Early in 1825, President John Quincy Adams sent his first annual message to Congress. To the surprise, not to say horror, of Jeffersonians in Washington, DC, and abroad, Adams called for an extensive program of governmental activism. To Secretary of State Henry Clay’s “American System” were added proposals for a national university and congressional appropriations for “light-houses of the sky.”

In December of that same year, Thomas Jefferson roused himself to one final blast against the threat of unlimited central government. With his “Draft Declaration and Protest of the Commonwealth of Virginia, on the Principles of the Constitution of the United States of America, and on the Violations of them,” Jefferson delivered himself of yet another iteration of a view of government to which he had adhered for five decades.1

At least, that’s how I see it. Other scholars have described it differently. Thus, for example, in the standard one-volume account of Jefferson’s life, Merrill Peterson calls the “Draft Declaration” a part of “a legacy of fetish and dogma, jealousy and fear.” “This was not the whole of” Jefferson’s legacy, concludes this admiring biographer, “only the sadder part.” Peterson explains the deviation of the “Draft Declaration” from Jefferson’s earlier devotion to “progress and enlightenment” by reference to “the gloom around him.”2

Of course, Peterson is right to say that Jefferson’s last days were notably gloomy, as the chickens of self-indulgence came home to roost.3 In the lives of individuals, as in those of nations, borrowing cannot go on forever, and Jefferson realized in his last days that his progeny would bear the cost of his spendthrift ways.

Yet an examination of the text of the “Draft Declaration” shows that it does not mark a turn from a more hopeful stance taken by its author in earlier days. Here, as repeatedly before, Jefferson’s task was boldly to lay out a constitutional argument.4 Far from uncharacteristically harsh or innovatively pessimistic, the position he took in his “Draft Declaration” was actually more reserved than similar Jeffersonian pronunciamentos of days gone by.

Jefferson began by noting that in establishing their independence from Great
BRITAIN, the thirteen states became “authorized to constitute governments, each for itself, in such form as it thought best.” In entering into “a compact,” the U.S. Constitution, they created “a single government as to their relations with each other, and with foreign nations,” as well as “certain other articles particularly specified.” In regard to matters reserved to the state governments, the states remained “foreign herein, each to the others, as they were before the original compact.”

Virginia, Jefferson says, insists on the constitutional division of these powers “religiously and affectionately.” The federal government, on the other hand, has claimed and exercised “a right of enlarging its own powers by constructions, inferences, and indefinite deductions,” he continues. Jefferson calls these federal acts “direct infractions” of the Constitution.

Turning to the matters at hand, Jefferson denied that the Congress had constitutional authority to appropriate money for construction of roads, canals, and bridges. He also denied that the General Welfare Clause constituted a general grant to Congress of power to spend money on anything it wanted; he asserted, rather, that the clause meant that money could be spent by Congress in furtherance of the powers spelled out in Article I, Section 8.

Jefferson next envisions the General Assembly insisting that it does not intend to issue a clarion call to resist the federal government’s unconstitutional spending initiatives. “Immediate rupture” of the Union is not Virginians’ purpose. Rather, he says, since Virginians value the Union second only to their own liberties, they want to call sister states’ attention to the tendency of Adams’s proposals toward “a government of unlimited powers,” and thus toward a rupture of the Union.

Jefferson hopes that further experience will vindicate “the great experiment which shall prove that man is capable of living in society, governing itself by laws self-imposed, and securing to its members the enjoyment of life, liberty, property, and peace; and further to show, that even when the government of its choice shall manifest a tendency to degeneracy, we are not at once to despair, but that the will and watchfulness of its sounder parts will reform its aberrations, recall it to original and legitimate principles, and restrain it within the rightful limits of self-government.”

Virginia, Jefferson would have the General Assembly say, would consent to an amendment to the Constitution empowering Congress to establish federal internal-improvements programs. That would be the acceptable way for such programs to be undertaken. In the absence of an amendment, Jefferson wanted the General Assembly to say that it would prove its love for the Union by calling on Virginians to obey the “null and void” legislation establishing federal internal improvements until the General Assembly should call on them to cease doing so.

Malone, Peterson, and other Jefferson experts have seen gloom and doom in this “Draft Declaration” of 1825. Their man is supposed to have been perched on his mountaintop, reading Ritchie’s agitated newspaper and John Taylor of Caroline’s Old Republican books, lamenting *McCulloch v. Maryland*, *Cohens v. Virginia*, and the Missouri Crisis, thinking about the financial calamity that Wilson Cary Nicholas’s bankruptcy had visited upon him, and marveling that the hard-won fruit of the Revolution was being tossed aside by the revolutionaries’ ungrateful sons. That accounts for this sectionalist screed. Fortunately, the story goes, the
more reasonable James Madison persuaded Jefferson to keep his “Draft Declaration” to himself.

Yet Jefferson’s “Draft Declaration” was not novel, and it was not gloomy. It was, so far as Jefferson was concerned, nothing more than the distilled wisdom of the Revolution itself. At least since 1774, Jefferson had stood for essentially the same understanding of the states’ role in the world, and of their relationships to each other.

It was in 1774 that a then mainly unknown Burgess Jefferson submitted the document later dubbed “A Summary View of the Rights of British America” to his colleagues in Williamsburg. In “A Summary View,” Jefferson, building upon a conception of the British Empire developed over the previous decade by a group of Virginian pamphleteers including Thomson Mason, Landon Carter, and, most important, Richard Bland, laid out a vision of George III’s realm as a federal union.⁵

Jefferson wanted Virginia’s delegates to the First Continental Congress to inform their king that the British Parliament was “a body of men, foreign to our constitutions, and unacknowledged by our laws.” The king, he said, could have a happy empire if he kept it in equipoise by preventing the legislature of one part (that is, Parliament) from imposing on the other parts (that is, any part of the empire outside Great Britain and Ireland). The king had certain functions to perform for all the empire in common, but the several distinct parts’ internal affairs were their concerns alone.

“A Summary View” won Jefferson a reputation as an able penman, and Congress naturally turned to him for a response to Lord North’s conciliatory proposal in 1775. Consistent with the theory of empire laid out in “A Summary View,” Jefferson’s resolutions of February 1775 insisted that the colonial legislatures alone had power to tax the colonists.⁶

Jefferson’s ability and certain political considerations led John Adams to conclude that Jefferson was a fit choice for a more momentous task, that of writing the first draft of the Declaration of Independence.⁷ Of course, his “Draft Declaration” did have a great deal to say about his understanding of federalism. Before we get to that, however, let us note that Jefferson did not want to become the draftsman of the Declaration of Independence. Rather, he begged and pleaded with his senior associates in Virginia politics to relieve him of his congressional duties in the spring and early summer of 1776 so that he could go home to Virginia and aid in drafting the first written constitution adopted by the people’s representatives in the history of the world: the Virginia Constitution of 1776.⁸ As Jefferson explained at the time, the new state constitution was “the whole object of the present controversy; for should a bad government be instituted for us in future it had been as well to have accepted the bad one offered to us from beyond the water without the risk and expense of contest.”⁹ Jefferson’s goal at the climax of the Imperial Crisis was to defend his vision of Virginia, just as “A Summary View” had implied two years earlier. Like Parliament, then, the other colonies’ governments were foreign to Virginia.

Fortunately for his reputation, if not for his ego (he spent the rest of his life trying to revise George Mason’s handiwork of 1776), Jefferson failed to persuade the men who ran the Convention to relieve him of his congressional duties and enable him to return home to help draft the Old Dominion’s groundbreaking constitution. He had to settle for drafting the Declaration of Independence instead.
The Declaration of Independence echoed “A Summary View” in its concluding, operative section, declaring that the united colonies “are, and ought to be, free and independent states.” As Pauline Maier has explained, Congress, by calling the document a declaration, took the traditional Anglophone route for calling attention to a preexisting fact. Indeed, since Virginia had established its independence on May 15 and inaugurated the first governor under its permanent republican constitution on June 29, Congress could not make Virginia independent of Great Britain. When the Declaration of Independence used Congressman Richard Henry Lee’s language to the effect that the thirteen “united Colonies are, and of Right ought to be, Free and Independent States,” it was using phraseology Lee and Jefferson, as Virginia congressmen, had been instructed to use by the Virginia General Assembly. In his draft Declaration, Jefferson claimed that the colonies were sovereign entities (“states”), and in using the plural he said they were so severally, not jointly.

As the war years wound down and people active in federal politics and in the Continental Army became increasingly unhappy with the states’ unwillingness or inability to support Congress fully (most thought it was the former, but recent scholarship points in the direction of the latter), Jefferson joined other Federalists in favoring federal enforcement power. He advocated empowering the Confederation Congress to levy a tariff.

Even then, however, Jefferson insisted on federal, not national, government. As he put it: “The politics of Europe render it indispensably necessary that with respect to everything external we be one nation only, firmly hooped together. Interior government is that which each state should keep to itself.” Jefferson’s experience as an American diplomat in France had taught him the correctness of the stance he had taken all along, for it seemed that only interstate cooperation would elicit foreign powers’ respect.

Seldom did Jefferson find himself stressing this point, however. In response to Madison’s copy of the draft United States Constitution, Jefferson advised his friend that a term limit for presidents who might otherwise become tyrants—he told John Adams that such persons would otherwise become tyrants—and a bill of rights should be added. When Madison objected, Jefferson impatiently opined that “a bill of rights is what the people are entitled to against every government on earth, general or particular.” Still, although he had these objections, Jefferson made sure to insist that disagreement about the form of the Constitution not be allowed to break up the union of the states itself, which he said would be “an incurable evil.”

Jefferson held these ideas in balance through the rest of his life: union was second only to Americans’ rights, which included the right to live under a constitutional (that is, a limited) government. Finding himself confronted with an evident intention to destroy constitutional limitations on the new federal government, in 1791 Secretary of State Jefferson delivered himself of the classic statement of limited-government constitutionalism, his Bank Bill Memorandum. Asked by President Washington to detail his objections to Secretary of the Treasury Alexander Hamilton’s Bank Bill, Jefferson said essentially what the moderate Federalists had said in Virginia’s 1788 ratification convention: the states had created the federal government, which had only the powers listed in Article I, Section 8; further, the Necessary and Proper Clause was not a substantive grant of additional powers.
Washington rejected Jefferson’s advice. The administration’s attitude concerning constitutional construction was one of several issues that led Jefferson into effective opposition even while still in the cabinet. By 1792, he joined with Madison and former New York anti-Federalist champion, Gov. George Clinton in creating the Republican Party, America’s first, federal political party. Limited-government federalism was the Jeffersonians’ domestic platform; indeed, one could argue that this domestic program (or antiprogram) logically mandated the Jeffersonians’ non-interventionist foreign-policy position.

By 1797, infringement of the Old Dominion’s reserved rights drove Jefferson to propose a truly radical step: when a Richmond grand jury returned a presentment for seditious libel against Rep. Samuel Cabell on the basis of a circular letter Cabell had sent to the congressman’s constituents, Jefferson drafted a petition calling for the grand jurors’ impeachment and their punishment for treason to Virginia.¹⁵

Governor James Monroe averred that Jefferson should address his petition to Congress instead of the General Assembly, as the grand jury had been a federal one. Jefferson replied that the matter at issue—a Virginia congressman’s freedom to communicate with his constituents—affected Virginia primarily and that in the worsening crisis of federal authority, Virginia must assert itself to preempt the Federalists’ seizing “all doubtful ground.”¹⁶

Clearly, therefore, the famous, draft Kentucky Resolutions of 1798 did not spring to Jefferson’s mind just then.¹⁷ In saying that the Constitution was the creature of the states, that the federal government had only the enumerated powers, that the states must keep watch over the federal government so it did not overstep the rightful limits of its authority, and that the states could therefore “nullify” unconstitutional federal laws, Jefferson merely reiterated the theory of federal relations to which he had long subscribed. Membership in the federal union mandated obedience to constitutional federal laws, as Jefferson had noted during the 1780s; it did not mean that Virginia had given up its own powers. Jefferson understood the state governments and the federal government each as having its own sphere of responsibility. Each had the right to enforce its powers against the other, and to defend its sphere against the predictable infringement of the other.

The revolutionary status of the “Revolution of 1800” sprang, in Jefferson’s estimation, from what he hoped and believed was its permanent establishment of the real principles of the Revolution. In his First Inaugural Address, Jefferson pledged “the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; [and] the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad.”¹⁸

In other words, the states retained control over virtually all domestic matters, while the federal government must see to interstate peace and the Union’s safety from foreigners.

Jefferson is seen by critics now, as he was at the time, as having violated his own principles in attempting to enforce the Embargo of 1807–9. Their evaluation is erroneous, however, for Jefferson always held that the states must comply with legitimate federal policies, first among which were those intended to maintain the peace and safety in which individual Americans could flourish. The arbitrariness with
which Jefferson and his congressional allies attempted to enforce their pacifist policy is lamentable, but that does not make it inconsistent.

Jefferson left the chief federal magistracy to his closest friend and most trusted political ally, who in turn handed it off to another of Jefferson's boon companions. One might have thought that the Virginia dynasts' shared constitutional vision would indeed triumph. In fact, Madison devoted his valedictory, the Bonus Bill Veto Message of 1817, to restating the Jeffersonian view of federalism.

Yet, within two years, the Missouri Crisis and *McCulloch v. Maryland* had Virginian republicanism aflame. Madison responded to John Marshall's “do what you want” construction of congressional power by noting, rightly, that Virginians would never have ratified the Constitution if they had anticipated that. Jefferson said that if its proslavery state constitution led Congress to deny it admission to the Union, “Missouri assumes independent self-government,” and the southern states, plus some northwestern ones, would join it. Jefferson did not take this matter lightly but famously heard the news of the Missouri Crisis as “a fire bell in the night.” Its fruit might well be the death of the Union, but that was a price that would have to be paid, as he had long said, if the alternative was unlimited (that is, unconstitutional) central government.

Jefferson blamed the looming breakdown of federalism on two phenomena: northern crypto-Federalists' manipulation of the slavery issue for partisan advantage, and the intentional “sapping and mining” of the Constitution's superstructure by the federal judiciary. He endorsed Virginia Court of Appeals judge Spencer Roane's newspaper columns castigating Marshall and exploding the majority opinion in *McCulloch*. Jefferson also endorsed (if only privately) John Taylor of Caroline's series of topical books (published from the late 1810s to the early 1820s) rooting out a nationalist conspiracy to substitute national for federal government from the inception of the federal Union.

Dumas Malone can perhaps be forgiven for thinking that Jefferson in his final days descended into a profound gloom, but let us return to those 1825 draft resolutions with additional care. Yes, they did say, as Jefferson had always said, that Virginia had ultimate authority within its own territory. And, yes, they pointed to recent initiatives and practices of the federal government as threatening to the Union.

Yet, far from adopting the haughty tone of 1774, or even the Olympian perspective of 1798, Jefferson's 1825 document is conciliatory, even fraternal. It begins by laying out the classic republican understanding of the Constitution and then says that Virginia hopes to persuade her sister states of her position. In case the other states are not persuaded, it says that Virginians should continue to obey unconstitutional federal law. And, finally, Jefferson accepted Madison's counsel to forebear having the resolutions introduced in the General Assembly altogether.

In short, Jefferson held to a consistent federal vision throughout his life. Under the U.S. Constitution, he believed that there were some “foreign” laws that Virginians had to obey. He thought the whole time, 1774–1825, that the General Assembly must be the judge of the limits of federal authority. In the end, he hoped that the dangerous trend he had identified would be headed off by the states' coordinated efforts.
References to this document are taken from the version found in Thomas Jefferson: Writings, ed. Merrill Peterson (New York: Library of America, 1984), 482–86.


4 Two instances that come to mind are 1774’s “A Summary View of the Rights of British America,” in Thomas Jefferson: Writings, 105–22; and 1798’s “Kentucky Resolutions,” in Thomas Jefferson: Writings, 449–56.


7 Pauline Maier, American Scripture: Making the Declaration of Independence (New York: Knopf, 1997).

8 Gutzman, chap. 1 in Virginia’s American Revolution.

9 Ibid., 24.

10 Thomas Jefferson to James Madison, 6 February 1786, in Thomas Jefferson: Writings, 848–49.


12 Thomas Jefferson to Alexander Donald, 7 February 1788, in Thomas Jefferson: Writings, 920.

13 Ibid., 416–21.


17 For full development of their lineage, see Gutzman, Virginia’s American Revolution.


19 For the Virginian republican response to the Marshall Court’s chief federalism opinions, see Gutzman, chap. 6, Virginia’s American Revolution.

20 Thomas Jefferson to Albert Gallatin, 26 December 1820, in Thomas Jefferson: Writings, 1449.
