

JEFFERSON ASCENDANT

David G. Post

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Thanks, Barbara, for the kind words of introduction. I once heard someone say, after an introduction like that: I’m just sorry my parents weren’t here to hear all of that; my father would have been impressed, and my mother would have believed it.

And thanks also to the Committee for inviting me here; coming to Wyoming to take part in discussion and debate about the ideas of Jefferson (and Hamilton) is about as Jeffersonian a thing as one can do, and I appreciate your having given me the opportunity to do that. This has indeed been a most interesting couple of days.

I’ve been studying Jefferson pretty intensively for the last 6 or 7 years or so. I came to Jefferson in an odd way. I study cyberspace law – I spend my days thinking about Napster, and about the regulation of online pornography, about spam filters and the Constitution, domain names and trademarks – that sort of thing. There are some interesting, and difficult, issues out there, a new world of legal questions and legal institutions emerging, on a worldwide scale, before our eyes – none of which, however, do I want to get into in this talk. My point here is simply that the more I read and studied about these interesting and difficult issues, the more it seemed to me that Jefferson was the most helpful commentator on these issues I could find, the more it seemed like I could learn more from reading and rereading his letters than I could from the latest law review articles or policy whitepapers.

I’m still trying to figure out exactly what that means.

Jefferson and Hamilton. We've talked a lot, and heard a lot, about them over the course of these 2 days. If you think about it, it's really too good to be true – you couldn't ask for, or have made up, a better (or more outrageous) pairing of two brilliant combatants for the soul of the new republic.

Merrill Peterson put it well, maybe best: “In the balance between liberty and authority, Jefferson tipped the former scale, Hamilton the latter.” Hamilton and the Federalists “feared the government’s vulnerability to public opinion [and] the natural turbulence of the populace” – what Hamilton once called the “imprudence of democracy” – and believed that Federalist rule and Federalist rulers were necessary “to save the people from their own worst enemy: themselves.” Jefferson and the Republicans, on the other hand, “found strength in the power of numbers”; public opinion was the “vital principle of American government,” and it was the “government that was to be saved by the people, not the people by the government.”

Jeffersonian Liberty, Hamiltonian Power. Jeffersonian Chaos, Hamiltonian Order. Jeffersonian Rule by the Many, Hamiltonian Rule by the Few. Jeffersonian Diffusion and Decentralization, Hamiltonian Concentration and Consolidation.

They disagreed on just about everything, every issue, great or small, surrounding the birth of the American Republic, and political parties congealed around their disagreement, drawn by the sheer force of their ideas. On one side of every question was Jefferson’s deep mistrust of concentrated power; on the other, Hamilton’s counter that too little power is as dangerous as too much. Peterson, again: “One – Jefferson – located the strength of the republic in the diffuse energies of a free society; the other, in the consolidation of power this new republic could achieve.” Hamilton wanted a national

bank to control the currency and establish American public credit; Jefferson thought this would be a breeding ground for corruption and speculation. Hamilton favored England, Jefferson France. Hamilton wanted the capital to be in New York, Jefferson in Virginia. At every turn, Hamilton promoted the interests of a strong executive at the helm of a strong central government; at every turn, Jefferson championed the interests of what he called the “ward republics” – small, self-governing communities, bound together within a loose hierarchy of district, State, and, finally, Nation, which would serve as the source of republican virtue and republican strength as the country grew.

Nowhere was this opposition more pronounced than in their attitudes towards the West. Hamilton, writing to a friend in 1790, referred to Florida “on our right” and Canada “on our left.” It was a revealing turn of phrase, for he thought of himself facing East – looking towards Europe. Perhaps that was because he had been to the West – to Western Pennsylvania, at least, an area now, of course, “back East,” but one that was, at the time, about as far “West” as people in the East had ever been – and he didn’t particularly like what he saw.

In 1792, Hamilton went West at the head of federal troops charged with quelling the “Whisky Rebellion” – an armed uprising of settlers in Western Pennsylvania who objected to the newly-imposed federal tax on distilled spirits. We don’t hear too much about the Whisky Rebellion these days – except, perhaps, through the song it spawned, “Copper Kettle”: “My daddy he made whisky/My granddaddy he did, too/We ain’t paid no whisky tax/Since 1792.” In retrospect, it’s not that surprising that we don’t; this little rebellion against the newly-imposed federal excise tax had, as it turned out, little effect on the course of the American experiment.

But nobody knew *that* at the time. To Hamilton (and to many others), the Whisky Rebellion was cause for real alarm, evidence – proof, even – that their fears about the maintenance of public order in an geographically extended nation were well-founded. It was an article of faith among Hamilton and the Federalists that, as Peter Onuf describes it, “an *overextended* union could never achieve a sufficient degree of national integration to function effectively in a dangerous world.” The West, Hamilton had written, is “not valuable to the United States for settlement”; but if his fellow-citizens, “more enterprising than wise,” (!) saw things differently and started to emigrate and to settle there, the country would suffer “all the injuries of a too widely dispersed population”: “by adding to the great weight of the western part of our territory, [it] must hasten the dismemberment of a large portion of our country, or a dissolution of the Government.”

In 1792 he saw it with his own eyes: Settlers at the outer edge of the new nation were descending into what he described as “sedition and public licentiousness,” and the American experiment was, as predicted, at risk. The lesson was clear: Expansion of the Union would require the projection of strong *executive* power, transmitted by military force across vast distances – all the way to Pittsburgh, and beyond! – if America was not to succumb to the disintegration and dissolution that had befallen earlier republics.

And Jefferson? Though he never crossed the Alleghenies, he lived, in Peter Onuf’s phrase again, “further West in his mind” than any of his contemporaries. His vision was a very different one:

“Thomas Jefferson cherished an imperial vision for the new American nation [in which] future generations of Americans would establish republican governments in the expanding hinterland of settlement. This rising empire would be sustained by affectionate union, a community of interests, and dedication to the principles of self-government Jefferson set forth in the Declaration of Independence. It would not be, as the British empire in America had become over the previous

decade, an empire built of force and fear, remote provinces subject to the despotic rule of a distant metropolitan government. Instead, the new regime, deriving its just powers from the consent of the governed, would show that the empire of liberty was illimitable."

No person in history, of course, did more to encourage settlement in the western territories than Jefferson. And as for the Whisky Rebellion itself: "The spirit of resistance to government," he wrote, "is so valuable that I wish it to be always kept alive. It will often be exercised when wrong – but better so than not to be exercised at all. I like a little rebellion now and then – it is like a storm in the atmosphere." The principal problem for a government "wherein the will of everyone has a just influence," he wrote, was "the turbulence to which it is subject." The alternatives, though, were considerably worse:

"Weigh[ed] against the oppressions of monarchy, this becomes nothing. *Malo periculosam libertatem quam quietam servitutem*: I prefer the tumult of liberty to the quiet of servitude."

Add to this mix the fact that they really hated each others' guts – and, as if that all weren't enough, that the careers of both men were dogged for years with lurid stories of illicit sexual liaisons Well, like I said – you couldn't have made this one up.

There are many, many extraordinary things about the opposition between Jefferson and Hamilton – not least of which is that we can place them on "opposite" sides of the debate about governance and governing only because they (and the other members of the revolutionary generation) fundamentally and irrevocably re-defined that very debate. The debate they had inherited had a very different set of opposites: monarchy and republicanism, control of all by one versus control of all by all. Somewhere between, say, the First Continental Congress and the ratification of the Constitution, that debate vanished. Not that monarchy, or despotism, or tyranny vanished from the Earth; but that

the *idea* of rule of one over all lost all of its power to command attention. A dazzling rhetorical device, penned by Jefferson, helped – declaring that “governments derive their just powers from the consent of the governed” to be, simply, a *self-evident truth*, undeserving of argument or attention, thus unceremoniously shouldering aside an entire tradition of British and Continental “tory” thought and ideas and writing so as to begin a new debate, one with Jefferson and Hamilton on opposite sides.

And equally extraordinary, of course, is the fact that they were each, in a sense, “right.” It is a cliché, but true nonetheless: We could not have become who we are, and what we are, without both visions. Though this talk is entitled “Jefferson Ascendant,” my fondness for Jefferson does not come at Hamilton’s expense, and I do not mean to suggest that somehow Jefferson was the “winner” in the battle with Hamilton, or that *his* vision was the only true and correct one, for it has been the peculiar genius of *this* republic that it has seen both visions prevail, that we have managed to find some kind of balance, some point where liberty and authority can – not always perfectly, and surely not without missteps, but by and large – coexist. That Hamiltonian efficiency and power, and Jeffersonian individualism and freedom, are not, after all, truly opposites.

It was not so clear, 150 or 200 years ago, that this was so. It may have taken the Civil War to accomplish that fusion – Lincoln, doing Hamilton’s nation-building work while holding firm to Jefferson’s principles.

So while my appreciation for Jeffersonian ideas does not come at Hamilton’s expense, I do think that Jefferson is “ascendant,” in the sense that the world, to my eyes at least, has moved, and is moving, in Jeffersonian directions, that Jeffersonian values are the pendulum is swinging towards Jeffersonian values.

What are those “Jeffersonian values”? It is of course presumptuous to attempt a catalogue, but here is what I take to be the core. First is the value of individual liberty, the freedom to live your life – to “pursue happiness” – as you see fit, to make the choices you think best for the way you want to live. The Jeffersonians took seriously – more seriously than their Federalist opponents – the relocation of sovereignty that had been at the heart of the American Revolution: that the individual is sovereign – politically and morally – not the State, not the King.

It’s not that Hamilton and the Federalists did not subscribe to notions of individual liberty; they did. But they had a counterweight; the “rights of *government*,” Hamilton declared, “are as essential to be defended as the rights of individuals, [for] the security of the one is inseparable from that of the other.” The individual’s right to be free from constraint, in other words, was counter-balanced by the government’s right to be secure and stable.

A preposterous notion, to the Jeffersonian; governments have no “rights,” for governments are not ends, they are means, means to secure *our* rights to life, liberty, and the pursuit of happiness.

Jeffersonian value number two is equality – one that might have, perhaps, some special resonance here in the “Equality State” – (I learned, in the course of preparing for this talk, courtesy of one of my friends, that this is Wyoming’s original, though now its alternate, nickname, courtesy of its position as the first State to give women the vote in 1869).

We’ve heard it a dozen times or more just in these few days here in Casper, and hundreds of times before that – so many times, in fact, that sometimes it’s hard to attend

to the meaning of the words: “We hold these truths to be self-evident: that all men are created equal.” That no one, by accident of birth, is somehow inherently superior to any one else; that my views, and your views, are equally deserving of respect; that, in Garry Wills’ wonderful phrase, “every human being is Humanity itself.”

Now, Jefferson (and, to a lesser extent, the entire Revolutionary generation) has taken a beating in recent years over these words and this principle; indeed, it has almost become a badge of intellectual honor these days to dismiss them, to turn these words – Jefferson’s most celebrated achievement – into the cornerstone of the indictment against him. There is, to many, something terribly dishonorable about the proclamation of this equality principle in a world in which men and women were most definitely *not* treated equally. What hypocrisy! What a lie! What a sham! If all men were created equal, how in the world could Jefferson *own* other human beings? How in the world can word and deed – Philadelphia’s “self-evident truth” and Virginia’s slave society (not to mention Sally Hemings) – be reconciled?

In a Jeffersonian world, of course, one is free to despise and discredit Jefferson and all things Jeffersonian. But I think this particular reading of this particular text misses the beauty of it. To say that “all men are created equal” in a world where all are treated as equals is unspectacular; to say it in 1776 – to say not just that it is true, but that it is *self-evidently* true, entirely *beyond argument* – was an extraordinary act of real intellectual courage. Jefferson and the other southerners knew full well what the words meant – they meant that slavery was doomed, that an institution founded upon the inherent superiority of some over others could not stand precisely because it was a lie, a betrayal of the sacred principles on which the new republic was being founded. The

Declaration declares that to be so – shouts it, as it were, from the rooftops. Which is precisely why the words deserve celebration, not scorn. The document states the moral proposition in unambiguous terms: in a republic truly founded upon “sacred and undeniable” principles, upon the “laws of Nature and of Nature’s God,” human slavery could not stand.

This Equality Principle, unleashed in a world in which commoners and aristocrats (not to mention masters and slaves) were seen as entirely different orders of being, became, in Gordon Wood’s words, the “most powerful proposition in American history bar none,” the “single most powerful and radical ideological force in all of American history.” It came to mean, simply, that “everyone is really the same as everyone else” – a basic, down-to-earth sense “that no one is really any better than anyone else,” that we are all basically alike, that we all partake of the same common nature, that we can look anyone in the eye and treat them as equals and expect to be treated as equals in return.

It is so fundamental a part of our modern sensibility that we almost cannot see it because we cannot imagine it being absent. We have sympathy for other human creatures because they are of equal moral worth and equal moral authority. Each of us, seeing the photographs in Professor Akem’s talk earlier today, had the same thoughts: those people are just like me. “By a path so mysterious I would not pretend to know its geography or its source,” Roger Rosenblatt recently wrote, “this acknowledgment of shared human traits leads to the recognition of human rights.”

Jeffersonian value number three is this: that *information* is the “lifeblood of the republic,” that the experiment in self-government launched by the Revolution could succeed, but *only* if the people had the information and knowledge requisite for the task:

“Enlighten the people generally, and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day. Although I do not, with some enthusiasts, believe that the human condition will ever advance to such a state of perfection that there shall no longer be pain or vice in the world, yet I believe it susceptible of much improvement, and most of all, in matters of government and religion; and that the diffusion of knowledge among the people is to be the instrument by which it is to be effected. . . .

The “diffusion of knowledge among the people.” It was all of a piece, of course: a government to be run by the people; a belief that all people had the equal right to make the decisions that affected their lives; and the free flow of information that would allow each person to make those decisions as wisely as they could. “It is honorable for us,” he wrote to James Madison,

“to have produced the first legislature that had the courage to declare that the reason of man may be trusted with the formation of his own opinions. . . . Trust the people; whenever [they] are well-informed, they can be trusted with their own government; whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.”

His passion – obsession, really – for “the diffusion of knowledge among the people” was breath-taking. It permeated almost everything he did and everything he thought, because “*no other sure foundation can be devised*” – none – “for the preservation of freedom and happiness”; because a nation that “expects to be ignorant and free . . . expects what never was and never will be”; because the government we get “depends not on . . . a select band of enlightened men, but on the condition of the general mind”; and because “the most effectual means of preventing the perversion of power into tyranny are to illuminate as far as possible the minds of the people.”

This passion animates his extraordinary life-long devotion to the cause of education. Preach a “crusade against ignorance,” he wrote to his mentor, George Wythe:

“Establish and improve the law for educating the common people. Let our countrymen know that . . . the tax which will be paid for this purpose is not more

than the thousandth part of what will be paid to the kings, priests, and nobles who will rise up among us if we leave the people in ignorance.”

In 1779, Jefferson himself introduced a remarkable, and remarkably far-sighted, bill in the Virginia Assembly – he later called it “by far the most important bill in our whole code” – to provide free publicly-financed education in Virginia, and he was still lobbying the Governor on portions of the bill the legislature had not enacted some 40 years later. And, as we all know, he dedicated the last 15 or so years of his life to the utterly preposterous idea that a world-class university could, somehow, take root in the backwoods of Virginia – a notion that only a madman could entertain and that only a magician could actually pull off. Which, of course, is precisely what he did, largely single-handedly, an achievement he ranked (justly, I think) as equal in significance to his authorship of the Declaration of Independence.

[Our history, the great historian of the West Bernard DeVoto wrote, “is a story mad with the impossible. ... it is by chaos out of dream, it began as dream and it has continued as dream down to the last headline you read in a newspaper, and of our dreams there are two things above all others to be said: that only madmen could have dreamed them or would have dared to – and that we have shown a considerable faculty for making them come true.”]

It was this passion that stood behind his devotion to the principles of unfettered debate, free inquiry, and a free press. “Were it left for me to decide whether we should have a government without newspapers or newspapers without a government, “ he famously declared, “I should not hesitate a moment to prefer the latter.” There would, of course, be a deafening cacophony of conflicting views and opinions – that was, for

Jefferson, the good news. Differences of opinion, “like differences of form, face, or feature, [are] a law of our nature, and should be viewed with the same tolerance,” uniformity of opinion being “no more desirable . . . than differences of face and stature.” No harm flowed from those differences – “It does me no injury for my neighbour to say there are twenty gods, or no god; it neither picks my pocket nor breaks my leg,” he declared – and much good, for only from the clash of opposing and contradictory ideas could we hope to distinguish right from wrong:

“Reason and free enquiry are the *only* effectual agents against error. . . . A truth that has never been opposed cannot acquire that firm and unwavering assent which is given to that which has stood the test of a rigorous examination. . . . Error alone needs the support of government; truth can stand by itself.”

The diffusion of information was, in Jefferson’s eyes, *in and of itself* a Good of the highest order. Error will correct itself if the flow of information is not disturbed; “Where reason and experiment have been indulged, error has fled before them.”

So I have been thinking of these Jeffersonian comments, and these Jeffersonian values, while listening to the various presentations and discussions. When, for instance, during Professor Ewan’s wonderful presentation last night, he told us that the toppling of the statue of Saddam Hussein had been an event staged, in its entirety, by the US government (“Topplegate,” he called it), I certainly got the message, one eminently worth attending to – a message about use and abuse of government power, about the power to create and to control information and about our need to be alert to the exercise of that power.

But the Jeffersonian in me heard a second message, a “meta-message,” a message about the message, in Professor Ewan’s story, embodied in the very fact that Professor Ewan was able to deliver his message to us, that he had (thanks, he told us, to Tim Rawls

and the website “Alternews.com”) discovered that the event had been staged, and that he was free to tell us, and to tell everyone, that, at least in *his* view and from the facts *he* had gathered, our government was lying to us. [Precisely, it is worth pointing out, what the Federalists’ Sedition Act of 1798 deemed criminal activity.] That he could dig around on the Internet for perspectives on this event other than the official one – indeed, as we all know, that it doesn’t actually take a whole lot of digging around to find perspectives other than the official one on just about anything.

That, Jefferson might tell us, is the meaning – or, at least, a meaning – of the story. The cure for mis-information is always, and *can only be*, more information. That information is power, that those in power will attempt to assert and extent their power, that the government would “assert its prerogatives” to mold and to control public opinion, by means fair and (on occasion) foul – that the government would act as if it *had* prerogatives – all of this surely would have concerned, but would not have surprised, Jefferson. But that we can, with such (relative) ease, find contrary sources of information to challenge official accounts, and that we can meet here in Wyoming to expose those official accounts to the light of day – that, I suspect, is what he would have found most heartening, for when *that* is no longer true, then, for sure, the republic is in deep trouble.

Now I happen to think, contrary to many others, that on that score we are actually in *less* trouble than, perhaps, we have ever been before. I heard someone yesterday comment on her fears that the tools of communication are being concentrated these days in fewer and fewer hands. Something, surely, to worry about, if true – but I’m not so sure it *is* true. We are entering what may be a golden age of communication and communicative diversity; never before have the tools to communicate with the world

been available to so many. Never before have students at Casper College been in possession of the tools to get their message out to the entire world. Never before has information been so difficult to control.

You may have seen the item in the newspaper the other day reporting that the Chinese government had fired Minister of Health Zhang Wenkang, for lying to the public in an attempt to cover up the scope and extent of the SARS epidemic. This should go down as a small, but significant, milestone in the history of information and informational politics. Many of you may be too young to remember a time – and it was not that long ago – when lying and covering up information was an essential part of the job description for most high government positions in China and other Communist countries. One can only imagine Mr. Wenkang’s reaction to the news that he was being sacked: You’re firing me for *what??*

Information has always been harder to control than physical, tangible things – and it has gotten a *lot* harder over the past 20 years. Just ask Mr. Wenkang. No, he was not fired “because of” the Internet – but he *was* fired because of the revolution of which the Internet is an important part, because the velocity of information has accelerated dramatically in recent years, and because the Chinese government is slowly coming to understand that it was no longer business as usual when it comes to information.

Maybe it’s just my Jeffersonian optimism, but I think that’s an exciting prospect. And I suppose it is that Jeffersonian optimism that is the last of the Jeffersonian values I want to mention here. To Jefferson, the future *could* be a better one – and, as he put it, “if we are to dream, the flatteries of hope are as cheap, and pleasanter, than the gloom of despair.”

He expressed that optimism best, perhaps, in the very last letter he ever wrote (mention of which was made in the presentation that opened this conference). The year was 1826, the 50th anniversary of the Declaration of Independence, and had been invited to a celebration in Washington, DC – one that ill-health prevented him from attending. In sending his regrets, he wrote of “the bold and doubtful election” they had made on that day 50 years earlier “between submission or the sword,” and of the “consolatory fact that our fellow citizens, after half a century of experience and prosperity, continue to approve the choice we made.”

“May it be to the world, what I believe it will be – to some parts sooner, to others later, but finally to all – the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government. . . . All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God. These are grounds of hope for others.”