CHAPTER 1

The Nature of Presidential Representation

On August 14, 1795, President George Washington signed the Jay Treaty between the United States and Great Britain. This treaty was intended to resolve various economic and foreign policy disputes that remained between the United States and Britain following the Revolutionary War.

The intensity of popular feeling about the Jay Treaty ran very high. Washington's decision to sign the Jay Treaty followed months of bitter conflict about whether the treaty adequately protected American interests and preserved national honor. Indeed, the debate over the Jay Treaty has long been recognized as an important factor in the development of American political parties. Federalists wanted to settle matters with Britain peacefully and regularize economic and political relations. However, Democratic-Republicans, who had gained control of the House of Representatives in the elections of 1792 and 1794, bitterly opposed the treaty for its alleged deference to British interests, hostility to French interests, and failure to achieve war reparations for southern slave owners.

Popular sentiment ran heavily against the treaty at the time Washington signed it. James Madison, a Democratic-Republican, wrote that Virginians were almost unanimously opposed to the treaty in every "town or county" with the exception of perhaps Alexandria. He also reported that in Boston, Portsmouth, New York, and Philadelphia, there had been unanimous "remonstrances" against the treaty. In Charleston, Boston, New York, and Philadelphia, copies of the treaty had been burned, along with effigies of its negotiator, John Jay. The British flag was dragged through the streets in Charleston. Rioters in

Philadelphia broke the windows of British officials. At a town meeting in New York, Alexander Hamilton, the chief architect of the treaty, attempted to give a speech in support of ratification. However, he was "drowned out by hisses and catcalls, the mood of the audience being so ugly and the sentiment so hostile to Hamilton" that he was pelted by stones (Sharp 1993, 119; see also Beschloss 2007, 1–17; Elkins and McKitrick 1993, 420–21).

Washington received numerous petitions warning that ratification of the treaty would mean the breakup of the union. For example, citizens of Clarke County, Kentucky told him that if he signed the treaty "western America is gone forever – lost to the union." Similar resolutions were also passed in North Carolina. A Virginia newspaper declared that accepting the treaty would initiate a petition to the legislature that it secede from the union (Sharp 1993, 119). The more populist and democratically inclined press extolled opponents of the treaty as representative of the republican spirit of the American people (Sharp 1993, 120).

As commissioner of the treaty, Washington himself was subject to various personal attacks. In Virginia, Revolutionary War veterans toasted "A speedy Death to General Washington!" Newspapers of the time published cartoons of the president being marched to a guillotine for favoring the British over the French. Several columnists alleged that Washington had been secretly bribed by the British (Beschloss 2007, 2). The president was also attacked for "signing Jay's Treaty and thus forming a close union with despotic England; being hostile to France; and condemning the Democratic-Republican societies" and for "conducting his administration upon principles incompatible with the spirit of republicanism and on precedents derived from the corrupt government of England" (Sharp 1993, 126).

In the Senate the treaty had been ratified by the barest of margins along strict partisan lines, receiving 20 Federalist votes and opposed by 10 Democratic-Republicans. Given the narrow margin of passage, strong public opposition, and partisan turmoil, Washington could have compromised with the Democratic-Republicans or pursued further negotiations. However, he chose instead to sign the treaty roughly six weeks after it was approved by the Senate. By signing the treaty, he subjected himself to claims of partisanship, a force that he greatly detested. Indeed, partisanship was initially viewed by Washington,

Jefferson, Hamilton, Madison, and virtually all of the founding fathers as the greatest threat to the new republic.

Washington signed the treaty because of what he perceived as a more immediate threat, the rising potential for a new war with Britain. The British had refused to give up their fortifications in western American territories following the Revolutionary War. There was also evidence that the British were arming and provoking the Indians in western territories to attack American interests. The British were also confiscating American goods shipped to the French West Indies and France after war had broken out between Britain and France in 1793. Indeed, British men-of-war had captured almost 250 American ships allegedly engaged in commerce with France, and many American seamen were impressed into British service (Beschloss 2007, 2–3; Elkins and McKitrick 1993, 388–96; Sharp 1993, 114–15). Most Americans viewed the British actions as an arrogant affront to national pride, and there was growing talk of declaring war against Britain. These provocations made it appear likely to Washington that another war with Britain might be imminent.

Washington had serious reservations about the treaty, but he signed it anyway to prevent a potential war. If a new war with Britain was to come, then Washington wanted the nation to be ready (Beschloss 2007, 31; Sharp 1993, 121). War with Britain at this time would have been disastrous to the fledgling American economy and very divisive to the newly established political system. The nation's economy was still reeling from the indebtedness required to fight the Revolutionary War. The new government had little ability to raise taxes and establish a military such as would be required to remove British fortifications or defend American shipping. American commerce was still dependent on the British and would clearly suffer in a war.

Partisan and sectional rivalries also boded poorly for a new war with Britain. Federalists were supportive of better relations. The mercantile interests of the Northeast were dependent on British commerce and wanted to renew economic ties. However, southern states had less to gain from the treaty, which failed to get compensation for British confiscation of slaves during the Revolutionary War. More generally, southerners and Democratic-Republicans were more supportive of an alliance with the French and viewed the treaty as hostile to their interests. Therefore, it was unclear if there was sufficient political unity

for the fledgling nation to pursue a new war with Britain. Given these circumstances and growing partisan tumult across the new nation, Washington deemed it better to sign the treaty, rather than leave things unsettled (Elkins and McKitrick 1993, 424).

Washington wanted to settle these issues peacefully and end the partisan tumult. However, partisan opposition did not cease with Washington's signing of the Jay Treaty. After the signing, some of the more radical opponents began calling for Washington's impeachment (Sharp 1993, 123–27). A series of essays appeared in major newspapers charging the House of Representatives to "save the Constitution and rescue liberty" and attacking the president's conduct of his office (Sharp 1993, 126) However, more moderate members of the Democratic-Republican opposition, such as Jefferson and Madison, urged caution in pursuing impeachment due to "the president's long and faithful service to the republic" (Sharp 1993, 127).

Refusing to give up after the president's signing of the treaty, Democratic-Republicans made a final attempt to block its implementation through the House of Representatives (Sharp 1993, 127–33). The Constitution gives the president the authority to negotiate treaties with the advice and consent of the Senate. However, the treaty required $90,000 to implement various requirements for further arbitration. The power of appropriations originates in the House of Representatives, and both chambers must agree to passage. Democratic-Republicans sought to prevent funding the treaty through the 59–47 majority they held in the House.

If the president and the Federalists were to prevail, then it was obviously necessary to persuade the public and House Democratic-Republicans to support funding. Recognizing this, Washington and the Federalists set about the task of changing public opinion. Washington remained the most highly respected leader in the nation, and his reputation was a powerful weapon in this effort. The Federalists organized petition campaigns to support the treaty by taking advantage of Washington's reputation and raising the specter of war with Britain if the appropriations measure failed. They also raised the Democratic-Republicans' threat to impeach the president against them as an issue to mobilize Washington's popular support.

In a series of 38 essays published nationally under the pseudonym "Camillus," Alexander Hamilton and Rufus King vigorously defended

the treaty section by section. Contrary to what was claimed by the Democratic-Republicans, they argued, "the treaty made no improper concessions to Great Britain" (Sharp 1993, 121). They also framed the debate over the treaty as a choice between war and peace.

After a nine-month public relations campaign by Washington and the Federalists, public opinion had swung in the other direction toward support of the treaty. As a democratic representative, Washington had used the presidential power of persuasion to move the public toward his own preferences and those of the Federalists. He had also exerted significant political pressure on partisan opponents in the House of Representatives. The appropriations measure passed the House of Representatives on April 30, 1796 by a vote of 56–48. The worst crisis for the new republic to that point was over roughly two years after it began.

THE JAY TREATY CONTROVERSY AND PRESIDENTIAL REPRESENTATION

The events surrounding the signing and funding of the Jay Treaty pose some interesting theoretical questions about the nature of presidential representation in the early American republic. Was the president through this period representing the community at large? Was the president behaving more as a partisan, representing Federalist over Democratic-Republican interests? Or was the president doing both, and acting as a statesman who perceived the Federalist stance on the Jay treaty to be more consistent with national interests?

A Centrist Interpretation of the Jay Treaty Controversy

It is clear from Washington's writings and speeches that he viewed the presidency as representing the community at large, rather than narrow partisan interests. He had stated this view in his third annual address on October 25, 1791:

> It is desirable on all occasions to unite with a steady and firm adherence to constitutional and necessary acts of Government the fullest evidence of a disposition as far as may be practicable to consult the wishes of every part of the community and to lay the foundations of the public administration in the affections of the people. (Richardson 1907)

Washington despised the idea of political parties formed in such a way as to pit one group of citizens against another. In his farewell address to the nation he made this clear:

> They [political parties] serve to organize faction, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation, the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternature triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common counsels, and modified by mutual interests. (Richardson 1907)

As noted in the Preface, Washington's views on presidential representation also showed clearly in a letter of July 28, 1795 to the Selectmen of Boston during the campaign to fund the Jay Treaty. He wrote,

> In every act of my administration, I have sought the happiness of my fellow citizens. My system for the attainment of this object has uniformly been to overlook all personal, local, and partial considerations; to contemplate the United States as one great whole; to confide that sudden impressions, when erroneous, would lead to candid reflection; and to consult only the substantial and permanent interests of our country. (Fitzpatrick 1931)

Washington's publicly expressed views on presidential representation suggest that he believed presidents should first and foremost reflect the nation as a whole while remaining oblivious to the passions inspired by partisan divisions. His writings allude to consulting "the wishes of every part of the community," administering with "the affections of the people," pursuing "the will of the nation," and actions driven by "the happiness of my fellow citizens." These phrases imply that he believed that presidents should seek whenever possible to satisfy a centrist majority beyond partisan considerations.

However, Washington also saw a national interest apart from public sentiment that might at times require divergence from public opinion. In other words, Washington viewed himself as a caretaker of the public good, catering to the popular will whenever possible, but deviating when he perceived the nation would be better served by doing so.

When deviating from the popular will, the president also found it appropriate to persuade the public to support his conception of the national interest.

This nonpartisan centrist view of presidential representation is consistent with sentiments expressed by other founding fathers. For example, Thomas Jefferson stated in a letter of March 13, 1789 from Paris,

> I am not a Federalist, because I never submitted the whole system of my opinions to the creed of any party of men whatever in religion, in philosophy, in politics, or in anything else where I was capable of thinking for myself. Such an addiction is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go there at all. (Lipscomb and Bergh 1904a, 300)

In discussing the evils of partisanship, James Madison in Federalist 10 defined faction as "a number of citizens, whether amounting to a minority or majority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." Thus, Madison's early view was that partisanship, whether reflected through "a minority or majority of the whole," generally runs counter to the interests of the nation at large, or what he termed the "aggregate interests of the community."

Similarly, Alexander Hamilton, discussing the presidency in Federalist 71, stated that

> The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests.

Hamilton's view of presidential representation expressed through this statement seems perfectly consistent with Washington's behavior during the Jay Treaty crisis. In signing the treaty, Washington acted in what he perceived to be the nation's best interest, regardless of popular sentiment or partisan interests. However, he also understood the importance of public sentiment to presidential success. Therefore,

Washington conducted a successful campaign to persuade the public toward his own position.

The antipartisan centrist view of presidential representation is also reflected in the original design of the presidency as an institution. By embedding the presidency in a single elected official, the Constitution focused accountability on one individual who presumably would represent the community at large above the political fray. The presidency was designed as the only elected institution in the United States that had the entire nation as a constituency. As such, once in office, presidents should feel obligated to put the aggregate community above partisan considerations.

Another aspect of the original design of the presidency suggesting a nonpartisan interpretation comes from noting that there was no provision in the original Constitution for partisan elections. Article Two stated that the U.S. Electoral College would elect both the president and the vice president in a single election; the person with a majority would become president and the runner-up would become vice president. Through these provisions, it was expected simply that persons of good faith and integrity would be put forward to represent the larger interests of the community.

However, problems with this nonpartisan electoral system arose as political parties began to emerge. The first problem occurred in the election of 1796, when the nation chose a president and vice president from different political parties. Washington's former vice president, John Adams, became president, with the Democratic-Republican Thomas Jefferson becoming vice president. Adams's presidency was marked by intense partisan disputes over foreign policy. Britain and France were at war. Adams and the Federalists favored Britain, whereas Jefferson and the Democratic-Republicans favored France.

Problems arose again in the election of 1800. Democratic-Republicans Thomas Jefferson and Aaron Burr each received the same number of electoral votes. This threw the election into the House of Representatives, which then elected Thomas Jefferson president, and Aaron Burr vice president. However, the acrimony and accusations of partisan corruption surrounding these events resulted in further movement toward a partisan electoral system.

The intentions of the founding fathers for a nonpartisan system were finally contravened with the ratification of the Twelfth Amendment in 1804. This amendment required each elector to cast two distinct votes: one for president and another for vice president. Given the low probability of partisan electors splitting their votes between candidates of different parties, this effectively created a partisan electoral system. From this point forward the political party receiving the most electoral votes elected both the president and the vice president. This has meant that the federal government has been continuously controlled by political parties since 1804, rather than by representatives from the broader community.

A Partisan Interpretation of the Jay Treaty Controversy

The Jay Treaty crisis marked the beginning of the end of the founders' vision of a nonpartisan presidency representing the larger interests of the community. Washington was selected as the first president because of his perceived consistency with this vision. He had participated in the constitutional convention and understood the founders' intentions for the presidency. More generally, he viewed himself not as a partisan, but as a caretaker of the new nation. Nevertheless, it was clear that the partisan views emerging from Washington's handling of the Jay Treaty controversy contained very different perspectives on what was in the national interest.

Political parties in the modern sense had not yet developed. However, the political arena was now divided into two groups, with very different visions of the nation's future. Each group held tightly to a set of principles upon which they thought the republic should be based. Each was firmly convinced that its principles were right, and that deviating from these principles would move the new nation down the wrong path. Thus, both Federalists and Democratic-Republicans were driven in their beliefs and actions during the Jay Treaty crisis by a sense of principled partisanship.

Federalists depicted themselves as the party most consistent with the original intent of the Constitution. Their vision was of a stronger national government that would actively promote the development of the nation. They viewed the nation as having tremendous potential

for economic progress and expansion. During the Washington administration, Federalists used an elastic interpretation of the Constitution to pass far-reaching laws. These included establishing a national currency, funding the national debt, federal assumption of state debts, creation of a national bank, and a system of import tariffs and a tax on whiskey that would help pay for these measures. Federalist support tended to be higher in the Northeastern states, which were developing more urban economies. Hamilton and many other Federalists opposed the institution of slavery as inconsistent with the founding principles, but recognized that its dissolution was not possible at this time. They also tended to admire the success of the British system, particularly its strong financial and trade networks. Federalists also opposed what they saw as the excesses of the French Revolution, which had begun in 1789. They were deeply suspicious of popular government, and favored government through individuals with strong intellect and merit.

In opposition, Democratic-Republicans depicted the Federalists as favoring government by the aristocracy. They claimed that Federalists sought to establish a sort of elective monarchy that would put undue power in the hands of the president and central government. This seemed anomalous to Democratic-Republicans, because the nation had recently fought to overthrow a monarchy of a different sort. Democratic-Republicans promoted states' rights and wanted to limit the power of the central government, espousing the view that states should be primarily responsible for the nation's development. They insisted on a strict construction of the Constitution, and denounced many of the Federalists' proposals (especially the national bank) as unconstitutional. Democratic-Republicans also opposed such Federalist policies as high tariffs, military spending, a national debt, and assumption of state debt. They opposed the Federalists' urban, financial, and industrial goals. With support generally concentrated among southern states, the Democratic-Republican vision was of a nation characterized more by the relaxed agrarian lifestyle of the South and of a continuation of slavery. Democratic-Republicans opposed the Jay Treaty and were appalled at the idea of catering to British interests. Instead, they favored neutrality toward Europe or an alliance