

Jefferson: A Paradox

Presentation Documents

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This packet contains four primary source documents that will be used as part of the presentation on Jefferson as a paradox. The documents will be used to illustrate the changing nature of Jefferson's political philosophy from the early republic through his presidency.

Jefferson's Opinion on the Constitutionality of the Bank of the US

1791

... I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.

They are not among the powers specially enumerated: for these are: 1st. A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2d. "To borrow money." But this bill neither borrows money nor ensures the borrowing it. The proprietors of the bank will be just as free as any other money holders, to lend or not to lend their money to the public. The operation proposed in the bill, first to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

3. To regulate commerce with foreign nations, and among the States, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank, creates a subject of commerce in its bills; so does he who makes a bushel of wheat, or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State, (that is to say of the commerce between citizen and citizen,) which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trade, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes ad libitum for any purpose they please; but only to pay the

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

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

2. The second general phrase is, "to make all laws necessary and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not necessary, and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the means which are "necessary," not those which are merely "convenient" for effecting the enumerated powers : If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to every one, for there is not one which ingenuity may not torture into a convenience in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the necessary means, that is to say, to those means without which the grant of power would be nugatory.

Kentucky Resolution

1799

RESOLUTIONS IN GENERAL ASSEMBLY

THE representatives of the good people of this commonwealth in general assembly convened, having maturely considered the answers of sundry states in the Union, to their resolutions passed at the last session, respecting certain unconstitutional laws of Congress, commonly called the alien and sedition laws, would be faithless indeed to themselves, and to those they represent, were they silently to acquiesce in principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended be as unnecessary as unavailing.

We cannot however but lament, that in the discussion of those interesting subjects, by sundry of the legislatures of our sister states, unfounded suggestions, and uncandid insinuations, derogatory of the true character and principles of the good people of this commonwealth, have been substituted in place of fair reasoning and sound argument. Our opinions of those alarming measures of the general government, together with our reasons for those opinions, were detailed with decency and with temper, and submitted to the discussion and judgment of our fellow citizens throughout the Union. Whether the decency and temper have been observed in the answers of most of those states who have denied or attempted to obviate the great truths contained in those resolutions, we have now only to submit to a candid world. Faithful to the true principles of the federal union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumnation.

Least however the silence of this commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or least those of our fellow citizens throughout the Union, who so widely differ from us on those important subjects, should be deluded by the expectation, that we shall be deterred from what we conceive our duty; or shrink from the principles contained in those resolutions: therefore.

RESOLVED, That this commonwealth considers the federal union, upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, annihilation of the state governments, and the erection upon their ruins, of a general consolidated government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those who administer the government, and not the constitution, would be the measure of their powers: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction;

and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy: That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt from what quarter soever offered, to violate that compact:

AND FINALLY, in order that no pretexts or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of federal compact; this commonwealth does now enter against them, its SOLEMN PROTEST.

Approved December 3rd, 1799.

Jefferson's Secret Letter to Congress

January 18, 1803

As the continuance of the act for establishing trading houses with the Indian tribes will be under the consideration of the Legislature at its present session, I think it my duty to communicate the views which have guided me in the execution of that act, in order that you may decide on the policy of continuing it, in the present or any other form, or discontinue it altogether, if that shall, on the whole, seem most for the public good.

The Indian tribes residing within the limits of the United States, have, for a considerable time, been growing more and more uneasy at the constant diminution of the territory they occupy, although effected by their own voluntary sales: and the policy has long been gaining strength with them, of refusing absolutely all further sale, on any conditions; insomuch that, at this time, it hazards their friendship, and excites dangerous jealousies and perturbations in their minds to make any overture for the purchase of the smallest portions of their land. A very few tribes only are not yet obstinately in these dispositions. In order peaceably to counteract this policy of theirs, and to provide an extension of territory which the rapid increase of our numbers will call for, two measures are deemed expedient.

First: to encourage them to abandon hunting, to apply to the raising stock, to agriculture and domestic manufacture, and thereby prove to themselves that less land and labor will maintain them in this, better than in their former mode of living. The extensive forests necessary in the hunting life, will then become useless, and they will see advantage in exchanging them for the means of improving their farms, and of increasing their domestic comforts. Secondly: to multiply trading houses among them, and place within their reach those things which will contribute more to their domestic comfort, than the possession of extensive, but uncultivated wilds. Experience and reflection will develop to them the wisdom of exchanging what they can spare and we want, for what we can spare and they want. In leading them to agriculture, to manufactures, and civilization; in bringing together their and our settlements, and in preparing them ultimately to participate in the benefits of our governments, I trust and believe we are acting for their greatest good. At these trading houses we have pursued the principles of the act of Congress, which directs that the commerce shall be carried on liberally, and requires only that the capital stock shall not be diminished. We consequently undersell private traders, foreign and domestic, drive them from the competition; and thus, with the good will of the Indians, rid ourselves of a description of men who are constantly endeavoring to excite in the Indian mind suspicions, fears, and irritations towards us. A letter now enclosed, shows the effect of our competition on the operations of the traders, while the Indians, perceiving the advantage of purchasing from us, are soliciting generally, our establishment of trading houses among them. In one quarter this is particularly interesting. The Legislature, reflecting on the late occurrences on the Mississippi, must be sensible how desirable it is to possess a respectable breadth of country on that river, from our Southern limit to the Illinois at least; so that we may present as firm a front on that as on our Eastern border. We possess what is below the Yazoo, and can probably acquire a certain breadth from the Illinois and Wabash to the Ohio; but between the Ohio and Yazoo, the country all belongs to the Chickasaws, the most friendly tribe within our limits, but the most decided against the alienation of lands. The portion of their country most

important for us is exactly that which they do not inhabit. Their settlements are not on the Mississippi, but in the interior country. They have lately shown a desire to become agricultural; and this leads to the desire of buying implements and comforts. In the strengthening and gratifying of these wants, I see the only prospect of planting on the Mississippi itself, the means of its own safety. Duty has required me to submit these views to the judgment of the Legislature; but as their disclosure might embarrass and defeat their effect, they are committed to the special confidence of the two Houses.

While the extension of the public commerce among the Indian tribes, may deprive of that source of profit such of our citizens as are engaged in it, it might be worthy the attention of Congress, in their care of individual as well as of the general interest, to point, in another direction, the enterprise of these citizens, as profitably for themselves, and more usefully for the public. The river Missouri, and the Indians inhabiting it, are not as well known as is rendered desirable by their connection with the Mississippi, and consequently with us. It is, however, understood, that the country on that river is inhabited by numerous tribes, who furnish great supplies of furs and peltry to the trade of another nation, carried on in a high latitude, through an infinite number of portages and lakes, shut up by ice through a long season. The commerce on that line could bear no competition with that of the Missouri, traversing a moderate climate, offering according to the best accounts, a continued navigation from its source, and possibly with a single portage, from the Western Ocean, and finding to the Atlantic a choice of channels through the Illinois or Wabash, the lakes and Hudson, through the Ohio and Susquehanna, or Potomac or James rivers, and through the Tennessee and Savannah, rivers. An intelligent officer, with ten or twelve chosen men, fit for the enterprise, and willing to undertake it, taken from our posts, where they may be spared without inconvenience, might explore the whole line, even to the Western Ocean, have conferences with the natives on the subject of commercial intercourse, get admission among them for our traders, as others are admitted, agree on convenient deposits for an interchange of articles, and return with the information acquired, in the course of two summers. Their arms and accoutrements, some instruments of observation, and light and cheap presents for the Indians, would be all the apparatus they could carry, and with an expectation of a soldier's portion of land on their return, would constitute the whole expense. Their pay would be going on, whether here or there. While other civilized nations have encountered great expense to enlarge the boundaries of knowledge by undertaking voyages of discovery, and for other literary purposes, in various parts and directions, our nation seems to owe to the same object, as well as to its own interests, to explore this, the only line of easy communication across the continent, and so directly traversing our own part of it. The interests of commerce place the principal object within the constitutional powers and care of Congress, and that it should incidentally advance the geographical knowledge of our own continent, cannot be but an additional gratification. The nation claiming the territory, regarding this as a literary pursuit, which is in the habit of permitting within its dominions, would not be disposed to view it with jealousy, even if the expiring state of its interests there did not render it a matter of indifference. The appropriation of two thousand five hundred dollars, "for the purpose of extending the external commerce of the United States," while understood and considered by the Executive as giving the legislative sanction, would cover the undertaking from notice, and prevent the obstructions which interested individuals might otherwise previously prepare in its way.

Embargo Act

1807

Agreeably to the notice given yesterday; Mr. SMITH, of Maryland. asked and obtained leave to bring in a bill in addition to the act, entitled "An act laying an, embargo on all ships and vessels in the ports and harbors of the United States," and the several acts supplementary thereto, and for other purposes; and the bill was read; and ordered to the second reading. The bill is as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That during the continuance of the, act laying an embargo on all ships and vessels in the ports and harbors of the United States, no vessels of any description whatever, and wherever bound, whose employment is confined to the navigation of bays, sounds, rivers, and lakes, within the jurisdiction of the United States, (packets, ferry-boats, and vessels, exempted from the obligation of giving any bond whatever, only excepted,) shall be allowed, to depart from any port of the United States without having previously obtained a clearance, nor until the master or commander shall have delivered to the collector or surveyor of the port of departure, a manifest of the whole cargo on board, including articles of domestic growth or manufacture, as well as foreign merchandise. And it shall also be the duty of the owners agents, or factors of every such vessel to produce within one month thereafter, to the collector of the district from which the vessel departed, a certificate of the landing of the whole of such cargo in a port of the United States, within the bay, sound, rivers, or lakes, to which the navigation of such vessel is confined, signed by the collector or surveyor, of the port, where the cargo shall have been landed.

Sec. 2. And be it farther enacted, That if any vessel described in the next preceding section, shall depart from a port of the United States without a clearance, ,or before the manifest of the cargo shall have been delivered to the collector or surveyor, in the manner therein prohibited, or if a certificate of the landing of the cargo shall not be produced within the time and in the manner therein provided; such vessel and cargo shall be forfeited, and the owner or owners, consignee, agent, factors, freighters, master or skipper of such vessel, shall respectively forfeit and pay a sum not exceeding thousand dollars, nor less than thousand dollars: Provided always, That nothing herein contained shall be construed to bar or prevent the recovery of the penalty on the bond given for each vessel.

Sec. 3. And be it further enacted, That (luring the continuance of the act, laying an embargo on all ships and vessels in the ports and harbors of the United States, and of the several acts supplementary thereto, it shall be the duty of the master or person having charge or command of any vessel, flat, or boat, intended to that part of the river Mississippi, which lies between the southern boundary of the Mississippi Territory, and the river Iberville, if going down the said river, to stop at Fort Adams, and if going up the river, to stop at Iberville, and at each place, as the case maybe, to deliver to an inspector of the revenue, to be stationed there for that purpose, a manifest of the whole cargo on board, and also to produce within two months thereafter to the same officer, a certificate of the landing of the same in some port of the District of Mississippi, and within the jurisdiction of the United States; which certificate shall be signed by the collector or one of the surveyors of the District of Mississippi, or if the cargo shall

be landed more than thirty miles from the place of residence of any such officer, by a State Or Territorial judge, having jurisdiction, at the place of such landing.

Sec. 4. And be it further enacted, That if any vessel, flat, or boat, shall enter that part of the river Mississippi, as prescribed in the next preceding section, without stopping and delivering a manifest in the manner therein provided, or if a certificate of the landing of the cargo, shall not be produced within the time and in the manner therein provided, such vessel, flat, or boat, and cargo, shall be forfeited , and the owner or owners, consignee, agent, factors, freighters, master, or skipper, of any such vessel, flat, or boat, shall respectively forfeit and pay a sum not exceeding - dollars, nor less than - dollars.

Sec. 5. And be it further enacted, That no ship or vessel, having any cargo whatever on board, shall, during the continuance of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, be allowed to depart from any port of the United States for any other port or district of the United States, adjacent to the territories, colonies, or provinces of a foreign nation: nor shall any clearance be furnished to any ship or vessel bound as aforesaid, without special permission of the President of the United States: And if any ship or vessel shall, contrary to the provisions of that act, proceed to any port or district adjacent to the territories, colonies, or provinces of a foreign nation, such ship or vessel, with her cargo, shall be wholly forfeited; and if the same shall not be seized, the owner or owners, agents, factors, and freighters of such ship or vessel, shall for every such offence forfeit and pay -and the master of such ship or vessel, as well as all other persons who shall knowingly be concerned in such prohibited voyages, shall each respectively forfeit and pay for every such offence, whether the vessel be seized or not.

Sec. 6. And be it further enacted, That the com-manders of the public armed vessels, and gunboats of the United States, shall, as well as commanders or masters of the revenue cutter's and revenue boats; be authorized, and they are hereby authorized, to stop slid examine any vessel, flat, or boat, either on the high seas or within the jurisdiction of the United States, which there. may be reason to suspect to be engag-ed in any traffic or commerce, or in the transportation of merchandise of either domestic or foreign growth or manufacture, contrary to the provisions of this act, or of the act laying an embargo on all ships and vessels in the ports and harbors of tile United States, or of any of the acts supplementary thereto; and if upon examination it shall appear that such vessel, flat, or boat, is thus engaged, it shall be the duty of the commander to seize every such vessel, flat, or boat, and to send the same to the nearest port of the United I States for trial.

Sec. 7. And be it further enacted, That the Comptroller of the Treasury be, and he is hereby authorized to remit the duty accruing on the importation of goods of domestic produce, or which being of foreign produce, had been exported without receiving a drawback, which may have been or may be re-imported in vessels owned by citizens of the United States, and which having sailed subsequent to the first day of October last, and prior to the twenty-second day of December last, may be or have been stopped on the high seas by foreign armed vessels, and by reason thereof have returned, or may Hereafter return into the United States, without having touched at any foreign port or place. And the said Comptroller is likewise authorized to direct the exportation bonds given for foreign merchandise exported with privilege of drawback, in such vessel, and re-exported in the same, in the manner aforesaid, to lie

cancelled, the duties on such re-importation being previously paid. and on such other conditions and restrictions as may be necessary for the safety of the revenue.

Sec. 8. And be it further enacted, That during the continuance of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, no foreign ship or vessel shall go from one port in the United States to another; and should any foreign ship or vessel, contrary to this section, go from one port of the United States to another the vessel with leer cargo shall be wholly forfeited, and the owner or owners, agent, factors, freighters, and master of such ship or vessel, shall forfeit and pay a sum not exceeding ----- dollars, nor less than ---dollars.