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Thomas Jefferson, Coercion, and the Limits of Harmonious Union

By BRIAN STEELE

DURING THE WINTER OF 1860–1861, PRESIDENT JAMES BUCHANAN, facing what would prove to be the great crisis of the Union, argued, on the one hand, that secession was illegal and unconstitutional and, on the other, that the federal government had no constitutional right to coerce the seceded states back into the Union. Even if coercion were constitutional, Buchanan argued, it would violate the spirit of the Union for the remaining states to make war on the others. The Union had to remain alive in the affections of the people, and their support could not be forced by arms.¹ Buchanan's argument paid silent homage to Thomas Jefferson's original notion of a voluntary union based on consent, affection, and interest rather than force.² So it seems natural

¹ James Buchanan, "Message of the President of the United States," *Congressional Globe*, 36 Cong., 2 Sess., Appendix, 1–4 (December 3, 1860). I would like to thank *Journal of Southern History* readers Richard B. Bernstein and Stuart Leibiger, as well as two anonymous readers, for their assistance in improving this article. I would also like to thank Peter Onuf, whose comments on this paper at the 2006 meeting of the Society for Historians of the Early American Republic in Montreal proved invaluable; Kris Ray, who organized the session and offered perceptive criticism of the paper; Andrew O'Shaughnessy, who chaired the session; and session participants whose questions and comments sparked a good deal of reflection, particularly Christine Coalwell McDonald and William Shade. Adam Tuchinsky, Harry Watson, Don Higginbotham, and David Voelker read and commented on various drafts of this article and vastly improved the final product.

² On this idea see, above all, Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville, 2000), esp. 38, 45, and 53–146. "The consent of equals" was, for Jefferson, "predicated on the absence of coercion." *Ibid.*, 138. See also Onuf, "The Expanding Union," in David Thomas Konig, ed., *Devising Liberty: Preserving and Creating Freedom in the New American Republic* (Stanford, 1995), 50–80; and the succinct statement in James E. Lewis Jr., *The American Union and the Problem of Neighborhood: The United States and the Collapse of the Spanish Empire, 1783–1829* (Chapel Hill, 1998), 20. Also see Thomas Jefferson (hereinafter TJ in citations to his correspondence) to James Madison, December 16, 1786, and December 28, 1794, in James Morton Smith, ed., *The Republic of Letters: The Correspondence between Thomas Jefferson and James Madison, 1776–1826* (3 vols.; New York, 1995), I, 458; II, 867; and TJ to Joseph Priestley, January 29, 1804, in Andrew A. Lipscomb and Albert Ellery Bergh, eds., *The Writings of Thomas Jefferson* (20 vols., library ed.; Washington, D.C., 1903–1904), X, 447. This concept of the Union as rooted in affection rather than coercion, though associated with

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to assume that Buchanan's response to the crisis would approximate Jefferson's own, had he lived to see it. Many historians go further and suggest, with Joseph J. Ellis, that had he lived, "Jefferson would have gone with the Confederacy."³

Of course, there is no DNA test to reconcile the counterfactual problem of what Jefferson "would have" done. But it seems worth reevaluating Jefferson's views based on his response to some of the greatest crises of union during his own lifetime. Admittedly, these

Jefferson, was hardly unique to him. Consider, as one particularly ironic example, William H. Seward, who in 1848 proclaimed, "This Union must be a voluntary one, and not compulsory. A Union upheld by force would be despotism." Seward, "The Election of 1848," October 26, 1848, in George E. Baker, ed., *The Works of William H. Seward* (5 vols.; New York, 1853–1884), III, 293. See, generally, Paul C. Nagel, *One Nation Indivisible: The Union in American Thought, 1776–1861* (New York, 1964), esp. 69–103.

³ The quotation is from the fifty-seventh minute of the recording of a talk by Ellis at the Massachusetts Historical Society, December 16, 2004, available at http://www.cspanarchives.org/library/index.php?main_page=product_video_info&products_id=184902-1&highlight=184902-1 (accessed August 12, 2008). Also see Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation* (New York, 2000), 199–200; and Cynthia A. Kierner, "Sex, Science, and Sensibility at Jefferson's Monticello," *Reviews in American History*, 33 (September 2005), 333–40. Kierner writes that "everything we know about Jefferson's politics suggests that in 1861 he would have cast his lot with slavery and secession under the guise of states' rights." *Ibid.*, 338. Of course, some of Jefferson's grandsons did follow this logic out of the Union. Thomas Jefferson Randolph was a Confederate supporter, and George Wythe Randolph served briefly as the Confederate secretary of war after voting twice for secession at the Virginia secession convention. William G. Shade, *Democratizing the Old Dominion: Virginia and the Second Party System, 1824–1861* (Charlottesville, 1996), 290; George Green Shackelford, "Randolph, George Wythe," in John A. Garraty and Mark C. Carnes, eds., *American National Biography* (24 vols.; New York, 1999), XVIII, 125–26; Shackelford, *George Wythe Randolph and the Confederate Elite* (Athens, Ga., 1988), esp. 44–58, 67. Obviously they believed themselves to be honoring Jefferson's legacy. My point here is not so much to dispute that implied claim as to suggest that Abraham Lincoln's coercion of the seceded states has Jeffersonian roots also. Other Jefferson descendants apparently took this latter line, including his great-grandson Major Sydney Coolidge (son of Ellen Wayles Randolph Coolidge), who was killed at Chickamauga fighting for the Union, as well as four of Jefferson's grandsons through Sally Hemings who fought for the Union. Beverly Jefferson, son of Eston Hemings, served briefly in the Union army, while his brother, John Wayles Jefferson, was wounded at Vicksburg and Corinth and reached the rank of lieutenant colonel. Eston's sons fought as whites, while two of Madison Hemings's sons (Thomas Eston and William Beverly) fought for the Union as blacks. Thomas Eston died in a Confederate prison during the war. See Henry Beebe Carrington, "Winfield Scott's Visit to Columbus," *Ohio History*, 19 (July 1910), 278–91, esp. 290; and Fawn M. Brodie, "Thomas Jefferson's Unknown Grandchildren: A Study in Historical Silences," *American Heritage*, 27 (October 1976), 28–33 and 94–99. Another son of Ellen Wayles Coolidge, Thomas Jefferson Coolidge, spent his life as a Boston financier and supported the Union in the war, which he spent managing one of his father-in-law's textile firms. See *The Autobiography of T. Jefferson Coolidge, 1831–1920* (Boston, 1923); and Nancy Gordon, "Coolidge, Thomas Jefferson," in Garraty and Carnes, eds., *American National Biography*, V, 425–27. It is entirely possible, of course, that Jefferson, had he lived (itself quite a counterfactual leap), would have felt and embraced what Paul D. H. Quigley calls "the key element in the acceptance of secession and national independence for the South": "a sense of shared victimhood at the hands of a hostile North" and the felt intrusion of this "northern threat into the realm of the domestic and the personal." See Quigley, "Patchwork Nation: Sources of Confederate Nationalism, 1848–1865" (Ph.D. dissertation, University of North Carolina at Chapel Hill, 2006), 18 (second quotation), 154 (first and third quotations). In any case, Jefferson's legacy embraces multiple (and sometimes mutually antagonistic) heirs.

episodes were less consequential than the crisis of 1860–1861, because disunion ultimately failed in the earlier examples. Nevertheless, Jefferson's response to them, as well as his conception of union generally, suggests a different conclusion than the standard view: Jefferson believed that the executive had the duty to enforce federal law throughout the Union and that the Union had a natural right to coerce seceding states and force them back into the fold.

To be sure, Jefferson's Kentucky Resolutions have been understood as giving sanction to later secession movements, and it is not always a simple matter to reconcile Jefferson's views on coercion with his stance in the 1790s. Nevertheless, the Virginia and Kentucky Resolutions did not advocate—or even broach—secession, and there were substantial qualitative differences between them and the later claims made by some New England Federalists and South Carolina nullifiers, despite the claims to Jefferson's legacy made by the latter group in particular.⁴ Much of the way we have thought about and understood

⁴ For an argument that the Kentucky and Virginia Resolutions were expressions of a nationalist movement whose central impulse was to put the nation in charge of the state, see Brian D. Steele, "Thomas Jefferson and the Making of an American Nationalism" (Ph.D. dissertation, University of North Carolina at Chapel Hill, 2003), 208–50. Melvin Yazawa makes the fascinating argument that the resolutions were about *diffusing* secessionist sentiment by forcing Americans to reflect on the central importance and value of the Union to their happiness. See Yazawa, "Dionysian Rhetoric and Apollonian Solutions: The Politics of Union and Disunion in the Age of Federalism," in Eliga H. Gould and Peter S. Onuf, eds., *Empire and Nation: The American Revolution in the Atlantic World* (Baltimore, 2005), 178–96, esp. 191–96. Richard E. Ellis shows that while Jefferson and James Madison "added new elements to the states' rights argument" by providing a kind of intellectual framework and legal road map for future attempts at nullification, their resolutions were "grounded in . . . majoritarian sentiment" and that later efforts that adopted the framework of protest Jefferson and Madison had constructed were for purposes "essentially antithetical to the one for which it had been used up to that time." Federalists in dissent during the Republican ascendancy first "laid bare . . . the disunionist tendencies that might, but also did not have to, be extrapolated from the states' rights argument." The Federalists, along with the South Carolina nullifiers, also essentially decoupled the states' rights discourse from its democratic (majoritarian) origins. Opposition to South Carolina nullification, Ellis shows, came from "nationalists" like Daniel Webster who rejected the compact theory and, more important, from traditional states' rights Unionists. The latter group embraced the compact theory but believed that the South Carolina doctrine "subverted the democratic assumptions that underlay the states' rights thought that had been associated with the Jeffersonian tradition"; they rejected South Carolina's claim that the states were completely sovereign. Traditional states' rights thought accepted Madison's formulation in *Federalist* 39 that the American political system was "neither wholly *national*, nor wholly *federal*" but contained essential elements of each. Both John C. Calhoun and Webster worked hard to remain faithful to Blackstone's concept of undivided sovereignty. Ellis's traditional states' righters, among whom Madison and Jefferson were most prominent, embraced a truer federalism. See Richard E. Ellis, *The Union at Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis* (New York, 1987), esp. 1–12 (first quotation on 5; second quotation on 4; third quotation on 5–6; fourth quotation on 6; fifth quotation on 9; sixth quotation on 10); Ellis, "The Path Not Taken: Virginia and the Supreme Court, 1789–1821," in A. E. Dick Howard and Melvin I. Urofsky, eds., *Virginia and the Constitution* (Charlottesville, 1992), 24–52, esp. 49–52; and Madison, "Thirty-nine {No. 38 in Newspapers}," in J. R. Pole, ed., *The Federalist* (Indianapolis, 2005), 211 (seventh quotation). On

the 1790s has been distorted by our viewing that period through the lens of later events, particularly those of the 1830s and, especially, 1860–1861.⁵ This essay will focus more narrowly, then, on Jefferson's reflections on the right of the Union to coerce what he sometimes called "refractory sister" states and on what he actually did in the face of perceived threats to union.⁶

Jefferson's thought on the problem of union first took shape during the Confederation period, during and after the Revolution. Jefferson spent a good deal of this period out of the country as American minister to France, attempting to gain commercial concessions. But he was continuously frustrated by the inability of Congress to formulate a coherent commercial policy that would make such a treaty attractive to the French. Repeatedly during this time, Jefferson argued that the Union had the right to coerce states, by force if necessary, to provide revenue to Congress.

The inability of the Confederation government to compel states to provide revenue was one of the problems that would lead to the writing of the Constitution. But Jefferson argued that the Confederation simply needed to act on its natural right to collect taxes. "It has been so often said, as to be generally believed," he complained to Edward Carrington in 1787, "that Congress have no power by the confederation to enforce

the limited appeal of what Ellis calls the "nationalist" argument associated with Daniel Webster, see Kenneth M. Stampp, "The Concept of a Perpetual Union," *Journal of American History*, 65 (June 1978), 5–33, reprinted in Stampp, *The Imperiled Union: Essays on the Background of the Civil War* (New York, 1980), 3–36. For a crucial look at the way Jefferson's resolutions were used in the years after his death, see Merrill D. Peterson, *The Jefferson Image in the American Mind* (2nd ed.: Charlottesville, 1998), 36–66. The compact theory of the Union governed by the law of nations could lead to different kinds of conclusions about the nature of that union. On these connections see Robert E. Shalhope, "Thomas Jefferson's Republicanism and Antebellum Southern Thought," *Journal of Southern History*, 42 (November 1976), 529–56, esp. 537–45; Peterson, *Jefferson Image*, 213–16; and Andrew C. Lenner, "John Taylor and the Origins of American Federalism," *Journal of the Early Republic*, 17 (Autumn 1997), 399–423, esp. 420–22. I also have some sympathy for the expressed confusion of the South Carolina nullifiers over Madison's rejection of the connections they drew between the "principles of '98" and their own doctrine, though I find Madison's explanations generally persuasive. On this problem see Kevin R. Gutzman, "A Troublesome Legacy: James Madison and 'The Principles of '98,'" *ibid.*, 15 (Winter 1995), 569–89. For two examples of the too easy way scholars connect Jefferson's states' rights thought with an embrace of secession, see Cass R. Sunstein, "Constitutionalism and Secession," *University of Chicago Law Review*, 58 (Spring 1991), 633–70, esp. 657; and Forrest McDonald, *States' Rights and the Union: Imperium in Imperio, 1776–1876* (Lawrence, Kans., 2000), 40.

⁵ On this broad point, and for an important corrective view, see Kevin M. Gannon, "Calculating the Value of Union: States' Rights, Nullification, and Secession in the North, 1800–1848" (Ph.D. dissertation, University of South Carolina, 2002); and David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence, Kans., 2003), 154–55.

⁶ See TJ to John Adams, July 5, 1814, in Lester J. Cappon, ed., *The Adams-Jefferson Letters: The Complete Correspondence Between Thomas Jefferson and Abigail and John Adams* (1959; reprint, Chapel Hill, 1987), 432.

any thing, e.g. contributions of money.” But, Jefferson argued, “[i]t was not necessary to give them that power expressly; they have it by the law of nature.” Jefferson explained his reasoning: “When two nations make a compact, there results to each a power of compelling the other to execute it.”⁷ Jefferson had made this point more explicit earlier in his commentary on Jean Nicolas D meunier’s article on the United States in the *Encyclop die M thodique*. Congress was far from “impotent,” Jefferson wrote. Whenever “two or more nations enter into a compact, it is not usual for them to say what shall be done to the party who infringes it. Decency forbids this. And it is as unnecessary as indecent, because the right of compulsion naturally results to the party injured by the breach.” Accordingly, “When any one state in the American Union refuses obedience to the Confederation by which they have bound themselves,” he told D meunier, “the rest have a natural right to compel them to obedience.”⁸ The essential point, Jefferson told Edmund Randolph, was that the Congress did not lack the “coercive powers” most people imagined “to be wanting.” On the contrary, the “law of nature” quite simply gave “one party to an agreement” the authority “to compel the other to performance.”⁹

⁷ TJ to Edward Carrington, August 4, 1787, in Julian P. Boyd et al., eds., *The Papers of Thomas Jefferson* (34 vols. to date; Princeton, 1950–), XI, 678. Note that the editors of *The Papers of Thomas Jefferson* have transcribed the word *nations*, which earlier editors rendered *parties*. See, for example, Paul Leicester Ford, ed., *The Works of Thomas Jefferson* (12 vols., federal ed.; New York, 1904–1905), V, 319.

⁸ Jefferson, “Answers to D meunier’s First Queries,” January 24, 1786, in Boyd et al., eds., *Papers of Thomas Jefferson*, X, 19. Jefferson clearly had commercial objectives in mind here that encouraged him to present a much more sanguine picture to Europeans who might be concerned about the financial stability of a trading partner. To Americans like Carrington and Monroe, Jefferson was less evasive about his frustration with the apparent inability of Congress to compel compliance of the states. For an argument that the Articles of Confederation actually did reject coercion, “embod[ying]” the Revolutionary sense that “voluntary consent and virtuous participation” by the states would ensure liberty, see Christian R. Esh, “‘The Sacred Cause of State Rights’: Theories of Union and Sovereignty in the Antebellum North” (Ph.D. dissertation, University of Maryland, College Park, 2006), 40–58 (quotations on 45).

⁹ TJ to Edmund Randolph, August 3, 1787, in Boyd et al., eds., *Papers of Thomas Jefferson*, XI, 672. Jefferson also seemed not to oppose congressional oversight of new states—even a degree of arbitrary oversight—in the stage of temporary government as outlined in the Ordinance of 1784 and the Northwest Ordinance of 1787. On this point see Robert F. Berkhofer Jr., “Jefferson, the Ordinance of 1784, and the Origins of the American Territorial System,” *William and Mary Quarterly*, 3rd ser., 29 (April 1972), 231–62, esp. 252–53 and 256–58. Jefferson even proposed (as a milder alternative to Madison’s proposed congressional veto over state legislation) the establishment of a federal court of appeals on questions of concern to the Union as a whole. If a state court upheld a state violation of a national treaty, for example, Jefferson said, “An appeal to a federal court sets all to rights” since such a treaty would, of course, “[control] . . . the state law.” Jefferson saw this as a corrective to Madison’s veto since Congress would be able to “watch and restrain” the proposed federal court whereas no such oversight would accompany a congressional veto power. Jefferson endorsed such a plan even while acknowledging the potential for federal “encroach[ment] on the jurisdiction of the state courts.” See TJ to Madison, June 20, 1787, in Boyd et al., eds., *Papers of Thomas Jefferson*, XI, 481.

Jefferson was not trigger-happy. He hoped that the states would comply voluntarily or respond to a kind of congressional soft power. He told George Wythe in 1787 “that some *peaceable* means should be continued for the federal head to enforce compliance on the part of the states.”¹⁰ His most common suggestion along these lines was the development of a navy that could patrol the coast and take “the deficiency of” any state’s “contributions” to the Union out of its “commerce.”¹¹ Bellicose as this idea sounds, Jefferson believed that such a naval force, he told John Adams, would “arm the federal head with the safest of all the instruments of coercion over their delinquent members and prevent them from using what would be less safe.”¹² Earlier, when Adams had argued for negotiation and payment of tribute to the Barbary States, Jefferson countered in favor of war and saw the enhanced coercive power of the Congress as one of the side benefits of outfitting a naval force to fight the so-called pirates in the Mediterranean Sea.¹³ Jefferson certainly remained concerned about the wisdom of giving such coercive power to the “federal head,” which is why he advocated naval rather than land-based military force. He wrote James Monroe that Americans had less need to fear a national coercive force “on . . . the water” than “any other element” because a naval capacity would be, as he told D meunier, “more easy, less dangerous to liberty, and less likely to produce much bloodshed.”¹⁴ And he remained convinced that Congress was right to wait “to the last extremities before it . . . execute[d] any of it’s powers which are disagreeable.”¹⁵

But apparently he feared the inability of Congress to compel “delinquent members” more than he worried about the negative consequences of arming it with such authority. Recounting these dilemmas in his 1821 autobiography, Jefferson remembered that “The fundamental defect of the Confederation was that Congress was not authorized to act immediately on the people, & by it’s own officers. Their power was only requisitory, and these requisitions were addressed to the several legislatures, to be by them carried into execution, without

¹⁰ TJ to George Wythe, September 16, 1787, in Boyd et al., eds., *Papers of Thomas Jefferson*, XII, 128–29, emphasis added.

¹¹ TJ to Edward Carrington, August 4, 1787, *ibid.*, XI, 678. A “single frigate” would do the trick, Jefferson thought: “Compulsion was never so easy as in our case.” *Ibid.*

¹² TJ to John Adams, July 11, 1786, in Cappon, ed., *Adams-Jefferson Letters*, 142.

¹³ Adams to TJ, July 3, 1786, *ibid.*, 138–39.

¹⁴ TJ to James Monroe, August 11, 1786, in Boyd et al., eds., *Papers of Thomas Jefferson*, X, 225; Jefferson, “Answers to D meunier’s First Queries,” January 24, 1786, *ibid.*, 19.

¹⁵ TJ to Edward Carrington, August 4, 1787, *ibid.*, XI, 678–79 (quotation on 679).

other coercion than the moral principle of duty”—a moral claim that was, Jefferson believed, not always sufficient.¹⁶

Accordingly, Jefferson told James Monroe, “There never will be money in the treasury till the confederacy shews it’s teeth. The states must see the rod; perhaps it must be felt by some one of them. I am persuaded all of them would rejoice to see every one obliged to furnish it’s contributions. . . . Every national citizen must wish to see an effective instrument of coercion.”¹⁷ If one party to the compact failed to meet its obligations or broke the compact in some way, in other words, the other party could compel the laggard by force to fulfill its responsibilities. In his clearest statement of this view, Jefferson told Edmund Randolph that “A delinquent state makes itself a party against the rest of the confederacy” and that the offended portion had a natural right to force this delinquent to do its duty.¹⁸

Jefferson’s argument here anticipated James Madison’s in *Federalist* 40 that all Americans understood “the absurdity of subjecting the fate of

¹⁶ Jefferson, “Autobiography,” in Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York, 1984), 71.

¹⁷ TJ to Monroe, August 11, 1786, in Boyd et al., eds., *Papers of Thomas Jefferson*, X, 225. Note that in the first printing of Volume X, quoted here, Boyd transcribed as *national* what Paul L. Ford rendered *rational*. See Ford, ed., *Works of Thomas Jefferson*, V, 150. In the second printing of the Boyd edition, the word was changed to *rational*.

¹⁸ TJ to Edmund Randolph, August 3, 1787, in Boyd et al., eds., *Papers of Thomas Jefferson*, XI, 672. Jefferson used the same language to describe the later Union in his Kentucky Resolutions: each state “acceded” to the compact “as a state, and is an integral party, it’s co-states forming, as to itself, the other party.” Smith, ed., *Republic of Letters*, II, 1080. Scholars often make a great deal of the distinctions between Madison’s Virginia Resolutions and Jefferson’s supposedly more extreme version, which implies that a single state can judge the constitutionality of an act of Congress. But in light of his earlier arguments about the nature of the compact, the implication, at least, is that Jefferson understood that Kentucky’s resolutions would expose the state to the legitimate oversight of the rest of the Union—in other words, that Kentucky was making itself vulnerable to the criticism of the other states. Madison later insisted that it was “inseparable from the nature of a compact, that there is as much right on one side to expound it, and to insist on its fulfilment according to that exposition, as there is on the other so to expound it as to furnish a release from it; and that an attempt to annul it by one of the parties may present to the other an option of acquiescing in the annulment, or of preventing it.” Madison to Nicholas P. Trist, February 15, 1830, in [William C. Rives and Philip R. Fendall, eds.], *Letters and Other Writings of James Madison, Fourth President of the United States* (4 vols.; New York, 1884), IV, 64. Also see Madison to Trist, December 23, 1832, in Gaillard Hunt, ed., *The Writings of James Madison* (9 vols.; New York, 1900–1910), IX, 490: “The essential difference between a free Government and Governments not free, is that the former is founded in compact, the parties to which are mutually and equally bound by it. Neither of them therefore can have a greater right to break off from the bargain, than the other or others have to hold them to it.” Precisely because it was a compact, then, the right to break away was no greater than the right of the other party to compel it to remain. Also see Madison to C. E. Haynes, August 27, 1832, *ibid.*, 483. Harry V. Jaffa’s reading of some of these letters has influenced my understanding of this aspect of Jefferson’s thought on the compact. See especially Jaffa, “Partly Federal, Partly National: On the Political Theory of the American Civil War,” in Jaffa, *The Conditions of Freedom: Essays in Political Philosophy* (Baltimore, 1975), 161–83. See also Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, Md., 2000), 53.

twelve states, to the perverseness or corruption of a thirteenth.” If one small state failed to ratify the Constitution, then a situation would arise, Madison mocked, in which an “inflexible opposition given by a majority of one sixtieth of the people of America” could overrule “the voice of twelve states comprising fifty-nine sixtieths of the people.”¹⁹ Many years later, Madison cited these letters of Jefferson’s to reject asserted connections between Jefferson’s views and South Carolina nullification. Madison marveled at “how closely the nullifiers who make the name of Mr. Jefferson the pedestal for their colossal heresy, shut their eyes and lips, whenever his authority is ever so clearly and emphatically against them.”²⁰

In support of this claim, Madison emphasized Jefferson’s absolutely inflexible devotion to majority rule as the sine qua non of republican government and his reflexive distrust of minority factions in possession of public authority.²¹ As Jefferson wrote William Eustis in 1809, “the fundamental principle of” the “common government” of “sister States” is “that the will of the majority is to prevail.”²² Since the “executive & legislative authorities are the choice of the nation, & possess the nation’s confidence,” Jefferson told William Duane, “it is the duty of the minority to acquiesce & conform” to “measures . . . approved by the majority.”²³ Rule of the majority—“absolute acquiescence in” its “decisions”—is “the vital principle of republics,” and force is “the vital principle and immediate parent of . . . despotism,” Jefferson wrote in

¹⁹ Madison, “Forty {No. 39 in Newspapers},” in Pole, ed., *Federalist*, 216. This language is not unlike that used by Abraham Lincoln during the secession crisis: “By what principle of original right is it that one-fiftieth or one-ninetieth of a great nation, by calling themselves a State, have the right to break up and ruin that nation as a matter of original principle?” Lincoln, “Speech from the Balcony of the Bates House at Indianapolis, Indiana,” February 11, 1861, in Roy P. Basler, ed., *The Collected Works of Abraham Lincoln* (9 vols.; New Brunswick, N.J., 1953–1955), IV, 196.

²⁰ Madison to Nicholas P. Trist, December 23, 1832, in Hunt, ed., *Writings of James Madison*, IX, 491. Also see Madison’s “Notes on Nullification, 1835–1836,” in Marvin Meyers, ed., *The Mind of the Founder: Sources of the Political Thought of James Madison* (rev. ed.; Hanover, N.H., 1981), 428–29n3.

²¹ Madison to ——— Townsend, October 18, 1831, in [Rives and Fendall, eds.], *Letters and Other Writings of James Madison*, IV, 199; Madison, “Notes on Nullification, 1835–1836,” in Meyers, ed., *Mind of the Founder*, 428–29n3.

²² TJ to William Eustis, January 14, 1809, in Ford, ed., *Works of Thomas Jefferson*, XI, 86. Jefferson assured Eustis that “that will [of the majority] has been governed by no local interests or jealousies” during the recent crisis of the embargo, which, he said, was “a legitimate and honest exercise of the will and wisdom of the whole.” *Ibid.*

²³ TJ to William Duane, April 30, 1811, in J. Jefferson Looney, ed., *The Papers of Thomas Jefferson: Retirement Series* (4 vols. to date; Princeton, 2004–), III, 592. As Rogan Kersh has noted, a certain ambiguity surrounded discussion of the specific nature of the obligations of the constituent parts of the Union. But on the general duty of the minority to acquiesce to majority will, Jefferson was remarkably consistent. See Kersh, *Dreams of a More Perfect Union* (Ithaca, 2001), 96.

his first inaugural address. But the two principles—majority rule and force—were not ultimately incompatible. In fact, there is a sense in which they are inseparable. Failure to acquiesce in the will of the majority, Jefferson continued, is an “appeal . . . to force” that must be addressed in some way by the majority.²⁴ As he later told a group of “republican citizens” from Annapolis and Anne Arundel County, Maryland, “Where the law of majority ceases to be acknowledged, there government ends, the law of the strongest takes its place, and life and property are his who can take them.”²⁵ This is not terribly different from Abraham Lincoln’s later reading of this problem: “If the minority will not acquiesce, the majority must, or the government must cease. There is no other alternative; for continuing the government, is acquiescence on one side or the other.”²⁶

Jefferson believed that minority rejection of majority will was fundamentally a rejection of the principle of equality upon which affectionate union was based. It was a claim for distinction and preference over other equal bodies—states or individuals.²⁷ As Jefferson told Henry Dearborn in 1815, one problem with Massachusetts was that it overestimated its own significance or value in the Union relative to other states. This could be corrected by a humble appreciation that “her Southern brethren are somewhat on a par with her in wisdom, in information, in patriotism, in bravery, and even in honesty.” Massachusetts “would really be great, if she did not think herself the whole.”²⁸

But minority refusal to acquiesce in the will of the majority was more than merely insulting or arrogant. It also was a recipe for chaos. The pursuance of independent policies by some states jeopardized the security of the others by threatening union with a potential unraveling

²⁴ Jefferson, “First Inaugural Address,” March 4, 1801, in Boyd et al., eds., *Papers of Thomas Jefferson*, XXXIII, 151. The *National Intelligencer* reprint adds “the” before “despotism”; Jefferson’s draft manuscript does not. See “Draft of First Inaugural,” March 4, 1801, in Thomas Jefferson Papers (Manuscript Division, Library of Congress, Washington, D.C.). This document is available online at the library’s American Memory website, http://memory.loc.gov/ammem/collections/jefferson_papers/index.html (accessed August 12, 2008). Also see TJ to Alexander von Humboldt, June 13, 1817, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XV, 127, in which Jefferson discusses the “sacred” law of majority rule: “once disregarded, no other remains but that of force, which ends necessarily in military despotism.”

²⁵ TJ to John Gassaway, February 17, 1809, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XVI, 337.

²⁶ Lincoln, “First Inaugural Address—Final Text,” March 4, 1861, in Basler, ed., *Collected Works of Abraham Lincoln*, IV, 267.

²⁷ See Onuf, *Jefferson’s Empire*, 142; and Lenner, “John Taylor and American Federalism,” 422.

²⁸ TJ to Henry Dearborn, March 17, 1815, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIV, 289.

of the federal system. Lincoln, of course, argued in his first inaugural address that “the central idea of secession, is the essence of anarchy,” but he was hardly the first to make this connection.²⁹ The Federalist defense of the Constitution, for one example, had rested to a considerable degree on the frightening assertion that the alternative to union was anarchy.³⁰ But it was Jefferson who perhaps most clearly articulated the view that Lincoln would later echo—that the alternative to union was not peaceable coexistence of neighboring confederacies but genuine Balkanization *avant la lettre* and unending crisis. If “each state” was “sovereign and independent in all things,” Jefferson reflected in 1818, they all “would be eternally at war with each other, & would become at length the mere partisans & satellites of the leading powers of Europe.”³¹ National existence, it followed, depended on union. Secession was madness, he told John Taylor, who had advocated the merger of Virginia and North Carolina into a separate confederacy. Jefferson, counseling patience, outlined the evils of secession:

if on a temporary superiority of the one party, the other is to resort to a scission of the union, no federal government can ever exist. if to rid ourselves of the present rule of Massachusetts & Connecticut, we break the union, will the evil stop there? suppose the N. England states alone cut off, will our natures be changed? are we not men still to the South of that, & with all the passions of men? immediately we shall see a Pennsylvania & a Virginia party arise in the residuary confederacy, and the public mind will be distracted with the same party spirit. what a game too will the one party have in their hands by eternally threatening the other that unless they do so & so, they will join their Northern neighbors. if we reduce our Union to Virginia & N. Carolina, immediately the conflict will be established between the representatives of these two states, and

²⁹ Lincoln, “First Inaugural Address—Final Text,” March 4, 1861, in Basler, ed., *Collected Works of Abraham Lincoln*, IV, 268.

³⁰ On this point, see especially Alexander Hamilton’s first contributions to the *Federalist*, especially numbers 6–8, as well as two remarkable essays by Peter S. Onuf: “Anarchy and the Crisis of the Union,” in Ronald Hoffman, Peter J. Albert, and Herman Belz, eds., *To Form a More Perfect Union: The Critical Ideas of the Constitution* (Charlottesville, 1992), 272–302; and “State Sovereignty and the Making of the Constitution,” in Terence Ball and J. G. A. Pocock, eds., *Conceptual Change and the Constitution* (Lawrence, Kans., 1988), 78–98. Also see Richard H. Kohn, “The Constitution and National Security: The Intent of the Framers,” in Kohn, ed., *The United States Military under the Constitution of the United States, 1789–1989* (New York, 1991), 64–65; and Hendrickson, *Peace Pact*. Of course, for most Antifederalists, disunion was a lesser threat than that posed by a consolidated national government, which they believed would lead to a civil war as states or regions vied for resources and influence with the central state, which would inevitably favor one over others. Antifederalists turned out to be men of great faith—in the propensity of republics to coexist in harmony in the absence of coercion—after all. Even Federalists, though, generally described the proposed system as a federal one rather than a consolidated national government, suggesting that interest rather than force would hold the states together. See Hendrickson, *Peace Pact*, 12–13.

³¹ Jefferson, “The Anas,” February 4, 1818, in Ford, ed., *Works of Thomas Jefferson*, I, 167.

they will end by breaking into their simple units. . . . who can say what would be the evils of a scission and when & where they would end?³²

Secession—anarchy at home—would weaken America’s example to the world that “a government, so modelled as to rest continually on the will of the whole society, is a practicable government.”³³ More to the point, Jefferson repeatedly suggested, only union would ensure “internal peace, and a political system of our own, independant of that of Europe.”³⁴ The very existence of the independent nation and the republicanism it represented, then, rested in large part upon union, and Jefferson was under no illusions about the “miseris which would follow a separa[t]ion of the States.” Without union, America would become Europe, imitating its “eternal and wasting wars” and “the abject oppression and degradation to which” its people were subject.³⁵

Jefferson’s argument about the natural right of coercion in a compact largely took shape during the Confederation period. But it seems clear that these reflections shaped his view of the union created by the Constitution and provided the framework within which we should consider his views of that union. Many years later, in 1818, Jefferson amended his earlier assertions, classifying the Articles of Confederation with those mere “treaties of alliance” that tend to be “insufficient” to “enforce compliance with their mutual stipulations.” This concession—that in spite of the natural right of parties to a compact or the dictates of international law, the Confederation had proven unable to compel the obligations of delinquent states and for all practical purposes left “each state to become sovereign and independant in all things”—implies a contrast with the federal Constitution and suggests that, in Jefferson’s view, the later compact did represent a transformation in the nature of the relationship between the states and granted the new Union a kind of coercive power beyond that which he had claimed for the Articles.³⁶

³² TJ to John Taylor, June 4, 1798, in Boyd et al., eds., *Papers of Thomas Jefferson*, XXX, 388–89. Also see TJ to James Ogilvie, August 4, 1811, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIII, 70–71. As far as I have seen, Jefferson never once suggested that a state could peaceably leave the Union in opposition to the will of its sister states.

³³ TJ to Richard Rush, October 20, 1820, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XV, 283–84. Jefferson went on in this letter to predict for Rush that a separation of states would be “for a short term only; two or three years’ trial will bring them back, like quarrelling lovers to renewed embraces, and increased affections. The experiment of separation would soon prove to both that they had mutually miscalculated their best interests.”

³⁴ Jefferson, “The Anas,” February 4, 1818, in Ford, ed., *Works of Thomas Jefferson*, I, 167.

³⁵ TJ to James Ogilvie, August 4, 1811, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIII, 70.

³⁶ Jefferson, “The Anas,” February 4, 1818, in Ford, ed., *Works of Thomas Jefferson*, I, 167.

To be sure, Jefferson's ideal was harmonious union based on affection and interest; the necessity of coercion indicated a failure on some level of this ideal. Jefferson's entire project recoiled at the thought of coercion of individuals, states, or foreign nations. As he told George III in *A Summary View of the Rights of British America*, "force cannot give right," and in Jefferson's own first inaugural address he called force "the vital principle and immediate parent of . . . despotism."³⁷ After the Revolution, Jefferson told Madison that new states in the West would remain united with the original union only as the Confederation managed "their interests honestly and for their own good. . . . A forced connection is neither our interest nor within our power."³⁸ This sensibility also informed Jefferson's view of relations between individuals, including marriage partners. It would be "[c]ruel," he once noted in a set of reflections on divorce, "to continue by violence an union made at first by mutual love, but now dissolved by hatred." "No partnership," he suggested, "can oblige continuance in contradiction to it's end and design."³⁹ Even war with foreign nations was to be a last resort: "Those *peaceable coercions* which are in the power of every nation, if undertaken in concert and in time of peace, are more likely [than force] to produce the desired effect."⁴⁰

Perhaps the clearest statement of Jefferson's horror of coercion comes in his Statute for Religious Freedom: "all attempts to influence [the human mind] by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend it by its influence on reason alone."⁴¹ Confirming the general ideal, Jefferson wrote Richard Rush in 1820: "a government of reason is better than one of force."⁴²

³⁷ Jefferson, "Draft of Instructions to the Virginia Delegates in the Continental Congress," July 1774, in Boyd et al., eds., *Papers of Thomas Jefferson*, I, 134 (first quotation); Jefferson, "First Inaugural Address," *ibid.*, XXXIII, 151 (second quotation).

³⁸ TJ to Madison, December 16, 1786, in Smith, ed., *Republic of Letters*, I, 458.

³⁹ Frank L. Dewey, "Thomas Jefferson's Notes on Divorce," *William and Mary Quarterly*, 3rd ser., 39 (January 1982), 212–23 (first and second quotations on 216; third and fourth quotations on 218). Dewey suggests that Jefferson drafted these notes between May 1771 and December 1772.

⁴⁰ TJ to Robert R. Livingston, September 9, 1801, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, X, 281–82, emphasis added. On this point also see Reginald C. Stuart, *The Half-way Pacifist: Thomas Jefferson's View of War* (Toronto, 1978).

⁴¹ See Jefferson's draft, "A Bill for Establishing Religious Freedom," in Peterson, ed., *Thomas Jefferson: Writings*, 346.

⁴² TJ to Rush, October 20, 1820, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*,

Jefferson was well aware, however, that claims to sovereignty must at some point be backed up, by force if necessary—that, as James J. Sheehan has put it recently, “States can survive only as long as they retain the ability to keep on making claims.”⁴³ As governor of Virginia, for example, Jefferson expressed his associationist ideal—“it is inconsistent with the spirit of our Laws and constitution to force tender consciences”—in the midst of a proclamation whose very purpose was to compel citizens of Virginia to choose sides in the war and fulfill “the duties they owe to their country while remaining in it.”⁴⁴ Suggestive too are distinctions Jefferson made between “a separate State,” “a county of a State,” and “*a mere voluntary association*, as those of the Quakers, Dunkars, Menonists.” Only voluntary associations did Jefferson explicitly shield from coercion: “If merely a voluntary association, the submission of its members will be merely voluntary also; as no act of coercion would be permitted by the general law.” A county, in contrast, “must be subject to those [laws] of the State of which it is a part.” States presumably, by implication, would also maintain an obligation to the Union, enforceable by violence if it came to that.⁴⁵ Coercion, then, was less a violation of Jefferson’s concept of union than a natural though undesirable part of it.

Jefferson understood quite clearly what Reinhold Niebuhr later criticized twentieth-century interwar liberals for forgetting: “While no state can maintain its unity purely by coercion neither can it preserve itself without coercion.” This “coercive factor” may remain latent in societies with an institutional commitment to justice, so that it “becomes apparent only in moments of crisis,” but nevertheless coercion “is never absent.”⁴⁶ Ultimately, as David C. Hendrickson has noted in another context, the “proposition that America could not [or should not] be governed by force” was for Jefferson no proof “that it could be

XV, 284. This letter, nevertheless, does display Jefferson’s full awareness of the tensions between this ideal and the potential need for coercion. Gerald Stourzh offers a relevant and compelling statement of the tension between this kind of ideal—government by reason, cooperation, and love rather than force—and the unfortunate necessity of coercion. See Stourzh, *Benjamin Franklin and American Foreign Policy* (2nd ed.; Chicago, 1969), 1.

⁴³ James J. Sheehan, “The Problem of Sovereignty in European History,” *American Historical Review*, 111 (February 2006), 1–15 (quotation on 3).

⁴⁴ “Proclamation concerning Paroles, By his Excellency, Thomas Jefferson, esqr., Governor of the Commonwealth of Virginia: A Proclamation,” January 19, 1781, in Boyd et al., eds., *Papers of Thomas Jefferson*, IV, 403–4 (quotations on 404).

⁴⁵ TJ to William Lee, January 16, 1817, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XV, 101–2 (quotations on 102), emphasis added.

⁴⁶ Reinhold Niebuhr, *Moral Man and Immoral Society: A Study in Ethics and Politics* (Louisville, 2001), 3–4.

governed *without* force . . .”⁴⁷ In other words, force, perhaps paradoxically, was latent in the very concept of union. In any case, there is no basis for the received wisdom that Jefferson simply refused to acknowledge any tension between the spiritual appeal of union and the potential necessity of coercion.⁴⁸ Even marriage, which Jefferson was loath to continue by force, was, he admitted, more complicated than it first had seemed. “When 2 have become joint traders for life,” he noted by way of illustration, “neither can take his stock out without consent of other.” Even if “both consent,” Jefferson suggested, it would be “Impolitic to allow divorce on consent of parties.” Though the meaning of “impolitic” here is somewhat ambiguous, the implication seems to be that there was something problematic or troubling about allowing divorce even by mutual consent.⁴⁹

Compacts between nations were likewise “obligatory on them by the same moral law which obliges individuals to observe their compacts.” Circumstances may “excuse . . . non-performance” of obligations when, for example, the fulfillment “becomes *impossible*” or “*self-destructive*,” in which case “the law of self-preservation overrules the laws of obligation to others.” But nothing in the law of nature or of nations permitted annulment of obligations merely because their performance becomes ““dangerous, useless, or disagreeable.”” Jefferson acknowledged that violation of a compact may become permissible “under certain degrees of *danger*,” but such danger “must be imminent, and the degree great.” Otherwise the “Obligation is not suspended.” It was never “the *possibility of danger*, which absolves a party from his contract: for that possibility always exists, and in every case.” The failure of one nation to comply with a compact “without just cause or compensation” was, Jefferson suggested, “a cause of war.”⁵⁰

Much has been made of Jefferson’s embrace of Shays’s Rebellion in western Massachusetts, but Jefferson (comfortably distant in France)

⁴⁷ The quotation is from Hendrickson’s description of Edmund Burke’s opposition to Britain’s prosecution of the American Revolution in Hendrickson, *Peace Pact*, 91.

⁴⁸ See, for example, Nagel, *One Nation Indivisible*, 98.

⁴⁹ Dewey, “Thomas Jefferson’s Notes on Divorce,” 218. Compare this statement with Lincoln’s argument that true “lovers of the Union” understood that preservation of the Union might require “coercion or invasion” of a state. Otherwise, “the means for the preservation of the Union” would be “of a very thin and airy character,” and “the Union, as a family relation,” Lincoln suggested, “would not be anything like a regular marriage at all, but only as a sort of free-love arrangement . . . to be maintained on what that sect calls passionate attraction.” Lincoln, “Speech from the Balcony of the Bates House at Indianapolis, Indiana,” February 11, 1861, in Basler, ed., *Collected Works of Abraham Lincoln*, IV, 195.

⁵⁰ Jefferson, “Opinion on the Treaties with France,” April 28, 1793, in Boyd et al., eds., *Papers of Thomas Jefferson*, XXV, 609–10 (first through tenth quotations), 613 (eleventh and twelfth quotations).

celebrated only the vigilance and public-spiritedness of the American people. He never endorsed the “motives” or methods of the insurgents. These, he admitted, were “founded in ignorance” and “produced acts absolutely unjustifiable.”⁵¹ Significantly, Jefferson never once suggested that Massachusetts did not have the right or even the duty to suppress the rebellion. On the contrary, his most frequent statement about Shays’s Rebellion, outside the often-cited eloquent statements celebrating the American “spirit of resistance to government” and “general attention to the public affairs,” was a hope that the government would be “mild in [its] punishment of rebellions”—not that the rebellions would succeed.⁵² The only sure “remedy” for such turbulence was to “reclaim” the people “by enlightening them,” that is, by disabusing them of false information and “set[ting] them right as to facts, pardon[ing] and pacify[ing] them.”⁵³ These were surely not the “virgorous measures to quell and suppress” Daniel Shays and his supporters that Abigail Adams endorsed, but they were a way of carefully defusing a misguided and ignorant resistance to civil government in a way that would not also crush the manifested spiritedness Jefferson valued.⁵⁴

Shays’s uprising was ultimately pacified in large part, Jefferson believed, because of the “discretion which the malcontents still preserved.” But similarly “tumultuous meetings” in Connecticut and New Hampshire ended because “the body of the people rose in support of government and obliged the malcontents to go to their homes.”⁵⁵ Jefferson’s endorsement of the attention to public affairs by people on both sides of the issue (even the rebels whom he believed to be misinformed) was never a suggestion that the appropriate government should not take action to pacify rebellion. Patience, transparency, and education were the weapons Jefferson preferred to Abigail Adams’s “broadsword” and “Light horse” in these cases, but both approaches were motivated by the desire to quell discontent.⁵⁶

Shays’s Rebellion gave Jefferson “no uneasiness” for a variety of reasons: from the vantage point of despotic Europe, a bit of resistance to authority looked positively refreshing to him.⁵⁷ And the reports he

⁵¹ TJ to William Stephens Smith, November 13, 1787, *ibid.*, XII, 356 (first and second quotations); TJ to James Madison, January 30, 1787, *ibid.*, XI, 92 (third quotation).

⁵² TJ to Abigail Adams, February 22, 1787, *ibid.*, XI, 174 (first quotation); TJ to James Madison, January 30, 1787, *ibid.*, XI, 93 (second and third quotations).

⁵³ TJ to Edward Carrington, January 16, 1787, *ibid.*, XI, 49 (second and third quotations); TJ to William Stephens Smith, November 13, 1787, *ibid.*, XII, 356 (first and fourth quotations).

⁵⁴ Abigail Adams to TJ, January 29, 1787, *ibid.*, XI, 86.

⁵⁵ TJ to William Carmichael, December 26, 1786, *ibid.*, X, 633.

⁵⁶ Abigail Adams to TJ, January 29, 1787, *ibid.*, XI, 87.

⁵⁷ TJ to James Madison, January 30, 1787, *ibid.*, XI, 93.

received generally assured him that the so-called rebellion was a misconceived (though somewhat justifiable) expression of discontent rather than a full-scale assault on the constituted institutions of society.⁵⁸ “No injury was done . . . in a single instance to the person or property of any one.” The rebellion lasted, he said, less than twenty-four hours and ended largely because the rebels had enough public spirit to back off in the face of majority rejection of their proposals.⁵⁹ So Jefferson’s endorsement of the “spirit of resistance” in this case is not terribly helpful in predicting what Jefferson might do in the face of a more serious challenge to republican institutions or to the Union.

In the Kentucky Resolutions of 1798, Jefferson called the national government a “creature of the compact”—not an original party to it. There is a tendency on the part of historians to associate this compact theory of the Constitution, which Jefferson articulated, with a kind of “take it or leave it” view of the Union. Partly because Lincoln rejected the compact theory and many self-identified advocates of states’ rights seemed to hold such a view, thereby tainting commitment to “states’ rights” with the stain of disunion, the tendency is not altogether misplaced.⁶⁰ But, as Jefferson told William Eustis in 1809, the Union—“the spirit of concord with her sister States”—had “placed us under that national government, which constitutes the safety of every part, by uniting for its protection the powers of the whole.” The national government, in other words, might have been the “creature of the compact,” but it was an umbrella of protection for that very compact, emerging out of the Union and remaining an indispensable part of it, rather than a separate entity to be ignored or discarded at pleasure. Jefferson noted, in fact, that the national government is the instrument through which the states act in their relations with each other.⁶¹

⁵⁸ See, for example, John Adams to TJ, November 30, 1786, *ibid.*, X, 557.

⁵⁹ TJ to William Carmichael, December 26, 1786, *ibid.*, X, 633.

⁶⁰ Jefferson, “Draft of the Kentucky Resolutions,” October 1798, in Peterson, ed., *Thomas Jefferson: Writings*, 453. In the heat of the crisis over South Carolina’s attempted nullification, Andrew Jackson, too, rejected the compact theory as leading inevitably to secession. But as Richard E. Ellis points out, Jackson’s proclamation denouncing nullification failed to distinguish “between states’ rights and state sovereignty.” Ellis, *Union at Risk*, 88. It is worth noting, too, that Jefferson’s theory did not contradict Jackson’s belief that “when a faction in a state attempt to nullify a constitutional law of Congress, or to destroy the Union, the balance of the people composing this Union have a perfect right to coerce them to obedience.” Jackson to John Coffee, December 14, 1832, quoted *ibid.*

⁶¹ TJ to William Eustis, January 14, 1809, in Ford, ed., *Works of Thomas Jefferson*, XI, 85. Also see Jefferson’s “Answers to D emeunier’s First Queries,” January 24, 1786, in Boyd et al., eds., *Papers of Thomas Jefferson*, X, 19, in which Jefferson argues that when a delinquent state makes itself an enemy of its sister states, the other states act upon it through the institution of Congress.

In any case, there is nothing inherent in the compact theory or in strict construction of the Constitution that precludes vigorous enforcement of federal law or an energetic national government. On the contrary, it is precisely as a function of such a theory or constitutional construction that Jefferson prosecuted federal power to its fullest scope—because Jefferson believed that within its clearly prescribed sphere, the federal government should energetically do its duty. Historians have tended to think of strict construction or compact theory as limiting what government can do. Of course, this is an important function of American constitutionalism, and the warmest advocates of compact theory feared unbridled central power most. Strict construction was designed above all to check national consolidation.⁶² But the Constitution also grants considerable energy to government within more or less well-defined limits.⁶³ And in certain hands, the compact theory and strict construction could also be understood to legitimate those powers that were granted to the national government.⁶⁴

State limitation or encroachment on the legitimately prescribed power of the national government, then, would be just as much a violation of the Constitution as the national government's usurpation of powers granted by the Constitution to the states. Accordingly, when Joseph C. Cabell asked Jefferson in 1814 "whether the States can add any qualifications to those which the Constitution has prescribed for their members of Congress," Jefferson's reflexive answer was "that they could not." For a state to "add new qualifications to those of the Constitution, would be as much an alteration as to detract from them."⁶⁵

⁶² This is certainly true of certain Virginia theorists like John Taylor, for whom "[t]he law of nations applied . . . not as a prop for the federal government but as an impediment to its actions." See Lenner, "John Taylor and American Federalism," 412.

⁶³ See the helpful discussion in Richard B. Bernstein, "The Federalist on Energetic Government, 1787–1788," in Stephen L. Schechter, ed., *Roots of the Republic: American Founding Documents Interpreted* (Madison, Wis., 1990), 335–54; and in Daniel Farber, *Lincoln's Constitution* (Chicago, 2003), 33–44. Also see Kohn, "Constitution and National Security," 74. On Jackson's handling of the nullification crisis, see Richard B. Latner, "The Nullification Crisis and Republican Subversion," *Journal of Southern History*, 43 (February 1977), 19–38. On Jefferson's federalism see David N. Mayer, "'Necessary and Proper': West Point and Jefferson's Constitutionalism," in Robert M. S. McDonald, ed., *Thomas Jefferson's Military Academy: Founding West Point* (Charlottesville, 2004), 57–58, 60. A nuanced and compelling case for the overall consistency of Jefferson's constitutionalism (theory and practice) is Mayer, *The Constitutional Thought of Thomas Jefferson* (Charlottesville, 1994), esp. 185–256.

⁶⁴ Even Taylor, for example, "supported assertion of federal power under limited and carefully defined circumstances." Lenner, "John Taylor and American Federalism," 415.

⁶⁵ TJ to Joseph C. Cabell, January 31, 1814, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIV, 82–84 (quotations on 82). Jefferson went on to reconsider his position, eventually concluding that states likely could add such qualifications not explicitly reserved to the nation by

Jefferson's first inaugural address, rightly remembered as a celebration of limited government, illustrates this point as well as any document in the Jefferson archive. Here, Jefferson laid out what he considered to be "the essential principles of our government," one of which was "the 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."⁶⁶ But another of Jefferson's "essential principles" was "the preservation of the General government in its whole constitutional vigor, as the sheet anchor of our peace at home, and safety abroad."⁶⁷ Strict construction of a Jeffersonian variety did limit federal power, but it also realized the full scope of federal power within those limits strictly prescribed. This is why Jefferson and Andrew Jackson (and Madison for that matter) found it necessary to call for constitutional amendments for national programs of internal improvements, on the one hand, but remained unafraid to enforce the embargo on Britain or squash nullification, on the other. All were committed to states' rights, to strict construction, and to limited government, but they nevertheless vigorously enforced federal law and even expanded federal power in certain areas. It is too simplistic to call this range of views contradiction or hypocrisy.

As Jefferson explained in a fascinating letter from early 1798, the state governments and the central government were "like the planets revolving round their common Sun, acting & acted upon according to their respective weights & distances." In its ideal form, Jefferson believed, such a system would "produce that beautiful equilibrium on which our constitution is founded" and would provide the world an example of a government ordered to "a degree of perfection unexampled but in the planetary system itself." The goal of "the enlightened statesman" would be "to preserve the weight & influence of every part, as too much given to any member of it would destroy the general

the Constitution, but the point rests that each sphere had its rightful grant of power that was not to be violated and that Jefferson took both spheres seriously. In instances like these, Jefferson reminded Cabell, "caution requires us not to be too confident, and that we admit this to be one of the doubtful questions on which honest men may differ with the purest motives." In cases "where the line of demarcation between the powers of the General and the State governments was doubtfully or indistinctly drawn, it would be prudent and praiseworthy in both parties, never to approach it but under the most urgent necessity." *Ibid.*, 83–84.

⁶⁶ Jefferson, "First Inaugural Address," in Boyd et al., eds., *Papers of Thomas Jefferson*, XXXIII, 150. Compare Jefferson's statement with Alexander Hamilton's assertion of a similar point in *Federalist* 28: "It may safely be received as an axiom in our political system, that the state governments will in all possible contingencies afford complete security against invasions of the public liberty by the national authority." Hamilton, "Twenty-eight," in Pole, ed., *Federalist*, 150.

⁶⁷ Jefferson, "First Inaugural Address," in Boyd et al., eds., *Papers of Thomas Jefferson*, XXXIII, 150.

equilibrium.” The point here, as it seems to have been in the first inaugural address, was that each of the “planets” has its appropriate “weight & influence” and to grant too much of either to “any member” would wreck the system. This was a prescription both for limits and for energy within the prescribed spheres.⁶⁸

Interestingly, no one understood this of Jefferson better than Alexander Hamilton. In the *Federalist* Hamilton had pointed out that force was a necessary component of the new national government, arguing “that the idea of governing at all times by the simple force of law . . . has no place but in the reveries of those political doctors, whose sagacity disdains the admonitions of experimental instruction.”⁶⁹ But Jefferson, Hamilton knew, was not nearly such a “waverer” or whimsical dreamer as Federalist pamphlet literature suggested.⁷⁰ Hamilton was quick to separate campaign rhetoric from reality during the election crisis of 1801, urging fellow Federalists to understand that Jefferson was far from “an enemy to the power of the Executive” and predicting, rightly it would turn out, that Jefferson would prove himself (as he had in the past) in favor of “a large construction of the Executive authority, & not backward to act upon it in cases which coincided with his views.”⁷¹ Jefferson largely fulfilled

⁶⁸ TJ to Peregrine Fitzhugh, February 23, 1798, *ibid.*, XXX, 130. Jefferson’s metaphor nicely diagrams Madison’s claim in *Federalist* 39 that the U.S. Constitution was “neither wholly national, nor wholly federal,” but “a composition of both.” See Madison, “Thirty-nine {No. 38 in Newspapers},” in Pole, ed., *Federalist*, 211. Madison later argued that the federal system created by the Constitution was “emphatically *sui generis*,” in Madison to Robert S. Garnett, February 11, 1824, in [Rives and Fendall, eds.], *Letters and Other Writings of James Madison*, III, 367. For a recent assessment that endorses Madison’s as a more accurate empirical description of the American system than the ideal concept of unitary sovereignty, see Jack N. Rakove, “Making a Hash of Sovereignty, Part I,” *Green Bag*, 2 (Autumn 1998), 35–44; and Rakove, “Making a Hash of Sovereignty, Part II,” *ibid.*, 3 (Autumn 1999), 51–59. Also see Jefferson’s explicit endorsement of the Constitution’s division of sovereignty in his letter to George Wythe, September 16, 1787, in Boyd et al., eds., *Papers of Thomas Jefferson*, XII, 128.

⁶⁹ Hamilton, “Twenty-eight,” in Pole, ed., *Federalist*, 148.

⁷⁰ For important reflections on this literature, see Jeffrey L. Pasley, “Politics and the Misadventures of Thomas Jefferson’s Modern Reputation: A Review Essay,” *Journal of Southern History*, 72 (November 2006), 871–908, esp. 879–81.

⁷¹ Hamilton to James A. Bayard, January 16, 1801, in Harold C. Syrett, ed., *The Papers of Alexander Hamilton* (25 vols.; New York, 1961–1977), XXV, 319–20. Jefferson’s “views” included strict limits as well as energy, whereas Hamilton’s leaned much more heavily to energy. Hamilton’s suggestion ran counter to the concern of many other Federalists that Jefferson would dismantle executive authority if elected and, in the words of John Marshall, “embody himself in the House of Representatives,” thus “weakening the office of the President” (a claim Hamilton explicitly rejected). Marshall is quoted in Gary J. Schmitt, “Thomas Jefferson and the Presidency,” in Thomas E. Cronin, ed., *Inventing the American Presidency* (Lawrence, Kans., 1989), 326–46 (quotation on 329). Hamilton’s perspicacious view also seems to counter Jefferson’s own admission that he was “not a friend to a very energetic government.” TJ to Madison, December 20, 1787, in Smith, ed., *Republic of Letters*, I, 511–15 (quotation on 514). Close inspection of this letter, however, reveals that Jefferson was referring to a government without

Hamilton's prophecy, leading many historians from Jefferson's day to our own to construe his presidency as a fundamental contradiction. But, as Hamilton himself understood, the paradox was more apparent than real.

Jefferson, Hamilton knew, was not the Peter Pan of much current historical writing, unable to grow up and translate into mature and effective governance his adolescent longing "for a world in which all behavior was voluntary and therefore all coercion unnecessary."⁷² As his presidential career illustrates, Jefferson was hardly under the illusion that union could survive without energy in government. His own rhetoric describing the Revolution as a destruction of artificial barriers to "consensual ties of affection, principle, and common interest" often made union seem natural and spontaneous.⁷³ But this rhetoric tended to mask the "critical role of the state in the progress of settlement and development" and Jefferson's own sense that "[t]he very idea of the nation implies enormous force."⁷⁴ As Peter Onuf has put it, "The paradox of expansion in Jeffersonian America was that a supposedly spontaneous, natural process depended so crucially on the exercise of state power."⁷⁵ If construction and maintenance of the republican legacy embodied in union required so much governance, we could hardly expect Jefferson to meet threats to union with philosophical hand-wringing.

And he did not. During the crisis that unfolded during Aaron Burr's conspiracy (which Jefferson ultimately understood as a plan to separate

clear boundaries, objecting particularly to the lack of a bill of rights and to the lack of term limits for the executive in the proposed Constitution that Madison had outlined for him. Nothing in this traditionally expressed Whig view precludes energetic government within a clearly defined sphere of power—precisely how Jefferson understood the system the Constitution installed. Indeed, Jefferson's primary objection to the Sedition Act of 1798 was that the national legislature had, with this act, taken upon itself powers to criminalize printing that the Constitution had "expressly" taken "out of their coercion"—powers outside its rightful sphere. TJ to Madison, June 7, 1798, *ibid.*, II, 1056.

⁷² Joseph J. Ellis, *American Sphinx: The Character of Thomas Jefferson* (New York, 1997), 59. For similar reflections on what Ellis calls Jefferson's "wholly voluntary world," see *ibid.*, 120, 136 (quotation). Jefferson could be quite supportive of energetic government that pursued ends he believed warranted. Convinced that Madison's tonnage bill (which discriminated against British trade) would pass the House, Jefferson happily described it as "a mark of energy in our government, in a case where I believe it cannot be parried." TJ to Thomas Mann Randolph Jr., May 30, 1790, in Boyd et al., eds., *Papers of Thomas Jefferson*, XVI, 450. Jefferson's endorsement of national "energy" to characterize a measure that was both decidedly un-Hamiltonian and opposed to the interests of southern planters seems ironic only because of a historiography that tends to equate energy with Hamilton and the opposite with Jefferson.

⁷³ Peter S. Onuf, "Thomas Jefferson, Federalist," in Onuf, *The Mind of Thomas Jefferson* (Charlottesville, 2007), 94.

⁷⁴ Peter S. Onuf, "The Revolution of 1803," *ibid.*, 107.

⁷⁵ Peter S. Onuf, "Thomas Jefferson and the Expanding Union," *ibid.*, 116.

the western states from the Union), Jefferson consulted Madison about whether the executive had the authority to use regular troops in cases of domestic insurrection.⁷⁶ When Madison told Jefferson that he did not, Jefferson drafted a bill “authorizing the employment of the land and naval forces of the US. in cases of insurrection” in all situations where the president is authorized to use militia “to suppress such insurrection, or to cause the laws to be duly executed.”⁷⁷ At all times, though, Jefferson hoped that local authorities would suppress the plot and counted on the loyalty and republicanism of the inhabitants of the western states. After the plot failed, the lesson Jefferson took from it was that government was strongest when “every man feels himself a part” of it—the message of the first inaugural. It proved, too, “the importance of preserving to the State authorities all that vigor which the Constitution foresaw would be necessary, not only for their own safety, but for that of the whole.” The “hand of the people” had “given the mortal blow to a conspiracy which, in other countries, would have called for an appeal to armies.”⁷⁸ Federal force thus seemed unnecessary in a union of such harmony and affection.⁷⁹

But if the people of Ohio and Kentucky and Louisiana had not come through, Jefferson was prepared for Burr. In his sixth annual message Jefferson reminded Congress that a benign government directed by the will of the people made “insurrection or enterprise on the public peace or authority” nearly unimaginable. Nevertheless, Jefferson remained unwilling to trust such “moral restraints only” and praised the wisdom of laws that “provided punishments for these crimes when committed.” But even this seemed insufficient to deal with such a conspiracy against the Union. Accordingly, Jefferson encouraged Congress to pass laws giving him the power to prevent even the “commission” of such

⁷⁶ See Dumas Malone, *Jefferson and His Time*. Vol. V: *Jefferson the President: Second Term, 1805–1809* (Boston, 1974), 253.

⁷⁷ TJ to John Dawson, December 19, 1806, document 28595, Jefferson Papers, Library of Congress; also available on American Memory website. Jefferson then told Dawson to rewrite the bill and burn the letter since Jefferson was “very unwilling to meddle personally with the details of the proceedings of the legislature” (though, of course, he was doing just that here!). Jefferson also suggested such a bill in his “Sixth Annual Message” to Congress, December 2, 1806, in Peterson, ed., *Thomas Jefferson: Writings*, 526–27. The Ninth Congress passed this bill in March 1807 under the title “An Act authorizing the employment of the land and naval forces of the United States, in cases of insurrections.” See *Annals of Congress*, 9 Cong., 2 Sess., 1286 (March 3, 1807).

⁷⁸ TJ to Edward Tiffin, February 2, 1807, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XI, 146–47.

⁷⁹ Largely the message of TJ to the Marquis de La Fayette, July 14, 1807, *ibid.*, 278–79; and TJ to DuPont de Nemours, July 14, 1807, *ibid.*, 274–76. For important reflections on the lessons Jefferson drew from the Burr conspiracy, emphasizing the benign nature of the government’s response, see Onuf, *Jefferson’s Empire*, 133–35.

crimes. As much as Jefferson trusted the magnetism of affection and interest to hold the Union together, he nonetheless considered a kind of preemptive suppression of “insurrection” a legitimate function of the national government.⁸⁰

The letters he sent reflecting on the conspiracy likewise suggest his willingness to fall back on federal force if necessary. Jefferson told Charles Clay that Burr’s plans were “effectually crippled by the activity of Ohio” but that “if he is able to descend the river with any means we are sufficiently prepared at New Orleans.”⁸¹ In addition to demonstrating the strength of the people’s affection for the government, the Burr conspiracy also proved a “wholesome lesson too to our citizens, of the necessary obedience to their government.”⁸² So the crushing of the conspiracy turned out to be both evidence of the people’s attachment to the government and a warning that the people had better obey it—evidence both of local ability to crush threats to public safety and of the federal government’s willingness to step in if states failed in their duty.

The same dual lesson applied to Jefferson’s enforcement of the embargo on Britain, which precipitated not only widespread violation of federal law but also calls for secession from the Union among some Massachusetts leaders.⁸³ Throughout the crisis, Jefferson remained committed to enforcement of federal law. He continued to rely on local enforcement—even when proclaiming the Lake Champlain region to be in a state of insurrection, for example, Jefferson initially encouraged the governor of New York to use state militia to put down the unrest.⁸⁴ And as during the Burr crisis, Jefferson counted on republican majorities to suppress the insurgencies of minorities, hoping, for example, that Republicans (and loyal Federalists) in Massachusetts would rally against “mob-law” and “crush it in embryo.”⁸⁵ But Jefferson even-

⁸⁰ Jefferson, “Sixth Annual Message,” December 2, 1806, in Peterson, ed., *Thomas Jefferson: Writings*, 526–27 (quotations on 526).

⁸¹ TJ to Charles Clay, January 11, 1807, in Ford, ed., *Works of Thomas Jefferson*, X, 339.

⁸² TJ to W. C. C. Claiborne, February 3, 1807, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XI, 150–51 (quotation on 151).

⁸³ In addition to Malone, *Jefferson and His Time*, V, esp. 583–657; and Merrill D. Peterson, *Thomas Jefferson and the New Nation: A Biography* (New York, 1970), 874–921, see especially Gannon, “Calculating the Value of Union,” 67–122 (and the many sources cited there).

⁸⁴ Peterson, *Thomas Jefferson and the New Nation*, 890–91. See Jefferson’s “Proclamation” on Embargo Laws, April 19, 1808, in which he “require[d] and command[ed] all officers having authority civil or military, and all other persons civil or military who shall be found within the vicinage of such insurrections . . . by all the means in their power by force of arms or otherwise to quell and subdue such insurrections . . .” (document 31313, Jefferson Papers, Library of Congress; also on American Memory website).

⁸⁵ TJ to Albert Gallatin, August 19, 1808, in Lipscomb and Bergh, eds., *Writings of Thomas*

tually sent regulars to the Canadian border in New York and told his secretary of war that “on the first symptom of an open opposition of the law by force” in Massachusetts, he should “fly to the scene” and “take direction of the public authority on the spot.”⁸⁶ Jefferson expected the people to rally in support of the “public authority.”⁸⁷ But it might prove necessary at some point to institute martial law in Boston and defeat the opposition by use of the regular army.⁸⁸ And when Albert Gallatin, Jefferson’s secretary of the treasury (who was responsible for much of the enforcement), suggested that the success of the embargo would demand granting the president “the most arbitrary powers,” Jefferson agreed: Congress, he said, “must legalize all *means* which may be necessary to obtain it’s *end*.”⁸⁹

Jefferson, XII, 138. Among many other expressions of this sentiment, see the later letter Jefferson sent Horatio G. Spafford, March 17, 1814, *ibid.*, XIV, 120: “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.”

⁸⁶ TJ to Henry Dearborn, August 9, 1808, *ibid.*, XII, 119 (first and second quotations); TJ to Gallatin, August 19, 1808, *ibid.*, 138 (third quotation). These soldiers were part of an expansion of six thousand troops that Jefferson had requested and Congress had granted. On the debate surrounding this expansion (and with predictably gleeful attention to the irony), see Henry Adams, *History of the United States of America during the Administrations of Thomas Jefferson* (New York, 1986), 1071–77.

⁸⁷ TJ to Gallatin, August 19, 1808, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XII, 137–38; and TJ to Robert Smith, August 9, 1808, document 31842, Jefferson Papers, Library of Congress (also on American Memory website). Jerry M. Cooper points out that “[i]n]o president has imposed martial law when interposing force in a civil disorder during peacetime,” so that Jefferson’s suggestion here would have been, if enacted, more expansive than George Washington’s suppression of the Whiskey Rebellion. See Cooper, “Federal Military Intervention in Domestic Disorders,” in Kohn, ed., *United States Military under the Constitution*, 120–50 (quotation on 133). On Jefferson’s views of the latter crisis, see TJ to Madison, December 28, 1794, in Smith, ed., *Republic of Letters*, II, 867–68, which condemns the response as incommensurate with the cause. In this letter, Jefferson does not argue that Washington would not have been justified in his action had the Whiskey Rebellion participants engaged in “any thing more than riotous” behavior “according to the definitions of the law.” It is worth noting that Jefferson’s (and Madison’s) main concern was Washington’s partisan effort to blame the “democratic societies” for the so-called rebellion—an association both denied—and thus to crack down on “freedom of discussion, the freedom of writing, printing and publishing.” In other words, Jefferson’s reaction was not an abstract condemnation of the national use of force in genuine cases of insurrection.

⁸⁸ TJ to Henry Dearborn, August 9, 1808, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XII, 119; and TJ to the Secretary of the Navy, August 9, 1808, *ibid.*, 121. Lipscomb and Bergh list Jacob Crowninshield as secretary of the navy, but Crowninshield, though nominated by Jefferson and approved by the Senate in 1805, never served as secretary of the navy. Robert Smith stayed on in this post. Since Crowninshield died in April 1808, Lipscomb and Bergh were doubly wrong to list him as the recipient of this letter. On the cabinet shuffling in Jefferson’s second term, see Noble E. Cunningham Jr., *The Process of Government under Jefferson* (Princeton, 1978), 70. For a critical examination of Jefferson’s expansive use of the powers granted him to enforce the embargo, see Leonard W. Levy, *Jefferson and Civil Liberties: The Darker Side* (Cambridge, Mass., 1963), 111–20.

⁸⁹ Gallatin to TJ, July 29, 1808, in Henry Adams, ed., *The Writings of Albert Gallatin* (3 vols.; Philadelphia, 1879), I, 399; TJ to Gallatin, August 11, 1808, in Ford, ed., *Works of Thomas Jefferson*, XI, 41.

As Jefferson told Massachusetts governor James Sullivan, Jefferson trusted the “character” of the good people of Sullivan’s state to suppress violations of the embargo, but the laws passed “by the general government” authorized the president “to have the embargo strictly observed, for the general good; and we are sworn to execute the laws.”⁹⁰ It was the sacrifice of the people—their own devotion to the laws—that invigorated Jefferson’s eagerness to enforce those laws. He wrote South Carolina governor Charles Pinckney, “Our good citizens having submitted to such sacrifices under the present experiment, I am determined to exert every power the law has vested in me for its rigorous fulfilment.”⁹¹

Moreover, Jefferson even declared himself willing to go beyond the law, claiming executive prerogative to preserve the nation. “[S]elf-preservation is paramount to all law,” he told a correspondent in 1808. “There are extreme cases where the laws become inadequate even to their own preservation.”⁹² In these cases, he later elaborated, those “who accept of great charges” will “risk themselves on great occasions, when the safety of the nation, or some of it’s very high interests are at stake.”⁹³ This claim to an executive prerogative outside the Constitution forces the president, somewhat paradoxically, to make himself vulnerable to the people even as he goes beyond their explicit grant of authority—to “throw himself,” as Jefferson put it, “on the justice of his country” for the purposes of national self-preservation.⁹⁴

⁹⁰ TJ to James Sullivan, August 12, 1808, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XII, 129. This appeal to his oath of office seems to anticipate Lincoln’s similar argument during the secession crisis: “You have no oath registered in Heaven to destroy the government, while I shall have the most solemn one to ‘preserve, protect and defend’ it.” Lincoln, “First Inaugural Address—Final Text,” March 4, 1861, in Basler, ed., *Collected Works of Abraham Lincoln*, IV, 271. See also Lincoln to Albert G. Hodges, April 4, 1864, *ibid.*, VII, 281–82.

⁹¹ TJ to Charles Pinckney, July 18, 1808, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XII, 104.

⁹² TJ to James Brown, October 27, 1808, *ibid.*, 183. Even here, though, Jefferson fell back on the vigilance of the people. During the Burr conspiracy, Jefferson claimed, “I never entertained one moment’s fear,” and “I as little fear foreign invasion.” *Ibid.*, 184.

⁹³ TJ to John B. Colvin, September 20, 1810, in Looney, ed., *Papers of Thomas Jefferson: Retirement Series*, III, 101. Also see TJ to John C. Breckinridge, August 12, 1803, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, X, 411, which describes a similar prerogative for the legislature during the crisis over the purchase of Louisiana and offers a nice illustration of the process as “the case of a guardian, investing the money of his ward in purchasing an important adjacent territory.”

⁹⁴ TJ to John B. Colvin, September 20, 1810, in Looney, ed., *Papers of Thomas Jefferson: Retirement Series*, III, 101. On this point, see Jeremy David Bailey, “Executive Prerogative and the ‘Good Officer’ in Thomas Jefferson’s Letter to John B. Colvin,” *Presidential Studies Quarterly*, 34 (December 2004), 732–54, esp. 749; and Paul A. Rahe, “Thomas Jefferson’s Machiavellian Political Science,” *Review of Politics*, 57 (Summer 1995), 449–81, esp. 462–68, which emphasizes that both John Locke and Jefferson understood that executive prerogative must

State defiance of legitimate national authority would require executive enforcement of the law; separatist plans for disunion might demand something more. In any case, for Jefferson, the right of self-preservation—the first law of nature and of nations—applied to internal as well as external threats to national existence. Jefferson's embrace of the prerogative suggests both the crucial significance of union in his statecraft and the lengths to which he was willing to go to preserve it.

The retired Jefferson followed the War of 1812 from Monticello with great interest and increasing alarm. The war, which Samuel Eliot Morison once labeled “the most unpopular war that this country has ever waged,” saw widespread opposition in New England, including continued smuggling, refusal to aid the war effort, attempts on the part of Governor Caleb Strong of Massachusetts to establish a separate peace with Great Britain, and repeated calls for secession from the Union, culminating with the infamous Hartford Convention late in the war.⁹⁵

Even before the war, Jefferson worried—not without reason—about the loyalty of New England, telling Henry Dearborn that he feared the “possibility of a separate treaty between [England] and your Essex men.” Jefferson did not broach the subject of coercion here, relying instead (as was his wont) on the “majority” of republicans in Massachusetts to “save us from this trial.” But he also noted that this “majority” would be “entitled to” unspecified “aid” to snuff out such a conspiracy.⁹⁶ In another prewar reflection on the nature of the Union, Jefferson examined the possibility that disunion was latent in the federal system of “seventeen distinct states.” Even if a “single state” was engulfed by despotism (not likely, in Jefferson's estimation), “sixteen others, spread over a country of two thousand miles diameter, rise up on every side, ready organised, for deliberation by a constitutional legislature, & for action by their Governor, constitutionally the commander of the militia of the state.” Local discontent, Jefferson argued in an echo of *Federalist* 10, would not “spread to such an extent as to be able to face the sound parts of so extensive an union.” If it did so spread, he explained to Destutt de Tracy, the discontented could

be accompanied by the people's right of resistance and the executive's ultimate accountability to the people.

⁹⁵ Samuel Eliot Morison, “Dissent in the War of 1812,” in Morison, Frederick Merk, and Frank Freidel, *Dissent in Three American Wars* (Cambridge, Mass., 1970), 3–31 (quotation on 3); Gannon, “Calculating the Value of Union,” 123–90.

⁹⁶ TJ to Henry Dearborn, August 14, 1811, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIII, 73.

become the majority—"the regular government"—where they would control Congress and "redress their own grievances by laws peaceably & constitutionally passed." The very organization of the Union should, without need of coercion, prevent secessionist sentiment or effectiveness. But the underlying implication remained clear: one discontented state would make itself the enemy of the other sixteen. So, even in his most sanguine moments, Jefferson hinted that the suppression of secession by force was a necessary, though of course extraordinary and undesirable, implication of his conception of the Union.⁹⁷

Just days before the U.S. declaration of war in 1812, Jefferson told his old friend Elbridge Gerry that while the purposes of the "English faction" in Massachusetts were unclear, if its purpose was rebellion and disunion, "it ought to be met at once." The national government "should be slow" to jump to conclusions, but nevertheless it "should" also "put forth its whole might . . . to suppress" such a scheme. If the minority demanded to govern the majority upon threat of disunion, then such an "anti-republican" threat should be met with force. Again Jefferson counted on what he believed to be the republican majority in Massachusetts to put down such schemes. But if they needed the "aid of their brethren of the other States" to bring "the rebellious to their feet," they should have it. The goal, Jefferson argued, was always repentance and reconciliation—the reunion of Massachusetts and Virginia would allow Jefferson to "say with old Simeon, 'Lord, now lettest thou thy servant depart in peace, for mine eyes have seen thy salvation.'"⁹⁸ But the outside possibility that the sister states, through the instrument of the national government, would need to use force to compel Massachusetts to remain in the Union is fairly clearly an open one here.⁹⁹

⁹⁷ TJ to Destutt de Tracy, January 26, 1811, in Looney, ed., *Papers of Thomas Jefferson: Retirement Series*, III, 337–38. See also TJ to Horatio G. Spafford, March 17, 1814, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIV, 120.

⁹⁸ TJ to Elbridge Gerry, June 11, 1812, in Ford, ed., *Works of Thomas Jefferson*, XI, 256–58 (first through eighth quotations on 256; ninth quotation on 258).

⁹⁹ To this point Jefferson had largely considered the disaffection and potential secession of single states only; though a case can be made for his concern about the entire region of New England, his fears of a state breaking off usually focused on Massachusetts. What made the later Missouri crisis so frightening to him, among other things, was its stark division of the Union into two large sectional interests—the scenario that Lincoln faced in 1861. How Jefferson projected to deal with this kind of situation is unclear. He largely despaired at the time. Jefferson understood the crisis in partisan terms, even as he feared the sectional consequences. In other words, he did not necessarily understand himself to be defending a southern position when he resisted the Tallmadge Amendments limiting slavery in Missouri. See the important discussion of Jefferson's response to the Missouri crisis as a threat to his ideal expanding harmonious union in Onuf, *Jefferson's Empire*, 127–29, 137–46.

Jefferson, in his imagination, was always able to count on a majority of citizens of the nation (or in a particular state) to support union and republican government. In 1785, in contrast with some of his other, less hopeful statements from the Confederation period, he told English radical Richard Price that the American motto was “nil desperandum” over the question of union. Congress might not have explicit authority to enforce union now, Jefferson said, but as soon as “two States commit hostilities on each other . . . the hand of the union will be lifted up and interposed, and the people will themselves demand a general concession to Congress of means to prevent similar mischeifs.” The American people, in other words, were reflexively Unionist and were willing to enlarge the powers of Congress to see “peace among the States” enforced.¹⁰⁰ Later, under the Constitution, he nearly always blamed secessionist sentiment on the work of an English conspiracy and/or of “a few base & cunning leaders.” Almost without exception, he fell back on this hope/faith, even in his darkest moments.¹⁰¹ He simply assumed that the good people of Massachusetts, for example, were true republicans and would, as such, subordinate their material interests for the good of the republic. This may have been utopian, but it was also extraordinarily magnanimous. As long as a majority, even of those with different ideological views, remained committed to union—and Jefferson believed this to be true of most Federalists—the Union itself was safe. As Jefferson explained to Destutt de Tracy, when the discontented became the majority, they could redress their grievances within the framework outlined in the Constitution. Until then, the majority would always squelch any attempts to destroy the Union since

¹⁰⁰ TJ to Richard Price, February 1, 1785, in Boyd et al., eds., *Papers of Thomas Jefferson*, VII, 631.

¹⁰¹ TJ to David Bailie Warden, December 29, 1813, in Sigmund Diamond, “Some Jefferson Letters,” *Mississippi Valley Historical Review*, 28 (September 1941), 225–42 (quotation on 232). Among other letters in this vein, see TJ to Marquis de Lafayette, February 14, 1815, in Ford, ed., *Works of Thomas Jefferson*, XI, 461; and the interesting letter to John Melish, January 13, 1813, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIII, 206–10, in which Jefferson divided the population of New England into ideological sections and determined that separatist elements there were only a minority faction of a minority party. It is worth noting that Lincoln made the same argument about the seceded states in 1861: “It may well be questioned whether there is, to-day, a majority of the legally qualified voters of any State, except perhaps South Carolina, in favor of disunion. There is much reason to believe that the Union men are the majority in many, if not in every other one, of the so-called seceded States. The contrary has not been demonstrated in any one of them,” and in some of them, Lincoln suggested, “Union men” were forced at the point of bayonets “to vote against the Union.” See Lincoln, “Message to Congress in Special Session,” July 4, 1861, in Basler, ed., *Collected Works of Abraham Lincoln*, IV, 437. Lincoln admonished the discontented secessionists to wait patiently until the next election, when they could, if they gained a majority, vote him out and elect someone more to their liking. “Why should there not be a patient confidence in the ultimate justice of the people,” he asked. See Lincoln “First Inaugural Address—Final Text,” March 4, 1861, *ibid.*, 270.

the majority always had an interest in maintaining it. Jefferson's point anticipates Lincoln's 1856 question: "A majority will never dissolve the Union. Can a minority do it?"¹⁰² Implied is a reminder to disaffected minorities that secession is a revolutionary right to be fought for, not granted, and of the right of the majority to suppress any rebellion posed by such a minority, as well as a thinly veiled threat that a majority would likely always be sufficient to suppress minority rebellion. Like Lincoln, who actually faced the kind of crisis that only haunted Jefferson's nightmares, Jefferson recognized the right of the Unionist democratic majority to preserve itself.

Throughout the War of 1812, Jefferson repeatedly discussed the possibility that Massachusetts would secede from the Union.¹⁰³ He often dismissed such worries because he considered secession so quixotic or preposterous. "[T]he defection of Massachusetts," he wrote, would be "a disagreeable circumstance, but not a dangerous one." Jefferson rhetorically dismissed anxiety primarily because "[t]heir own people will put down these factionists as soon as they see the real object of their opposition"—disunion and alliance with England.¹⁰⁴ But he also believed that separation would never work because Massachusetts needed its "sister States" if it was to survive. If Massachusetts seceded, Jefferson told James Martin, one option would be to "let them go." But Jefferson believed effective disunion to be impossible because of majority Unionist sentiment. But even if the state did find a way to leave, Massachusetts would never last on its

¹⁰² Lincoln, "Speech at Kalamazoo, Michigan," August 27, 1856, in Basler, ed., *Collected Works of Abraham Lincoln*, II, 366. Note that Madison, much less sanguine than Jefferson, understood that it was more than possible for minorities to "possess such a superiority of pecuniary resources, of military talents and experience, or of secret succours from foreign powers" that it would render their power, though illegitimate, more substantial and effective than that of a majority. Even when majorities formed "illicit combinations for purposes of violence" within a single state, Madison said, "the federal authority" had an obligation "to support the state authority." Madison, "Forty-three {No. 42 in Newspapers}," in Pole, ed., *Federalist*, 238–39. Hamilton, like Jefferson, appeared more optimistic about the ability of majorities to suppress domestic insurrections of minorities in "a small part of a state." See Hamilton, "Twenty-eight," *ibid.*, 148.

¹⁰³ Kevin Gannon describes just how deeply this sentiment was rooted in Massachusetts—suggesting that Jefferson was actually too optimistic about majority Unionist sentiment there. Gannon sees states' rights rhetoric and sentiment for secession as a grassroots phenomenon in New England with a long history that began with Jefferson's election in 1800. See Gannon, "Calculating the Value of Union," esp. 123–90; and David H. Fischer, "The Myth of the Essex Junto," *William and Mary Quarterly*, 3rd ser., 21 (April 1964), 191–235, which also emphasizes the moderating influence of the leadership at the Hartford Convention—precisely the group Jefferson believed to be a radical minority. It appears, from Gannon's work, that Jefferson had a much more democratically approved crisis (within the state) on his hands than he imagined.

¹⁰⁴ TJ to William Short, November 28, 1814, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIV, 217–18.

own—if affection would not keep it in the Union, economic interest would force it to come back. It was also possible that war would break out between Massachusetts and the Union, and in this case “it would be a contest of one against fifteen” (can a minority do it?). Even if Massachusetts did leave, then, disunion “would be corrected by an early and humiliating return to the Union.” Often, it seems, Jefferson dismissed any real danger of disunion simply by imagining that such a thing could never happen.¹⁰⁵

The ubiquity of such reflections in Jefferson’s correspondence—and there are many—and the simple fact that no formal secession crisis ever erupted in Jefferson’s day make it easy to overlook or dismiss Jefferson’s implied commitment to keeping the Union together, by force if necessary. But such implication is there if we care to look. As he told Jean Nicolas D emeunier in 1786, a formal statement of the “right of compulsion” was unnecessary—it was implied by the compact itself.¹⁰⁶ That Jefferson bent over backward to effect (and imagine) reconciliation without resort to force is testimony to his dreams and forbearance, not proof that at some point coercion would not become an option for him.¹⁰⁷

Of course, all of this may beg the question of whether Massachusetts had some legal or constitutional right to leave the Union if it desired.

¹⁰⁵ TJ to William Eustis, January 14, 1809, in Ford, ed., *Works of Thomas Jefferson*, XI, 86 (first quotation); TJ to James Martin, September 20, 1813, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIII, 382–83 (second quotation on 382; third and fourth quotations on 383). Peter Onuf notes that Jefferson “externalized all threats to the union” and emphasizes Jefferson’s faith in “the union’s durability in a time of great crisis.” Onuf, *Jefferson’s Empire*, 128 (first quotation), 130 (second quotation).

¹⁰⁶ Jefferson “Answers to D emeunier’s First Queries,” January 24, 1786, in Boyd et al., eds., *Papers of Thomas Jefferson*, X, 19.

¹⁰⁷ Attention to Lincoln’s description of “coercion” and “invasion” as mere “enforcement of the laws of the United States” seems not inappropriate here. See Lincoln, “Speech from the Balcony of the Bates House at Indianapolis, Indiana,” February 11, 1861, in Basler, ed., *Collected Works of Abraham Lincoln*, IV, 195. Compare that speech with TJ to James Sullivan, August 12, 1808, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XII, 129: “we are sworn to execute the laws.” Shortly after leaving the presidency, Jefferson endorsed Madison’s threat of national force against Pennsylvania, which was resisting enforcement of the Supreme Court’s decision in *United States v. Peters* (1809). Jefferson reassured Madison that there had never “been any difference at all in our political principles, or any sensible one in our views of the public interests.” Jefferson’s only concern, he said, was the defiant “spirit manifested by the” Pennsylvania militiamen who had been arrested by a federal marshal for resistance to federal law. Jefferson professed to being “much mortified” at the Philadelphia parades celebrating their release. See TJ to Madison, May 22, 1809, in Smith, ed., *Republic of Letters*, III, 1588–89. On the controversy see Kenneth W. Treacy, “The Olmstead Case, 1778–1809,” *Western Political Quarterly*, 10 (September 1957), 675–91; and Gary D. Rowe, “Constitutionalism in the Streets,” *Southern California Law Review*, 78 (January 2005), 401–56. The most succinct discussion of the complicated story is William O. Douglas, “Interposition and the *Peters* Case, 1778–1809,” *Stanford Law Review*, 9 (December 1956), 3–12.

Jefferson's approach, though, tended to lean away from this abstract question and toward the practical one of how to respond to such a scenario—and his answers suggest that whatever right Massachusetts had to leave was matched by an equal right of the other states to force it to stay.

Revisiting his own metaphor of the Union as a planetary system, Jefferson told John Melish in the last days of the War of 1812 that it might at some point become necessary to "reduc[e] . . . by impulse instead of attraction, a sister planet into its orbit." As Jefferson acknowledged, this was changing the meaning of the original metaphor, and such coercion would "be as new in our political as in the planetary system." Falling back on his old hope, Jefferson suggested that "the operation" would be "painful rather than difficult" since the "sound part of our wandering star [Massachusetts] will probably, by its own internal energies, keep the unsound within its course." There are multiple ways of reading this somewhat confusing letter, but it seems clear that Jefferson was acknowledging a scenario in which it might become necessary to compel a state to remain in the system against its will. This would not be the ideal—and it would be, as Jefferson put it, "a new chapter in our history."¹⁰⁸ But sometimes human societies, Jefferson wrote in a different context, were "compelled . . . to choose a great evil in order to ward off a greater."¹⁰⁹ Coercion is not by any means entirely incompatible with any principle Jefferson had espoused before—particularly with his oft-expressed devotion to the Union and concern about the catastrophes that would follow its demise.¹¹⁰ The Union would stay together. If secession was quelled by a republican majority within the offending state itself, this was all to the good (and to be expected). But if not, the sister states would come to the aid of the Unionists there and crush the rebellion. The goal was always repentance, reconciliation, and avoidance of civil war, but there is

¹⁰⁸ TJ to John Melish, December 10, 1814, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIV, 219–21 (quotations on 221). It was possible, too, Jefferson worried, that Massachusetts secessionist leaders might call in "a foreign power" that would force the rest of the Union "to meet it but so much the nearer, and with a more overwhelming force." *Ibid.*, 221. As Jefferson speculated around the same time, the "federalists will then call in the English army, the republicans ours, and it will only be a transfer of the scene of war from Canada to Massachusetts." "But," falling back on his faith in the republican majority, Jefferson declared, "it will not come to this." TJ to William Short, November 28, 1814, *ibid.*, 217–18.

¹⁰⁹ *Ibid.*, 213.

¹¹⁰ For three examples among many, see TJ to George Washington, May 23, 1792, in Boyd et al., eds., *Papers of Thomas Jefferson*, XXIII, 538–39; TJ to Robert Wright, April 3, 1809, in Looney, ed., *Papers of Thomas Jefferson: Retirement Series*, I, 106–7; and TJ to James Ogilvie, August 4, 1811, in Lipscomb and Bergh, eds., *Writings of Thomas Jefferson*, XIII, 70–71.

nothing in the compact theory or in Jefferson's ideal of affectionate union that precludes coercive action on the part of sister states. Coercion seems to be a natural implied component of Jefferson's theory of union.¹¹¹

This admittedly brief and tentative examination of Jefferson's response to several crises of union suggests that he was willing to enforce federal law in the face of opposition by state and local authorities, that he believed the Union was empowered to coerce a seceding state, and that he claimed executive prerogative in cases of national self-preservation or even of national interest. This was hardly James Buchanan's position in 1860 and appears much closer to Lincoln's. None of this is meant to imply that Jefferson and Lincoln embraced similar theories of union. They did not. It is meant to suggest that our reflexive assumption that Jefferson's approach to disunion would have approximated Buchanan's or even that of the fire-eaters needs careful reconsideration. The argument here should not be misread as a contrary assertion that Jefferson would not have "gone with the Confederacy" but seen rather as a call for historians to reconsider our reflexive tendency to assume this counterfactual.

If we look at Jefferson's political career as a whole, we see a kind of alternation between fear of the potentially negative consequences of centralized power, on the one hand, and a fear of national weakness and dissolution, on the other. During the Revolution, Jefferson joined other Americans in his resistance to arbitrary metropolitan authority. But during the Confederation period, Jefferson (along with many other leading figures) saw the greatest threat to American interests (and ultimately liberty) in the inability of Congress to compel member states to perform their obligations. During the 1790s, however, Jefferson understood the Federalists in charge of the national state to be exercising authority that was unauthorized by the original compact. The correction for this would be a restoration of the proper constitutional role of the state governments. During his presidency and the Republican ascendancy, though, Jefferson saw various threats to majority rule and to the legitimate powers granted to the national state posed by outlying states.

¹¹¹ This is especially the case if secession is understood (as Jefferson seemed to understand it) as an insult to democratic majorities and to the sacrifices of the people and an elevation of one state above the others—a self-indulgence the opposite of Jefferson's ideal both in politics and in marriage, each of which required mutual sacrifices to preserve affection and harmony. See TJ to Thomas Jefferson Randolph, November 24, 1808; and TJ to Maria Jefferson Eppes, January 7, 1798, in Edwin Morris Betts and James Adam Bear Jr., eds., *The Family Letters of Thomas Jefferson* (Columbia, Mo., 1966), 362–65, 151–53.

In nearly every case, Jefferson's approaches to these crises were simplified by the fact that the threats he perceived came largely from his ideological enemies.¹¹² But we need not read this as disingenuous or cynical simply because we understand it in retrospect to be rooted in partisanship. Jefferson's partisan interests aligned with his idealistic nationalism and democratic faith. When threats to union came from his ideological allies, Jefferson tended to counsel patience. But of course Jefferson rarely saw threats to union from his allies, partly because he simply understood his partisan opponents to be the only true ideological enemies of the republic but also because in his lifetime more genuine threats to union really did come from Federalists and wayward Republicans like Burr than from southern defenders of states' rights. In any case, there is a kind of logic to the career that a simple dismissal as hypocrisy cannot recover. Jefferson's ideal union rooted in harmony, affection, and interest was inextricably interwoven throughout his public career with a commitment to preserving the nation and its republican promise—a commitment that sometimes demanded energetic government and might require coercive force. It is not necessary to claim that Jefferson made a fetish of the Union to acknowledge that he nevertheless understood it as essential to America's promise and that for him the creation of union implied the right of the majority to keep it.

¹¹² This is perhaps a way of paraphrasing what Jean Yarbrough has said of American federalism generally: that it "has always been primarily a *political* issue rather than a legal issue—since the Constitution's silence on the powers reserved to the states allows considerable flexibility in distributing power between the states and the national government." Yarbrough, "Rethinking 'The Federalist's View of Federalism,'" *Publius*, 15 (Winter 1985), 32. Also see Charles Warren's succinct dismissal of states' rights thought in American history as always aligned with the "economic and social interests" of its proponents. Warren, *The Supreme Court in United States History* (2 vols., rev. ed.; Boston, 1926), I, 388. But see Ellis, "Path Not Taken," and Mayer, *Constitutional Thought of Thomas Jefferson*, for compelling studies of certain strands of states' rights thought as principled, nuanced, and relevant.