tories, merchants trading with England, stock speculators and banking officials, federal employees and other office seekers and” spineless loafers.⁴⁵⁸

Frustrated with the Federalists’ dominance, in early 1794 Jefferson resigned from Washington’s cabinet and retreated to Monticello,⁴⁵⁹ yet he continued to engage in copious correspondence and personal relationships with like-minded colleagues and maintained his influence on many of the country’s emerging leaders who also favored a smaller central government.⁴⁶⁰ That year, George Washington sent John Jay to negotiate a treaty with England, resolving some of the issues left unsettled in the 1783 Treaty of Paris.⁴⁶¹ Although the resulting treaty yielded some favorable terms for the United States, it angered Jefferson and others who wanted to establish closer ties with France rather than England.⁴⁶² Preferring to develop stronger ties to France, Jefferson maintained his longstanding hatred of England⁴⁶³—with

457. See generally ELLIS, *supra* note 3, at 157-58; *id.* at 182-83 (providing correspondence between Madison and Jefferson, who discussed the Federalists as “scheming to subvert the liberties of ‘the people’”); APPLEBY, *supra* note 11, at 4 (“Jefferson’s vision accounts for the almost utopian zeal of his two administrations. They certainly explain his animus toward the Federalist party for installing a network of upper-class families to monopolize offices in the new constitutional order. By the time he became president, Jefferson had, for eight years, led a rambunctious political movement manned by thousands of white men eager to assert their right to be heard and esteemed. In opposing the Federalists, he ushered in a kind of sustained partisan activity that had never existed before.”); *id.* at 29 (“No political party would arise again claiming that ordinary voters needed the guidance of the right, well-born, and well-educated. . . . The Federalists misjudged American voters and their likely acquiescence to a ruling elite.”).

458. See ELLIS, *supra* note 3, at 157. Jefferson’s “Country Party” consisted of “the vast majority of American voters [including] ‘the entire body of landholders throughout the United States’ as well as ‘the body of labourers, not being landholders, whether in husbanding or the arts.’” *Id.* It did not include “former loyalists and Tories, American merchants trading with England, stock speculators and banking officials, federal employees and other office seekers and—an all-purpose psychological category—‘nervous persons, whose languid fibres have more analogy with a passive than active state of things.’” *Id.*; see also *id.* (“In the traditional Whig formulation the Country Party was an elite group of landowners who opposed the policies of the Court Party, and the two competing elites offered different prescriptions for what was in the best interest of the public. But Jefferson had come to see himself as the leader of a popular majority doing political battle against an elite minority.”); MEACHAM, *supra* note 2, at 295.

459. MEACHAM, *supra* note 2, at 277, 283-85.

460. *Id.* at 287 (“Led by James Madison, correspondents kept Jefferson current on politics and foreign affairs.”); see also *id.* at 287-89.

461. See ELLIS, *supra* note 3, at 186-92 (discussing the Jay Treaty with England); see also MEACHAM, *supra* note 2, at 293.

462. MEACHAM, *supra* note 2, at 293.

463. See ELLIS, *supra* note 3, at 148 (describing Jefferson’s hatred of England).

whom Hamilton and the Federalists wanted to cultivate a renewed alliance. Jefferson disliked noble titles and trappings and was ever vigilant against any suggestion that a monarchy return to the United States,⁴⁶⁴ which he feared would occur if Hamilton's predilections prevailed.⁴⁶⁵ Moreover, upon reading the treaty, Jefferson "saw that Hamilton had successfully managed to legislate through Jay's diplomacy. 'A bolder party-stroke was never struck,' Jefferson told Madison. 'For it certainly is an attempt of a party, which finds they have lost their majority in one branch of the legislature, to make a law by the aid of the other branch and the executive, under color of a treaty, which shall bind up the hands of the adverse branch from ever restraining the commerce of their patron-nation.'"⁴⁶⁶ Having access to Madison's "Notes on the Debates at the Constitutional Convention,"⁴⁶⁷ Jefferson formulated an argument interpreting the Constitution to allow the U.S. House of Representatives to have a determination in the approval process of any treaty, despite the language in the Constitution granting that function to the U.S. Senate.⁴⁶⁸ Instead of strict interpretation, in this instance Jefferson once again advocated for a loose construction of the Constitution, allowing powers to be added to the House of Representatives that were not included in the text of the document.⁴⁶⁹ He was willing to adopt a flexible and adaptable constitutional

464. See MEACHAM, *supra* note 2, at xxvii-xxviii ("Jefferson . . . did not trust those Americans who maintained even imaginative ties to monarchy and its trappings—aristocracy of birth, hereditary executives, lifetime legislatures, standing armies, large naval establishments, and grand, centralized financial systems. When Jefferson sensed any trend in the general direction of such things, he reacted viscerally, fearing that the work of the Revolution and of the Constitutional Convention was at risk."); *id.* at 239 ("The quasi-regal air around the president—the levees and the bows, the enormous carriage with numerous horses—bothered Jefferson, who believed substance could follow style. A tilt toward the monarchical in form might, he feared, precede a move toward the autocratic in fact."); ELLIS, *supra* note 3, at 324 (discussing "consolidation" as "monarchists in slightly different guise").

465. MEACHAM, *supra* note 2, at 240 ("Hamilton favored a strong national government and to a degree sought to emulate the basic British financial and commercial systems."); *id.* at 241 ("Hamilton was willing to entertain the possibilities of a hereditary (or at least lifelong) presidency or Senate.").

466. *Id.* at 293-94.

467. See ELLIS, *supra* note 3, at 187-88 (stating in October 1795, Madison "left with Jefferson the only copy of his 'Notes on the Debates at the Constitutional Convention,' a clear signal that Jefferson needed to bone up on the constitutional questions at issue" in opposing the Jay Treaty).

468. See *id.* at 191 ("[Jefferson argued that] 'the true theory of our constitution' allowed the elected representatives in the House an equal share of power over treaties with the president and the Senate."); see also *id.* ("Because he regarded the House of Representatives as the most democratic branch of the government with the closest ties to popular opinion, 'the representatives are as free as the President and the Senate were to consider whether the national interest requires or forbids their giving the forms and force of law to the articles over which they have a power.'").

469. *Id.* at 192 ("Jefferson's more extreme position reflected his more cavalier attitude toward constitutional questions in general. Unlike Madison, who had a deep appreciation for the Constitution as an artful arrangement of juxtaposed principles and powers with abiding influence over future generations, Jefferson tended to view it as a merely convenient agreement about political institutions that ought not to bind future generations or prevent the seminal source of all power—popular

interpretation when it suited him. Popular protests against the Jay Treaty erupted in the states, giving rise to the formation of the first organized political parties, the Republicans opposing the rule of the Federalists.⁴⁷⁰

In Washington's Farewell Address, which James Madison and Alexander Hamilton helped write, he bemoaned potential abuse of political parties, noting:

They serve to organize faction, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community," he said in his Farewell Address. "They are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterward the very engines which have lifted them to unjust dominion."⁴⁷¹

When Washington announced he was stepping down after two terms, Jefferson allowed his name to be put forward opposing John Adams, who had served as Vice President under Washington.⁴⁷² Intimation of possible secession by northern states signaled their concern that Jefferson would win due to southern states' political advantage, because the Constitution's Three-Fifths Clause allowed White southerners to count three-fifths of their

opinion—from dictating government policy. . . . [Jefferson's] statements more accurately reflected his greater willingness to bend constitutional arguments to serve what he saw as a higher purpose Upsetting delicate constitutional balances or setting dangerous precedents did not trouble him in such moments.").

470. See generally *id.* at 235-36 ("The Federalists preferred a more consolidated federal government in which more power was allocated to the executive and judicial branches and America's primary European ally and role model was England. The Republicans wanted a smaller and weaker federal government in which the House of Representatives was the dominant force; they looked to France as our chief European friend. While these were hardly incidental differences—they had their origins in fundamentally juxtaposed ideas about the proper allocation of political power in a republican government"); *id.* at 194 ("What Jefferson saw clearly in the wake of the Jay Treaty debate . . . was that the resolution of the questions raised by the treaty had been reached by a new kind of politics in which both sides acknowledged that success depended upon an appeal to popular opinion . . . once the game had been defined in these terms—that is, once republicanism became more democratic in character—the Federalists were doomed."); ONUF, *supra* note 13, at 85 ("[A]lthough Jefferson and his contemporaries were the founders of the American political tradition and the inventors of the first recognizably 'modern' political parties—they thought, wrote, spoke, and acted in an entirely different world from ours. In fact, the political and constitutional continuities between their times and ours have been the greatest obstacles to understanding: because we still use them, we think we know what all the words mean. But Jefferson's obsessive fears of 'power' and 'corruption' and his notions of 'liberty,' 'virtue,' personal and political 'independence,' and 'equality' were all embedded in a view of the world astonishingly unfamiliar to modern readers.").

471. NCC Staff, *On This Day: The First Bitter, Contested Presidential Election Takes Place*, NAT'L CONST. CTR.: BLOG (Nov. 4, 2023), <https://constitutioncenter.org/blog/on-this-day-the-first-bitter-contested-presidential-election-takes-place> [<https://perma.cc/2DHV-FL98>].

472. MEACHAM, *supra* note 2, at 298-302.

enslaved Black population toward their number of electoral college votes, giving them a distinct advantage.⁴⁷³ In this instance, Jefferson strongly opposed states' rights to secede, boldly claiming "We shall never give up our union, the last anchor of our hope, and that alone which is to prevent this country from becoming an arena of gladiators."⁴⁷⁴ Jefferson's inconsistency regarding his opposition to northern states' suggestions of secession versus southern states' evocations of secession, which he favored at various times, as discussed further below,⁴⁷⁵ highlights his inconsistent interpretation of the U.S. Constitution regarding state secession. This shifting interpretation comports with his kaleidoscopic constitutional construction that he employed throughout his life.

However, for now Adams won and Jefferson came in second, securing his position as Vice President under Adams under the electoral process then in place.⁴⁷⁶ Partisanship continued to fulminate, as Jefferson bemoaned in his understated manner: "You and I have formerly seen warm debates and high political passions. But gentlemen of different politics would then speak to each other. . . . It is not so now. Men who have been intimate all their lives cross the streets to avoid meeting, and turn their heads another way, lest they should be obliged to touch their hat."⁴⁷⁷ More violently, dueling had become a common way to resolve political grievances that touched on the honor of the clashing partisans.⁴⁷⁸ Reportedly, after a single instance, President Adams never once consulted with Vice President Jefferson about governance,⁴⁷⁹ although the two gentlemen interacted episodically.⁴⁸⁰ Instead, Adams and the Federalists in control of Congress passed the Alien and Sedition Acts, under which the president and executive branch "launched a broad-ranging assault on the administration's domestic enemies,"⁴⁸¹ in Jefferson's Republican

473. *Id.* at 303.

474. *Id.*

475. See discussion *infra* Section IV.B.4.

476. NCC Staff, *supra* note 471; see also MEACHAM, *supra* note 2, at 302.

477. MEACHAM, *supra* note 2, at 299 (omission in original).

478. APPLEBY, *supra* note 11, at 50 ("Dueling in the United States threw on political warfare. Unprepared for the give-and-take of partisan disputes, America's first politicians were its first duelers. . . . In the early decades of the nineteenth century, political opponents were quick to challenge one another to a duel if they thought that their honor had been sullied."); see also *id.* at 92-96, 124.

479. MEACHAM, *supra* note 2, at 306 (stating that after one inquiry from Adams early in his term, Jefferson noted "he never after that said one word to me on the subject, or ever consulted me as to any measure of government").

480. *Id.* at 341 ("For all the strife of recent years, Jefferson and the Adamses had managed to maintain quietly civil relations. In early 1801 the president and the First Lady asked the vice president to dinner. . . . Such small human moments speak well of both the Adamses and of Jefferson.").

481. ONUF, *supra* note 13, at 187 ("The party conflicts of the 1790s culminated in the Federalists' efforts to suppress the Republican opposition through repressive legislation. The Alien and Sedition Acts of 1798 launched a broad-ranging assault on the administration's domestic enemies even as it prepared for a full-scale war against France. In response, Jefferson and his allies sought

party, which the Republicans decried as infringing upon individual rights in a nation founded on freedom.⁴⁸² In short, “[t]he alien laws collectively invested the president the authority to deport resident aliens he considered dangerous. The sedition bill criminalized free speech.”⁴⁸³ The National Archives website elucidates further:

These laws raised the residency requirements for citizenship from 5 to 14 years, authorized the president to deport “aliens,” and permitted their arrest, imprisonment, and deportation during wartime. The Sedition Act made it a crime for American citizens to “print, utter, or publish . . . any false, scandalous, and malicious writing” about the government. The laws were directed against Democratic-Republicans, the party typically favored by new citizens. The only journalists prosecuted under the Sedition Act were editors of Democratic-Republican newspapers. Sedition Act trials, along with the Senate’s use of its contempt powers to suppress dissent, set off a firestorm of criticism against the Federalists and contributed to their defeat in the election of 1800, after which the acts were repealed or allowed to expire. The controversies surrounding them, however, provided for some of the first tests of the limits of freedom of speech and press.⁴⁸⁴

Federalist prosecutors hounded Republican members of Congress as well as the press: “[t]he prosecutions under the new laws were egregious. Republican editors were arrested, indicted, and tried for publishing pieces the Adams administration deemed seditious.”⁴⁸⁵ In a desperate response to what they considered despotic legislation,⁴⁸⁶ Jefferson and Madison utilized the state governments to try to fight back against the Alien and Sedition Acts by crafting

to rally their troops against the Federalist juggernaut, calling on American patriots to reenact the Revolutionary struggle against a tyrannical central government.”).

482. MEACHAM, *supra* note 2, at 312.

483. *Id.*

484. *Milestone Documents: Aliens and Sedition Acts (1798)*, NAT’L ARCHIVES (July 27, 2023), <https://www.archives.gov/milestone-documents/alien-and-sedition-acts> [<https://perma.cc/F6LQ-GKM4>]; see also APPLEBY, *supra* note 11, at 26 (“Under the Sedition Act, zealous Federalists prosecuted every major Republican newspaper publisher. More than a dozen persons were tried for criticizing the government, and the newly refurbished army harassed both editors and protestors. . . . Aliens—particularly radical French and Irish emigres who had gravitated to Jefferson’s orbit—were threatened with deportation, though only one was actually deported.”).

485. MEACHAM, *supra* note 2, at 317.

486. *Id.* at 313 (“So began a furiously divisive time of intensity and vitriol. Jefferson and the Republicans believed they were no longer expecting but were instead experiencing the end of American liberty. ‘Everyone has a right to explain himself,’ John Taylor wrote, adding that the government was now ‘manufacturing a law which may even make it criminal to pray to God for better times.’”).

the Kentucky and Virginia resolutions, respectively.⁴⁸⁷ In a radical move, Jefferson anonymously attempted to argue that state governments had the authority to nullify any acts of the federal government with which the states disagreed.⁴⁸⁸ However, the Kentucky legislature had qualms about the nullification language, and upon further thought, Jefferson reconsidered the wisdom of such an extreme argument.⁴⁸⁹ Yet this incident demonstrates Jefferson's willingness to interpret the Constitution imaginatively whenever it suited his goals.⁴⁹⁰ Instead of taking the federal government to court to argue against the constitutionality of the Alien and Sedition Acts, as the Supreme Court's power of judicial review had not yet been established, Jefferson again interpreted the Constitution loosely, ignoring the implications of the Supremacy Clause and claiming that the Constitution was merely a compact among the states, which the states could ignore when they disagreed with the federal government.⁴⁹¹ Notably, this incident happened pre-*Marbury v. Madison*, so

487. See *id.* at 318; BENEDICT, *supra* note 15, at 113-14 (providing the Virginia and Kentucky resolutions 1789 against Alien and Sedition Acts drafted by Jefferson and Madison); ELLIS, *supra* note 3, at 212 (stating Jefferson and Madison collaborated in drafting "the Kentucky and Virginia Resolutions in order to block implementation of the Alien and Sedition Acts, the one significant act of his vice presidency"); ONUF, *supra* note 13, at 86 ("[T]he general belief that Jefferson and Madison only belatedly turned to states' rights: the Kentucky and Virginia Resolutions of 1798 were inspired by political desperation as Republican oppositionists sought to counter Federalist control of the national legislature and executive. The compact theory of union was grounded not in principle but rather in political expediency."); APPLEBY, *supra* note 11, at 27 ("[Jefferson] counseled even more greatly overwrought Republicans against secession. He advised 'a little patience': 'we shall see the reign of witches pass over, their spells dissolved, and the people recovering their true sight, restoring their government to its true principles.' In the event, he was correct, but his patience did not prevent him from working with Madison to get the Virginia and Kentucky legislatures to pass resolutions condemning the Alien and Sedition acts as unconstitutional.").

488. See ELLIS, *supra* note 3, at 212 (explaining Jefferson had gone considerably further than Madison in recognizing the right of a state to nullify a federal law within its own borders, even describing federal intrusion in state matters as interference by a foreign government); BENEDICT, *supra* note 15, at 114 (discussing the Constitution as a compact among states (Jefferson) versus people as sovereign); see also ONUF, *supra* note 13, at 99 (noting threats of "separatist movements and disunionist plots").

489. MEACHAM, *supra* note 2, at 319.

490. *Id.* at 318-19 ("Viewed in terms of philosophy, the contradictions between Jefferson the nationalist and Jefferson the nullifier seem irreconcilable. Viewed in terms of personality and of politics, though, Jefferson was acting in character. He was always in favor of whatever means would improve the chances of his cause of the hour. When he was a member of the Confederation Congress, he wanted the Confederation Congress to be respected. When he was a governor, he wanted strong gubernatorial powers. Now that the disagreed with the federal government (though an officer of that government), he wanted the states to have the ability to exert control and bring about the end he favored. He was not intellectually consistent, but a consistent theme did run through his politics and statecraft: He would do what it took, within reason, to arrange the world as he wanted it to be.").

491. See generally ELLIS, *supra* note 3, at 212 ("Jefferson had gone considerably further than Madison in recognizing the right of a state to nullify a federal law within its own borders, even describing federal intrusion in state matters as interference by a foreign government."); BENEDICT, *supra* note 15, at 114 (distinguishing between the Constitution as a compact among states (Jefferson) and people as sovereign); ONUF, *supra* note 13, at 99 (noting concerns of Jefferson and his contemporaries regarding threats of "separatist movements and disunionist plots").

the Supreme Court's power of judicial review to declare unconstitutional an act of federal government had not yet been recognized; therefore, Jefferson might have thought this was the only way to prevent federal violations of people's freedom of speech and of the press, as well as the rights of recently immigrated residents against unwarranted arrest, imprisonment, and deportation.⁴⁹² Considering his antipathy to the federal courts under Federalist judges appointed by Washington and later by Adams,⁴⁹³ Jefferson may not have gone that route anyway. Yet it is important to note that his animosity toward the federal courts and to what he considered to be the overreach of the federal executive and legislative branches when they were controlled by the Federalists may partially have been due to his animosity toward the people in those positions and their enmity toward him, as opposed to any deeply held philosophical beliefs about the powers of the three branches of government under the U.S. Constitution.⁴⁹⁴ For example, despite Jefferson's reputation as a strict constructionist, once he was elected president and his Republican party controlled Congress, he became much more open to the dynamic interpretation of the Constitution that he had already adopted in numerous instances, whenever a loose construction was expedient to achieve his ends, as discussed below. Since Chief Justice John Marshall served a remarkable thirty-five years from 1801 to 1835,⁴⁹⁵ we do not know what Thomas Jefferson would have thought about the power of the judicial branch had it been controlled by Republican justices and judges. He may well have changed his views about the judiciary under different circumstances, just as

492. BENEDICT, *supra* note 15, at 123 (noting "the Supreme Court . . . declared the authority to rule federal laws unconstitutional in the monumental case of *Marbury v. Madison* (1803)").

493. William H. Rehnquist, *Thomas Jefferson and His Contemporaries*, 9 J.L. & POL. 595, 600 (1993) ("Jefferson and the Republicans . . . were profoundly offended by the action of the lame-duck Congress in passing the Judiciary Act of 1801, called by its detractors the 'Midnight Judges Act.' This law created a variety of new federal judgeships and minor magistrate positions. It was passed shortly before Adams left office, and the Republicans claimed that Adams stayed up until midnight the night before Jefferson's inauguration signing commissions for the new judges—all of whom, of course, were Federalists. Jefferson wrote to a friend, 'The Federalists have retired into the judiciary as a stronghold . . . and from that battery all the works of Republicanism are to be beaten down and erased.' Soon after his inauguration, Jefferson and his supporters repealed the Judiciary Act of 1801 in order to turn some of the 'Midnight Judges' out of office. But it appeared that they could do nothing about John Marshall and the other Federalist justices on the Supreme Court." (second omission in original) (footnotes omitted)); *see also* MAYER, *supra* note 4, at 265 ("To Jefferson's dismay the federal judiciary was monopolized by Federalists."); *id.* at 257-94 (discussing Jefferson's views on the judiciary and judicial review).

494. MEACHAM, *supra* note 2, at 375 ("Jefferson's hatred of his cousin John Marshall was cordial, but it was hatred nonetheless."); *see also* APPLEBY, *supra* note 11, at 61-62 ("Since nary a Republican sat on the federal bench, Jefferson maintained that the Federalists had already politicized the judiciary."); ELLIS, *supra* note 3, at 267-68.

495. S. S. Morrison, *The Life of John Marshall*, 31 HARV. L. REV. 496, 496 (1918) (book review) ("The story of Marshall's career as chief justice, covering thirty-five of the most pregnant years of our national development, the decisions alone touching nearly every aspect of it, offers innumerable and interesting byways to the historical explorer.").

he had done with the other branches of government, as explored further in the following sections.

3. *As an Adaptable and Pragmatic President*

The presidential election of 1800 was at least as vitriolic as the previous contest⁴⁹⁶ and came down to a nail-biting finish. Whereas previously George Washington's Federalist administration had continued when John Adams won the presidency in 1796, the Republican party decisively prevailed in the next political contest four years later.⁴⁹⁷ Thomas Jefferson and Aaron Burr ran as Republican candidates for president and vice president respectively against John Adams and Charles Pinkney as the Federalist candidates.⁴⁹⁸ Although the Republicans soundly defeated the Federalists due to popular reaction against the draconian Alien and Sedition Acts⁴⁹⁹ (which had cracked down on political opponents, immigrants, and anyone who criticized the president in the press, and which ironically backfired against the Federalists),⁵⁰⁰ Jefferson and Burr tied for the presidency through the electoral college process in place at that time, then went through thirty-six rounds of balloting in the House of Representatives before Jefferson narrowly emerged as the winner.⁵⁰¹ Both Federalists and Republicans, who were each struggling to

496. APPLEBY, *supra* note 11, at 28 (“[T]he campaign of 1800 was one of the most acrimonious in the annals of American history . . . the vituperation was unprecedented. . . . Men who had once been comrades in arms crossed the street rather than exchange civilities. Even those who had campaigned together for the ratification of the Constitution—like Hamilton and Madison, who together wrote the Federalist Papers—became adversaries. . . . These men were fighting over the meaning of the revolution and by extension, of America itself.”).

497. *Id.* (“Rarely do presidential elections produce a mandate, but the sharpness of the differences between the Republicans and the Federalists gave Jefferson’s victory a decisive quality. The two parties had squared off on the issues of foreign policy and revolutionary hopes, on free speech and the permissible bounds of popular politics, on whether to use the Constitution to limit or energize the federal government. Escalating the stakes, the Jeffersonians said that they were fighting to ensure that America would truly be the ‘last, best hope of the world.’”).

498. MEACHAM, *supra* note 2, at 328, 330-33.

499. ONUF, *supra* note 13, at 83 (“In contrast to the Adams Federalists, who had sought to suppress their opponents with the Alien and Sedition Acts and had instead spurred Jeffersonian Republicans on toward their electoral revolution, Jefferson would allow his critics to discredit and disgrace themselves before the sovereign people.”).

500. APPLEBY, *supra* note 11, at 27 (“[P]ublic opinion had shifted away from the Federalists. The voters of Pennsylvania, a bellwether state, decisively elected a slate of Republican officials, indicating that the country had soured on Federalist prosecutions and wearied of a president who lost few opportunities for lecturing men, women, and children on their duties. Even more fascinating, the Sedition Act failed to staunch the flow of Republican bile; rather, it politicized a host of printers, who rushed to found newspapers during the election year of 1800.”).

501. *See* ONUF, *supra* note 13, at 100 (stating uncertain future “during the succession crisis of 1800-1801, which saw a tie in the electoral college and thirty-six contentious ballots in the House of Representatives before Jefferson was elevated to the presidency”); *see also* ELLIS, *supra* note 3, at 206-07 (explaining Aaron Burr as Vice President; electoral tie; House deadlock lasting six days and thirty-six ballots; Burr’s role in securing New York for Jefferson in exchange for being on the

determine the outcome between Jefferson and Burr, considered taking measures that were outside of a narrow reading of the Constitution, again demonstrating the flexible approach to constitutional construction adopted by numerous founders on both sides of the political divide.⁵⁰² Moreover, suggestions of secession emanated from both parties.⁵⁰³ Yet almost miraculously, the first transition of power from one party to another in the United States occurred without bloodshed, whereas most previous transitions of power in nations throughout the world had been precipitated either by hereditary transfer of power⁵⁰⁴ or by violent overthrow of the prior regimes.⁵⁰⁵ People dissatisfied with the increasingly authoritarian Federalist government currently in power had accepted that, under the United States Constitution, they would simply need to wait four years for another chance to oust the leaders currently in office. Jefferson called it the “revolution of 1800,” since the opposition party favoring a less-invasive central government and greater emphasis on individual rights and state governance defeated what had become a more authoritarian centralist party with monarchical tendencies.⁵⁰⁶

ballot with Jefferson in place of Adams, who would likely have won a second term but for New York going for Jefferson); MEACHAM, *supra* note 2, at 331, 340.

502. BENEDICT, *supra* note 15, at 114 (“[During the election of 1800] Federalists attacked Republicans as atheists and anarchists Republicans charged Federalists with being aristocrats and monarchists, intent on subverting the liberty of the people, enforcing religious orthodoxy, and converting the Union into a consolidated empire. Neither side conceded the legitimacy of the other. Each considered extra-constitutional measures, and each feared the other would resort to violence.”); APPLEBY, *supra* note 11, at 9 (“Both Federalists and Republicans expressed doubts that there would even be an election.”).

503. Federalists feared that Republicans would resort to violence to take over governance of the country. “Republicans were no less alarmist, some even urging secession at the same time that they charged the Federalists with intending to introduce a monarchy or aristocracy before they had to yield power in March 1801. Because both parties had a strong regional basis, talk of disunion abounded in New England and the South.” APPLEBY, *supra* note 11, at 9; *see also id.* at 82 (“Some New England Federalists actually contemplated secession from the Union.”).

504. *See, e.g., id.* at 115-16 (“However deficient hereditary monarchy might be in other ways, it had solved the vexing problem of transferring power: ‘The king is dead; long live the king!’ crowds shouted when death delivered the throne to the heir apparent.”).

505. *See* ELLIS, *supra* note 3, at 210-11 (describing the peaceful transfer of power as revolutionary); *id.* at 210 (“Margaret Bayard Smith, the wife of the editor of the pro-Jefferson *National Intelligencer* and a member of the audience, put it most succinctly: ‘The changes of administration, which in every government and in every age have most generally been epochs of confusion, villainy and bloodshed, in this happy country take place without any species of distraction, or disorder.’”); ONUF, *supra* note 13, at 83 (“[T]he peaceful ‘transit of power’ from Federalists to Republicans marked an epoch in the history of party government.”).

506. ELLIS, *supra* note 3, at 310 (“[H]e used the phrase ‘the revolution of 1800’ to describe his own election, claiming that it was ‘as real a revolution in the principles of our government as that of 1776 was in its form.’”); ONUF, *supra* note 13, at 187 (“When . . . the war crisis dissipated and public opinion recoiled against the administration’s mobilization measures, Jefferson believed a new day had dawned. Patriotic voters finally came to their senses in the ‘Revolution of 1800,’ returning to Revolutionary first principles and securing their precious union.”); *id.* at 84 (“Jefferson’s extraordinary interpretation of his rise to power seems unwarranted by what had been, after all, a rather narrow victory at the polls that was only finally secured—on the eve of the inauguration—after thirty-six congressional ballots.”); *see also* MEACHAM, *supra* note 2, at xviii (“Jefferson

Questions arose as to whether newly elected President Jefferson intended to decimate the federal government⁵⁰⁷ and dismantle the Constitution,⁵⁰⁸ and destroy the United States in light of his previous efforts to have Virginia secede from the union.⁵⁰⁹ He certainly wanted to eliminate any vestiges of an imperial presidency,⁵¹⁰ yet the more exaggerated fears were unwarranted.

In Jefferson's first inaugural address, he set forth his perspectives about the federal government's role under the Constitution. Avidly averse to politics and political parties⁵¹¹ (despite crafting and leading the first opposition party in the nation), Jefferson attempted to reconcile people on both sides of the political divide, stating that "[w]e are all republicans: we are all federalists,"⁵¹² intentionally using lowercase in his written transcript to signify the terms should stand for concepts of government instead of political factions, and later in the speech transposing the two terms, highlighting federalist before republican to exhibit his belief in the equal importance of both concepts to the new governmental structure of the United States.⁵¹³ Despite the rancor

. . . found himself in a struggle to secure his own election and, in his mind, rescue the nation from the allegedly monarchical tendencies of the Federalist Party."); *id.* at 241 ("Jefferson . . . had long believed in, and fought for, a respected and effective national government. . . . Jefferson found the discovery of a quasi-monarchical culture growing up around President Washington unsettling. Jefferson believed in a powerful *republican* government.").

507. *See generally* ELLIS, *supra* note 3, at 210 (explaining Jefferson's opposition to federal government and as first Republican president "raised serious questions about the very survival of a federal government the incoming president had threatened to dismantle"); *id.* at 211 ("No one knew for sure what he meant by 'pure republicanism,' except perhaps that it entailed reducing the size and scope of the federal government."); *id.* at 212 (stating his intention to shrink federal government).

508. *Id.* at 211-12 (discussing fear that Jefferson intended to dismantle the Constitution itself).

509. *See id.* at 213 ("Federalist rumors that Jefferson meant to destroy the current foundation of the central government and thereby allow the United States to become, like Europe, a series of separate nation-states in the manner of France, Italy, and Austria.").

510. *See id.* at 228 ("He wanted to institutionalize a self-consciously nonimperial presidency.").

511. *See* ONUF, *supra* note 13, at 34 (discussing Jefferson's antipathy to political life).

512. *Id.* at 34-35 ("When, at his first inaugural, he said, 'We are all republicans, we are all federalists,' he was seeking to overcome and banish party divisions. Parties were anathema to Jefferson because they set up artificial and corrupt barriers among representatives of the people who should be acting together for the common good. Ominously, party divisions tended to replicate and exacerbate sectional animosities. Jefferson therefore invoked a transcendent commitment to 'federal and republican principles, our attachment to union and representative government.'"); THOMAS JEFFERSON, *Excerpt from the First Inaugural Address*, in JEFFERSON ON FREEDOM 87, 89 (2011) ("We have called by different names brethren of the same principle. We are all republicans: we are all federalists.").

513. MAYER, *supra* note 4, at 120-21 ("As Dumas Malone has noted, Jefferson did not capitalize the key words and thus turn them into party names, as later editors would take the liberty of doing. His meaning was clear in the context of his previous statements: that 'every difference of opinion is not a difference of principle,' and that 'we have called by different names brethren of the same principle.' He meant that nearly all Americans favored a republican rather than a monarchical form of government and accepted the federal system, as contrasted with a consolidated national government on the one hand and a confederacy of fully sovereign states on the other.").

of the recent election, Jefferson extended an olive branch to those in the opposing party who had maligned him.⁵¹⁴ To those who feared he would allow the dismantling of the federal government, or the Constitution, or the union to secessionist states, he offered his reassurance that he believed the United States government would remain durable and resilient.⁵¹⁵ He reaffirmed his commitment to equality and nondiscrimination based upon one's religion or politics, freedom of religion, freedom of the press, the right to petition for habeas corpus, and the right to trial by impartial juries.⁵¹⁶ Regarding foreign policy, he signaled his commitment to a strong central government focused on preserving peace for the United States and safety from any threats abroad, including a well-disciplined militia and civil control over the military to maintain that peace, as well as a policy of neutrality toward other nations and the encouragement of foreign commerce.⁵¹⁷ With respect to fiscal policy, Jefferson favored keeping the budget and taxes low and ensuring timely payment of the federal debts to maintain the United States' credit.⁵¹⁸ His economic focus remained on agriculture and developing commerce in support of agriculture.⁵¹⁹ Jefferson highlighted the importance of states' rights to administer domestic issues and as "the surest bulwarks against anti-republican

514. ONUF, *supra* note 13, at 36 ("If Jefferson occasionally gave vent to sanguinary sentiments, he showed no inclination to exterminate his enemies when he gained power: 'Let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.'").

515. JEFFERSON, *supra* note 512, at 89-90 ("If there be any among us who would wish to dissolve this Union, or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it. I know indeed that some honest men fear that a republican government cannot be strong; that this government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm, on the theoretic and visionary fear, that this government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest government on earth. I believe it the only one, where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern. Sometimes it is said that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found angels, in the form of Kings, to govern him? Let history answer this question. Let us then, with courage and confidence, pursue our own federal and republican principles; our attachment to union and representative government.").

516. *Id.* at 91-92 ("[I]t is proper you should understand what I deem the essential principles of our government, and consequently those which ought to shape its administration. . . . Equal and exact justice to all men, of whatever state or persuasion, religious or political; . . . freedom of religion; freedom of the press; and freedom of person, under the protection of the Habeas Corpus; and trial by juries impartially selected.").

517. *Id.* ("[P]eace, commerce, and honest friendship with all nations, entangling alliances with none; . . . the preservation of the General government in its whole constitutional vigor, as the sheet anchor of our peace at home, and safety abroad; . . . a well disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them; the supremacy of the civil over the military authority.").

518. *Id.* ("[E]conomy in the public expence, that labor may be lightly burthened; the honest payment of our debts and sacred preservation of the public faith . . .").

519. *Id.* at 92 ("[E]ncouragement of agriculture and of commerce as its handmaid . . .").

tendencies” — which he was concerned that an authoritarian central government may impose.⁵²⁰ Moreover, he stressed the importance of maintaining the right of the people to change those serving as leaders of the federal government through the election process, which serves as a peaceful means of changing a government with which the majority of the people do not agree, as opposed to resorting to a violent revolution like the country had recently experienced.⁵²¹ Furthermore, Jefferson emphasized the “absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but force, the vital principle and immediate parent of the despotism,” fearing that if the federal government ever attempted to suppress the will of the majority, repression and tyranny would result.⁵²² That said, he did not want the tyranny of the majority to trample upon the individual rights and freedoms of the minority:

[a]ll . . . will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression. Let us then, fellow-citizens, unite with one heart and one mind.⁵²³

In addition, he underscored the importance of “the diffusion of information,” a phrase he used to support the development of a strong system of public education throughout the United States.⁵²⁴ Education of the voting citizenry underpinned his faith in the will of the majority, ensuring an enlightened, civic-minded, virtuous, and responsible electorate who would selflessly support public policies beneficial for the good of the whole and would respect the rights of minorities.⁵²⁵ Listing these standards of governance that would

520. *Id.* at 91 (“[T]he support of the state governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies . . .”).

521. *Id.* (“[A] jealous care of the right of election by the people, a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided . . .”).

522. *Id.* (“[A]bsolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but force, the vital principle and immediate parent of the despotism . . .”).

523. JEFFERSON, *supra* note 512, at 88; *see also* MEACHAM, *supra* note 2, at 345.

524. JEFFERSON, *supra* note 512, at 92 (“[T]he diffusion of information, and arraignment of all abuses at the bar of the public reason . . .”); *see also* MEACHAM, *supra* note 2, at 121 (noting Jefferson supported legislation “for creating a system of general public education to broaden opportunities for many white Virginians”).

525. MEACHAM, *supra* note 2, at xix-xx (“He had a defining vision, a compelling goal—the survival and success of popular government in America. Jefferson believed the will of an educated, enlightened majority should prevail. His opponents had less faith in the people, worrying that the broad American public might be unequal to self-government. Jefferson thought that same public was the salvation of liberty, the soul of the nation, and the hope of the republic.”).

be his guiding principles as President of the United States, Jefferson indicated:

[t]hey should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty and safety.⁵²⁶

Echoing back to his language in the Declaration of Independence of uniting one people, Jefferson's inaugural address was an attempt to help achieve a true union of all people within the fledgling nation. Incumbent upon the president, "Jefferson once said, was 'to unite in himself the confidence of the whole people' to 'produce a union of the powers of the whole, and point them in a single direction, as if all constituted but one body and one mind.'"⁵²⁷

In accordance with the principles professed in his first inaugural address, President Jefferson initially viewed the constitutional role of the federal government as quite limited, reversing the previous Federalist direction.⁵²⁸ Therefore, he aimed to reduce the size of the federal government and slash the national debt,⁵²⁹ both of which he believed had grown too large under the previous twelve years of Federalist leadership.⁵³⁰ He also replaced many Federalists in federal office with Republicans.⁵³¹ His new Secretary of the Treasury, Albert Gallatin, was instrumental in implementing these policies. Upon taking office, for example, they eliminated excise taxes on alcohol, sugar, and tobacco products that had been implemented by Hamilton.⁵³² Even Jefferson's day-to-day style of governance emphasized minimalism: instead of the large, routine cabinet meetings he had experienced under George

526. JEFFERSON, *supra* note 512, at 92.

527. MEACHAM, *supra* note 2, at 342.

528. APPLEBY, *supra* note 11, at 31 ("He had also promised to cut the size of government."); *see also* ELLIS, *supra* note 3, at 212 (describing Jefferson's intention to shrink federal government.); MEACHAM, *supra* note 2, at 352.

529. MEACHAM, *supra* note 2, at 352; *id.* at 219 ("Jefferson, a man with large personal debts, deplored the weakness that came with weighty borrowing [on behalf of the United States.]"); ELLIS, *supra* note 3, at 185 ("Coming as they did from a man whose own meticulous accounting of his personal finances never seemed capable of producing a realistic rendering of the proverbial bottom line, Jefferson's critical remarks on Hamilton's financial confusion are richly ironic. . . . [I]f Jefferson were to reenter the political arena, one of his highest priorities would be the reduction and elimination of the public debt. But his obsession with public debt rested cheek by jowl with his own cavalier way with his personal debt.").

530. ONUF, *supra* note 13, at 84 ("As the heavy hand of Federalist administration was lifted—with the end of excise taxes, the reduction of the national debt, the dismantling of the fiscal-military apparatus that threatened to plunge the new nation into a never-ending cycle of wars—the American people would reap the fruits of peace and prosperity. Jefferson would win the people's favor by doing nothing, or by undoing what the Federalists had done.").

531. MEACHAM, *supra* note 2, at 377.

532. ONUF, *supra* note 13, at 84.

Washington, Jefferson often preferred to give and receive communication with department heads in writing or in one-on-one meetings.⁵³³ When he did convene cabinet meetings, they mainly operated through consultation and consensus.⁵³⁴ Most of Jefferson's cabinet loyally remained in office throughout his two terms, in large part due to his sagacious style of governance: "Far from intimidating those around him, Jefferson elicited candor, tapping into the kind of experience needed to govern wisely."⁵³⁵ Appointing Republicans to federal office, "Jefferson insisted on local approval and general respectability, but personal ability went further with the new president than wealth and social position."⁵³⁶ Accompanying his principally one-sided appointments, "political recriminations intensified" and "[p]artisan malice reached beyond party affairs. . . . Alexander Hamilton's son James recalled that the partisan hostility destroyed all social intercourse between the leaders of the different parties."⁵³⁷ Unlike other famous political orators of the founding generation, Jefferson eschewed public speaking,⁵³⁸ and unlike his aristocratic Federalist predecessors, he scorned majestic regal gatherings, instead preferring smaller dinner parties where speaking of politics was largely forbidden.⁵³⁹ Ironically, Jefferson's personal improvident spending habits continued apace throughout his presidency, as yet another instance of the discrepancy between his professed values (e.g., frugality and freedom) and

533. ELLIS, *supra* note 3, at 224 ("All business had to go through the appropriate department heads first. On every working day each department head sent Jefferson a written summary of all decisions or issues in his area. Jefferson responded in writing, if possible on the same day, and also made himself available for individual conferences Unlike Washington, Jefferson preferred not to schedule regular meetings of the full cabinet, convening the entire group only when difficult decisions or a looming crisis required it. This arrangement made the president, as Jefferson put it, 'the hub of a wheel' with the business of the nation done at the rim, conveyed through the departmental spokes but all supervised at the center. It was a system that maximized control while simultaneously creating necessary distance from details."). In his presidential leadership Jefferson adopted "the paternalistic style of the plantation master who had designed Monticello so as to make slavery almost invisible. It was the domestic style of the benevolent patriarch surrounded by an extended family bonded together in seemingly perfect harmony by unalloyed affection. It was, finally, the republican style of the president-elect, declaring that his chief duty was to render the federal government over which he was to assume control unobtrusive and politically impotent. The common ingredient in all these contexts was Jefferson's urge to cloak his exercise of power from others and from himself." *Id.* at 225.

534. APPLEBY, *supra* note 11, at 41.

535. *Id.*

536. *Id.* at 39.

537. *Id.* at 40.

538. *See, e.g.*, ELLIS, *supra* note 3, at 32 (stating Thomas Jefferson was reticent and did not like public speaking or the spotlight); APPLEBY, *supra* note 11, at 41 ("Breaking with Federalist precedent, Jefferson sent his annual [State of the Union] address to Congress in written form instead of delivering it in person."); WILLS, *supra* note 3, at 14 ("Even when he entered the House [of Burgesses], he spoke rarely if ever."); *id.* (stating Jefferson "said little, but saw everything").

539. ELLIS, *supra* note 3, at 226-28 (describing dinner parties with political elites with no talk of politics and noting only two public addresses—his inaugural speeches).

his actions (e.g., profligacy and holding other human beings in bondage).⁵⁴⁰ As an amateur architect with a great appreciation for classical architecture, “Jefferson, the economizer in government, was at war with Jefferson, the designer and collector of objects of beauty and curiosity. During his second term, he oversaw the addition of the two arcaded wings that still grace the White House.”⁵⁴¹

As demonstrated throughout his presidency, Jefferson’s views on federal power and the Constitution changed once he held the leadership position in the United States government.⁵⁴² Instead of maintaining a purely strict constructionist approach to federal constitutional powers, President Jefferson not only exercised certain express powers in the Constitution vigorously, but he also made use of more broadly implied powers⁵⁴³ and “looser, self-serving constructions” of the Constitution.⁵⁴⁴ Jefferson embraced not only republican

540. See *id.* at 232-33 (“In his personal life, of course, we know that the looming specter of crushing debt had no discernible effect on his indulgent habits of consumption. (The wine bill alone for his first term as president approached ten thousand dollars, and the expensive and apparently eternal renovations of Monticello continued apace throughout his presidency.) Perhaps the soundest way to put it is that just as an extended exposure to slavery seemed to give Jefferson a particularly intense appreciation of individual freedom, so his private habits of indulgence gave him a particularly powerful appreciation of government austerity. In both cases his public fervor grew directly out of his experience of private failure.”); APPLEBY, *supra* note 11, at 34 (“He probably would have rejected the notion that there was a contradiction in his character, by pointing to the difference between private and public spending. He wanted the federal government to be open, frugal, unpretentious, and agreeable to ordinary men and women, but he apparently felt no dissonance between such a goal and his own love of attractive, useful, and comfortable objects.”).

541. APPLEBY, *supra* note 11, at 34. Once the original colonnades became dilapidated, Andrew Johnson had them removed. *East Wing Fact Sheet*, WHITE HOUSE HIST. ASS’N, <https://www.whitehousehistory.org/press-room/press-backgrounders/east-wing-fact-sheet> [<https://perma.cc/D7T7-SUY6>] (last visited Apr. 4, 2026). Theodore Roosevelt oversaw construction of the renewed version of the East and West Wings, which were expanded by Franklin Delano Roosevelt. *Id.* The historic East Wing of the White House has recently been demolished to make room for a ballroom. Jonathan Edwards & Dan Diamond, *GOP Lawmaker Quietly Questioned ‘Disturbing’ East Wing Demolition*, WASH. POST (Feb. 24, 2026), <https://www.washingtonpost.com/politics/2026/02/24/trump-ballroom-gop-concerns/> [<https://perma.cc/86VZ-HPN8>].

542. ELLIS, *supra* note 3, at 187 (“Jefferson’s constitutionalism was ‘contextualist,’ changing over time ‘as background political circumstances changed.’ Jefferson’s inauguration signaled a radical change in circumstances that cast executive authority in an entirely new light. Suspicious of Federalist intentions, Jefferson had previously opposed establishing a military academy on strict constructionist grounds. Now that the administration was safely ensconced within its proper sphere of authority, such constitutional scruples could be laid aside.”).

543. BENEDICT, *supra* note 15, at 116 (“After the Republican victory in the election of 1800, most people expected Republicans to follow the principle of ‘strict construction’ of national power. But while Jefferson believed in limiting federal power to powers that were expressly delegated, he and his successors were willing to exercise those powers vigorously, over the opposition of the more radical members of their own party. Sometimes Jefferson even exercised powers that were not so clearly delegated.”).

544. ONUF, *supra* note 13, at 188 (“Jefferson’s many critics, then and now, have made much of his alleged ‘inconsistency’ and ‘hypocrisy’ on constitutional issues: as long as he was in opposition, Jefferson was a strict constructionist; once in power, he was prone to looser, self-serving constructions. . . . Given the Federalists’ tendency to interpret the principle of federal supremacy as a license to consolidate all authority in the central government, it was incumbent on Republican

beliefs and practices but also federalist beliefs and practices,⁵⁴⁵ although not as much emphasis has been placed on this aspect of Jefferson by some people who have referenced him to champion their causes, such as states' rights advocates during their secessionist movements to preserve slavery.⁵⁴⁶ With respect to the three branches of the federal government, "Jefferson had never doubted the power of the presidency."⁵⁴⁷ He did not hesitate to consolidate and enhance executive power once in office:⁵⁴⁸ "Jefferson was in some ways as nationalist as Hamilton."⁵⁴⁹

As a tactic in opposition to the Alien and Sedition Acts,⁵⁵⁰ in which the Federalists then in power had tried to suppress both their Republican political opponents and newly arrived immigrants, Jefferson's advocacy shortly before his presidency for "state 'nullification' of federal authority" through a "compact theory of union was grounded not in principle but rather in political expediency."⁵⁵¹ Regarding Jefferson's and Madison's previous states' rights stance, "the Kentucky and Virginia Resolutions of 1798 were inspired by political desperation as Republican oppositionists sought to counter Federalist control of the national legislature and executive."⁵⁵² Once he took over as president shortly thereafter, he celebrated the union of states in his inaugural

oppositionists to raise the alarm at any initiative—including the founding of the National Bank, or even the proposal to establish a national military academy—that threatened to expand the ambit of federal authority. But once the administration was fully 'republicanized'—that is, once it was purged of the 'aristocratic,' 'monocratic' tendencies toward 'consolidation' that characterized Federalist administrations—the federal government could be trusted to exercise more expansive powers.").

545. ONUF, *supra* note 13, at 85-86 ("I want to shift attention away from the first term in Jefferson's statement—'We are all republicans'—to the second—'we are all federalists.' I will argue that 'federal principles,' the preservation of the framers' 'more perfect union,' was as important to Jefferson as vindicating republican government."); *see also* MEACHAM, *supra* note 2, at 162 ("Neither a reflexive nationalist nor a states'-rights purist—categories that were already taking form—Jefferson was grappling with the distribution of power in a country of diverse interests.").

546. ONUF, *supra* note 13, at 86 ("Jefferson has never lacked defenders, of course, but these defenders are clearly most comfortable in speaking to Jefferson's republicanism—his eloquent statements of natural rights and his lifelong advocacy of equality and government by consent—not to his federalism."); *id.* ("Invoking Jefferson's authority, states' rights advocates would lead the nation into a bloody civil war.").

547. MEACHAM, *supra* note 2, at 296 ("From his first reading of the draft Constitution while in France, he sensed that the office could become the center of action for the whole government. Experience had proved his instincts right.").

548. *Id.* at 351 ("From war making to economic life to territorial acquisition to federal spending to subpoenas and the sharing of information with Congress and the courts, Jefferson maintained or expanded the authority of the presidential office. . . . The Republican rhetoric of limited and minimal government was heartfelt but hardly controlling. . . . Federalists who expected him to begin the world over again by seeking to minimize the executive office misjudged him.").

549. WILLS, *supra* note 3, at 359.

550. *See generally* BENEDICT, *supra* note 15, at 111-14 (discussing the Alien and Sedition Acts).

551. ONUF, *supra* note 13, at 86; *see also* MAYER, *supra* note 4, at 199-208.

552. ONUF, *supra* note 13, at 86.

address, which may seem “disingenuous, if not downright hypocritical,” if not considered in light of Jefferson’s utilitarian and flexible beliefs about constitutional interpretation.⁵⁵³ Jefferson believed both in republican states’ rights when those state governments were preserving freedom and individual rights for his constituents, and he also believed in a strong federal government when it was preserving freedom and individual rights for his constituents.⁵⁵⁴ Jefferson’s focus was not on one particular method of constitutional interpretation, either a narrow construction or a broad construction; instead, his arguments concerning constitutional interpretation changed depending on which construction would best preserve individual rights.⁵⁵⁵ Jefferson “began with a purer and more intensely idealistic conception of the levels of individual freedom possible in this world, especially after the final vestiges of kingly and clerical power had been blown away, Jefferson harbored a more acute sensitivity toward the explicit exercise of government power than any other member of the revolutionary generation.”⁵⁵⁶ Not afraid of a flexible interpretation of the Constitution, Jefferson’s chameleonic colors of constitutional construction changed with his changing circumstances, whenever such shifts to either strict or broad interpretation bolstered his particular policy arguments in any given moment.⁵⁵⁷

553. *Id.* (“Jefferson’s celebration of the union in his inaugural—a union he was prepared to destroy in 1798 though state ‘nullification’ of federal authority—thus seems disingenuous, if not downright hypocritical.”).

554. *Id.* at 87 (“It is worth noting that, in the next paragraph of the inaugural, when Jefferson returned to the Revolutionary legacy, he reversed the sequence of the first formulation: ‘Let us then, with courage and confidence pursue our own federal and republican principles, our attachment to our union and representative government.’ Jefferson did not privilege ‘republicanism’ over ‘federalism’ (as we may), nor would he be willing to distinguish or dissociate these ‘principles.’”).

555. *Id.* (“[W]e certainly continue to draw inspiration from Jeffersonian conceptions of the natural and universal rights of individuals. . . . It is worth noting that, in the next paragraph of the inaugural, when Jefferson returned to the Revolutionary legacy, he reversed the sequence of the first formulation: ‘Let us then, with courage and confidence pursue our own federal and republican principles, our attachment to our union and representative government.’ Jefferson did not privilege ‘republicanism’ over ‘federalism’ (as we may), nor would he be willing to distinguish or dissociate these ‘principles.’ . . . The Revolutionaries were not simply founding new republics; they hoped to construct a new order for the ages, a federal republican regime that would preserve peace (in the world, among the states), sustain republican government (in the states), and secure the liberty and natural rights of individual citizens.”).

556. ELLIS, *supra* note 3, at 156.

557. Jefferson also did not shrink from inconsistency in other matters when experience proved his prior assumptions to be incorrect. For example, although he had written decades before in his book, *Notes on the State of Virginia*, that he “considered Negroes inferior to whites” in intelligence, “his suspicions about the inferiority of African Americans [did not prevent his approval, while serving as Secretary of State, of] the black astronomer and mathematician Benjamin Banneker to the post of official surveyor for the District of Columbia.” APPLEBY, *supra* note 11, at 76; see also Jennifer Davis, *Benjamin Banneker: Surveyor, City Planner, Astronomer*, LIBR. OF CONG. BLOGS (Feb. 21, 2024), <https://blogs.loc.gov/law/2024/02/benjamin-banneker-surveyor-city-planner-astronomer/> [<https://perma.cc/WR76-QABW>].

Although as Secretary of State under George Washington, in considering whether Congress has the power to establish a national bank, Jefferson had advocated for a narrow interpretation of the Necessary and Proper Clause and limiting the powers of the federal government to those expressly enumerated in the Constitution,⁵⁵⁸ during his presidency he acquiesced that Congress has powers that extended beyond those expressly enumerated in the Constitution. Despite the fact that under Washington he had railed against a national bank as beyond the powers of the federal government, during his own presidency, Jefferson retained the national bank as “cost-effective.”⁵⁵⁹ Moreover, during his presidency, “Jefferson sanctioned some exercises of federal powers which can only be explained in terms of either a looser definition of ‘necessary and proper’ or Hamiltonian ‘implied powers,’” such as approving legislation to establish the U.S. West Point Military Academy and legislation to develop a dry dock for the navy.⁵⁶⁰ And while he suggested that the federal government’s powers under the Constitution should be expanded to allow for “the improvements of roads, canals, rivers, education, and other great foundations of prosperity and union”—either by interpreting powers that Congress already possesses to enable these actions, or by adding language through the amendment process,⁵⁶¹ he assumed such powers in signing a law in 1806 authorizing the use of federal funds to build the first “National Road.”⁵⁶² Furthermore, in response to an attack on a U.S. ship, Jefferson disbursed federal funds on military expenditures without congressional appropriations legislation, seeking congressional approval after Congress reconvened several

558. BENEDICT, *supra* note 15, at 110.

559. ELLIS, *supra* note 3, at 234. Moreover, regarding Thomas Jefferson’s protégé, James Madison, father of the Constitution, even though he had previously contested the constitutionality of a national bank, “in 1815, Madison announced his conversion. He had thought the bill first establishing the bank in 1791 unconstitutional, he conceded. But efforts to defund the bank or repeal its charter had failed. The federal government had dealt with its agents. District and circuit courts had decided cases involving the bank without challenging its constitutionality. He had always believed that time and politics would determine constitutional interpretation, and the time had come to accept the popular decision. In 1816 Congress passed a bill . . . establishing the second Bank of the United States, with a charter to run for twenty years. Madison signed it.” BENEDICT, *supra* note 15, at 118-19.

560. MAYER, *supra* note 4, at 213-14.

561. THOMAS JEFFERSON, *Eighth Annual Message, in* JEFFERSON ON FREEDOM 128, 137-38 (2011) (“Shall it lie unproductive in the public vaults? Shall the revenue be reduced? Or shall it rather be appropriated to the improvements of roads, canals, rivers, education, and other great foundations of prosperity and union, under the powers which Congress may already possess, or such amendment of the constitution as may be approved by the States? While uncertain of the course of things, the time may be advantageously employed in obtaining the powers necessary for a system of improvement, should that be thought best.”).

562. See Rickie Longfellow, *The National Road*, U.S. DEP’T OF TRANSP. FED. HIGHWAY ADMIN. (June 30, 2023), <https://highways.dot.gov/highway-history/general-highway-history/back-time/national-road> [<https://perma.cc/37TL-92DM>].

months later.⁵⁶³ One historian has cast Jefferson's constitutional interpretation as based on adherence to a principle of federalism:

What makes his view of federalism particularly important to his constitutional thought is that Jefferson also adopted it as a canon of constitutional interpretation. "The best general key for the solution of questions of power between our governments," he maintained, "is the fact that 'every foreign and federal power is given to the federal government, and to the states every power purely domestic.'" "Whenever a doubt arises to which of these branches [state or federal] a power belongs, I try it by this test," he said in his later years. His theory of constitutional interpretation thus may properly be regarded as contextual, and the theory of federalism provided the context—the principle that Jefferson understood as the overall design, or purpose, of the Constitution; the premise upon which it was based—within which he resolved questions of allocations of power.⁵⁶⁴

Yet Jefferson's principle of federalism, too, is open to interpretation. The determination of what falls within the term "federal power" and what falls within the term "power purely domestic" must be delineated through interpretation. For example, although some may think of public education as falling within "power purely domestic" of the states, Jefferson advocated for an amendment to the Constitution enabling Congress to enact legislation regarding public education, obviously feeling that involvement in public education should be included among the powers of the federal government.⁵⁶⁵

It appears that among the founding fathers, their views on a flexible interpretation of the Constitution depended upon who was in charge of the United States at the time, and that both sides were willing to change their views about either strict construction or loose construction of the Constitution. As Republicans reversed their stance from advocating strict constructionism of the Constitution to a more flexible interpretation, Federalists simultaneously flip-flopped to embrace strict construction, since they opposed the actions the Republicans were taking while in control of the national government.⁵⁶⁶ In the words of another historian:

[a]s the Federalists turned toward strict construction and doctrines of state sovereignty, more and more Republicans adopted nationalistic constitutional views. The Revolution had broken down elite

563. MAYER, *supra* note 4, at 254.

564. *Id.* at 188-89 (alteration in original).

565. *See id.* at 218.

566. BENEDICT, *supra* note 15, at 117.

control of the economy. Ordinary people were striving to get ahead, and they wanted government to promote the economic environment that would enable them to do so. Jefferson's secretary of the treasury, Albert Gallatin, urged federal support for more "internal improvements" to promote interstate commerce. . . . Enthusiastically patriotic . . . , they favored vigorous national action to develop the American economy, much as the Federalists had in the 1790s. Even Jefferson reluctantly agreed that it was necessary to encourage manufacturing in order to make America independent of England. Madison, too, began to stress the more nationalistic aspects of his constitutional philosophy and generally shared the nationalist Republicans' vision.⁵⁶⁷

Another example of Jefferson's willingness to take bold action requiring a loose construction of the Constitution was his landmark Louisiana Purchase—a defining moment in U.S. history, doubling the size of the nation.⁵⁶⁸ Despite his doubts about the federal government's ability to take such action without a constitutional amendment,⁵⁶⁹ he leapt at the opportunity, creating yet another precedent for a broad constitutional construction of national power.⁵⁷⁰ Even the primary author of the Constitution, James Madison, "did

567. *Id.* at 118 ("[Jeffersonian Republicans] moved to promote an interstate national economy . . . [including] national support for 'internal improvements' in transportation facilities—such as dredging rivers and harbors, subsidizing transportation companies, and building roads and canals. These improvements would encourage economic development in the West by making it more accessible to national and international trade.").

568. *See id.* at 116 ("Jefferson demonstrated the flexibility of his principles when he purchased the territory between the Mississippi River and the Rocky Mountains from France. The strongest support for Republicanism had come from southerners and westerners, who complained that Federalists had failed to open the Mississippi River to American shipping. In 1802, Jefferson learned that Spain had secretly transferred ownership of New Orleans and much of the Spanish territory along the Mississippi River and its western tributaries to France. Negotiating intensively for the purchase of New Orleans and a guarantee of free navigation along the Mississippi, Jefferson was amazed at a French offer to sell all its western American territories, comprising some 828,000 square miles, for about \$15 million. Jefferson jumped at the deal, closing it in 1803."); ELLIS, *supra* note 3, at 242-43 ("It was unquestionably the greatest achievement of the Jefferson presidency and . . . one of the most consequential executive actions in all of American history."); APPLEBY, *supra* note 11, at 65.

569. *See generally* ELLIS, *supra* note 3, at 248 ("Finally, and most famously, there were the constitutional questions raised by the acquisition of so vast a tract."); *id.* at 249 ("Jefferson remained convinced that the enlargement of the Union required an amendment to the Constitution: 'The constitution has made no provision for our holding foreign territory . . . ' he acknowledged. 'The Executive in seizing the fugitive occurrence, have done an act beyond the Constitution.' . . . [H]e was now under moral obligation to request a constitutional amendment from the Congress at the same time he forwarded the treaty for ratification." (first omission in original)); APPLEBY, *supra* note 11, at 65; MEACHAM, *supra* note 2, at 389 ("Jefferson's initial view was that purchasing Louisiana and then governing it required a constitutional amendment.").

570. *See* BENEDEICT, *supra* note 15, at 116 ("The Constitution nowhere plainly gives the national government the power to acquire more territory, and many Americans opposed the acquisition. Abandoning their constitutional nationalism, some New England Federalists denied the

not share his constitutional scruples. . . . The pressure to seize the moment carried the day.”⁵⁷¹ Jefferson’s practicality enabled him to act decisively, despite his constitutional misgivings: “A slower or less courageous politician might have bungled the acquisition; an overly idealistic one might have lost it by insisting on strict constitutional principles. Jefferson, however, was neither slow nor weak nor overly idealistic.”⁵⁷² Interestingly, although Jefferson had previously opposed the treaty John Jay had negotiated with England because it effectively legislated via the treaty power and devoted federal funds without the prior consent of the House of Representatives, here Jefferson did the same, as the Louisiana Purchase would require Congressional approval of funds. Similarly, just as he had left the question regarding the constitutional scope of the Necessary and Proper Clause open to Washington’s ultimate discretion, he was willing to leave the questions of constitutionality regarding the Louisiana Purchase open, as well.⁵⁷³ While some “historians have found hypocrisy in Jefferson’s use of executive power to complete the Louisiana Purchase,”⁵⁷⁴ he was arguably maintaining consistency in interpreting the Constitution as president in the manner in which he felt best served the country in accordance with each circumstance or issue he was facing at the time:

[t]he America of Jefferson was neither wholly Federal nor wholly Republican. It was, rather, a marbled blend of the two, confected by

acquisition would be constitutional. Jefferson anguished over the problem. No enumerated power justified the purchase, he wrote his allies. He would undertake it anyway, hoping that Congress would amend the Constitution to authorize the purchase after the fact. But it never came close to happening. Despite Jefferson’s heart burnings, the Louisiana Purchase stood as a precedent for broad construction of federal power. Soon thereafter Congress arranged for the sale of western lands at cheap prices, encouraging frontier land speculation and economic development. Despite the absence of any express delegation of power to do so, Jefferson’s secretary of the treasury, Albert Gallatin, proposed that some of the money be used to build roads between the Atlantic seaboard and the Ohio River, linking the West more firmly with the East. In 1806, Jefferson signed a bill for the construction of a national road from Maryland to Ohio.”)

571. APPLEBY, *supra* note 11, at 65.

572. MEACHAM, *supra* note 2, at 384.

573. *Id.* at 391-92 (“The philosophical Jefferson had believed an amendment necessary. The political Jefferson, however, was not going to allow theory to get in the way of reality. ‘I confess . . . I think it important in the present case to set an example against broad construction by appealing for new power to the people,’ he wrote Wilson Cary Nicholas. ‘If however our friends shall think differently, certainly I shall acquiesce with satisfaction, confiding that the good sense of our country will correct the evil of construction when it shall produce ill effects.’ So he left himself room to maneuver. It was the same kind of political craft he had practiced in the debate over the Bank of the United States, when he made the case against Hamilton’s broad construction only to (wisely) leave open the possibility that Washington could sign the bill. Jefferson’s decision to acquire Louisiana without seeking a constitutional amendment expanded the powers of the executive in ways that would likely have driven Jefferson to distraction had another man been president. Much of his political life, though, had been devoted to the study and the wise exercise of power. He did what had to be done to preserve the possibility of republicanism and progress.” (omission in original)).

574. Jill Abramson, *Foreword* to MEACHAM, *supra* note 2.

a practical man of affairs. The significance of the case of Louisiana in shaping the destinies of the country and in illuminating Jefferson's political leadership cannot be overstated. He believed in a limited government, except when he thought the nation was best served by a more expansive one.⁵⁷⁵

Moreover, Jefferson ignored his usual policy of federal fiscal conservatism in favor of westward expansion⁵⁷⁶ over territories he wanted to acquire for the United States, regardless of the Indigenous nations and their rights to their homelands⁵⁷⁷ or the claims of other European powers over these lands.⁵⁷⁸ Jefferson justified his flexible interpretation of the Constitution and his significant expansion of his executive authority,⁵⁷⁹ noting: "It is incumbent on those who accept great charges," he explained afterward, "to risk themselves on great occasions," adding that "to lose our country by a scrupulous adherence to written laws, would be to lose the law itself . . ."⁵⁸⁰ James

575. MEACHAM, *supra* note 2, at 406.

576. See ELLIS, *supra* note 3, at 243-47 (describing circumstances surrounding the purchases, as well as how Jefferson ignored fiscal conservatism in favor of western expansion).

577. See ONUF, *supra* note 13, at 33-34 ("The ascendancy of a strict constructionist constitutionalism born of a fear of power subverted positive government for public purposes, but Jeffersonians could overcome their scruples when the purposes seemed sufficiently compelling. The Louisiana Purchase is the prime case in point, violating the fundamental principles that were, as Henry Adams writes, 'the breath of his political life.' There were always exceptions and limits to the principles that Jeffersonians articulated in such absolute, unlimited terms. What would come to be called the new nation's 'manifest destiny' to spread across the continent thus trumped any lingering concerns about the rights of Native Americans or, for that matter, of neighboring European colonies under the law of nations."); APPLEBY, *supra* note 11, at 92 ("[Jefferson] prevailed in the West, where the most vigorous opposition came from Native Americans struggling to keep their land."); *id.* at 98 ("[M]ost of the Native American tribes still lived on ancestral lands, which they were prepared to fight to keep."); *id.* at 117 ("Americans disputed the right of the indigenous people to retain their ancestral homes. Believing profoundly in the superiority of their civilization, Americans acted as though this capacity conferred legitimacy upon their insatiable desire for land.").

578. ELLIS, *supra* note 3, at 243-44 ("Jefferson regarded Spanish ownership of the vast western region of North America as essentially a temporary occupation that conveniently bided time for the inevitable American sweep across the continent."); APPLEBY, *supra* note 11, at 117 ("The audacity of a minor country perched on the Atlantic shelf of the North American continent plotting to expel the French, Spanish, and British who had been in North America since the sixteenth century still induces awe.").

579. ELLIS, *supra* note 3, at 247 ("He violated his most cherished political principles several times over in order to guarantee the most expansive version of the 'noble bargain,' and he temporarily made himself into just the kind of monarchical chief magistrate he had warned against.").

580. *Id.* (omission in original); see also Kenneth T. Walsh, *The Most Consequential Elections in History: Thomas Jefferson and the Election of 1800*, U.S. NEWS (Aug. 13, 2008), <https://www.us-news.com/news/articles/2008/08/13/the-most-consequential-elections-in-history-thomas-jefferson-and-the-election-of-1800> [<https://perma.cc/D9BP-2ZSN>] ("In 1802, he acquired the vast territory of Louisiana from France, 828,000 square miles that more than doubled the land area of the United States. . . . In the process, Jefferson abandoned his commitment to a strict construction of the Constitution and moved toward a stronger central government. Jefferson had said he favored limiting the executive branch only to the powers specified in the Constitution. But that document was silent on acquiring more territory through purchase. Jefferson went ahead anyway, fearing that the opportunity to buy the vast Louisiana tract from Napoleon would be lost if he waited for Congress and

Madison, father of the U.S. Constitution, as well as Treasury Secretary Albert Gallatin, favored a broad constitutional interpretation that allowed Jefferson and Congress to effectuate the Louisiana Purchase without a constitutional amendment.⁵⁸¹ Fearful that he would lose the chance to acquire the territory, Jefferson acquiesced in its purchase without explicit authorization under the U.S. Constitution,⁵⁸² despite the objections of strict constructionists that compromises leading to ratification of the Constitution envisioned maintaining the original boundaries of the United States.⁵⁸³ Jefferson's fascination with and commitment to westward expansion as the destiny of the United States superseded any need for consistency in constitutional theory.⁵⁸⁴ He sent the Lewis and Clark expedition to explore the new territory under a duplicitous pretext regarding its destination.⁵⁸⁵ Once President Jefferson acquired the vast new territory on behalf of the United States, he confronted additional

the states to pass a constitutional amendment specifically authorizing it. Jefferson argued that, 'to lose our country by a scrupulous adherence to written laws, would be to lose the law itself.'").

581. ELLIS, *supra* note 3, at 249 ("Although Madison and Gallatin tried to persuade him otherwise, Jefferson remained convinced that the enlargement of the Union required an amendment to the Constitution.").

582. *Id.* ("[T]he ever-impulsive Napoleon was having second thoughts; at the same time the Spanish were threatening to challenge the entire treaty on the ground that no one really knew the proper boundaries of Louisiana. Fearing that any delay might put the purchase at risk, Jefferson concluded that 'the less that is said about my constitutional difficulty, the better; and that it will be desirable for Congress to do what is necessary *in silence*.' If the choice was between sustaining his strict interpretation of executive authority or losing half a continent, he chose the more pragmatic course, all the while expressing the hope that 'the good sense of our country will correct the evil of [broad] construction when it shall produce ill effects.'"); *see also id.* at 251 ("[T]he debate over a constitutional amendment would have raised a constellation of nettlesome questions—about slavery and the slave trade, Indian lands, Spanish land claims and a host of other jurisdictional issues—that might have put the entire purchase at risk.").

583. ONUF, *supra* note 13, at 131 ("Critics of the Louisiana Purchase charged that the annexation of this vast new territory subverted the compromises that secured vital sectional interests in the federal Constitution. These compromises were predicated on the new nation's 1783 boundaries, limits that Jefferson conspicuously overlooked in his inaugural . . . expansion beyond the new nation's original boundaries was 'unconstitutional,' both from the perspective of the sort of 'strict construction' Jefferson ordinarily favored and because the hard bargaining at Philadelphia that made union possible depended on respecting those limits.").

584. ELLIS, *supra* note 3, at 251-52 ("The issue, then, is . . . how he managed to implement decisions that defied in so many ways his long-standing commitment to limitations on executive power and the near-sacred character of republican principles. . . . The answer would seem to be the special, indeed almost mystical place the West had in his thinking. . . . For Jefferson more than any other major figure in the revolutionary generation, the West was America's future. Securing a huge swatch of it for posterity meant prolonging for several generations the systemic release of national energy that accompanied the explosive movement of settlements across the unsettled spaces. (The Indians, like Spain, did not count in this calculus.) . . . The West was the place where his agrarian idyll could be regularly rediscovered, thereby postponing into the indefinite future the crowded conditions and political congestions of European society.").

585. *Id.* at 247; *see also* APPLEBY, *supra* note 11, at 106; MEACHAM, *supra* note 2, at 371 (stating "Congress secretly agreed to fund an expedition to find the best route to the Pacific").

constitutional quandaries,⁵⁸⁶ where he again adopted a flexible theory of constitutional interpretation necessary to adapt to the changed circumstances facing the nation. The federal government needed to come up with a way to govern the new territory, and no direction was provided in the Constitution. In order to tamp down potential insurrectionist tendencies by European settlers in the newly acquired territory, as well as addressing resistance by the Indigenous nations defending against expanding encroachments upon their territories, Jefferson and Congress implemented temporary federal control over the territory that implied vast authority by the central government,⁵⁸⁷ concentrated in enormous new presidential powers.⁵⁸⁸ In a distinctly anti-republican move, Jefferson advocated for and implemented a territorial government in which he would appoint a governor, who would govern alongside an appointed council, all of whom would be accountable to the president and not to the people whom they were governing.⁵⁸⁹ Some historians have hinted that the consolidated power in the central government that Jefferson and Congress were accruing under their evolving interpretation of the Constitution outside of the formal amendment process was a practical necessity born out of the changed circumstances in which the nation now found itself.⁵⁹⁰

586. ELLIS, *supra* note 3, at 249 (“The constitutional embarrassments became worse over the succeeding months.”).

587. *See id.* (“The huge Republican majority in Congress ratified the Louisiana Purchase, as one senator put it, ‘in less time than required for the most trivial Indian contract,’ then passed enabling legislation that delegated to the president nearly autocratic power over decisions about a provisional government in the Louisiana Territory.”).

588. *See id.* at 249-50 (“John Quincy Adams, one of the few senators to oppose the legislation, observed that Jefferson would possess ‘an assumption of implied power greater . . . than all the assumptions of implied powers in the years of the Washington and Adams administrations put together.’ The old enemy of George III now wielded more arbitrary power over the residents of Louisiana than any British king had wielded over the American colonists.”).

589. *See id.* at 250 (“Moreover, Jefferson chose to use that executive power to propose a blatantly nonrepublican territorial government. . . . [T]he provisional government of the territory he proposed consisted of a governor appointed by the president and a nonelected council or senate, which Jefferson called the ‘Assembly of Notables.’ . . . [T]his was . . . precisely the kind of government Jefferson had condemned the Federalists for preferencing, since it deprived the residents of any elective rights and, as Madison privately admitted, ‘will leave the people of that District for a while without the organization of power dictated by the Republican theory.’”); *see also id.* at 251 (“The following year a delegation of three agents from the territory came to Washington to present a remonstrance, protesting the violation of their rights and their de facto status as colonists. . . . Jefferson avoided any contact with the delegation or conversation about their remonstrance. In his private correspondence he explained that ‘our new fellow citizens [in Louisiana] are as yet incapable of self-government as children, yet some cannot bring themselves to suspend [republican] principles for a single moment.’ The suspension was only temporary, he promised, until he could be assured that the political temperature had sufficiently lowered to avoid the risk of insurrection.” (alterations in original)).

590. *Id.* (“Even the decision to install an essentially arbitrary and despotic provisional government over the Louisiana Territory to carry it through the early years of assimilation cannot be condemned outright, since both the sheer size of the region and the ethnic diversity of the Creole population posed governance problems that justified a firmer hand at the start.”).

Ensuring strong governance of the western territories by the central government on the east coast, Jefferson instituted a deliberate system of patronage, fostering strong ties between the elites chosen to govern the territories in the west and the national government, which granted the western elites those privileges.⁵⁹¹ Ignoring his previous trepidations about elastically interpreting the Constitution to allow for the Louisiana Purchase, Jefferson exalted American expansionism in his second inaugural address.⁵⁹² Instead of focusing on specific grants of power delegated to the federal government by the Constitution, Jefferson referred in his address to “federative principle[s]” upon which the union of states was founded.⁵⁹³ Although Jefferson and his Republican cohorts were willing to call for strict constructionism when they wanted to oppose Federalists in the central government, the Republicans were conversely willing to employ a broad interpretation of the Constitution when they were in power.⁵⁹⁴ The Federalists utilized the same arguments regarding

591. ONUF, *supra* note 13, at 127. With republican political patronage within the new states, “the national administration would assiduously cultivate the new state leadership.” *Id.* “[S]tatehood would enable an emergent political elite to consolidate its authority locally . . . enhancing their access to the federal trough. In the Northwest Territory, for instance, Republicans . . . leveraged party connections with the new Jefferson administration to accelerate statehood and secure control over both federal and state patronage.” *Id.* “[N]ew states would enjoy disproportionate influence in federal councils,” particularly the U.S. Senate, where a sparsely populated state is equal to a densely populated state. *Id.* “That influence could be used to distribute concrete rewards to the political elite, its clients, and constituents generally. The privatization of public (federal) lands was, in the case of most new states, the most lucrative bonanza, but much was to be gained as well from political appointments, government contracts, internal improvements, and other forms of federal expenditure.” *Id.* “Preserving a balance between states and union that would secure their distinct spheres of authority was the great desideratum of Jeffersonian federalism, but this balance could only be sustained by a dynamic and expansive political system that made states and union functionally interdependent and promoted the constant circulation of men and resources between periphery and center.” *Id.* “Jeffersonian federalism was most successful in containing and redirecting the centrifugal tendencies of westward expansion by drawing political elites in frontier regions into a dynamic national political system. If the federal Constitution decentralized authority, thus making union depend on the uncoerced consent of sovereign states, the Republican party institutionalized that consent, directing political ambitions toward the center.” *Id.* at 128.

592. *See id.* at 131 (“Suppressing his own constitutional scruples, Jefferson insisted that the genius of American federalism was expansive. ‘Who can limit the extent to which the federative principle may operate effectively?’ he asked in his second inaugural address. ‘The larger our association,’ he answered, echoing Madison’s rejoinder to Montesquieu, ‘the less it will be shaken by local passions.’”).

593. *Id.* (“Jefferson did not derive his ‘federative principle’ from the Constitution but rather from the original ‘association’ of Revolutionary republics in 1776. Union came first, then came the elaboration of constitutional provisions for its implementation.”).

594. *See generally id.* (“Strict construction of the Constitution was the means of securing states’ rights and therefore preserving the union. Virginian John Page, one of Jefferson’s dearest friends, thus summarized the Republican gospel in 1799: the federal Constitution ‘is the *Instrument* by which the people of the several *confederated states of America* meant to preserve to their respective states their *Independence*.’ The Constitution was the means, or ‘*Instrument*,’ of union, not an end in itself, particularly in a case where strict adherence to the constitutional text jeopardized the rights of future states. ‘A strict observance of the written laws is doubtless *one* of the highest duties of a good citizen,’ Jefferson explained in 1810, ‘but it is not *the highest*. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation.’”).

strict and loose construction of the Constitution in reverse.⁵⁹⁵ Although Jefferson and his administration championed the incorporation of new states into the union as a method of preserving the union,⁵⁹⁶ those opposed to expansion, primarily in the northern states, decried the spread of slavery, land speculation, and Republican patronage that benefitted southern slaveholding plantation owners and southern politicians.⁵⁹⁷ The anti-expansionist opponents denounced “territorial expansion under Jeffersonian auspices [that] expanded the empire of slavery as well as the ‘empire of liberty.’”⁵⁹⁸ This time, under

595. *See generally id.* at 132 (“Federalist anti-expansionists embraced strict construction at precisely the point Jefferson abandoned it. Disagreement hinged on the history and fundamental character of the union. For Jefferson’s opponents, the ratification of the Constitution marked a fundamental break in American political history: the union itself was the product of specific, substantive constitutional compromises; it ceased to exist when those original understandings were violated. Because the federal government, the institutional embodiment and sine qua non of union, also derived its existence from the Constitution, ‘loose’ constructions of the text that enhanced the administration’s effective power were ‘constitutional.’ The Constitution—and therefore the union—were only at risk when Republicans subverted the balance of power within the union that the Constitution was meant to secure. Jefferson invoked ‘reason of state’ and the law of national self-preservation when dealing with external enemies; his opponents invoked the same logic in the new nation’s domestic affairs. Anti-expansionists thus insisted that the axioms of conventional political science continued to apply at home as well as abroad: peace among the American states depended both on maintaining a vigorous central government and on securing the vital interests of the union’s original partners.”).

596. *See generally id.* at 133 (“Jefferson and his Republican coadjutors focused on the east-west axis, celebrating the capacity of a dynamic federal union to incorporate new members without the dangerous concentration of power in an overbearing central government. Rapid expansion preempted centrifugal tendencies in frontier regions, strengthening the union against external threats. The formation of new states under the sanction of Article IV, Section III of the federal Constitution, specific provisions of the Confederation Congress’s Northwest Ordinance (1787), and subsequent congressional organic acts constituted a progressive, liberal alternative to the colonial rule of old regime empires. Republican administrations would pursue this enlightened, anticolonial policy in the vast region of the Louisiana Purchase.”).

597. *See generally id.* at 133 (“Anti-expansionists instead focused on the north-south axis, emphasizing the implications of new state formation for the balance of power in the original union. From their skeptical perspective, Jefferson’s appeal to the ‘federative principle’ disguised and mystified the concrete interests—of land speculators, Republican politicians, and slaveholding planters—that expansion really served Jeffersonians may have deemphasized the kind of strong central government Federalists favored, but they showed a genius for party and state building that successfully linked an expanding periphery to the centers of power. They thus showed that control of the federal government was vitally important for promoting the coalition of interests aligned under their party’s banner. While Republicans celebrated the triumph of principle, they vigorously pursued their own interests. Union thus was not spontaneously consensual: the Republicans’ success depended on their ability to mobilize consent by appealing to a wide array of interests. And the most important interest was always Jefferson’s original core constituency, the staple-producing, slaveholding planters of the South.”).

598. *Id.* at 134 (“Advocates of these opposing versions of federalism could easily see through their opponents’ pretenses. Republicans persuasively argued that Federalists were out of step with history: an ambitious, enterprising people would not be restrained in their expansive pursuits; they would find ways of governing themselves that maintained order without concentrating power. But Federalists understood equally well that the new Republican order served some interests better than others and that territorial expansion under Jeffersonian auspices expanded the empire of slavery as well as the ‘empire of liberty.’ They recognized that the principles of federalism could never be fully extricated from the underlying question of the actual balance of power in the union.”).

Jeffersonian presidential rule, the rumblings of secession came from anti-Republican opponents of slavery and advocates of fundamental values of freedom, liberty, and independence in the north,⁵⁹⁹ and although the secessionist threats did not materialize, Jefferson hinted at the possibility of a strong federal response had the northerners tried to secede.⁶⁰⁰

As in other matters concerning constitutional powers, Jefferson tended to be inconsistent in his approach to foreign relations, depending upon who held central control—the Federalists versus himself. Once in the highest office, he at times adopted a minimalist approach to foreign policy, a power squarely within the sovereignty of the federal government,⁶⁰¹ and almost exclusively within the purview of the president.⁶⁰² For example, as president he favored a policy of neutrality regarding international hostilities between European nations, since he believed that developing foreign alliances would draw the United States into war, which would drain the country's resources, increase its debts, and impose military service upon its people.⁶⁰³ This new policy of neutrality contrasted with his previous preference as Secretary of State under President Washington, when Jefferson advocated vociferously to form a strong alliance with France against England, demonstrating his

599. APPLEBY, *supra* note 11, at 92-93.

600. ONUF, *supra* note 13, at 134; *see also id.* at 126 (“Jeffersonian federalism . . . depended on ‘unity of action and direction in all the branches of the [federal] government’ under a strong, unitary executive. The several states remained ‘single and independent as to their internal administration’ and so stood ready to resist any encroachments on their legitimate rights, but as Jefferson explained to Destutt, were ‘amalgamated into one as to their foreign concerns.’ If the machinery of state government were ever turned against the union itself, if ‘certain States from local and occasional discontents, might attempt to secede from the Union’ and thus make themselves foreigners, then the federal government could direct its full force against them. Or, as Jefferson told another correspondent in 1814, when secessionist sentiment was rampant in New England, ‘I see our safety in the extent of our confederacy, and in the probability that in the proportion of that the sound parts will always be sufficient to crush local poisons.’” (alteration in original)).

601. *See* ELLIS, *supra* note 3, at 212 (“‘The true theory of our Constitution,’ he told Gideon Granger, is that ‘the states are independent as to everything within themselves, and united as to everything respecting foreign nations.’”); ONUF, *supra* note 13, at 126 (“Jeffersonian federalism . . . depended on ‘unity of action and direction in all the branches of the [federal] government’ under a strong, unitary executive. The several states remained ‘single and independent as to their internal administration’ and so stood ready to resist any encroachments on their legitimate rights, but as Jefferson explained to Destutt, were ‘amalgamated into one as to their foreign concerns.’”).

602. MEACHAM, *supra* note 2, at 236-37 (“He was clear on one thing: He held an executive office of responsibility and of authority. ‘The transaction of business with foreign nations is Executive altogether,’ he wrote in April 1790. ‘It belongs then to the head of that department, *except* as to such portions of it as are specially submitted to the Senate. *Exceptions* are to be construed strictly.’”).

603. *See generally* ONUF, *supra* note 13, at 186-87 (“War constituted the greatest challenge to the new nation, Jeffersonian Republicans agreed, for the exigencies of mobilizing men and resources in the cause of national independence and self-preservation—the first and highest duty of any government according to the law of nature—tended to obliterate constitutional distinctions among warring powers, thus transforming republics into monarchies with powerful, irresponsible governments—even when they pretended to preserve their republican forms.”).

willingness to change his mind once he held the reins of power. As president, Jefferson reduced the military, slashing the number of army officers and troops and decimating the Navy,⁶⁰⁴ which would come back to haunt the United States under President James Madison during the War of 1812.⁶⁰⁵

As another example, Jefferson did not hesitate to assert his own executive power regarding international armed conflict inventively and forcefully,⁶⁰⁶ whereas previous correspondence between Republican Madison and Jefferson had questioned whether Federalist President Washington had usurped congressional powers by acting unilaterally in matters of war and peace.⁶⁰⁷ Jefferson professed his belief in “a well-organized and armed militia” as the “best security” for the United States, and that “Congress alone have power to produce a uniform state of preparation in this great organ of defense.”⁶⁰⁸ Yet in accordance with Jefferson’s broad and creative constitutional adaptation of presidential military powers while he held the office, he believed that exigent circumstances “might require him to lead the nation into another war.”⁶⁰⁹ According to Jefferson’s actions as president, “[w]ithin strict constitutional limits, the president’s authority to conduct foreign policy—like the monarch’s prerogative—was absolute,”⁶¹⁰ even though the Constitution

604. See ELLIS, *supra* note 3, at 231 (“Gallatin’s program to retire the debt required reductions in the size of the number of federal employees, shrinking the army and significant cuts in the navy.”); ONUF, *supra* note 13, at 84 (“As the heavy hand of Federalist administration was lifted—with the end of excise taxes, the reduction of the national debt, the dismantling of the fiscal-military apparatus that threatened to plunge the new nation into a never-ending cycle of wars—the American people would reap the fruits of peace and prosperity. Jefferson would win the people’s favor by doing nothing, or by undoing what the Federalists had done.”).

605. ELLIS, *supra* note 3, at 232 (“[Adams] worried most about the dismantling of the navy, which might one day prove shortsighted. (The War of 1812 proved him right.)”).

606. MEACHAM, *supra* note 2, at 364-65 (describing Jefferson’s deployment—before seeking congressional approval—of naval forces to the Mediterranean to protect U.S. ships from pirates).

607. *Id.* at 273-74 (referring to Washington’s Neutrality Proclamation); *id.* (“‘It has been asked also,’ Madison wrote to Jefferson, ‘whether the authority of the Executive extended by any part of the Constitution to a declaration of the disposition of the U.S. on the subject of war and peace? . . . The right to decide the question . . . [of] war or peace . . . [is] vested in the Legislature.’ Was Washington acting too kingly? James Monroe thought the proclamation ‘unconstitutional and improper.’” (alterations in original) (omissions in original)).

608. THOMAS JEFFERSON, *Eighth Annual Message to the Senate and the House of Representatives*, in JEFFERSON ON FREEDOM 128, 135 (2011) (“For a people who are free, and who mean to remain so, a well-organized and armed militia is their best security . . . Congress alone have power to produce a uniform state of preparation in this great organ of defense; the interests which they so deeply feel in their own and their country’s security will present this as among the most important objects of their deliberation.”).

609. ONUF, *supra* note 13, at 126 (“Far from eschewing the use of force in foreign affairs, Jefferson did not hesitate to exercise executive authority on behalf of vital national interests: the first law of nature, self-preservation, might require him to lead the nation into another war—or it might justify the purchase and annexation of a vast new territory. Within strict constitutional limits, the president’s authority to conduct foreign policy—like the monarch’s prerogative—was absolute.”).

610. *Id.*

actually gives Congress the power to declare war and to authorize appropriations to fund any wartime activities.⁶¹¹ One example of Jefferson's willingness to engage the United States in undeclared armed hostilities against foreign nations was his initiation, before obtaining congressional approval, of his successful campaign against north African nations and the pirates along the Barbary Coast.⁶¹² Only after first ordering U.S. warships to the region, he sought "congressional approval for having a naval squadron sent into the Mediterranean."⁶¹³ Beforehand, he even consulted his cabinet, seeking their concurrence "that the naval forces were authorized—by executive, not legislative, authority"—to engage in armed confrontation with foreign nations,⁶¹⁴ and as part of the squadron's engagement, an "American schooner . . . attacked a Tripolitan polacca."⁶¹⁵ This stance runs directly contrary to concerns previously expressed in correspondence between Madison and Jefferson that President Washington was usurping powers of Congress in matters of war

611. U.S. CONST. art. I, § 8, cls. 1, 11, 13-14 ("The Congress shall have Power . . . To declare War . . . To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces . . .").

612. See generally BRIAN KILMEADE & DON YAEGER, THOMAS JEFFERSON AND THE TRIPOLI PIRATES: THE FORGOTTEN WAR THAT CHANGED AMERICAN HISTORY 49-50 (2015) ("The gentlemen of the cabinet immediately recognized the question had broad significance; they were being asked to consider whether the president's authority extended to take military action without first gaining permission from Congress." The cabinet members offered different interpretations of presidential authority, finally inventively concluding that the president could dispatch the squadron "as peacemakers rather than agents of war."); MEACHAM, *supra* note 2, at 364-65 ("At a cabinet meeting . . . , Jefferson and his advisers debated the Barbary States. At issue was whether the United States ought to dispatch a squadron . . . to the Mediterranean in a display of power to discourage further piracy against American shipping. . . . He wanted to make sure they concurred in something else, too: that the naval forces were authorized—by executive, not legislative, authority—to 'search for and destroy the enemy's vessels wherever they can find them.' . . . Should [Commodore] Dale find that all of them had declared war, he was told to distribute his force in such a manner 'so as best to protect our commerce and chastise their insolence—by sinking, burning, or destroying their ships and vessels wherever you shall find them.' . . . In the wake of the episode, Jefferson described the American victory and asked Congress to authorize offensive actions against aggressors in the Mediterranean. Yet he had clearly already provided such authority without Congress back in the spring. . . . Here Jefferson was effectively exerting control over military and foreign policy while appearing to defer to the legislature. It was typical Jefferson: having his way without precipitating confrontation or a distracting crisis. Congress fell into Jefferson's hands, essentially retroactively approving the orders to [Commodore] Dale and granting the president even wider authority . . .").

613. APPLEBY, *supra* note 11, at 42; see also *id.* at 56 (noting that "[w]hen Congress finally convened, Jefferson asked for retroactive approval, taking the occasion to introduce his view that any military action more than merely defensive required the sanction of Congress," which appears disingenuous in light of his prior actions); KILMEADE & YAEGER, *supra* note 612, at 87 ("Jefferson wanted congressional approval to finally admit there was a war on."). Once Congress passed a statute approving the use of force, "[n]o longer would Jefferson have to worry that he overstepped his authority in ordering the U.S. Navy to the Mediterranean." *Id.* at 93. This worry indicates Jefferson had thought the Constitution prohibited such expansive presidential authority, and yet he had exercised that authority anyway.

614. MEACHAM, *supra* note 2, at 365.

615. APPLEBY, *supra* note 11, at 56.

and peace by merely proclaiming a position of U.S. neutrality.⁶¹⁶ Once again, Jefferson, “who had, as secretary of state, argued against broad construction in the case of the establishment of the Bank of the United States, found that his own powers as president benefited from the broadest kind of construction.”⁶¹⁷

In the realm of foreign commerce, Jefferson embraced low tariffs and free trade, which would encourage friendly relations in place of hostility between nations.⁶¹⁸ Having considered the closure of U.S. embassies abroad, he ultimately saw the wisdom in retaining this avenue for diplomatic relations.⁶¹⁹ Jefferson’s overall belief that the federal government retained full powers over foreign relations was one area that had remained relatively consistent while he was both in and out of power and in which he has been deemed a “nationalist” by historians,⁶²⁰ although his perspectives on the president’s power under the Constitution, versus the foreign policy powers held by Congress, shifted depending upon who was in office at the time.

As another instance when Jefferson was willing to interpret the Constitution broadly to allow him to bring the full force of federal power against the people of the United States⁶²¹ was his enactment and enforcement of the Embargo Act of 1807.⁶²² Initiated in an attempt to maintain U.S. neutrality

616. MEACHAM, *supra* note 2, at 273-74.

617. *Id.* at 366.

618. See ONUF, *supra* note 13, at 37 (“In its most extravagant formulation, the fulfillment of Jefferson’s project would see the nations of the world substitute peaceful, mutually beneficial exchange for violent conflict.”); see also *id.* at 186 (“So, too, Jefferson believed, perpetual peace among the states depended on an effective central government, potent in its own sphere but constitutionally restrained from encroaching on the reserved rights of the states or the liberties of the people. Such a government, he concluded, could promote peace in the world at large, advancing American interests by working toward a regime of free trade and rising prosperity throughout the commercial world.”).

619. ELLIS, *supra* note 3, at 234 (explaining Jefferson considered closing embassies but did not).

620. ONUF, *supra* note 13, at 188 (“Mayer notes, however, that Jefferson’s constitutional contextualism always ‘permitted a broad latitude for the exercise of federal powers within the sphere assigned to the national government under the Constitution, particularly with regard to foreign affairs.’ Defense of the republic justified any ‘necessary and proper’ measures, as the first law of nature enjoined, but the same elasticity did not apply to relations between the federal government and the states or individual citizens. . . . ‘Federalism to Jefferson meant far more than the “states rights” caricature,’ Mayer concludes, for it led him ‘to interpret federal powers under the Constitution quite liberally in matters involving foreign affairs.’ In this respect, he ‘could be fairly described as a “nationalist.”’”).

621. MEACHAM, *supra* note 2, at 431 (“The embargo turned American politics upside down. Jefferson became the explicit advocate of strong central power. Republicans who favored less government became the most meddlesome of regulators. Connecticut became a bastion of states’ rights, asserting that ‘in such a crisis of affairs, it is right, and has become the duty of the legislative and executive authorities of the state, to withhold their aid and cooperation from the execution of the act passed to enforce more effectually the embargo system.’”).

622. BENEDICT, *supra* note 15, at 117 (“The passage of the Embargo Act of 1807 was an extreme example of Jefferson’s willingness to exercise delegated powers energetically.”); see also

between the warring France and England and to convince them to allow the United States to engage unmolested in free trade with both nations, Jefferson enforced that neutrality by prohibiting virtually everyone in the United States from engaging in any foreign trade.⁶²³ Both Jefferson and his successor Madison had “justified the embargo as an exercise of Congress’s power to regulate foreign commerce and the president’s power to carry on foreign relations.”⁶²⁴ The result was largely recognized as a disaster, decimating the U.S. economy, causing widespread smuggling, requiring draconian enforcement measures blockading American ports, engaging the Army and Navy against his own people, and turning many Americans against him.⁶²⁵ Once again, the North talked of secession from the union in conjunction with massive demonstrations against the embargo, and newspapers excoriated the president as a despot.⁶²⁶ Although this calamity at the end of Jefferson’s presidency tarnished his reputation, he successfully handed the presidential power over to his protégé, James Madison, who won the election to become the fourth president of the United States.⁶²⁷ Yet Jefferson remained under the cloud of failure of his final years in office; indeed, he did not even mention his service as president on his epitaph, instead highlighting “Here was buried Thomas Jefferson[,] Author of the Declaration of American Independence[,] of the Statute of Virginia for religious freedom & Father of the University of Virginia.”⁶²⁸

MEACHAM, *supra* note 2, at 429-30 (“It was a breathtaking bill, a projection of governmental power that surpassed even the hated Alien and Sedition Acts.”).

623. BENEDICT, *supra* note 15, at 117 (“At Jefferson’s urging, Congress barred all exports from the United States in an attempt to force England and France, again at war, to allow peaceable trade with both countries.”). In response to the hostilities between England and France in 1803, “Jefferson’s answer to these multiple challenges was the Embargo Act of 1807, which essentially closed American ports to all foreign trade.”); *see also* ELLIS, *supra* note 3, at 283; APPLEBY, *supra* note 11, at 126-31.

624. BENEDICT, *supra* note 15, at 117 (“Jefferson and Madison, who succeeded him as president in 1809, justified the embargo as an exercise of Congress’s power to regulate foreign commerce and the president’s power to carry on foreign relations.”).

625. ELLIS, *supra* note 3, at 283 (“The result was an unadulterated calamity that virtually wrecked the American economy, had no discernible effect on either the policies or economies of England or France and required the federal government to exercise coercive powers to enforce the embargo, thereby contradicting the Jeffersonian principle of limited government.”); *see also* MEACHAM, *supra* note 2, at 432 (“History has not been kind to Jefferson’s embargo: it is commonly seen as bad policy that delayed but did not prevent war and left America weaker.”).

626. APPLEBY, *supra* note 11, at 128 (stating one newspaper exhorted, “[n]erve your arms with vengeance against the despot who would wrest the inestimable germ of independence from you,” using the Declaration of Independence against its author).

627. *See* MEACHAM, *supra* note 2, at 434.

628. *Jefferson’s Grave and Tombstone*, MONTICELLO, <https://www.monticello.org/encyclopedia/jeffersons-gravestone> [<https://perma.cc/T2HJ-VBCV>] (last visited Apr. 5, 2026).

Toward the end of his presidency, Jefferson took steps to initiate a law that would ban the importation of slaves into the United States.⁶²⁹ Article I, Section 9, Clause 1 of the U.S. Constitution provides: “The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.”⁶³⁰ As his second term ended in 1808, Jefferson spearheaded a statute through Congress to put into effect a prohibition on the importation of people to be sold as slaves.⁶³¹

Although Jefferson respected the U.S. Constitution and took pains to honor its spirit, he did not believe in unquestioning reverence toward an ossified constitutional edifice that would bind current generations to an archaic and obsolete past.⁶³² A Jefferson biographer contrasts his constitutional philosophy with that of the Federalists:

While virtue and responsibility were the civic ideals of the Federalists, [Jefferson] responded more rapturously to the freedom to explore, to express, to think, to travel, and to form opinions. And he feared that the dead hand of the past inhibited all of these freedoms. Sensing that the Federalists were trying to elevate the new Constitution to some empyrean realm, Jefferson ridiculed those who looked upon constitutions with ‘sanctimonious reverence and deemed them like the Ark of the Covenant too sacred to be touched.’ In countries ‘left free,’ he predicted, the forms of social existence would be emergent and fluid. Without set practices, sacred constitutions, and inhibiting authorities, experience itself would furnish men and women with the material for making decisions. Liberated once and for all would be man the doer, the inventor, the adapter,

629. APPLEBY, *supra* note 11, at 131.

630. U.S. CONST. art. I, § 9, cl. 1.

631. APPLEBY, *supra* note 11, at 131 (“At the earliest possible moment, Jefferson placed before Congress legislation that would end American participation in this cruelest of all commercial undertakings.”); *see also* MCCOLLEY, *supra* note 54, at 163-64 (“The constitution prohibited any interference with the trade for twenty years from the time of its writing, but so soon as that limitation expired the Virginia-dominated Congress outlawed it. Still, hostility to the slave trade was not at all the equivalent of hostility to slavery.”). Indeed, this effort benefitted White slaveowners more than enslaved African Americans, as it increased the value of enslaved people already in the United States. *See id.* at 164.

632. WILLS, *supra* note 3, at xxiii (“[Jefferson] would never encourage people to yearn back toward some ideal of perfection delivered to their forebears. He opposed ‘entailing’ opinions on a later generation; he wanted constitutions revisited often, since accumulated knowledge must make later generations wiser than that which drew up *any* old document.”); APPLEBY, *supra* note 11, at 148 (“[Jefferson] distrusted old ways. He even proposed that the American electorate vote on all its laws every nineteen years—what he calculated to be the length of a generation—to put into practice his famous affirmation that the earth belonged to the living. And he discovered many American voters who shared his views.”).

the improver—*Homo faber*—the universal man hidden from himself by tyrants, priests, and overlords. One can see in all these expectations the source of Jefferson's enduring appeal, for his were the values that continue to flourish in the United States today.⁶³³

While serving as president, Jefferson, in a letter to the governor of Virginia, signaled his belief that their current “times . . . which, planting a new world with the seeds of just government, will produce a remarkable era in the history of mankind.”⁶³⁴ His reference to “seeds” indicates an embryonic Constitution that has not yet produced a “just government” but is expected to do so in the future as the constitutional governmental grows and matures. Likewise, his use of the future tense “will produce” reinforces that he expected the government *in the future* to promote justice and that the remarkable era of the United States *still lies ahead*. Therefore, the constitutional framework is continually growing toward a just government, and the United States is continually progressing toward a more just society—toward the equality and right to life, liberty, and pursuit of happiness promised by the Declaration of Independence and toward that “more perfect union” promised by the U.S. Constitution.⁶³⁵

4. *As an Elder Statesman During Retirement*

Once Jefferson retreated to his cherished Monticello, surrounded by family and friends in his home state of Virginia, his kaleidoscopic perspectives on constitutional interpretation shifted once again, gradually swinging back to reflect more of the states' rights outlook adapted to his then surroundings and circumstances.⁶³⁶ The massive debts he had continued to accumulate throughout his presidency weighed heavily upon his mind,⁶³⁷ in addition to

633. APPLEBY, *supra* note 11, at 49-50; *see also* MEACHAM, *supra* note 2, at xxiii (“[H]e was drawn to the world beyond Monticello, endlessly at work, as he put it, ‘to see the standard of reason at length erected after so many ages during which the human mind has been held in vassalage by kings, priests, and nobles.’”).

634. MEACHAM, *supra* note 2, at xxviii-xxix (“Writing his William and Mary schoolmate and Revolutionary colleague John Page in 1803—Page was governor of Virginia, Jefferson president of the United States—Jefferson said: ‘We have both been drawn from our natural passion for study and tranquility, by times which took from us the freedom of choice: *times* however *which, planting a new world with the seeds of just government, will produce a remarkable era in the history of mankind*. It was incumbent on those therefore who fell into them, to give up every favorite pursuit, and lay their shoulder to the work of the day.’” (emphasis added)).

635. *See supra* note 40 and accompanying text.

636. ELLIS, *supra* note 3, at 327 (“Jefferson’s sources of political information were highly partisan and narrowly provincial. Small wonder that his own views became distorted by similar prejudices.”).

637. MEACHAM, *supra* note 2, at 418, 436; APPLEBY, *supra* note 11, at 151-52; *see also* ELLIS, *supra* note 3, at 326-27 (discussing Jefferson’s insurmountable debt and the arguments of his defenders that his positions in retirement must be taken in the context of “his financial misfortunes” as “the ramblings of a depressed old man paralyzed by the realization that his bankruptcy would

“a dozen disparate developments [that] dashed his hopes for a peaceful old age . . . [and] marred his dreamed-of tranquility,” casting a pall over what would otherwise have appeared to be an idyllic retirement, and perhaps souring his outlook on the state of the nation.⁶³⁸ Favorably, his chosen heir-apparent, James Madison, had ascended to the presidency, serving from 1809 to 1817, and another Jeffersonian, James Monroe, took the reins from 1817 to 1825.⁶³⁹ These Republican successors, both slave-owning Virginians, continued Jefferson’s course of maintaining a limited central government, strong within its constitutionally delegated federal powers, yet deferential to the state governments on issues they considered to be internal state matters.⁶⁴⁰ Between 1814 and 1815, some Federalists in New England again talked of secession, whereupon Jefferson wrote from Monticello reconfirming his anti-secessionist stance: “‘The cement of the Union is in the heart-blood of every American,’ said Jefferson. ‘I do not believe there is on earth a government established on so immovable a basis.’”⁶⁴¹

While serving as president, Jefferson had previously advocated for federal support for developing the channels for interstate commerce.⁶⁴² His treasury secretary created a proposal for a massive federal project to develop a network of roads, canals, navigable rivers, and other infrastructure projects to connect the growing nation.⁶⁴³ Jefferson had questioned whether a constitutional amendment enabling the federal government to undertake these projects would be required, but nevertheless, he had signed a law establishing the first national road, thus interpreting the Constitution to give the federal government these powers, as mentioned above.⁶⁴⁴ Yet when Congress put

deprive his heirs of Monticello”); Cantu, *supra* note 104, at 19 (“Jefferson never recovered from the burden of debt and ‘nothing intruded more upon the tranquility of his declining years’ than his ever-increasing debt.” (footnote omitted)).

638. APPLEBY, *supra* note 11, at 151.

639. Peter Onuf, *Thomas Jefferson: Impact and Legacy*, U. VA. MILLER CTR., <https://miller-center.org/president/jefferson/impact-and-legacy> [<https://perma.cc/75SY-4CZA>] (last visited Apr. 19, 2026).

640. MEACHAM, *supra* note 2, at xix (“Judged by the raw standard of the winning and the keeping of power, . . . Thomas Jefferson was the most successful political figure of the first half century of the American republic. For thirty-six of the forty years between 1800 and 1840, either Jefferson or a self-described adherent of his served as president of the United States: James Madison, James Monroe, Andrew Jackson, Martin Van Buren. (John Quincy Adams, a one-term president, was the single exception.) This unofficial and little-noted Jeffersonian dynasty is unmatched in American history.”).

641. *Id.* at 463.

642. *Id.* at 417 (“Jefferson was the first president to advocate a broad program of public works, calling for a constitutional amendment to authorize the financing of ‘education, roads, rivers, canals,’ and other projects.”).

643. *Id.*

644. See Rickie Longfellow, *The National Road*, U.S. DEP’T OF TRANSP. (June 30, 2023), <https://highways.dot.gov/highway-history/general-highway-history/back-time/national-road> [<https://perma.cc/BCK5-9QQ8>].

before his successor, James Madison, an act to support further internal improvements, Jefferson wrote letters arguing against the legislation as outside the bounds of permissible federal action, despite the fact that most Republicans at the time interpreted the Constitution more broadly to allow the federal government to help build the nation in this way.⁶⁴⁵ The impetus for Jefferson's increasing reticence about interpreting the federal government's powers broadly—and that of other southern politicians such as Madison⁶⁴⁶—reflected their general suspicion of federal power in an atmosphere increasingly charged around southern states' rights to maintain the institution of slavery.⁶⁴⁷ This rejection of any federal involvement in slavery continued a traditional view of constitutional interpretation by southern slaveowners from the early days of the Constitution: "When a petition drawn by Benjamin Franklin was submitted in 1790, suggesting with characteristic mildness that Congress might consider some means of uplifting Negroes held in bondage, Congress was embroiled in a week of acrimony."⁶⁴⁸

The frictions between the slave-holding southern states and the commercial and navigational centers in the anti-slavery northern states were becoming increasingly palpable.⁶⁴⁹ Several of the northern state legislatures took measures to abolish slavery within their jurisdictions, and others were following suit in limiting the institution.⁶⁵⁰ As more states were accepted into

645. ELLIS, *supra* note 3, at 325. In 1822, Jefferson wrote a letter to his former cabinet member Gallatin opposing federal "internal improvements" such as roads and canals, even though "[w]hile serving in Jefferson's cabinet, Gallatin had in fact authored the first study of a national system of roads and canals, and most Republicans had long since accepted the principle of federal responsibility for an interstate network of transportation to bind together the geographic regions and connect the coastal states to the interior." *Id.*

646. *See id.* at 329 ("Madison tended to share Jefferson's foreboding fears of consolidation. Like Jefferson, he was trapped by the unattractive implications of the slavery question; he also opposed the restrictions on slavery imposed by the Missouri Compromise and sought relief in the illusion of diffusion, as well as the equally illusory belief that gradual emancipation was somehow feasible. Moreover, one of his last acts as president was to veto the bill for internal improvements on the ground that it granted the federal government unconstitutional powers. In all these crucial ways he and Jefferson agreed, making it possible for Madison to commiserate in good conscience with his aging mentor and his tortured thoughts after 1820.")

647. *Id.* at 325 ("The ancestral voices he heard and the ghosts of Federalism he saw now had the decided look of a massive delusion. Even worse, the embarrassing truth was that he was allowing the enormous prestige associated with his name to be captured by the most reactionary segment of southern political culture, with its attendant defense of slavery and its doctrine of states' rights."); *see also* MCCOLLEY, *supra* note 54, at 99 (discussing southerners not wanting any federal laws that might pave the way for federal involvement in laws concerning slavery); *id.* ("A representative from South Carolina then remarked that he wished the question [of a national act for the registration and certification of all Negroes on the high seas] had never been raised, for he preferred that the federal government to have no concern with slavery whatever. [The] bill might be 'a kind of entering-wedge.'").

648. MCCOLLEY, *supra* note 54, at 121.

649. *See generally* MEACHAM, *supra* note 2, at 474-78.

650. *See generally id.* (describing some of Jefferson's reflections as a political leader on slavery and its evolving role within the political landscape of early America); SHIRLEY ANN WILSON

the union, tensions increased as to whether they should be admitted as free states or as slave states.⁶⁵¹ Jefferson and other southerners advocated vociferously that the matter of slavery should be left entirely to each state's legislature and should not be addressed by the federal government.⁶⁵² They feared that if the federal government took any stance on regulation of the institution of slavery within the states, such a precedent would pave the way for further federal interference with the issue of slavery—an intolerable exercise of unconstitutional federal authority, according to the slaveholding state leaders, whose way of life depended upon their ownership of other people to labor on their behalf.⁶⁵³ Although the Virginian Republicans were radical in their advocacy of expanding political participation to a much broader range of White males, they were staunchly conservative in maintaining the institution of slavery.⁶⁵⁴ Once again, Jefferson appeared to embrace the secessionist movement on behalf of slaveholding states that he had decried when suggested by the northern states.⁶⁵⁵ Similarly, when Congress and President James Monroe enacted legislation supporting internal improvements to national

MOORE, NAT'L PARK SERV., SWEET FREEDOM'S PLAINS: AFRICAN AMERICANS ON THE OVERLAND TRAILS 1841-1869, at 17 (2012) ("In the North, where economies did not depend on slave labor after the Revolution, legislatures and courts quickly moved to abolish slavery and adopted a policy of gradual emancipation. These actions compelled African Americans to continue in bondage for a specific number of years after the enactment of the state's abolition laws, or until they or their children reached a specified age. In 1800, nearly 37,000 northern blacks, most residing in New York and New Jersey, remained in legal servitude. By 1830, Northern states had virtually abolished slavery, with only 3,568 blacks, most in New Jersey, still in bondage." (footnote omitted)).

651. See generally MEACHAM, *supra* note 2, at 474-78; *The Road to Secession*, NAT'L PARK SERV. (Sep. 15, 2023), <https://www.nps.gov/anti/learn/historyculture/roadtosecession.htm> [<https://perma.cc/K2JQ-5HPJ>] (discussing the Missouri Compromise).

652. See generally MEACHAM, *supra* note 2, at 474-78.

653. See generally *id.*

654. See MCCOLLEY, *supra* note 54, at 52 ("Nothing in orthodox Virginia politics threatened the plantation system, or the slave labor upon which it was based. On the contrary, Virginia politics in the age of Jefferson pointed consistently and forthrightly toward the prosperity and expansion of the plantation system."); *id.* at 56 ("Virginia rejected the alternatives offered by the Federalists, and in doing so practically endorsed her traditional economic system, including slave labor. . . . Of the Virginians of 1800, Henry Adams wrote: 'To escape the tyranny of Caesar by perpetuating the simple and isolated lives of their fathers was the sum of their political philosophy; to fix upon the national government the stamp of their own idyllic conservatism was the height of their ambition.' Virginians were, as Adams so engagingly tells us, profoundly conservative in political and economic matters, but we must not accept Adams' implication of torpor and stagnation: the planting aristocracy of Virginia was vigorous and growing. Its way of life caused it to outgrow its native province, and in time the profits of cotton would bring a new and gaudier prosperity to many of its migrant members, but the social ideal of the plantation aristocrat, with his [enslaved laborers], remained constant and essential." (footnote omitted)).

655. ELLIS, *supra* note 3, at 326 ("Secession was preferable to consolidation. It was a sad and pathetic spectacle, all the more so because it seemed to ring all the familiar chords of 1776 and 1800, but he was in fact linking his legacy to the destruction of the republic he had helped create."); see also ONUF, *supra* note 13, at 134 (discussing secession tendencies in the north after 1812 and in the south before the Civil War).

infrastructure, Jefferson raised the possibility of Virginian secession.⁶⁵⁶ As Jefferson had previously recognized concerning northern states, such a secessionist stance was not merely unconstitutional but was anti-constitutional and would have torn apart the union for which the revolutionaries had previously fought.⁶⁵⁷ But again, Jefferson's interpretation of the Constitution had always rested on his overriding commitment to the freedom of White males, which included their freedom to own other people, a principle which superseded his commitment to keeping the United States united.⁶⁵⁸ His increasingly narrowing interpretation of the Constitution did not necessarily reflect the views of his protégé, James Madison, primary author of the document,⁶⁵⁹ and it certainly did not reflect the views of numerous other members of the founding generation, who remained patriotically loyal to the *United States of America*.⁶⁶⁰

656. See ELLIS, *supra* note 3, at 331-32. In 1822, Jefferson sent to Madison a draft of a measure for Virginia opposing federal internal improvements and threatening to have Virginia secede from the United States. *Id.* at 331. "Madison wrote back within the week. . . . The essence of the lengthy answer was that Jefferson's proposed draft was 'an anomaly without any operative character.' Congress had passed the act funding internal improvements by a decisive majority. The only ground on which the act could be overturned was for the Supreme Court to find it unconstitutional, a course that was unlikely in the extreme given Marshall's predilections and, irony of ironies, a course that Jefferson considered illegal anyway. Whatever one thought about internal improvements as a stalking-horse for the evils of consolidation, Virginia had to obey the law. To suggest otherwise was to raise the specter that states need not abide by laws they found objectionable. This was a recipe for civil war and eventual anarchy, precisely the danger the Constitution was designed to avoid and, Madison urged ever so discretely, hardly the course Jefferson wished associated with his name. Jefferson almost always listened when Madison offered constitutional advice." *Id.* at 332-33. This time was no exception.

657. *Id.* at 328 ("No one could challenge Madison's claim that he knew Jefferson better than any man alive, and he expressed his clear conviction that 'the charges against Mr. Jefferson,' meaning the claims on his patrimony by secessionists and resolute states' righters, 'can be duly refuted.'"); *id.* at 329 ("Madison's defense of Jefferson was in fact more than a bit disingenuous"); *id.* at 328-29 ("Jefferson's final thoughts on the meaning of the American Revolution and what that meaning meant for the government of the emergent American nation *were* extreme, but not in the sense of being aberrant or wildly misrepresentative; they were intensifications and purifications of what he had been saying all along.").

658. *Id.* at 253 (discussing "nonchalance toward the preservation of the national union, the dominant political issue of the next half century").

659. Jefferson wrote to Madison about his belief that the federal government served foreign relations only, and that state governments handled all other matters. *Id.* at 329-30. Madison responded cryptically about "the problem of collision between the federal and State powers." See *id.* at 330. After James Madison's death, "his wife, Dolley, in a note appended to her husband's papers soon after his death, spoke more candidly: 'Thomas Jefferson was not in America pending the framing of the Constitution, whose information in all that occurred in the Convention, and of the motives and intents of the framers, was derived from Mr. Madison, whose opinions guided him in the construction of that instrument, was looked up to many as its father and almost unanimously as its only true repositior.' When it came to constitutional questions, in short, Jefferson often did not know what he was talking about." *Id.*

660. *Id.* at 333 ("Adams had been telling Jefferson for several years that the Jeffersonian version of what the American Revolution actually meant was both idiosyncratic and irresponsible. Now Madison was telling him that he had failed to grasp the central achievement of the constitutional settlement of 1787-88, which was to grant the federal government sufficient sovereignty to assure

As noted above, during that charged timeframe, Jefferson was especially concerned that if the federal government's powers were interpreted broadly under the Constitution, it may be used to interfere with slave ownership in the southern states.⁶⁶¹ While Jefferson had at times previously railed against the institution of slavery as immoral, he kept his own enslaved men, women, and children in bondage, which enabled him to continue living his opulent lifestyle.⁶⁶² Not only did enslaved people—including children—provide him with income, cultivate his fields, prepare his food, take care of his home, make his clothing, serve his family, and construct and renovate his mansion,⁶⁶³ but his enslaved laborers' capital worth as property also provided the collateral necessary to enable him to live on credit.⁶⁶⁴ In his plantation record-keeping, he explicitly highlighted the value of an enslaved woman who could produce enslaved children as much higher worth than any enslaved man, since the children she bore would increase the owner's human capital.⁶⁶⁵ The

a national system of laws that all states and all individuals were obliged to obey. Both Adams and Madison, in their different ways, were informing Jefferson that the outstanding accomplishment of the revolutionary generation had been the realistic recognition of the need for limits as well as liberation, that the American republic had endured because its creators made sensible compromises with political power, that the genius of the American Revolution resided in its capacity to harness, indeed to consolidate, the energies released by the movement for independence.”); *id.* at 334 (“Even such intimate collaborators as Adams and Madison might consider his vision alluringly irresponsible, the kind of dangerously romantic aversion to established authority that one needed to get over. But Jefferson’s statements during his last years of life, far from being aberrant ramblings, represented a consistent rededication to his visionary principles. All compromises with political power were pacts with the devil. All efforts at political consolidation were treasonable acts.”).

661. See MEACHAM, *supra* note 2, at 474-78.

662. ONUF, *supra* note 13, at 32 (referring to “a paradox, like so many in Jefferson’s life, that could be reconciled only by denial—in this case, denial that Jefferson and his allies pursued their own interested ends through partisan political action”).

663. MCCOLLEY, *supra* note 54, at 132 (“The labor of his slaves created and sustained the modest splendors of Monticello, and the crops they grew purchased (though they never quite covered the cost) the fine wines and books that made his life at home seem so attractive.”); see also Monticello Curatorial and Restoration Staff, *Mulberry Row Nailery*, MONTICELLO (2012), <https://www.monticello.org/encyclopedia/nailery> [<https://perma.cc/2SK2-56UU>]; MCCOLLEY, *supra* note 54, at 20 (“Thomas Jefferson . . . set twelve of his young slaves, aged ten to sixteen years to fabricating nails,” including for sale to provide Jefferson with income); *id.* at 60 (noting generally that children who were enslaved normally “were kept busy at lighter chores”); *Work on the Monticello Plantation*, MONTICELLO, <https://www.monticello.org/slavery/life/work> [<https://perma.cc/CMV3-C4W6>] (last visited Apr. 5, 2026); MEACHAM, *supra* note 2, at 285 (“While construction at Monticello progressed through the years, Mulberry Row (where enslaved people lived and worked), which ran along the southeastern edge of the main house, expanded to meet his needs. According to Monticello historians, he added new slave quarters, a smokehouse, blacksmith’s shop, carpenter’s shop, wash house, sawpit, and, in April 1974, he launched a new manufacturing enterprise there: a nailery, where enslaved boys produced as many as 10,000 nails a day.”).

664. Clyde W. Ford, *Founding Fathers as Founding Debtors: How Some of Them Used Slaves as Collateral*, L.A. TIMES (July 1, 2021), <https://www.latimes.com/opinion/story/2021-07-01/founding-fathers-july-fourth-slaves> [<https://perma.cc/8T79-BJKN>].

665. APPLEBY, *supra* note 11, at 77. Regarding his own enslaved men, women, and children, Jefferson could be “crassly calculating, as when he commented on the superior value of female slaves: ‘I consider a woman who brings a child every two years as more profitable than the best man

enslavement of people also supported the wealth and extravagant way of life of other revolutionary leaders and founders, such as George Washington, James Madison, James Monroe, Patrick Henry, John Marshall, and others.⁶⁶⁶ It is unsurprising that these southern Virginian plantation owners would refuse to give up the financial benefits of their ownership of other people during their lifetimes. One cannot simply write off their actions as a product of the times, since many of their contemporaries who initially owned other people saw the evil in maintaining the institution of slavery, subsequently freeing their enslaved laborers and actively working against the institution.⁶⁶⁷ Moreover, northern states were emancipating enslaved people through changes in their state laws: “Not only had these states furnished a model for extinguishing the legality of human property, they had made good on the ringing affirmations of equal rights in the Declaration of Independence.”⁶⁶⁸

Furthermore, southern slaveowners were deeply anxious about the possibility of a violent revolution for independence by the people they had enslaved, which would threaten their lives and the lives of their White families, friends, and neighbors throughout the south.⁶⁶⁹ The successful bloody revolt throughout the 1790s by enslaved Africans on the French-controlled island of Saint-Domingue (now Haiti) finally led in 1804 to the first establishment of a new nation by previously enslaved people headed by General Toussaint Louverture, a former slave who became the new country’s prominent leader.⁶⁷⁰ Although their revolution for independence from France and their

of the farm. What she produces is an addition to the capital, while his labor disappears in mere consumption.” *Id.* When considering the number of women who died in childbirth during that era due to frequent pregnancies, including his own wife and daughter, this statement is particularly callous.

666. *Id.* at 138-39; *see also* MCCOLLEY, *supra* note 54, at 144-45 (noting that in his will, George Washington, who had no descendants, freed his slaves upon the death of his wife, Martha).

667. APPLEBY, *supra* note 11, at 77 (“Jefferson could have disentangled himself from the South’s peculiar institution. Thousands of slave owners did, many of them touched by the brief antislavery crusade of the Methodists and Baptists. One particularly eloquent Baptist preacher traveled with manumission forms in his saddlebags. In 1782, Virginia legislators had even made it easier to free human property . . . Jefferson was also a witness to Northern emancipation, as one by one the states above the Mason-Dixon Line put slavery on the path to legal extinction. These acts brought the issue out of the study and into the political realm, demonstrating that legislation could end the most ancient and odious of all labor systems. A world without slavery was imaginable; realizing such an end was on the agenda of dozens of conscientious people, but not on Jefferson’s.”); *see also* MCCOLLEY, *supra* note 54, at 131 “[F]rom the 1770’s onward there were also serious and dedicated men in Europe, the northern states, and even in Virginia who demonstrated in practice as well as in theory that the Negro slave could be educated, emancipated, and civilized. Jefferson was not ahead, but rather far behind, such public advocates of emancipation as John Jay and Alexander Hamilton of New York, Anthony Benezet and Benjamin Franklin of Philadelphia, and Robert Pleasants and Warner Mifflin of Virginia.”); *id.* at 180 (discussing Virginian Edward Coles freeing his slaves).

668. APPLEBY, *supra* note 11, at 137.

669. *Id.* at 78-79.

670. *Id.*; MEACHAM, *supra* note 2, at 255-56.

White European enslavers—many of whom fled Saint-Domingue and took refuge in southern U.S. states—seems to mirror the revolution for independence in the United States and the principles of his Declaration, Thomas Jefferson refused to support these revolutionaries because they were Black Africans who had been enslaved by White Europeans, and he feared their successful revolution would encourage a similar revolution for independence among the Black Africans who were still enslaved by White Europeans throughout the southern United States—in many regions significantly outnumbering the White population.⁶⁷¹ In his retirement, this very real trepidation inspired Jefferson once again to advocate for a strict, narrow construction of federal power under the U.S. Constitution, as well as for a broad interpretation of states' rights under a compact theory of the union, which ultimately led the southern states to secede and the resulting Civil War just a few decades later.⁶⁷²

Despite the fact that Jeffersonian governance continued to dominate national and state politics for decades,⁶⁷³ the split over slavery continued to widen the rift between northern and southern states. Considering the looming storm clouds on the national stage that eventually led to the Civil War, in conjunction with Jefferson's personal financial troubles, his final years were certainly not entirely tranquil.⁶⁷⁴

In spite of these pressing concerns, Jefferson maintained his optimism about human nature and about the ultimate fate of the nation,⁶⁷⁵ as highlighted in his renewed correspondence with John Adams as elder statesmen in their later years.⁶⁷⁶ He believed the best years for the country would always

671. APPLEBY, *supra* note 11, at 78-79 (“What Jefferson clearly never did was hail the Haitian Revolution as the first successful slave revolt and Haiti as the Western Hemisphere’s second republic. Faced with blacks demonstrating a taste and talent for freedom, he recoiled like any other slave owner. He saw Haiti more as a threat to Southern slavery than as a beacon of freedom.”); *see also* MEACHAM, *supra* note 2, at 255-56; MCCOLLEY, *supra* note 54, at 112-13.

672. *See* MEACHAM, *supra* note 2, at 474-78.

673. *See generally id.* at xix (“George Washington, John Adams, and Alexander Hamilton are sometimes depicted as wiser, more practical men than the philosophical master of Monticello. Judged by the raw standard of winning and the keeping of power, however, Thomas Jefferson was the most successful political figure of the first half century of the American republic. For thirty-six of the forty years between 1800 and 1840, either Jefferson or a self-described adherent of his served as president of the United States: James Madison, James Monroe, Andrew Jackson, and Martin Van Buren. (John Quincy Adams, a one-term president, was the single exception.) This unofficial and little-noted Jeffersonian dynasty is unmatched in American history.”).

674. APPLEBY, *supra* note 11, at 151 (“The unintended consequences of a dozen disparate developments dashed his hopes for a peaceful old age . . . disruptions and worries marred his dreamed-of tranquility.”).

675. *Id.* at xxiii (“[H]e gave the nation the idea of American progress—the animating spirit that the future could be better than the present or the past. The greatest American politicians since have prospered by projecting a Jeffersonian vision that the country’s finest hours lay ahead.”).

676. ELLIS, *supra* note 3, at 299-300 (“At the same time that Jefferson was beginning to develop his idea of the University of Virginia as a capstone to his career and a monument to his legacy,

arise in the future and was impatient with those who remained bound to the past, as noted by a Jefferson biographer:

He loved the spirit of innovation. “The fact is that one new idea leads to another, that to a third and so on through a course of time, until someone, with whom no one of these ideas was original, combines all together, and produces what is justly called a new invention.” The future was full of infinite possibilities. “When I contemplate the immense advances in science, and discoveries in the arts which have been made within the period of my life, I look forward with confidence to equal advances by the present generation; and have no doubt they will consequently be as much wiser than we have been, as we than our fathers were, and they than the burners of witches,” he wrote in retirement.⁶⁷⁷

Furthermore, as opposed to a hereditary aristocracy in which the Federalists had believed, Jefferson believed in a natural aristocracy in which people were blessed with and cultivated their individual sets of talents,⁶⁷⁸ which he asserted must be facilitated by a government-supported public education system.⁶⁷⁹ Under Jefferson’s vision, these well-educated, civic-minded, critical thinkers would naturally be elected as leaders within the state and national governments. Jefferson advocated not only for public primary and secondary schools throughout the nation, but also for publicly supported higher education.⁶⁸⁰ His crowning achievement was the creation of the University of

he was inadvertently, and at times against his own instincts, creating with Adams what turned out to be the ultimate literary monument to the American Revolution as an ongoing argument between idealistic and realistic impulses. . . . What their correspondence preserved for posterity was the dynamic and contentious character of the Revolution they had mutually fought and wrought.”); *id.* at 300 (“Adams . . . had begun to make copies of all his letters in 1776, and Jefferson had been preserving most of his correspondence since 1782.”); *id.* at 300-01 (“While historians have offered several explanations for this remarkable explosion of leadership at the very start of the American republic—and it truly was remarkable—the self-conscious sense that the future was watching elevated the standards and expectations for all concerned.”).

677. MEACHAM, *supra* note 2, at 468.

678. APPLEBY, *supra* note 11, at 154-55 (“Adams pushed . . . the inevitability of aristocracies forming in every society; he listed aristocracy’s five pillars as beauty, wealth, birth, genius, and virtues. Jefferson demurred, distinguishing between artificial aristocracies based on wealth and family and the natural one arising from virtue and talent.”); *see also* MEACHAM, *supra* note 2, at 459 (“Jefferson said, . . . ‘The natural aristocracy I consider as the most precious gift of nature, for the instruction, the trusts, and government of society. . . . And indeed it would have been inconsistent in creation to have formed man for the social state, and not to have provided virtue and wisdom enough to manage the concerns of the society. May we not even say that that form of government is the best which provides the most effectually for a pure selection of these natural aristoi into the offices of government?’”).

679. MCCOLLEY, *supra* note 54, at 42-43 (mentioning Jefferson’s advocacy for a “general scheme for public education”).

680. APPLEBY, *supra* note 11, at 154 (“In the 1818 report to the Commissioners for the University of Virginia, Jefferson once more asserted his conviction that self-government required an

Virginia (UVA), which he spearheaded and played an instrumental role in designing both the architectural infrastructure and the educational philosophy.⁶⁸¹ UVA officially opened in 1825, so Jefferson was able to see his dream come to fruition shortly before he died.⁶⁸²

As the fiftieth anniversary of the Declaration of Independence approached in 1826, Jefferson was invited to give a speech at the nation's capital.⁶⁸³ Unable to attend due to his failing health, Jefferson instead sent written remarks to be read at the Fourth of July celebration of the birth of the United States through his famous Declaration:

May it be to the world, what I believe it will be, (to some parts sooner, to others later, but finally to all,) the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government. . . . All eyes are opened or opening to the rights of men. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few, booted and spurred, ready to ride them legitimately, by the grace of God. These are grounds of hope for others; for ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them.⁶⁸⁴

Here, Jefferson again focused—not on the benefits of an energetic federal government nor the importance of the rights of state governments in and of themselves—but instead on the centrality of individual rights and of broad individual participation in self-governance as primary goals of the Declaration of Independence, of the Revolutionary War, and of the Constitution that

educated citizenry. These sentiments were becoming conventional, as were Jefferson's expression of hopes for civilization.").

681. *Id.* ("Jefferson wished to be remembered as the 'Father of the University of Virginia,' an accomplishment to be carved on his tombstone along with his authorship of the Declaration of Independence and the Virginia Statute for Religious Freedom."); *see also* MCCOLLEY, *supra* note 54, at 10 ("[T]he creation of the University of Virginia at Charlottesville, in Jefferson's own Albemarle County, an act which also represented the triumph of republicanism over monarchy and of secularism over Anglican Christianity."); MEACHAM, *supra* note 2, at 468-69.

682. *See* Gene Zechmeister, *Timeline of the Founding of the University of Virginia*, MONTICELLO (July 5, 2011), <https://www.monticello.org/encyclopedia/timeline-founding-university-virginia> [<https://perma.cc/6N4U-JVRN>].

683. ELLIS, *supra* note 3, at 345 ("Officials planning the Independence Day celebrations in Washington invited him to attend the ceremonies honoring the fiftieth anniversary of the Declaration of Independence on July 4. Jefferson was on no condition to leave his mountaintop, but he agreed to send a written statement.").

684. *Id.* at 345-46 (omission in original).

ultimately arose as a consequence.⁶⁸⁵ Moreover, he foresaw the expansion of those rights to a wider range of people in his prediction that “[t]hese are grounds of hope for others,” as he provided in his written statement celebrating the fiftieth anniversary of the Declaration of Independence.⁶⁸⁶ While the nation was celebrating the Fourth of July, its two remaining great founders—John Adams and Thomas Jefferson—passed from this Earth, leaving behind a legacy of rights and freedoms that continue to inspire people to advocate for their inclusion within these universal principles throughout the United States and throughout the world.⁶⁸⁷

V. CONCLUSION

On the 250th anniversary of the Declaration of Independence, it is important for Americans to cultivate a greater understanding of our nation’s history and how our past shapes our country today. As highlighted above, Thomas Jefferson argued for an educated and involved citizenry who would keep a watchful eye on the government,⁶⁸⁸ including through the power of organized political parties and making their views known by protesting against government overreach, unresponsiveness, and violations of the rights of the people. Jefferson believed that only an educated and involved citizenry would ensure that constitutional interpretation by all levels and branches of government remains faithful to the will of the people and at the same time respectful of the rights of minorities, such as people who hold minority beliefs about politics, religion, and so on.⁶⁸⁹

This article demonstrates that Thomas Jefferson, one of the foremost founders of the United States, implemented a malleable approach to construing the U.S. Constitution throughout the course of his post-revolutionary years.⁶⁹⁰ Jefferson’s adaptability regarding his interpretation of the U.S.

685. APPLEBY, *supra* note 11, at 132-33 (“Jefferson’s states’-rights views were always in tension with his powerful nation-building tendencies, and he saw state power as offering a balance to federal power Jefferson’s controlling aim was neither national independence nor state sovereignty but rather to secure for Americans ‘the ever enduring privilege of personal freedom.’”).

686. *See supra* text accompanying note 684.

687. ELLIS, *supra* note 3, at 347 (“All America was still talking about the simultaneous death of Adams and Jefferson, on the fiftieth anniversary to the day of their great collaboration of 1776”).

688. MAYER, *supra* note 4, at 84 (noting that Jefferson’s republicanism required “a people watchful of the government and jealous of their rights”).

689. *Id.* at 86-87 (“Jefferson’s stress on public education was tied directly to his republicanism and the assumptions that underlay his concept of self-government. As he later observed, a civilized nation could not be both ignorant and free.”).

690. MEACHAM, *supra* note 2, at xxiii (“He was the father of the ideal of individual liberty, of the Louisiana Purchase, of the Lewis and Clark expedition, of the American West. He led the first democratic movement in the new republic to check the power and influence of established forces.”);

Constitution, at times applying a strict construction and at times a loose construction, demonstrates that one of the most preeminent Founding Fathers did not undertake a single, monolithic, uniform method of interpretation, but instead employed different methodologies in order to address differing circumstances.⁶⁹¹ Unquestionably one of the most profoundly influential political leaders in the 250-year history of the United States, it was “Jefferson’s deft ability to compromise and improvise [that] made him a transformational leader.”⁶⁹² Moreover, in addition to this Jeffersonian Republican application of flexible constitutional construction, Federalists also employed an adaptable interpretation, as noted above, and as memorialized by Federalist Chief Justice John Marshall in *McCulloch v. Maryland*.⁶⁹³ This multiplicity of interpretations of the U.S. Constitution reflects the multiplicity of interpretations of the Declaration of Independence by the Founding Fathers, as highlighted by one historian in a 1964 account:

It is one of the many curiosities of American history that Abraham Lincoln and many other members of the later Republican party both believed and asserted that the Declaration of Independence had been intended by the Founding Fathers to apply in principle to all races of men, and not simply to white Americans. Roger Taney, on the other hand, argued (with more impressive historical evidence) in the Dred Scott decision that the Fathers consciously excluded Negroes. Lincoln held that the promise of “life, liberty, and the pursuit of happiness” had not been possible of immediate fulfillment, but was established as a national ideal and goal, while Taney held that the Fathers must have been dreadful hypocrites to hold out such an ideal to American Negroes while continuing slavery as usual. *Actually, there was no consensus whatever among the Founding Fathers or among their constituents.*⁶⁹⁴

MAYER, *supra* note 4, at 286 (“[B]oth his commitment to originalism and the form of originalism to which he adhered would vary with the circumstances.”).

691. MAYER, *supra* note 4, at xii (noting Jefferson’s “strict interpretation of some provisions of the Constitution, in contrast with his loose (and often inventive) construction of other provisions”).

692. Walter Isaacson, *Foreword* to MEACHAM, *supra* note 2 (“Jon Meacham shows how Jefferson’s deft ability to compromise and improvise made him a transformational leader.”).

693. BENEDICT, *supra* note 15, at 138 (“Nor could the [national] government be tied down by how Americans might have applied it in 1788. ‘It is a Constitution we are expounding,’ he urged in *McCulloch v. Maryland*. It was ‘intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs.’ Its application must be derived from the text in light of this great principle, not from how some people might have applied it in 1787.” (citing *McCulloch v. Maryland*, 17 U.S. 316 (1819))).

694. MCCOLLEY, *supra* note 54, at 137 (emphasis added).

Moreover, Jefferson favored each generation freely governing itself and not becoming strapped into a fossilized Constitution dictated by the hand of long-dead generations.⁶⁹⁵ He contemplated that the populace would regularly update the Constitution through periodic votes of the people in each generation (which he calculated at approximately every two decades).⁶⁹⁶ Furthermore, he was used to frequent amendments to the Constitution, such as the first ten amendments in the Bill of Rights ratified in 1791, the Eleventh Amendment on sovereignty of states with respect to lawsuits brought against them ratified in 1795, and the Twelfth Amendment altering the electoral college procedure ratified in 1804.⁶⁹⁷ Whenever he was faced with a question about the constitutionality of an action as president, he suggested a quick fix through amendments to the Constitution, such as with the Louisiana Purchase, with internal improvements to rivers, canals, and roadways, and with the ability of the federal government to support public education.⁶⁹⁸ Jefferson believed that having a process by which the people could readily amend the Constitution would beneficially enable it to stay abreast of the will of the people, instead of ensconcing it in the will of prior generations, as reflected below:

The past, he thought, should hold no magical, unexamined claim over the present. “Some men look at Constitutions with sanctimonious reverence and deem them, like the ark of the covenant, too sacred to be touched,” he wrote in 1816. “They ascribe to the men of the proceeding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well: I belonged

695. See MEACHAM, *supra* note 2, at 224. “In early September 1789, . . . Jefferson wrote a long letter to James Madison. He composed it in the fevered context of the French Revolution, and by his own account his thinking sprang from particular events in Europe. ‘I set out on this ground, which I suppose to be self evident, ‘that the earth belongs in usufruct to the living’: that the dead have neither powers nor rights over it.’ A little later, he added: ‘The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. They are masters too of their own persons, and consequently may govern them as they please . . .’” *Id.*

696. See *id.* The quotation in the preceding footnote continues, “[e]very constitution, then, and every law, naturally expires at the end of 19 years [the Jeffersonian definition of a generation].” *Id.* (second alteration in original).

697. APPLEBY, *supra* note 11, at 11 (“Three years later, Congress would propose and the states ratify the Twelfth Amendment, separating the ballots for president and vice president.”); *id.* at 72 (“During the course of the year, enough states ratified the Twelfth Amendment, separating the Electoral College ballots for president and vice president, to put it into effect for this election.”); see also MEACHAM, *supra* note 2, at 299-300.

698. MAYER, *supra* note 4, at 296 (“The generally strict theory of interpretation that Jefferson applied to the federal Constitution had as its corollary an emphasis on explicit change through amendment, rather than accommodation through interpretation, as the vehicle for adding to federal powers, as his proposals with respect to the Louisiana Purchase and internal improvements, for example, indicate.”); *id.* at 218 (explaining that Jefferson included public education within his concept of internal improvements to be supported by the federal government).

to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present: and 40 years of experience in government is worth a century of book-reading: and this they would say themselves, were they to rise from the dead.”⁶⁹⁹

Had Jefferson realized how difficult it would be to amend the Constitution throughout subsequent generations,⁷⁰⁰ he may have embraced the flexible constitutional construction⁷⁰¹ by the judicial branch that he embraced by the executive and legislative branches of government, as demonstrated above. Moreover, he may have trusted the judicial branch when it finally came under predominantly Republican-appointed judicial officers, or at least under avowedly independent judicial officers, as opposed to the Federalist-packed judiciary left by the Adams administration, against which he frequently railed.⁷⁰²

Members of the founding generation held divergent views about the type of country they wanted to create upon declaring independence from Britain, as well as divergent views about the meaning of the Constitution they jointly crafted to shape this country—a Constitution intentionally full of compromises, ambiguities, and gaps left for future generations to fill. Those future generations have continued to shape and mold their interpretations of the Constitution, their government, and their society to fit their evolving times, their enhanced knowledge, their scientific and technological innovations,

699. MEACHAM, *supra* note 2, at 467-68.

700. MAYER, *supra* note 4, at 309 (“Eventually the addition of the Twelfth Amendment to the Constitution resolved the ‘defect’ in the mode of choosing a president that had given rise to the crisis of 1801. This was the last amendment to the United States Constitution in Jefferson’s lifetime; indeed, over sixty years would pass before the addition of the Thirteenth Amendment. This was not as Jefferson would have liked it; several times during and after his presidency he urged amendments to the Constitution.”).

701. *Id.* at 313 (“Perhaps more important than Jefferson’s advocacy or support for particular constitutional amendments was his advocacy of the general principle that constitutional problems ought to be resolved not through ingenious construction—whether as an exercise of executive prerogative, as in the Louisiana Purchase, or as an exercise of judicial interpretation, as in Chief Justice Marshall’s opinion in *McCulloch v. Maryland*—but rather through appeals to the people. He envisioned either an informal process—the will of the people ‘reintegrated’ into the Constitution through the electoral process—or the formal process of constitutional conventions and amendments.”).

702. *Id.* at 257 (“Perhaps no single aspect of Jefferson’s constitutional thought better illustrates the interplay of republicanism and federalism than does his view of the judicial branch of the national government. It certainly is the aspect of his constitutional thought that seems to have changed most dramatically over time. Jefferson’s writings of the 1780s suggest that he reposed ‘great confidence’ in the judiciary as a protector of rights and that he believed in judicial review—or something very much like judicial review—as an effective ‘legal obstacle,’ or ‘legal check,’ against legislative tyranny. At about the time he became president, however, Jefferson apparently switched his position; he criticized the federal judiciary as a ‘stronghold’ of the Federalist party and proposed a theory of concurrent review emphasizing the independent roles of the president and Congress as interpreters of the Constitution. After he retired from the presidency, moreover, Jefferson’s negative opinions of the federal judiciary intensified.”).

their increasingly globalized world, and as Jefferson highlighted, the progress of the human mind.⁷⁰³ Writing to John Adams in their elder years, Jefferson observed:

One of the questions you know on which our parties took different sides, was on the improvability of the human mind, in science, in ethics, in government, etc. Those who advocated reformation of institutions, *pari passu*, with the progress of science, maintained that no definite limits could be assigned to that progress. The enemies of reform, on the other hand, denied improvement, and advocated steady adherence to the principles, practices and institutions of our fathers, which they represented as the consummation of wisdom, and *akmé* of excellence, beyond which the human mind could never advance. Altho' in the passage of your answer alluded to, you express disclaim the wish to influence the freedom of enquiry, you predict that that will produce nothing more worthy of transmission to posterity, than the principles, institutions, and systems of education received from their ancestors. I do not consider this as your deliberate opinion. You possess, yourself, too much science, not to see how much is still ahead of you, unexplained and unexplored. Your own consciousness must place you as far before our ancestors, as in the rear of our posterity.⁷⁰⁴

Jefferson initially purported to loath an energetic federal government that President George Washington, Alexander Hamilton, John Adams, and others installed during the first twelve years of the new republic, claiming that doing so ran against the original intention of the Revolutionary War.⁷⁰⁵ However, apparently the original intention of many of the Founding Fathers—such as Washington, Hamilton, and Adams—was indeed to embrace an energetic federal government.⁷⁰⁶ As demonstrated by these contrasting

703. APPLEBY, *supra* note 11, at 155. In Jefferson's correspondence with Adams during their final years, Jefferson insisted that their differences: "split on the question of 'the improvability of the human mind, in science, in ethics, in government.' 'Those who advocated reformation of institutions, *pari passu*, with the progress of science maintained that no definite limits could be assigned to that progress,' he added." *Id.*; see also Stacey Schiff, *Foreword* to MEACHAM, *supra* note 2 ("Jon Meacham resolves the bundle of contradictions that was Thomas Jefferson by probing his love of progress and thirst for power. Here was a man endlessly, artfully intent on making the world something it had not been before.").

704. WILLS, *supra* note 3, at xxiii.

705. ELLIS, *supra* note 3, at 210 ("Jefferson . . . objected to the creation of an energetic national government on the ground that it violated the original intentions of the American Revolution.").

706. Of course, one must remain cautious about claiming to truly know and understand the "original intentions" of the founders. See ONUF, *supra* note 13, at 2-3 ("The historian's role is to protect us against facile appropriations of the past to serve present purposes, to challenge the assumption that the founders' 'original intentions'—whether they are supposed to be 'liberal' or 'conservative'—can be fully known and should be authoritative guides to future action."). And as this

views, any claim that there was one original intention driving the founders of the United States or the framers of the Constitution is clearly misplaced.⁷⁰⁷ Disagreements in constitutional interpretation among Republicans and Federalists were rooted in assertions of power between these differing groups of Founding Fathers, many of whom had originally helped draft the Constitution and participated in the debates surrounding its ratification. Each party had a vested interest in adopting a flexible interpretive methodology that would reinforce their own positions depending on their changing circumstances, which invariably continued to shift depending on whether they were the party in power or in the opposition. Therefore, many Founding Fathers originally anticipated and employed a flexible interpretation of the Constitution, instead of envisioning an ossified and inflexible interpretive stance. Furthermore, the Constitution does not include within its text any mandate to choose one particular methodology of interpretation over another, thereby in itself allowing for flexibility in its interpretation.⁷⁰⁸

Despite Jefferson's initial skepticism about party politics, he reluctantly resigned himself to their reality.⁷⁰⁹ Indeed, "[t]he Founders' dream of a nation beyond partisanship was one that simply could not survive the very nature of a free politics in a culture of diverse interests."⁷¹⁰ Perhaps Jefferson's Declaration dream of one people united would not engender unification around political or policy preferences, but instead unification around faith in the Constitution's promise to create a free and self-governing society allowing people to debate and decide among those disparate goals as they continue progressing forward toward a more perfect union.

article helps demonstrate, different founders invariably had different intentions when it came to the Constitution and its meaning and application.

707. See Colby, *supra* note 444, at 720-21; see also *supra* note 444 and accompanying text.

708. For example, Chief Justice John Marshall's point in *McCullough v. Maryland* notes that the nature of the Constitution "requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American Constitution is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations found in the ninth section of the 1st article introduced? *It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation.*" See *McCulloch v. Maryland*, 17 U.S. 316, 407 (1819) (emphasis added).

709. MEACHAM, *supra* note 2, at 319 ("Jefferson . . . was coming to a more settled view of the nature of faction. 'In every free and deliberating society, there must from the nature of man be opposite parties, and violent dissensions and discords; and one of these for the most part must prevail over the other for a longer or shorter time . . . Perhaps this party division is necessary to induce each to watch and debate to the people the proceedings of the other.'"); see also MAYER, *supra* note 4, at 117 ("[I]t seems that he came close to accepting the dynamics underlying a two-party system.").

710. MEACHAM, *supra* note 2, at 373.

As reflected on the wall of the Jefferson Memorial in Washington, D.C., Thomas Jefferson celebrated the continual evolution of knowledge, progress, human rights, and constitutional governance:

I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.⁷¹¹

Jefferson's authorship of the Declaration of Independence, as well as his kaleidoscopic interpretation of the United States Constitution throughout his different roles as one of our nation's preeminent Founding Fathers, reflect his belief in the continual progress of humanity and progress of the United States toward that more perfect union of one people, who collectively form the backbone, heart, and spirit of our nation.⁷¹² Despite all of his public travails, and despite all of his personal tragedies, Jefferson resolutely maintained to the end his optimistic faith in the American people and the basic goodness of the world.⁷¹³ Although the Constitution is not perfect, it provides a shining

711. *Quotations on the Jefferson Memorial*, MONTICELLO, <https://www.monticello.org/encyclopedia/quotations-jefferson-memorial> [<https://perma.cc/Y7M3-GY8Q>] (last visited Apr. 5, 2026) (providing the quote shown on the southeast wall of the Jefferson Memorial in Washington, D.C.). The original passage is provided as follows:

I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.

Id. (quoting Jefferson to H. Tompkinson (AKA Samuel Kercheval), July 12, 1816).

712. MEACHAM, *supra* note 2, at 315 ("Jefferson's vision for the United States was expansive. The work was never done, of course, however strong the performance of a particular era.")

713. *Id.* at 467 ("I think, with you, that it is a good world on the whole; that it has been framed on a principle of benevolence, and more pleasure than pain dealt out to us," Jefferson wrote Adams in 1816. . . . Jefferson believed in the future, and why not? His own lifetime was testament to the possibility of political and intellectual progress. The past, he thought, should hold no magical, unexamined claim over the present.")

beacon of hope for us to move forward as one people striving together through our democratic republic system of governance. And as Thomas Jefferson concluded, “we must be contented to travel on towards perfection, step by step.”⁷¹⁴

714. *Id.* at 214 (“Jefferson decided to make his peace with the Constitution as drafted. ‘There are indeed some faults which revolted me a good deal in the first moment: but we must be contented to travel on towards perfection, step by step,’ he wrote in May 1788. This was a key element of Jefferson’s vision: He wrote beautifully of the pursuit of the perfect, but he knew good when he saw it. He would not make the two enemies.”).