Alexander Hamilton

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In light of the political aftermath of President Washington's Proclamation of Neutrality, Alexander Hamilton decided to write a series of essays, defending Washington's decision and his authority to make it, under the pen name Pacificus. Hamilton's essays cover a wide range of topics, including whether the United States was obligated by the Treaty of 1778 to support France in its conflict with England and other European nations, why it would be ill-advised for the young American nation to get involved in that conflict, and why a sense of gratitude to France for its prior support of the United States should not govern the United States' decision. In his first essay, Hamilton makes his case for his understanding of executive power under the Constitution, including the President's authority to make decisions about such matters as neutrality proclamations independently of Congress.

. . . The objections which have been raised against the Proclamation of Neutrality lately issued by the President . . . [include that the Proclamation was without authority] . . .

In order to judge of the solidity of the first of these objection[s], it is necessary to examine what is the nature and design of a proclamation of neutrality.

The true nature & design of such an act is—to *make known* to the powers at War and to the Citizens of the Country . . . that such country is in the condition of a Nation at Peace with the belligerent parties, and under no obligations of Treaty, to become an *associate in the war* with either of them; that this being its situation its intention is to observe a conduct conformable with it and to perform towards each the duties of neutrality; and as a consequence of this state of things, to give warning to all within its jurisdiction to abstain from acts that shall contravene those duties, under the penalties which the laws of the land (of which the law of Nations is a part) annexes to acts of contravention.

This, and no more, is conceived to be the true import of a Proclamation of Neutrality . . . [I]t will remain to see whether the President in issuing it acted within his proper sphere, or stepped beyond the bounds of his constitutional authority and duty.

. . . The inquiry then is—what department of the Government of the [United States] is the prop[er] one to make a declaration of Neutrality in the cases in which the engagements [of] the Nation permit and its interests require such a declaration.

A correct and well informed mind will discern at once that it can belong neit[her] to the Legislative nor Judicial Department and of course must belong to the Executive.

The Legislative Department is not the *organ* of intercourse between the [United States] and foreign Nations. It is charged neither with *making* nor *interpreting* Treaties. It is therefore not naturally that Organ of the Government which is to pronounce the existing condition of the Nation, with regard to foreign Powers, or to admonish the Citizens of their obligations and

duties as founded upon that condition of things. Still less is it charged with enforcing the execution and observance of these obligations and those duties.

It is equally obvious that the act in question is foreign to the Judiciary Department of the Government. The province of that Department is to decide litigations in particular cases. 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 has no concern with pronouncing upon the external political relations of Treaties between Government and Government. This position is too plain to need being insisted upon.

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.

It appears to be connected with that department in various capacities, as the *organ* of intercourse between the Nation and foreign Nations—as the interpreter of the National Treaties in those cases in which the Judiciary is not competent, that is in the cases between Government and Government—as that Power, which is charged with the Execution of the Laws, of which Treaties form a part—as that Power which is charged with the command and application of the Public Force.

This view of the subject is so natural and obvious—so analogous to general theory and practice—that no doubt can be entertained of its justness, unless such doubt can be deduced from particular provisions of the Constitution of the [United States.]

. . . The second Article of the Constitution . . . 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 declares among other things that the President shall be Commander in Chief of the army and navy of the [United States] and of the Militia of the several states when called into the actual service of the [United States,] that he shall have power by and with the advice of the senate to make treaties; that it shall be his duty to receive ambassadors and other public Ministers and to take care that the laws be faithfully executed.

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, further than as it may be coupled with express restrictions or qualifications; as in regard to the cooperation of the Senate in the appointment of Officers and the making of treaties; which are qualifica[tions] of the general executive powers of appointing officers and making treaties: Because the difficulty of a complete and perfect specification of all the cases of Executive authority would naturally dictate the use of general terms—and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. 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 [government] the expressions are—"*All Legislative powers herein granted shall be vested in a Congress of the [United States]*"; 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."

The enumeration ought rather therefore to be considered as intended by way of greater caution, to specify and regulate the principal articles implied in the definition of Executive Power; leaving the rest to flow from the general grant of that power, interpreted in conformity to other parts [of] the constitution and to the principles of free government.

The general doctrine then of our constitution is, that the Executive Power of the Nation is vested in the President; subject only to the *exceptions* and *qu*[*a*]*lifications* which are expressed in the instrument.

Two of these have been already noticed—the participation of the Senate in the appointment of Officers and the making of Treaties. A third remains to be mentioned the right of the Legislature "to declare war and grant letters of marque and reprisal."

With these exceptions the Executive Power of the Union is completely lodged in the President. This mode of construing the Constitution has indeed been recognized by Congress in formal acts . . . The power of removal from office is an important instance.

. . . [T]he conclusion is, that the step, which has been taken by [the President], is liable to no just exception on the score of authority.

It may be observed that this Inference w[ould] be just if the power of declaring war had [not] been vested in the Legislature, but that [this] power naturally includes the right of judg[ing] whether the Nation is under obligations to m[ake] war or not.

The answer to this is, that however true it may be, that th[e] right of the Legislature to declare wa[r] includes the right of judging whether the N[ation] be under obligations to make War or not—it will not follow that the Executive is in any case excluded from a similar right of Judgment, in the execution of its own functions.

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; and in fulfilling that duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the Country impose on the Government; and when in pursuance of this right it has concluded that there is nothing in them inconsistent with a *state* of neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the Nation. The Executive is charged with the execution of all laws, the laws of Nations as well as the Municipal law, which recognises and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality, when that is the state of the Nation, to avoid giving a cause of war to foreign Powers . . .

Those who object to the proclamation will readily admit that it is the right and duty of the Executive to judge of, or to interpret, those articles of our treaties which give to France particular privileges, in order to the enforcement of those privileges: But the necessary consequence of this is, that the Executive must judge what are the proper bounds of those privileges—what rights are given to other nations by our treaties with them—what rights the law of Nature and Nations gives and our treaties permit, in respect to those Nations with whom we have no treaties; in fine what are the reciprocal rights and obligations of the United States & of all & each of the powers at War . . .

. . . The Legislature is free to perform its own duties according to its own sense of them—though the Executive in the exercise of its constitutional powers, may establish an antecedent state of things which ought to weigh in the legislative decisions. From the division of the Executive Power there results, in referrence to it, a *concurrent* authority, in the distributed cases.

Hence in the case stated, though treaties can only be made by the President and Senate, their activity may be continued or suspended by the President alone.

No objection has been made to the Presidents having acknowleged the Republic of France, by the Reception of its Minister, without having consulted the Senate; though that body is connected with him in the making of Treaties, and though the consequence of his act of reception is to give operation to the Treaties heretofore made with that Country: But he is censured for having declared the [United States] to be in a state of peace & neutrality, with regard to the Powers at War; because the right of *changing* that state & *declaring war* belongs to the Legislature.

It deserves to be remarked, that as the participation of the senate in the making of Treaties and the power of the Legislature to declare war are exceptions out of the general "Executive Power" vested in the President, they are to be construed strictly—and ought to be extended no further than is essential to their execution.

While therefore the Legislature can alone declare war, can alone actually transfer the nation from a state of Peace to a state of War—it belongs to the "Executive Power," to do whatever else the laws of Nations cooperating with the Treaties of the Country enjoin, in the intercourse of the [United States] with foreign Powers.

In this distribution of powers the wisdom of our constitution is manifested. 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 . . .

The President is the constitutional Executor of the laws. Our Treaties and the laws of Nations form a part of the law of the land. He who is to execute the laws must first judge for himself of their meaning. In order to the observance of that conduct, which the laws of nations combined with our treaties prescribed to this country, in reference to the present War in Europe, it was necessary for the President to judge for himself whether there was any thing in our treaties incompatible with an adherence to neutrality. Having judged that there was not, he had a right, and if in his opinion the interests of the Nation required it, it was his duty, as Executor of the laws, to proclaim the neutrality of the Nation, to exhort all persons to observe it, and to warn them of the penalties which would attend its non observance.

The Proclamation has been represented as enacting some new law. This is a view of it entirely erroneous. It only proclaims a *fact* with regard to the *existing state* of the Nation, informs the citizens of what the laws previously established require of them in that state, & warns them that these laws will be put in execution against the Infractors of them.