

The Origins of Jeffersonian Nationalism: Thomas Jefferson, James Madison, and the Sovereignty Question in the Anglo-American Commercial Dispute of the 1780s

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IN THE YEARS FOLLOWING THE AMERICAN REVOLUTION, U.S. relations with Great Britain never looked more promising than they did in the spring of 1783. Encouraged by the favorable terms of the preliminary peace agreement, Americans had good reason to anticipate a friendly renewal of Anglo-American trade, a subject on which British prime minister William Petty, second Earl of Shelburne, seemed disposed to make liberal arrangements. But this promising aspect proved illusory. By summer Congress had received word of the Shelburne ministry's fall and of British policy makers' plans to treat the new republic as a maritime rival. A July 2 order-in-council excluded U.S. vessels from the West Indian carrying trade, cutting off a valuable branch of American shipping. Meanwhile, British vessels and commodities flooded U.S. ports. The Articles of Confederation left to the individual states the power to regulate their own trade, so British merchants aggressively pursued their former share of the American market without fear of retaliation from Congress. British officials trusted the success of their exclusionary policies to Congress's imbecility and the residual parochialism of the colonial era.¹ Shelburne's brief flirtation notwithstanding, the July 2 order-in-council

¹ For a review of these policies and the process by which British officials developed them, as well as for the British perspective generally, see Charles R. Ritcheson, *Aftermath of Revolution: British Policy Toward the United States, 1783–1795* (Dallas, 1969). For American responses to the British mercantilist system before the Revolution, particularly the absence of colonial grievances over the system itself, see Oliver M. Dickerson, *The Navigation Acts and the American Revolution* (Philadelphia, 1951). I would like to thank the *Journal of Southern History*'s three anonymous reviewers for their invaluable assistance in sharpening and polishing this article. I also would like to thank my fellow panelists and participants at the 2010 Historical Society conference in Washington, D.C., particularly Aaron N. Coleman, Adam Tate, Richard

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confirmed the British government's undiminished pretensions to commercial monopoly, which Americans resented as both hostile and damaging to their interests.

Perhaps no two statesmen were better positioned to craft an American response than Thomas Jefferson and James Madison. As a U.S. diplomat charged with negotiating commercial treaties, as the Confederation Congress's accredited minister to France, and then as secretary of state in George Washington's first administration, Jefferson exerted tremendous influence on American foreign policy. Likewise, Madison, as a member of both the Confederation Congress and the Virginia legislature, as a delegate to constitutional reform conventions at Annapolis, Maryland, and Philadelphia, and as the leading actor in the U.S. House of Representatives, observed and shaped deliberations on the commercial question. In their official capacities, therefore, Jefferson and Madison performed nearly every conceivable diplomatic and legislative function pertaining to U.S. trade policy.

British commercial hostility involved Jefferson and Madison in considerations of expediency—what trade policies the United States ought to adopt and why—but it also forced them, perhaps for the first time, to wrestle in a uniquely American way with the serious question of sovereignty. If the British maritime challenge required a response, then who or what should provide it? Could individual states craft separate and effective trade policies? Or must a nation, though born in rebellion against imperial consolidation, trust its commercial fate to a central authority? A few murky and contradictory commentaries on the subject reveal that before 1783 Americans had given little thought to trade regulation. Britain's West Indian policy, therefore, appeared as a fresh and crucial problem involving both the locus of sovereignty and the nature of the Union.²

Samuelson, and Hans Eichelz, who either read or heard an earlier version of this article and helped me think about it in clearer and more interesting ways. Finally, to my colleagues at Ashland University who took part in our monthly scholarship roundtable and offered helpful advice, in particular Edith Foster, René Paddags, Patrick Campbell, Emily Hess, and Glenn Kumhera, I extend my gratitude.

²The literature on sovereignty, the Union, and the Founding is vast. See, for instance, Forrest McDonald, *States' Rights and the Union: Imperium in Imperio, 1776–1876* (Lawrence, Kans., 2000); and David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence, Kans., 2003), esp. the excellent bibliographic essay, pp. 281–97. See also Hendrickson, "The First Union: Nationalism versus Internationalism in the American Revolution," in Eliga H. Gould and Peter S. Onuf, eds., *Empire and Nation: The American Revolution in the Atlantic World* (Baltimore, 2005), chap. 2.

Madison insisted years later that the commercial dispute of the 1780s did more to bring about the constitutional reformation of 1787–1788 than did any other issue.³ This astonishing assertion alone justifies a careful examination of the sovereignty and commercial questions in the 1780s, as well as a reconsideration of the origins and nature of the Jefferson-Madison collaboration.⁴ Historians once universally regarded Madison as an apostate from the nationalism of Alexander Hamilton, supporting a strong central government in the 1780s before succumbing to Jefferson's influence and joining up with Republican defenders of state sovereignty. However, recent scholarship, beginning with Lance Banning's seminal book *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (1995), has rescued Madison from charges of apostasy by demonstrating that he was never the sort of nationalist Hamilton and others imagined him to be.⁵ Conversely, a few historians have come to see

³“Out of this experience,” Madison declared, “grew the measures which terminated in the establishment of a government competent to the regulation of our commercial interests, and the vindication of our commercial rights.” These interests and rights, he said, constituted “the first objects of the people in the steps taken for establishing the present government.” See Madison, “Commercial Discrimination,” January 14, 1794, in William T. Hutchinson et al., eds., *The Papers of James Madison* (17 vols.; Chicago and Charlottesville, 1962–1991), XV, 184.

⁴Adrienne Koch, *Jefferson and Madison: The Great Collaboration* (New York, 1950). For a recent study that seeks to rescue Madison from Jefferson's shadows, see Andrew Burstein and Nancy Isenberg, *Madison and Jefferson* (New York, 2010).

⁵My understanding of Madison in the 1780s and 1790s conforms to the interpretation that appears in Lance Banning's deservedly celebrated book *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca, N.Y., 1995). Banning's most enduring achievement is his persuasive decoupling of Madison from the so-called nationalists of the early 1780s, thereby demonstrating that Madison was never really the sort of nationalist Hamilton was. A related and perhaps equally impressive achievement is Banning's description of Madisonian thought as *emerging* throughout the late 1780s and into the early 1790s, when it finally crystallized into something permanent and recognizably Madisonian. Of course, Banning's treatment of Madison is far more comprehensive than my own and therefore much less focused on trade regulation. In its basic contours, however, my argument is consistent with Banning's in that I, too, see Madison (along with Jefferson) working out the problem of sovereignty rather than beginning from a fixed ideological position and then either deviating or remaining consistent over time. Furthermore, I do not know that Banning has ever argued that either Jefferson or Madison sought to position themselves as the strictest of strict constructionists. The two Virginians, Banning writes, “never sought, as their essential end, to hold the federal government within the narrowest of bounds.” See Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca, N.Y., 1978), 284. Finally, in the development of Madisonian nationalism, for which I argue in this essay, I see in Madison's words and actions the same thread that, for Banning, connected the Madison of the 1780s to the Madison of the 1790s: a deep and abiding reverence for the will of the people. Recent essays inspired by Banning's reinterpretation of Madison include Alan Gibson, “The Madisonian Madison and the Question of Consistency: The Significance and Challenge of Recent Research,” *Review of Politics*, 64 (Spring 2002), 311–38; Gordon S. Wood, “Is There a ‘James Madison Problem’?,” in Wood, *Revolutionary Characters: What Made the Founders Different* (New York, 2006), 141–72; Michael Schwarz, “The Great Divergence Reconsidered: Madison, Hamilton, and U.S.-British Relations, 1783–89,” *Journal of the Early Republic*, 27 (Fall 2007), 407–36; and

Jefferson as more of a nationalist than the traditional narrative suggests.⁶ With respect to the critical issue of sovereignty and commercial regulation, the evidence for the 1780s supports recent reinterpretations of both Madison and Jefferson. On one hand, the two Virginians never advocated anything like Hamiltonian consolidation, the brand of nationalism to which Republicans in later years so vehemently objected (in fact, it would be difficult to identify anyone in the national councils of the 1780s who openly pushed for the sort of centralizing policies Hamilton and his Federalist supporters later adopted). On the other hand, Madison's and Jefferson's attitudes toward commercial regulation after 1783 reveal meaningful nationalist sensibilities. While they did not entirely reject trade policies originating in the states, Madison and especially Jefferson pressed for national solutions to what they deemed a national problem. Throughout the mid-1780s they insisted that the power to make trade policy for the entire nation must reside in Congress, though they were never very clear about how such an investiture of authority should take place. Following the Constitution's ratification, Madison pushed for aggressive commercial policies by appealing to a nationalist conception of popular sovereignty—that is, the people, not the states, demanded retaliation against Great Britain; and Congress, Madison argued, was obliged to respond.⁷ In short, if Madison was correct about the importance of commerce in shaping the new government under the Constitution, and if Jefferson and Madison each viewed commercial regulation from a nationalist perspective, then we might conclude that the Jefferson-Madison alliance, the most important political collaboration in American history, originated not as a defense of state sovereignty but as an appeal to national interests.

When the First Continental Congress met in 1774, a pronounced ambiguity marked American thinking on the subject of commercial regulation. Colonial protesters in the 1760s and 1770s had tempered their resistance to internal taxation with acknowledgments of parliamentary

Robert W. T. Martin, "James Madison and Popular Government: The Neglected Case of the 'Memorial,'" *Polity*, 42 (April 2010), 185–209.

⁶Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville, 2000); Brian Steele, "Thomas Jefferson, Coercion, and the Limits of Harmonious Union," *Journal of Southern History*, 74 (November 2008), 823–54; Brian Steele, *Thomas Jefferson and American Nationhood* (New York, 2012); Arthur Scherr, "Thomas Jefferson's Nationalist Vision of New England and the War of 1812," *Historian*, 69 (Spring 2007), 1–35.

⁷The American Revolution's impact on the concept of popular sovereignty is best explained in Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, 1969), 344–89. Thomas Jefferson's faith in majority rule and the people at large, well understood and widely accepted, comes through most clearly in David N. Mayer, *The Constitutional Thought of Thomas Jefferson* (Charlottesville, 1994), 89–107.

authority over trade—that is, as long as Parliament did not attempt to raise revenue.⁸ That Parliament possessed such authority over trade Americans generally conceded, though they never really attempted to explain why until October 1774, when Congress adopted the Declaration of Rights, whose fourth resolution declared that Americans would “cheerfully consent . . . to the regulation of our external commerce” so long as such regulation did not entail “raising a revenue on the subjects in America, without their consent.”⁹ With this resolution, after more than a century of imperial trade regulation, delegates to the Continental Congress decided that the power to regulate trade came not from parliamentary sovereignty but from colonial consent.

Earlier that same year a young Thomas Jefferson had penned a very different interpretation. *A Summary View of the Rights of British America* (1774), Jefferson’s first major contribution to public discourse, offered an equally unequivocal rejection of parliamentary sovereignty, albeit with several important differences. Instead of relying exclusively on the doctrine of consent, Jefferson elevated “the exercise of a free trade” to the condition of a “natural right” and asserted that in the seventeenth century this right had succumbed to “unjust encroachment” and “arbitrary power.” In other words, the right of free trade existed in a state of nature—that is, until Parliament and the Stuart kings saddled the young colonies with the Navigation Acts. “The true ground on which we declare these acts void,” Jefferson thundered, “is that the British parliament has no right to exercise authority over us.”¹⁰ Whereas the Continental Congress had grounded Parliament’s regulatory authority in consent, Jefferson, citing a natural right to free trade, denied that such authority had ever existed.

Natural rights, Jefferson declared two years later, derived security from governments instituted by consent, and yet, in a mercantilist world of closed economic systems, it was not clear exactly which American governments had the obligation to secure these rights and by what means they ought to secure them. In September 1776 the Continental Congress offered one answer in the form of the so-called Model Treaty, a rough plan by which Congress’s diplomats would

⁸ See, for example, John Dickinson, *Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies* (1767), in Forrest McDonald, ed., *Empire and Nation* (2nd ed.; Indianapolis, 1999), esp. Letter II, 7–15.

⁹ Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York, 1979), 58–59.

¹⁰ “Draft of Instructions to the Virginia Delegates in the Continental Congress (MS Text of *A Summary View, &c.*),” in Julian P. Boyd et al., eds., *The Papers of Thomas Jefferson* (39 vols. to date; Princeton, 1950–), I, 121–37 (first, second, and third quotations on 123; fourth quotation on 124; fifth and sixth quotations on 125).

pursue a system of commercial treaties on principles of free trade while at the same time avoiding political alliances.¹¹ In contrast, the Articles of Confederation, drafted in 1777 and ratified in 1781, offered a very different answer. According to Article IX, “The United States, in Congress assembled,” would “have the sole and exclusive right” to make treaties, “provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners” as the people of those states might confront in foreign ports. Article IX also prevented Congress from making a treaty that circumscribed the state legislatures’ rights to prohibit, if they so chose, “the exportation or importation of any species of goods or commodities whatsoever.”¹² This single line effectively eviscerated the Model Treaty and placed the right of commercial regulation firmly in the hands of the states.

On the whole, there is something contradictory about how American Revolutionaries viewed commercial regulation before 1783. Congress acknowledged Parliament’s right to regulate American trade by consent, while Jefferson, elevating free trade to the condition of a natural right, denied that such power had ever existed or that such consent had ever been given. To secure free trade, Congress adopted a plan based on the Model Treaty, which the Articles of Confederation subsequently rendered meaningless. During the so-called critical period of the 1780s, those who sought retaliation against British commercial policies regretted Article IX, and yet it is possible that this article came much closer to reflecting dominant attitudes about commerce and sovereignty before 1783 than did the Model Treaty. After all, the United States of America under the Articles of Confederation defined itself as “a firm league of friendship” in which “[e]ach State retains its sovereignty.” As Gordon S. Wood has reminded us, this general conception “was not probed and analyzed” in America during the Revolution “because whatever the limitations the Confederation may have placed in fact on the individual sovereignty of the states, few believed that their union in any theoretical sense contravened that sovereignty.”¹³ Furthermore, with all possible energy and resources devoted to matters of war and independence, circumstances had not yet conspired to focus Americans’ attention on commercial issues.

¹¹ George C. Herring, *From Colony to Superpower: U.S. Foreign Relations since 1776* (New York, 2008), 17–19.

¹² Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774–1781* (Madison, Wis., 1940), 266.

¹³ *Ibid.*, 263 (first and second quotations); Wood, *Creation of the American Republic*, 354–55 (third quotation on 354; fourth quotation on 354–55).

The appearance in 1783 of Britain's order-in-council prohibiting U.S. access to the West Indies provided that focus. British audacity came as a shock, particularly to those Americans who, after the war, dramatically overestimated their economic value to the empire. Others immediately saw the order-in-council as a calculated attempt to thwart America's growth in its infancy. In the ensuing years American legislators and diplomats found themselves in basic agreement on the need for retaliatory action.

Before news of the order-in-council arrived late that summer, American expectations regarding British commerce had tended toward the optimistic. Oliver Wolcott of Connecticut, for example, predicted that America's recent enemy would "endeavour to accomodate herself to the Wishes of a People whom she has in Vain endeavored to conquer."¹⁴ Theodorick Bland of Virginia confidently opined that the British must "feel the loss of us" and "therefore bid for our future good Will."¹⁵ And Stephen Higginson of Massachusetts rejoiced that Great Britain "has wisely determined to give us every advantage in trade."¹⁶ But the delegates soon discovered their error. On June 17 Henry Laurens wrote from London to warn Congress that former "assurances" of fair treatment from the British seemed "to have undergone a wonderful refinement." As Laurens correctly observed, "Reciprocity appears now to mean, Enjoyment on one side, and Restrictions on the other."¹⁷ Even British diplomats seemed blindsided by their government's abrupt turn. David Hartley, who learned of the order-in-council through the newspapers, wrote from Paris of the shock his American counterparts had expressed upon learning that he had known nothing about it. "If any thing could astonish them more than the Proclamation itself," Hartley wrote of the American negotiators, "it was to find that I had received no notification of it." For months Hartley and his American counterparts had operated under the assumption that the British government would adopt liberal trade policies. Alas, according to Hartley, "every thing has been put into commotion by the Order[-in-council]."¹⁸

Perhaps the suddenness of the change helped sharpen American focus, for diplomats and delegates alike took immediate aim at Article IX's

¹⁴ Oliver Wolcott to Oliver Wolcott Jr., March 13, 1783, in Paul H. Smith et al., eds., *Letters of Delegates to Congress, 1774-1789* (26 vols.; Washington, D.C., 1976-2000), XX, 29.

¹⁵ Theodorick Bland to George Washington, March 22, 1783, *ibid.*, 69.

¹⁶ Stephen Higginson to Theophilus Parsons, April [7-10], 1783, *ibid.*, 141.

¹⁷ Henry Laurens to Robert R. Livingston, June 17, 1783, in Mary A. Giunta et al., eds., *The Emerging Nation: A Documentary History of the Foreign Relations of the United States under the Articles of Confederation, 1780-1789* (3 vols.; Washington, D.C., 1996), II, 156.

¹⁸ David Hartley to Charles James Fox, July 29, 1783, *ibid.*, 208.

vesting of regulatory authority in the states. From Paris, John Adams suggested that “[w]hat powers Congress shd. have for governing the Trade of the whole . . . deserves the serious Consideration of every one in America,” and Congress responded by appointing a committee to consider that very question.¹⁹ This committee, formed on September 12, delivered its report less than two weeks later. It concluded “that a General Power be somewhere lodged for regulating the concerns of the United States” and “that not only a continuation but an additional cement to the Union is necessary.” Congress, the committee argued, should deliberate further on the subject and recommend the same to the individual state legislatures.²⁰ Meanwhile, delegates from the Chesapeake took the lead on the issue and moved quickly to forward these recommendations to their respective states. Daniel Carroll and James McHenry of Maryland urged their state’s legislature to consider “the expediency of vesting Congress with powers adequate to the formation of a navigation act, or such other general power, as may be competent to frustrate the projects & commercial regulations of Great Britain.”²¹ Arthur Lee and John Francis Mercer did likewise for Virginia.²² Mercer even took his case directly to the public, using the newspapers as a forum to expose the gravity of the situation. In the second of his “North American” essays, which appeared in the *Pennsylvania Journal* in October, Mercer tried to stir up his countrymen against the renewed British threat. “The late ungenerous, I may say *hostile* attack of Great Britain on our commerce,” Mercer observed, “sprang confessedly from an early conviction, that we could not act as a nation.” The British government tried through its commercial policies to “openly disseminate those seeds of disunion,” which so recently had given embarrassment to the Congress. But America’s late enemy would not succeed, Mercer claimed, for once again it would inspire the people of the United States to join in common purpose: “Presumptuous nation, secure in our disunion, thou hast ever been too eager, and thy premature violence has been the parent of our wisdom—catching at the glittering shadow—may the substance ever elude thy fangs.”²³

While all delegates agreed that British commercial policies posed a significant threat, and while nearly all agreed that Congress ought to

¹⁹ John Adams to Robert R. Livingston, July 18, 1783, *ibid.*, 197–98 (quotation on 198).

²⁰ “Committee of Congress Report,” September 25?, 1783, in Paul H. Smith et al., eds., *Letters of Delegates to Congress*, XX, 702.

²¹ Maryland Delegates to the Maryland Assembly, November 3, 1783, *ibid.*, XXI, 143.

²² Virginia Delegates to Benjamin Harrison, November 1, 1783, *ibid.*, 138–41.

²³ John Francis Mercer to the Public, ante October 8, 1783, *ibid.*, 27–33 (first and second quotations on 28; third and fourth quotations on 29).

have the power to regulate trade for the entire nation, the strength of this general consensus did not preclude differences of opinion on certain very important details. Delegates to Congress, like most members of state legislatures, harbored persistent fears of concentrated power, with an intensity the modern reader can scarcely appreciate. Harking back to the controversies that sparked the Revolution, American statesmen in the 1780s well understood the difference between regulation for the purpose of protection and regulation designed to raise revenue. David Howell of Rhode Island, for example, noted with approval that the Maryland General Assembly, in response to the recommendation from Carroll and McHenry, had agreed to the former but not to the latter. "The power of regulating trade," Howell declared, "so far as such regulations are *bona fide* not calculated to *raise a revenue* therefrom, would, in my humble opinion, be less dangerous in the hands of Congress than the power of raising a revenue."²⁴ In addition to the revenue question, some delegates worried that a permanent grant of regulatory powers to Congress might lead to tyranny. Every good eighteenth-century republican understood that governments perpetually sought to feed themselves by consuming more and more of the people's liberties. If unchecked, any centralized authority would run mad with power. It was important, therefore, that the state legislatures avoid granting Congress too much regulatory discretion. Most delegates hoped that the states would invest Congress with the power to regulate trade, but at the same time they believed the investiture should be limited to a period of a few years; some preferred a twenty-year grant, while others thought ten years more than sufficient. They repeatedly used words and phrases such as "temporary" and "for a limited Time" to describe their conditional approval of greater congressional authority over trade.²⁵ Either way, most agreed that Congress required additional powers in order to deal with the specific threat of British commercial aggression. They did not universally agree, however, that the national government ought to be strengthened across the board.²⁶

²⁴ David Howell to William Greene, February 1, 1784, *ibid.*, 315.

²⁵ Samuel Holten to George Partridge, October 8, 1785, *ibid.*, XXII, 671 (first quotation); Rufus King to Nathan Dane, September 17, 1785, *ibid.*, 635 (second quotation).

²⁶ Elbridge Gerry, in fact, wrote to Samuel Adams to assure the onetime Son of Liberty that Congress intended no great experiment in consolidated government. "I am happy to find that We unite in Sentiment in the Necessity of vesting Congress with more commercial powers," Gerry wrote, "& flatter myself We shall not differ in making them in the first Instance temporary, & in opposing a general Revision of the Confederation." Gerry's words clearly forecast his future anti-Federalist predilections, which, in 1787, compelled him to walk away from the Philadelphia convention without signing the Constitution and later to lead the movement for its defeat in Massachusetts. See Gerry to Samuel Adams, September 30, 1785, *ibid.*, 651.

News of the 1783 British order-in-council found James Madison in Princeton, New Jersey, about to retire from the Confederation Congress and Thomas Jefferson, still lingering at Monticello following a series of personal misfortunes, about to enter it. Madison returned to Virginia politics for several years before the Constitutional Convention beckoned, while Jefferson spent a few months in Congress before departing for France on a diplomatic mission. During these years of collaboration at a great distance, the two Virginians lamented the dismal state of Anglo-American trade and pressed vigorously for congressional regulatory power over all U.S. commerce. Yet they also searched for alternative solutions as they and their countrymen worked out the problem of sovereignty in a confederated republic. As state legislator and foreign minister, respectively, Madison and Jefferson worked to resolve the commercial issue through whatever means possible before finally settling on a nationalist approach that conformed to Americans' emerging conception of popular sovereignty.

The order-in-council had a wondrous effect on Madison's legislative priorities. For three years in the Confederation Congress he had wrestled with important issues such as debt, revenue, and western land claims—all, of course, while hoping for a successful conclusion to the war. Before 1783 commercial issues had not mattered much. In fact, in 1781, when a few congressional delegates proposed an amendment to the Articles that would have ceded to Congress the power to regulate commerce, Madison helped cast Virginia's decisive vote against the amendment.²⁷ But the order-in-council, in particular the mercantilist reasoning behind it, awakened Madison to the dangers of allowing British trade policy to stand unchallenged. "The Conduct of G.B. in the negotiation with America has shewn great unsteadiness if not insidiousness on the subject of commerce," he wrote, and the "proclamation of the 2d. of July is a proof that some experiment is intended on the wisdom, firmness & union of the States, before they will enter into a Treaty in derogation of her Navigation Act." Congress no doubt would "recommend some defensive plan to the States," the failure of which would "prove such an inefficacy in the Union as will extinguish all respect for it & reliance on it."²⁸ Suddenly, Britain's hostile trade policy had much larger implications. Benjamin Franklin wrote to Congress from Paris to warn the delegates that "tho' it [the British

²⁷ Banning, *Sacred Fire of Liberty*, 20.

²⁸ James Madison to Edmund Randolph, September 13, 1783, in Hutchinson et al., eds., *Papers of James Madison*, VII, 314–16 (first quotation on 314; second quotation on 314–15; third and fourth quotations on 315).

government] has made peace with us it is not in truth reconciled either to us or to it's loss of us; but still flatters itself with hopes that some change in the affairs of Europe or some disunion among ourselves may afford them an opportunity of recovering their dominion, punishing those who have most offended, and securing our future dependance."²⁹ Some Virginians shared these fears. "[T]he Court of London," according to Edmund Pendleton, "may keep a Lusting Eye on the Dominion of America" to determine if a change in circumstances "affords them any prospect of recovering it."³⁰ While Madison scoffed at reports that renewed British hostility could lead to another war, he nonetheless interpreted the order-in-council as a product of Great Britain's general "ill humour," which was "the natural consequence of disappointed and disarmed ambition," and he concluded that the danger to the Union was real.³¹

In the Virginia legislature Madison took the lead in fashioning a response to Britain's commercial aggression. He accepted the chairmanship of the Commerce Committee and succeeded in drafting a bill that authorized Congress "to prohibit the importation of the growth or produce of the British West India islands, into these United States, in British vessels, or to adopt any other mode which may most effectually tend to counteract the designs of Great Britain," provided that "all the States in the union shall have passed similar Laws."³² At the same time, Madison understood that the caveat delaying implementation until all states "shall have passed similar Laws" diminished the Virginia bill's effectiveness. So he drafted an alternative measure, the so-called Virginia Port Bill of 1784. This state-centered solution would have restricted Virginia's coastal trade to five port towns. Madison originally had preferred fewer. "We made a warm struggle for the establishment of Norfolk and Alexandria as our only ports," he informed Jefferson, "but were obliged to add York, Tappahannock and Bermuda hundred, in order to gain any thing and to restrain to

²⁹ Thomas Jefferson to Benjamin Harrison, March 18, 1784, with extract from Benjamin Franklin's letter to Congress dated December 25, 1783, in Boyd et al., eds., *Papers of Thomas Jefferson*, VII, 42.

³⁰ Edmund Pendleton to Richard Henry Lee, February 21, 1785, in David John Mays, ed., *The Letters and Papers of Edmund Pendleton, 1734–1803* (2 vols.; Charlottesville, 1967), II, 472–74 (quotations on 473).

³¹ James Madison to James Monroe, January 8, 1785, in Hutchinson et al., eds., *Papers of James Madison*, VIII, 220.

³² *An Act to Authorize the Congress of the United States to Adopt Certain Regulations Respecting the British Trade* ([Richmond, 1784]), in Folder 4, Portfolio 179, Printed Ephemera Collection (Rare Book and Special Collections Division, Library of Congress, Washington, D.C.), available online at <http://hdl.loc.gov/loc.rbc/rbpe.17900400>.

these ports foreigners only.”³³ To ensure that the restrictions applied only to foreign vessels rather than to vessels belonging to American merchants in other states, Madison agreed to expand from two to five the list of port towns in which foreigners legally could trade. Obviously the Port Bill was designed to target the British, who, despite their own restrictive policies, had enjoyed unfettered access to any wharf in Virginia while the state government had done nothing to retaliate. That Madison was forced to accept three additional ports simply to concentrate the bill’s effect on the British shows that many Virginians resisted the attempt to circumscribe their commerce. “The act,” Madison reported to Jefferson, “which produces most agitation and discussion is that which restrains foreign trade to enumerated ports.”³⁴ Unfortunately, not even their oft-presumed Anglophobia could reconcile some Virginians to a bill that, by Madison’s reckoning, would have destroyed the virtual monopoly Britons had enjoyed over Virginia’s trade.³⁵ For his part, Jefferson applauded Madison’s efforts and suggested that consolidating Virginia’s foreign trade at one port only would have produced even greater salutary effects. “One of my reasons for wishing to center our commerce at Norfolk,” Jefferson explained, “was that it might bring to a point the proper subjects of taxation and reduce the army of taxgatherers almost to a single hand.”³⁶ Ironically, Jefferson hoped that this state-centered attempt at commercial consolidation would have the decidedly *anti*-consolidation effect of reducing the number of government officials in service.

In the end, of course, Virginia’s commercial restrictions could have the desired effect only if other states followed suit, a point that ultimately compelled Madison to resume his efforts at the national level. In November 1785 he drafted a resolution instructing Virginia’s representatives in Congress “to propose . . . a recommendation to the States . . . to authorize that Assembly to regulate their trade” in accordance with certain conditions. While Madison outlined the regulatory powers, his colleagues in the assembly supplied the conditions. Congress could collect no revenue. It could not discriminate between nations bound and not bound by a commercial treaty. And its regulatory

³³ James Madison to Thomas Jefferson, July 3, 1784, 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, 322.

³⁴ James Madison to Thomas Jefferson, August 20, 1784, *ibid.*, 337.

³⁵ A full discussion of the bill appears in Drew R. McCoy, “The Virginia Port Bill of 1784,” *Virginia Magazine of History and Biography*, 83 (July 1975), 288–303.

³⁶ Thomas Jefferson to James Madison, December 8, 1784, in James Morton Smith, ed., *Republic of Letters*, I, 353.

authority must be temporary.³⁷ Madison chafed at all three of these conditions and soon began thinking of more permanent remedies.

As an accredited diplomat at a European court, Jefferson was better positioned than Madison to effect changes in American commercial relations. In fact, before receiving plenipotentiary powers as U.S. minister to France, Jefferson had arrived in Europe with instructions to join seasoned negotiators Benjamin Franklin and John Adams in securing commercial treaties based on the principle of reciprocity and more or less consistent with the Model Treaty of 1776.³⁸ Congress would have welcomed free-trade agreements with any nation, but Britain's trade mattered most.

In 1784 the American commissioners worked through official channels in Paris to sound out the British government's position on trade. Having informed London of their eagerness to discuss commercial affairs, Jefferson, Adams, and Franklin waited through the winter of 1784–1785 with no reply. “We have long and daily expected to hear from them,” Jefferson wrote, but the British “seem . . . to have forgotten us.”³⁹ When the response finally came, its contents proved disheartening. John Frederick Sackville, third Duke of Dorset, the British ambassador to France, broke the news:

Having communicated to my Court the readiness you express'd . . . to remove to London for the purpose of treating upon such points as may materially concern the Interests both political and commercial of Great Britain and America . . . I have been, in answer thereto, instructed to learn from you, Gentlemen, what is the real nature of the Powers with which you are invested; whether you are merely commission'd by Congress, or whether you have receiv'd separate Powers from the respective States. A Committee of North American Merchants . . . express how anxiously they wish to be inform'd upon this subject, repeated experience having taught them in particular, as well as the Public in general, how little the authority of Congress could avail in any respect, where the Interests of any one individual State was even concern'd, and particularly so, where the concerns of that particular State might be suppos'd to militate against such resolutions as Congress might think proper to adopt.⁴⁰

Did the commissioners possess powers and instructions from individual states, or were they “merely” commissioned by Congress?—the question could not have been better calculated to insult the American

³⁷ James Madison to Thomas Jefferson, January 22, 1786, *ibid.*, 401–9 (quotation on 409).

³⁸ The commissioners' instructions particularly emphasized the need for reciprocity with European possessions in the Western Hemisphere. With Europe itself the commissioners were to take the more realistic approach of “most favored nation.” See Merrill D. Peterson, “Thomas Jefferson and Commercial Policy, 1783–1793,” *William and Mary Quarterly*, 3rd ser., 22 (October 1965), 584–610 (quotation on 591).

³⁹ Thomas Jefferson to Richard Henry Lee, February 7, 1785, in Boyd et al., eds., *Papers of Thomas Jefferson*, VII, 643–44.

⁴⁰ Duke of Dorset to the American Commissioners, March 26, 1785, *ibid.*, VIII, 55–56.

diplomats. Jefferson was aghast at the tone and substance of the British reply. "The letter from *the Duke of Dorset*," he wrote to James Monroe, "will I dare say *surprise you all*. It is a folly above the highest that could have been expected."⁴¹

But the American commissioners did not despair. Adams, settling into his position as minister to Great Britain and embracing his duties with characteristic purposefulness, urged his colleagues to forget Britain's initial rebuff and get down to specifics regarding a commercial treaty.⁴² Franklin planned to sail for America as soon as possible, so Jefferson assumed a greater share of the commission's responsibilities. The Virginian wasted no time in responding to Adams. Their first objective, Jefferson wrote—no doubt recalling the Dorset letter—was to convince the British government that its interests lay in dealing with Congress. This would be no small task. Citing "[a] late conversation with an English gentleman" in Paris, Jefferson confessed that he now believed "what I did not believe before," that the British thought "seriously that Congress have no power to form a treaty of commerce." But how could Jefferson and Adams persuade them otherwise? The Dorset letter made clear that even if the British recognized Congress's power to conclude a treaty of commerce, they certainly did not concede its effectiveness in enforcing such a treaty. Negotiating from a position of weakness, Jefferson responded in the only way he could. "If Great Britain asks then why she should enter into treaty with us," he told Adams, "I answer, because till a treaty is made no Consul of hers can be received[,] . . . no protection to her commerce can be given by Congress, no cover to it from those checks and discouragements with which the states will oppress it, acting separately and by fits and starts." Under the Articles of Confederation the states enjoyed the right to regulate their own commerce, so Jefferson proposed that he and Adams use this fact to their advantage, hoping the threat of thirteen angry legislatures might persuade London to strike a deal with a presumably more benevolent Congress. "That [the states] will act so till a treaty is made," Jefferson concluded, "Great Britain has had several proofs, and I am convinced that those proofs will become general."⁴³

⁴¹ Thomas Jefferson to James Monroe, April 15, 1785, *ibid.*, 88. For Jefferson's otherwise favorable view of the Duke of Dorset, see Thomas Jefferson to John Adams, July 28, 1785, *ibid.*, 315–17, esp. 317.

⁴² John Adams to Benjamin Franklin and Thomas Jefferson, June 20, 1785, in Lester J. Cappon, ed., *The Adams-Jefferson Letters: The Complete Correspondence Between Thomas Jefferson and Abigail and John Adams* (2 vols. paged consecutively; Chapel Hill, 1959), 33.

⁴³ Thomas Jefferson to John Adams, July 7, 1785, *ibid.*, 38–39 (first, second, and third quotations on 38; fourth, fifth, sixth, and seventh quotations on 39).

The “proofs” to which Jefferson referred came in the form of the Massachusetts and New Hampshire Navigation Acts. Incensed by Britain’s monopolistic trade policies, particularly the exclusion of U.S. ships from the British West Indies, the legislatures of these two New England carrying states had imposed their own restrictions on British ships trading in their states’ ports. Though circumscribing only a fraction of the overall Anglo-American trade, these acts did manage to attract British attention in ways that the frustrated American negotiators hitherto had not. From London, Abigail Adams gleefully observed that the Massachusetts act had “struck the hireling scriblers dumb” and that she had noticed “less abuse against the Americans in the papers since the publication of it.”⁴⁴ Jefferson initially believed that Massachusetts and New Hampshire had done right, particularly if the other states followed.⁴⁵ Upon further review, however, he discovered that these acts did not discriminate against British shipping alone but against all foreign vessels, and giving preferences to U.S. shipping by effectively excluding the trade of friendly foreigners was not at all what Jefferson had in mind. Once it became clear that this wholesale exclusion was exactly what Massachusetts and New Hampshire had done, Jefferson warned that these acts were not only “much complained of” in France but were also very likely to “draw retaliating measures from the states of Europe, [if] generally adopted in America or not corrected by the states which have adopted [them].”⁴⁶ Here was the problem Madison had encountered in Virginia: a refusal on the part of many delegates to discriminate between those nations with which Congress had struck commercial agreements and those with which it had not. It now seemed to Jefferson that state-centered regulations, devoid of coherence, would not provide sufficient protection to American commercial interests.

By comparison, Adams showed far more deference to the states than did Jefferson. Finding their diplomatic efforts stymied by an impenetrable wall of official British intransigence, Adams and Jefferson in 1785 had plenty of time to write to one another, which they did in a series of exchanges that covered, among other topics, the question of whether the United States, despite their Revolutionary principles, ought to adopt something akin to the British mercantilist system. Adams concluded that they should, though he did not insist

⁴⁴ Abigail Adams to Thomas Jefferson, August 21, 1785, *ibid.*, 55.

⁴⁵ Thomas Jefferson to Nathaniel Tracy, August 17, 1785, in Boyd et al., eds., *Papers of Thomas Jefferson*, VIII, 398–99.

⁴⁶ Thomas Jefferson to William Carmichael, November 4, 1785, *ibid.*, IX, 15.

that such measures originate in Congress. "If the English will persevere in excluding our Ships from their" dominions, he wrote, then Americans "must adopt in all the States the Regulations which were once made in England."⁴⁷ More specifically, "[t]he thirteen States must each pass a Navigation Act, and heavy Duties upon all British Merchandizes, so as to give a clear Advantage to their own and the Manufactures of France and Germany, Prussia and Russia, or we shall be a long time weak and poor."⁴⁸ Not only did Adams continue to view the states as the most likely sources of regulatory reform, but he also suggested that he and Jefferson ought to follow the states' lead to some degree. Referring to the Massachusetts Navigation Act and surmising that "the Reasonings and Dispositions of all the States tend the same Way at present," Adams advised Jefferson, "[W]e must conform our Proceedings, as I suppose, to their Views."⁴⁹ But Jefferson did not subscribe entirely to Adams's logic. On one hand, he agreed that the time had come for collective action. "The determination of the British cabinet to make no equal treaty with us," he wrote to Adams, "confirms me in the opinion expressed in your letter of Oct. 24 that the U.S. must pass a navigation act against Great Britain and load her manufactures with duties so as to give a preference to those of other countries." As for the legislative source of this proposed American navigation act, on the other hand, Jefferson subtly but clearly departed from his colleague: "I hope our assemblies will wait no longer, but transfer such a power to Congress at the sessions of this fall."⁵⁰ Oddly, on the important issue of commercial regulation it was the future Federalist John Adams who placed his confidence in the states, while the future Republican Thomas Jefferson championed a more vigorous central government.

But Jefferson's approach was not quite as straightforward as might appear from this fascinating exchange with Adams. For one thing, Jefferson never claimed—as a defender of Parliament in the 1770s would have—that national sovereignty consisted of the power to regulate trade. In fact, to Adams he expressed his wish that the state legislatures would transfer this power to Congress, which implies sovereignty in the states themselves. The exception, as Jefferson told James Monroe, was in the power to make treaties. "The moment these treaties are concluded," Jefferson wrote, "the jurisdiction of Congress

⁴⁷ John Adams to Thomas Jefferson, August 7, 1785, in Cappon, ed., *Adams-Jefferson Letters*, 50–52 (first quotation on 50–51; second quotation on 51).

⁴⁸ John Adams to Thomas Jefferson, October 24, 1785, *ibid.*, 86.

⁴⁹ John Adams to Thomas Jefferson, August 18, 1785, *ibid.*, 55.

⁵⁰ Thomas Jefferson to John Adams, November 19, 1785, *ibid.*, 94.

over the commerce of the states springs into existence, and that of the particular states is superseded so far as the articles of the treaty may have taken up the subject."⁵¹ Apart from treaty-making, however, Congress possessed no regulatory authority and no power to coerce the states to do much of anything. Jefferson had not yet considered the possibility that the *people*, not the states, might grant this power to Congress before long.

Furthermore, eighteenth-century republican ideology offered an alternative solution to the commercial crisis that did not require resolution of the sovereignty question. Before the Revolution, many Americans had boycotted British-made luxuries and weaned themselves off of what the age called "superfluities," and in the process they exerted economic pressure sufficient, at times, to modify the British policies they protested. Here was an example of what the eighteenth century called "virtue"—a willingness to sacrifice individual interest for the public good. This was the stuff of which republicans were made; it was how Americans had prevailed in the great imperial struggle.⁵² Now, Jefferson wondered, could they do it again? Could Americans in the 1780s—that is, without coercion—abstain from purchasing the British goods to which they had grown so accustomed? And might that collective abstention force the British government to rescind its order-in-council?

Unfortunately, every relevant report he received from America suggested otherwise. "We are fast Verging to Individual and Universal Bankruptcy," James Currie wrote from Richmond, Virginia, in 1785. Complaining of "Extravagance Unequalled in so young a Country," Currie reported to Jefferson the appearance of "40 new (and Elegant) Chariots" at a racing day in Fredericksburg, over and above the number that had appeared at the same event the previous year. Virginians' sudden postwar profligacy managed to "astonish strangers" as well as natives of the Old Dominion who had spent time

⁵¹ Thomas Jefferson to James Monroe, June 17, 1785, in Boyd et al., eds., *Papers of Thomas Jefferson*, VIII, 230.

⁵² Drew R. McCoy, in *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill, 1980), has argued brilliantly for the coherence and persistence of these ideas in Jeffersonian conceptions of political economy. See especially pp. 21–32 for the eighteenth-century debate over "luxury" and p. 45 for "superfluities." The broader concept of "virtue" has received extensive treatment from historians of republicanism and is in many ways inseparable from it. See Bernard Bailyn, *The Ideological Origins of the American Revolution* (1967; enlarged ed., Cambridge, Mass., 1992), esp. 321–79; Wood, *Creation of the American Republic*, esp. 53–70; and Lance Banning, "Some Second Thoughts on Virtue and the Course of Revolutionary Thinking," in Terence Ball and J. G. A. Pocock, eds., *Conceptual Change and the Constitution* (Lawrence, Kans., 1988), 194–212.

in Europe and then returned to the state after the Revolution.⁵³ Even more disconcerting was the image Americans projected to the rest of the world. "The eyes of the friends of liberty and humanity are now fixed on that country," Richard Price wrote to Jefferson from London in 1785. And yet, from "the accounts of distress and confusion" in the United States, it was clear that "a rage for foreign trade" had taken hold "along the Sea coast of America and in Some of the principal towns." This "deviation" from "Simplicity" to "luxury" threatened to "Spread among the body of the people till the infection becomes general and the new governments are render'd images of our European governments."⁵⁴ Before long it seemed that even Jefferson had lost faith in American virtue. "I consider the extravagance which has seized them," he wrote of his countrymen, "as a more baneful evil than toryism was during the war. . . . Would a missionary appear who would make frugality the basis of his religious system, and go thro the land preaching it up as the only road to salvation, I would join his school tho' not generally disposed to seek my religion out[side] of the dictates of my own reason and feelings of my own heart."⁵⁵ While Jefferson despaired over rampant materialism, he continued to link the nation's commercial affairs with the need for a reformation of manners and morals in the people. "I know nothing," he wrote to Madison from Paris, "which would act more powerfully as a sumptuary law with our people than an inhibition of commerce with England."⁵⁶

As he and Adams ruminated on trade and as his correspondents bombarded him with bad news about Americans' reckless consumption choices, Jefferson in his official capacity concluded that British silence in response to repeated American overtures constituted that government's final resolution. "With this nation nothing is done," he told Madison in April 1786, "and it is now decided that they intend to do nothing with us." King, ministry, merchants, and people had aligned themselves against the United States. "They sufficiently value our commerce," Jefferson concluded, "but they are quite persuaded they shall enjoy it on their own terms."⁵⁷ In Europe, then, there was nothing left to be done. All eyes now turned inward to the movement

⁵³ James Currie to Thomas Jefferson, October 17, 1785, in Boyd et al., eds., *Papers of Thomas Jefferson*, VIII, 641.

⁵⁴ Richard Price to Thomas Jefferson, March 21, 1785, *ibid.*, 53.

⁵⁵ Thomas Jefferson to John Page, May 4, 1786, *ibid.*, IX, 445–46.

⁵⁶ Thomas Jefferson to James Madison, March 18, 1785, *ibid.*, VIII, 40.

⁵⁷ Thomas Jefferson to James Madison, April 25, 1786, in James Morton Smith, ed., *Republic of Letters*, I, 417.

for constitutional reform that would culminate in the establishment of a new government invested with powers sufficient to challenge British commercial supremacy.

Before the so-called miracle at Philadelphia, Americans tried one final time to resolve the trade issue without shaking the young republic's constitutional foundation. The attempt came in late 1786 at the Annapolis "Commercial Convention," as Madison called it, where commissioners appointed by the state legislatures tried to discuss trade regulation as a matter separate from constitutional reform.⁵⁸ They found, however, "that the power of regulating trade" was "of such comprehensive extent" and would "enter so far into the general System of the foederal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the Fœderal System."⁵⁹ Thus the Constitutional Convention grew out of the need not only to vest in Congress the authority to regulate trade but also to determine the basis and extent of that authority.

By 1787 arguments and events had shown with redundant force that the national government needed the power to regulate trade. So persuasive were these arguments and events, and so complete was the consensus among delegates, that the convention devoted only a small portion of a single day—August 16—to discussing the question of whether to add trade regulation to the list of Congress's enumerated powers. When the vote came, the delegates agreed *nemine contradicente*.⁶⁰ Months later, while defending the convention's enumeration of powers, Madison in *Federalist* 42 cited this consensus in declaring that "[t]he regulation of foreign commerce . . . has been too fully discussed to need additional proofs here of its being properly submitted to the federal administration."⁶¹ Without dissent or justification—the absence of the former obviated the need for the latter—the framers of the Constitution finished the work begun in the aftermath of Britain's 1783 order-in-council and finally rescinded Article IX of the Confederation compact.

⁵⁸ James Madison to Thomas Jefferson, March 18, 1786, *ibid.*, 414.

⁵⁹ "Annapolis Convention. Address of the Annapolis Convention," September 14, 1786, in Harold C. Syrett et al., eds., *The Papers of Alexander Hamilton* (27 vols.; New York, 1961–1987), III, 688.

⁶⁰ Entry for Thursday, August 16, in James Madison, "Notes of Debates in the Federal Convention of 1787," TeachingAmericanHistory.org, <http://www.teachingamericanhistory.org/convention/debates/0816.html>.

⁶¹ James Madison, *Federalist* 42, in Alexander Hamilton, James Madison, and John Jay, *The Federalist*, edited by Benjamin Fletcher Wright (Cambridge, Mass., 1961), 304; hereinafter cited as Wright, ed., *Federalist*.

When the House of Representatives met for the first time in 1789, Madison made sure to include commerce among the first items of business. On April 8, the initial occasion for substantive debate, Madison proposed as part of a broad system of regulation and revenue that Congress impose, among other things, different rates of taxation on “vessels belonging wholly to the subjects of Powers with whom the United States have formed treaties” and on “vessels belonging wholly or in part to the subjects of other Powers,” with the former receiving preferential treatment.⁶² With respect to the latter—those “other Powers” not in treaty with the United States—all present knew that Madison had Great Britain in mind. Since 1783 Americans had sought an effective means of retaliation against British trade policies, and Madison now looked to provide those means through a system of “commercial discrimination”—a system that contemporaries and historians alike came to identify most closely with Madison himself.⁶³

No doubt this personal identification with a system of commercial discrimination would have astonished Madison in 1789. If the history of the Confederation era had revealed anything, it had revealed that Madison was by no means the only statesman who believed that bold, discriminatory measures giving commercial preferences to nations in treaty with the United States might work to reverse Britain’s monopolistic policies. “We ought to have no Preferences nor Partialities,” John Adams had declared in 1785; and yet if Great Britain persisted in excluding U.S. ships from the West Indies, then, Adams said, “I am for giving France the Preference.”⁶⁴ Even more striking was Alexander Hamilton’s argument in *Federalist* 11. “Suppose, for instance, we had a government in America, capable of excluding Great Britain (with whom we have at present no treaty of commerce) from all our ports; which would be the probable operation of this step upon her politics?” Hamilton asked. “Would it not enable us to negotiate, with the fairest prospect of success, for commercial privileges of the most valuable and extensive kind, in the dominions of that kingdom?”⁶⁵ Considering Adams’s call for

⁶² *Annals of Congress*, 1 Cong., 1 Sess., 108 (April 8, 1789).

⁶³ For an interpretation of Madison’s “system” as grounded in republican ideology and constituting a coherent alternative to Alexander Hamilton’s own “system,” see Drew R. McCoy, “Republicanism and American Foreign Policy: James Madison and the Political Economy of Commercial Discrimination, 1789 to 1794,” *William and Mary Quarterly*, 3rd ser., 31 (October 1974), 633–46.

⁶⁴ John Adams to Thomas Jefferson, October 3, 1785, in Cappon, ed., *Adams-Jefferson Letters*, 77.

⁶⁵ Alexander Hamilton, *Federalist* 11, in Wright, ed., *Federalist*, 137; Schwarz, “Great Divergence Reconsidered,” 423–24.

treaty-based commercial preferences, Hamilton's defense of the new government based on its ability to exclude British ships from U.S. ports, and the debates in Congress and elsewhere since 1783, Madison certainly had good reason to expect that his proposed system of commercial discrimination would meet with near-universal approval.

From the beginning, however, Madison encountered resistance. In the course of a single day's debate in the House of Representatives, a number of delegates voiced doubts about the entire discriminatory system, prompting a reply from its author. "From what has been suggested by the gentlemen that have spoken on the subject before us," Madison began, "I am led to apprehend we shall be under the necessity of travelling further into an investigation of principles than what I supposed would be necessary, or had in contemplation when I offered the propositions before you."⁶⁶ For weeks the House proceeded to debate both the propositions and the principles. Meanwhile, as Jefferson waited in Paris for congressional approval to return home, Madison kept his friend apprised of developments. "The discrimination between Nations in and not in Treaty," Madison wrote, had called forth in Congress a small but vociferous group of delegates who favored "putting G. B. at once on the same footing with the most favored nation."⁶⁷

Enemies of discrimination, however large their numbers proved to be in the U.S. Senate and later in the Federalist Party, amounted to a minority and thus did not reflect the will of the sovereign, which by 1789 had come to mean not the nation or the states but the people. The government must enact commercial discrimination, Madison argued, because the sovereign people demanded it. "It has not been denied," Madison said during the House debates of May 4, "and therefore I take it to be tacitly admitted, that the public sentiments are friendly to such a discrimination as is proposed." Furthermore, the commercial crisis had led first to Annapolis and then to the Philadelphia convention, whose labors the people had ratified, Madison believed, in anticipation of bold retaliatory measures that would strike at Britain and its monopolistic ambitions. To "abolish this favorite distinction," then, would be to "disappoint the expectations of the warmest friends and advocates of the Constitution," along with many others.⁶⁸ In an extended letter to Jefferson at the end of June, Madison summarized and amplified the arguments he had made on the House floor.

⁶⁶ *Annals of Cong.*, 1 Cong., 1 Sess., 115 (April 9, 1789).

⁶⁷ James Madison to Thomas Jefferson, May 9, 1789, in James Morton Smith, ed., *Republic of Letters*, I, 608.

⁶⁸ *Annals of Cong.*, 1 Cong., 1 Sess., 247 (May 4, 1789).

Commercial discrimination conformed to “the motives in which the new Government originated,” as well as “the known sentiments of the people at large,” the majority of whom would have deemed it an insult “to see G.B. in particular put on the footing of the most favored nations, by the first act of a Government instituted for the purpose of uniting the States in the vindication of their commercial interests against her monopolizing regulations.”⁶⁹ Madison, in short, made an extended appeal to public opinion. The Senate, filled with future Federalists whose pro-British policies represented the real apostasy from the previous decade’s consensus, rejected it.⁷⁰

Jefferson could not believe the Senate would be so foolish. France, Jefferson wrote from Paris, “has engaged herself in a ruinous war for us, has spent her blood and money to save us,” while Britain “has moved heaven, earth and hell to exterminate us in war, has insulted us in all her councils in peace, shut her doors to us in every part where her interests would admit it, libelled us in foreign nations,” and so on. To treat these two nations equally would be “to give a great deal more to one than to the other.”⁷¹ For the next several years Jefferson joined Madison in promoting commercial discrimination against Britain. As secretary of state, Jefferson laid out the argument for discrimination most clearly in his famous 1793 report on commerce, which historian Merrill D. Peterson has described as the culmination of “a decade of unremitting labor to develop a national system of political economy independent of Britain” and geared toward “free exchange and pacific intercourse among nations.”⁷² In the end, the commercial policies Jefferson and Madison advocated—the very policies for which, according to Madison, Americans had reformed their national government in the first place—went nowhere.

Britain’s order-in-council excluding U.S. ships from the West Indian carrying trade constituted the first serious postwar challenge to American nationhood and union. Preoccupied with winning a war and securing independence, Americans before 1783 had given little thought to commerce. After 1783, however, members of Congress and U.S. diplomats abroad—faced with lingering British hostility and yet

⁶⁹ James Madison to Thomas Jefferson, June 30, 1789, in James Morton Smith, ed., *Republic of Letters*, I, 619.

⁷⁰ For a recent study that emphasizes Madison’s commitment to popular government, see Colleen A. Sheehan, *James Madison and the Spirit of Republican Self-Government* (New York, 2009).

⁷¹ Thomas Jefferson to James Madison, August 28, 1789, in James Morton Smith, ed., *Republic of Letters*, I, 629.

⁷² Peterson, “Thomas Jefferson and Commercial Policy,” 585.

saddled with the Articles of Confederation—uniformly agreed that Congress should have the power to regulate trade in the national interest. Jefferson and Madison, in their separate diplomatic and legislative capacities, urged their countrymen to bolster national authority over commerce and then, once the people had approved the Constitution, pressed Congress to acknowledge the popular will and retaliate against Great Britain. Given the general consensus on the subject of commerce that had prevailed in the 1780s, Jefferson and Madison had good reason to feel astonishment at the Senate's refusal to adopt the sort of discriminatory commercial policies Madison insisted the people had demanded since the end of the Revolution.

Despite having defended the Constitution in *Federalist* 11 on grounds that it created “a government . . . capable of excluding Great Britain . . . from all our ports,” Treasury Secretary Alexander Hamilton opposed commercial discrimination, proceeded to craft a set of fiscal policies modeled after Britain's and dependent on British trade, and then puzzled over why Jefferson and Madison opposed him. In a famous 1792 letter to the Virginian Edward Carrington, Hamilton offered his own interpretation of the Jefferson-Madison alliance and its origins. “*Mr. Madison,*” Hamilton wrote, “*cooperating with Mr. Jefferson is at the head of a faction decidedly hostile to me and my administration, and actuated by views in my judgment subversive of the principles of good government and dangerous to the union, peace and happiness of the Country.*” Madison's behavior particularly troubled Hamilton, for only a few years earlier the two men had worked together to help secure ratification of the Constitution and thereby strengthen the national government. In fact, Hamilton confessed that when he became treasury secretary he had expected, due to what he called “the similarity of thinking between that Gentleman and myself,” Madison's support and that he might not have accepted the job otherwise. Frustrated and perplexed by his former colleague's apparent betrayal, Hamilton blamed Madison's transformation—for “certain it is, that a very material *change* took place”—on the insidious influence of Jefferson, whom Madison long had admired but who, according to Hamilton, “did not in the first instance cordially acquiesce in the new constitution for the U States.” Together, as Hamilton declared, Jefferson and Madison, the former an enemy of national government and the latter an apostate from it, hoped “to narrow the Federal authority.”⁷³

⁷³ Alexander Hamilton to Edward Carrington, May 26, 1792, in Syrett et al., eds., *Papers of Alexander Hamilton*, XI, 426–45 (first and second quotations on 429; third quotation on 427; fourth quotation on 440; fifth quotation on 439; sixth quotation on 437).

Whatever might be said in behalf of Hamilton's policies as treasury secretary, he most certainly mischaracterized the origins of the Jefferson-Madison collaboration. Thanks to the work of Lance Banning and others, historians now appreciate the fundamental consistency in Madison's thinking between the 1780s and 1790s. Scholars also know that Madison never embraced the sort of nationalism that came to be identified with Hamiltonian consolidation. That Madison harbored nationalist sympathies, however, is clear enough from his opinions on commercial regulation, his efforts to secure constitutional reform, and his defense of commercial discrimination on grounds of popular sovereignty. The same was true of Jefferson. In fact, it seems somewhat odd to describe a man who served from 1784 to 1793 in diplomatic and executive capacities as an advocate of states' rights.⁷⁴ In the commercial policies he preferred and in his understanding of the interests all Americans shared, Jefferson, too, was a nationalist. Hamilton thus exaggerated Jefferson's disposition to "narrow the Federal authority" under the Constitution. And if Hamilton got it wrong—that is, if Madison was not the nationalist of Hamilton's imagination and if Jefferson was more of a nationalist than Hamilton allowed—then the origins and objects of the Jefferson-Madison alliance must appear in a different light. Jefferson, for instance, could not have converted Madison to a states' rights position he himself did not espouse. If historians take Madison at his word and recognize the crucial role of commerce in bringing about constitutional reformation, then the traditional understanding of the first party struggle as a contest between national-minded Hamiltonian Federalists who advocated a strong central government consistent with the constitutional settlement of the 1780s and Jeffersonian Republicans who championed state sovereignty and thereby abandoned the great nationalist achievement of 1787–1788 requires substantial modification.

⁷⁴ This understanding of Jefferson remains prevalent in popular memory, as evidenced by an otherwise exceptional interpretative exhibit inside the Ford Orientation Center at George Washington's Mount Vernon, which describes Secretary of State Jefferson as an advocate of "states' rights."