EXCERPTS FROM THE PACIFICUS/HELVIDIUS DEBATES

Pacificus I, Philadelphia, 29 June 1793 (excerpts)

The Legislative Department is not the organ of intercourse between the UStates and foreign Nations. It is charged neither with making nor interpreting Treaties. . . .

It is equally obvious that the act in question is foreign to the Judiciary Department of the Government. . . . It is indeed charged with the interpretation of treaties; but it exercises this function only in the litigated cases; that is where contending parties bring before it a specific controversy. . . .

It must then of necessity belong to the Executive Department to exercise the function in Question—when a proper case for the exercise of it occurs. . . .

The second Article of the Constitution of the UStates, section 1st, establishes this general Proposition, That "The Executive Power shall be vested in a President of the United States of America."

The same article in a succeeding Section proceeds to designate particular cases of Executive Power. . . .

It would not consist with the rules of sound construction to consider this enumeration of particular authorities as derogating from the more comprehensive grant contained in the general clause. . . . The different mode of expression employed in the constitution in regard to the two powers the Legislative and the Executive serves to confirm this inference. In the article which grants the legislative powers of the Governt. the expressions are—"All Legislative powers herein granted shall be vested in a Congress of the UStates"; in that which grants the Executive Power the expressions are, as already quoted "The Executive Po<wer> shall be vested in a President of the UStates of America." . . .

If the Legislature have a right to make war on the one hand—it is on the other the duty of the Executive to preserve Peace till war is declared . . . it becomes both its province and its duty to enforce the laws incident to that state of the Nation. . . .

The right of the Executive to receive ambassadors and other public Ministers may serve to illustrate the relative duties of the Executive and Legislative Departments. This right includes that of judging, in the case of a Revolution of Government in a foreign Country, whether the new rulers are competent organs of the National Will and ought to <be> recognised or not. . . . To apply it to the case of France, if the<re> had been a Treaty of alliance offensive <and> defensive between the UStates and that Coun<try,> the unqualified acknowlegement of the new Government would have put the UStates in a condition to become an associate in the War in which France was engaged. . . .

It is the province and duty of the Executive to preserve to the Nation the blessings of peace. The Legislature alone can interrupt those blessings, by placing the Nation in a state of War. . . .

Pacificus II, 3 July 1793 (excerpts)

The Alliance between the United States and France is a Defensive Alliance. In the Caption of it it is denominated a "Treaty of Alliance eventual and defensive." In the body of it, (Article the 2) it is again called a defensive Alliance. . . .

The great question consequently is—What are the nature and effect of a defensive alliance? When does the casus foederis, or condition of the contract take place, in such an alliance?

Reason the concurring opinions of Writers and the practice of Nations will answer—"When either of the allies is attacked, when war is made upon him not when he makes war upon another."

In other words, The stipulated assistance is to be given to the ally, when engaged in a defensive not when engaged in an offensive war. This obligation to assist only in a defensive war constitutes the essential difference between a defensive alliance and one which is both offensive and defensive. In the latter case there is an obligation to cooperate as well when the war on the part of our ally is offensive as when it is defensive. To affirm therefore that the UStates are bound to assist France in the War in which she is at present engaged would be to convert our Treaty with her into an Alliance Offensive and Defensive contrary to the express & reiterated declarations of the Instrument itself.

No position is better established than that the Power which first declares or actually begins a War, whatever may have been the causes leading to it, is that which makes an offensive war. Nor is there any doubt that France first declared and began the War against Austria, Prussia, Savoy Holland England and Spain. . . .

France then being on the offensive in the war, in which she is engaged, and our alliance with her being defensive only, it follows that the casus foederis or condition of our guarantee cannot take place; and that the UStates are free to refuse a performance of that guarantee, if demanded. . . .

Pacificus III, 6 July 1793 (excerpts)

France at the time of issuing the proclamation was engaged & likely to be engaged in war, with all or almost all Europe; without a single ally in that quarter of the Globe. . . .

By this situation of things alone, the UStates would be dispensed from an obligation to embark in her quarrel. . . .

The Contest in which the UStates would plunge themselves, were they to take part with France, would possibly be still more unequal, than that in which France herself is engaged. With the possessions of Great Britain and Spain on both Flanks, the numerous Indian tribes, under the influence and direction of those Powers, along our whole Interior frontier, with a long extended sea coast—with no maritime force of our own, and with the maritime force of all Europe against us, with no fortifications whatever and with a population not exceeding four Millions—it is impossible to imagine a more unequal contest, than that in which we should be involved in the case supposed; a contest from which, we are dissuaded by the most cogent motives of self preservation, as well as of Interest.

We may learn from Vatel one of the best Writers on the laws of Nations that "If a State which has promised succours finds itself unable to furnish them, its very inability is its exemption; and if the furnishing the succours would expose it to an evident danger this also is a lawful dispensation. . . .

The Revolution in France is the primitive source of the War, in which she is engaged. The restoration of the monarchy is the avowed object of some of her enemies—and the implied one of all of them. That question then is essentially involved in the principle of the war; a question certainly never in the contemplation of that Government, with which our Treaty was made, and it may thence be fairly inferred never intended to be embraced by it. . . .

Pacificus IV, 10 July 1793 (excerpts)

A third objection to the Proclamation is, that it is inconsistent with the gratitude due to France, for the services rendered us in our own Revolution. . . .

They endeavour . . . by saying, that the Proclamation places France upon an equal footing with her enemies; while our Treaties require distinctions in her favour, and our relative situation would dictate kind offices to her, which ought not to be granted to her adversaries. . . .

Faith and Justice between nations are virtues of a nature sacred and unequivocal. They cannot be too strongly inculcated nor too highly respected. Their obligations are definite and positive their utility unquestionable: they relate to objects, which with probity and sincerity generally admit of being brought within clear and intelligible rules.

But the same cannot be said of gratitude. It is not very often between nations, that it can be pronounced with certainty, that there exists a solid foundation for the sentiment—and how far it can justifiably be permitted to operate is always a question of still greater difficulty. . . .

Between individuals, occasion is not unfrequently given to the exercise of gratitude. Instances of conferring benefits, from kind and benevolent dispositions or feelings towards the person benefitted, without any other interest on the part of the person, who confers the benefit, than the pleasure of doing a good action, occur every day among individuals. But among nations they perhaps never occur. It may be affirmed as a general principle, that the predominant motive of go<od> offices from one nation to another is the interest or advantage of the Nation, which performs them. . . .

Whence it follows, that an individual may on numerous occasions meritoriously indulge the emotions of generosity and benevolence; not only without an eye to, but even at the expence of his own interest. But a Nation can rarely be justified in pursuing <a similar> course; and when it does so ought to confine itself within much stricter bounds. . . .

Pacificus V, 13-17 July 1793 (excerpts)

A question has arisen, with regard to the proper object of that gratitude, which is so much insisted upon; whether the unfortunate Prince, by whom the assistance received was given; or the Nation of whom he was the Chief and the Organ. . . .

Louis the XVI, though no more than the constitutional Agent of the Nation, had at the time the sole power of managing its affairs—the legal right of directing its will and its forces. It belonged to him to assist us or not, without consulting the nation; and he did assist us, without such consultation. His will alone was active; that of the Nation passive. If there was any kindness in the decision, demanding a return of kindness from us, it was the kindness of Louis the XVI—his heart was the depository of the sentiment. . . .

The doctrine that the Prince is only the Organ of his nation is conclusive to enforce the obligations of good faith between Nation and Nation; in other words, the observance of duties stipulated in treaties for National purposes—and it will even suffice to continue to a nation a claim

to the friendship and good will of another resulting from friendly offices done by its prince; but it would be to carry it too far and to render it too artificial to attribute to it the effect of transferring that claim from the Prince to the Nation. . . .

As to the individual good wishes of the citizens of France . . . they can be no foundation for national gratitude. They can only call for a reciprocation of individual good wishes. They cannot form the basis of public obligation. . . .

It is certain, that the love of liberty was not a national sentiment in France when a zeal for our cause first appeared among that people. . . .

There is reason to believe too that the attachment to our cause, which ultimately became very extensive, if not general, did not originate with the mass of the French people. It began with the

higher circles, more immediately connected with the government, and was thence transmitted through the Nation. . . .

Pacificus VII, 27 July 1793 (excerpts)

The remaining objection to the Proclamation of Neutrality, still to be discussed, is that it was out of time and unnecessary. . . .

Austria and Prussia are not Maritime Powers. . . . It would therefore have been useless, if not ridiculous, to have made formal Declaration on the subject, while they were the only parties opposed to France.

But the reverse of this is the case with regard to Spain Holland & England. These are all commercial maritime Nations. . . . their attention would be immediately drawn towards the UStates with sensibility, and even with jealousy. It was to be feared that some of our citizens might be tempted by the prospect of gain to go into measures which would injure them. . . . Attacks by some of these Powers upon the possessions of France in America were to be looked for as a matter of course. . . .

In proportion to the probability of our being regarded with a suspicious and . . . unfriendly eye, by the Powers at war with France; in proportion to the danger of imprudencies being committed by any of our citizens, which might occasion a rupture with them—the policy on the part of the Government of removing all doubt as to its own disposition, and of deciding the condition of the UStates in the view of the parties concerned became obvious and urgent. . . .

The conduciveness of the Declaration of neutrality to that end was not the only recommendation to an early adoption of the measure. It was of great importance that our own citizens should understand, as soon as possible, the opinion which the Government entertained of the nature of our relations to the warring parties and of the propriety or expediency of our taking a side or remaining neuter. The arrangements of our merchants could not but be very differently affected by the one hypothesis, or the other; and it would necessarily have been very detrimental and perplexing to them to have been left in uncertainty. . . .

Cite as: The Papers of Alexander Hamilton Digital Edition, ed. Harold C. Syrett. Charlottesville: University of Virginia Press, Rotunda, 2011. Original source: Volume XV: June 1793–January 1794

Helvidius I, 24 August 1793 (excerpts)

The natural province of the executive magistrate is to execute laws, as that of the legislature is to make laws. All his acts therefore, properly executive, must presuppose the existence of the laws to be executed. A treaty is not an execution of laws. . . . To say then that the power of making treaties which are confessedly laws, belongs naturally to the department which is to execute laws, is to say, that the executive department naturally includes a legislative power. In theory, this is an absurdity—in practice a tyranny.

The power to declare war is subject to similar reasoning. A declaration that there shall be war, is not an execution of laws, . . . on the contrary . . . when performed, has the effect of repealing all the laws operating in a state of peace. . . .

From this view of the subject it must be evident, that although the executive may be a convenient organ of preliminary communications with foreign governments, on the subjects of treaty or war; and the proper agent for carrying into execution the final determinations of the competent authority; yet it can have no pretensions from the nature of the powers in question. . . .

The power of making treaties and the power of declaring war, are royal prerogatives in the British government, and are accordingly treated as Executive prerogatives by British commentators.

Helvidius II, 31 August 1793 (excerpts)

He [Pacificus] here admits that the right to declare war includes the right to judge whether the United States be obliged to declare war or not. Can the inference be avoided, that the executive instead of having a similar right to judge, is . . . excluded from the right to judge as from the right to declare?

He cannot disentangle himself by considering the right of the executive to judge as concurrent with that of the legislature. For if the executive have a concurrent right to judge . . . he must go on and say that the executive has a concurrent right also to declare. . . .

Whatever difficulties may arise in defining the executive authority in particular cases, there can be none in deciding on an authority clearly placed by the constitution in another department. . . . The declaring of war is expressly made a legislative function. The judging of the obligations to make war, is admitted to be included as a legislative function. . . .

The power to judge of the causes of war as involved in the power to declare war, is expressly vested where all other legislative powers are vested, that is, in the Congress of the United States. It is consequently determined by the constitution to be a Legislative power. . . .

A concurrent authority in two independent departments to perform the same function with respect to the same thing, would be as awkward in practice, as it is unnatural in theory.

If the legislature and executive have both a right to judge of the obligations to make war or not, it must sometimes happen, though not at present, that they will judge differently. . . .

Helvidius III, 7 September 1793 (excerpts)

"The President is also to be authorised to receive Ambassadors and other public Ministers." This . . . is more a matter of dignity than of authority. It is a circumstance . . . far more convenient that it should be arranged in this manner, than . . . convening the Legislature or one of its branches upon every arrival of a foreign Minister. . . .

It is evident, therefore, that if the Executive has a right to reject a public Minister it must be founded on some other consideration than a change in the government or the newness of the

government; and consequently a right to refuse to acknowledge a new government cannot be implied by the right to refuse a public Minister. . . .

That the authority of the Executive does not extend to question, whether an existing government ought to be recognized or not . . . or refuse activity and operation to preexisting treaties. Another consequence is that a nation, by exercising the right of changing the organ of its will, can neither disengage itself from the obligations, nor forfeit the benefits of its treaties.

As a change of government then makes no change in the obligations or rights of the party to a treaty, it is clear that the Executive can have no more right to suspend or prevent the operation of a treaty, on account of the change. . . .

Helvidius IV, 14 September 1793 (excerpts)

Should the prerogative which has been examined, be allowed . . . the interval would probably be very short, before it would be heard . . . that the prerogative . . . means a right to judge and conclude that the obligations of treaty impose war, as well as that they permit peace. . . .

If the executive is "to decide on the obligation of the nation with regard to foreign nations"—"to pronounce the existing condition (in the sense annexed by the writer) of the nation with regard to them; and to admonish the citizens of their obligations and duties as founded upon that condition of things, to judge what are the reciprocal rights and obligations of the United States, and of all and each of the powers at war:"—add, that if the executive moreover possesses all powers relating to war not strictly within the power to declare war, . . . would it be difficult to fabricate a power in the executive to plunge the nation into war, whenever a treaty of peace might happen to be infringed? . . .

Every just view that can be taken of this subject, admonishes the public, of the necessity of a rigid adherence to the simple, the received and the fundamental doctrine of the constitution, that the power to declare war including the power of judging of the causes of war is fully and exclusively vested in the legislature: that the executive has no right, in any case to decide the question, whether there is or is not cause for declaring war: that the right of convening and informing Congress, whenever such a question seems to call for a decision, is all the right which the constitution has deemed requisite or proper: and that for such more than for any other contingency, this right was specially given to the executive.

In no part of the constitution is more wisdom to be found than in the clause which confides the question of war or peace to the legislature, and not to the executive department. . . . War is in fact the true nurse of executive aggrandizement. In war a physical force is to be created, and it is the executive will which is to direct it. In war the public treasures are to be unlocked, and it is the executive hand which is to dispense them. In war the honors and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered, and it is the executive brow they are to encircle. The strongest passions, and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace. . . .

The constitution has manifested a similar prudence in refusing to the executive the sole power of making peace. The trust in this instance also, would be too great for the wisdom, and the temptations too strong for the virtue, of a single citizen. . . .

I shall conclude this paper and this branch of the subject, with two reflections, which naturally arise from this view of the Constitution. . . .

As the constitution has not permitted the Executive singly to conclude or judge that peace ought to be made, it might be inferred from that circumstance alone, that it never meant to give it

authority, singly, to judge and conclude that war ought not to be made. The trust would be precisely similar and equivalent in the two cases. The right to say that war ought not to go on, would be no greater than the right to say that war ought to begin. . . . If the Constitution therefore has deemed it unsafe or improper in the one case, it must be deemed equally so in the other case.

Helvidius V, 18 September 1793 (excerpts)

[If] The Proclamation is "a manifestation of the sense of the government"; "why did not the government wait. . . . [I]f the Proclamation really possessed the character, and was to have the effects, here ascribed to it, something more than the authority of the government . . . would have been a necessary sanction to the act, and if the term "government" be removed, and that of "President" substituted, in the sentences quoted, the justice of the reflection will be felt with peculiar force.

"[T]he government," unquestionably means in the United States the whole government, not the executive part, either exclusively, or pre-eminently; as it may do in a monarchy, where the splendor of prerogative eclipses, and the machinery of influence, directs, every other part of the government.

I proceed therefore to observe that as a "Proclamation," in its ordinary use, is an address to citizens or subjects only, . . . there can be no implication in the name or the form of such an instrument, that it was meant principally, for the information of foreign nations. . . .

As the Legislature is the only competent and constitutional organ of the will of the nation; that is, of its disposition, its duty and its interest, in relation to a commencement of war, in like manner as the President and Senate jointly, not the President alone, are in relation to peace, after war has been commenced. . . .

Cite as: The Papers of James Madison Digital Edition, J. C. A. Stagg, editor. Charlottesville: University of Virginia Press, Rotunda, 2010. Original source: Congressional Series, Volume 15 (24 March 1793–20 April 1795)