

Alexander Hamilton on the Alliance
with France, 1793

Are the United States bound, by the principles of the laws of nations, to consider the treaties heretofore made with France as in present force and operation between them and the actual governing powers of the French nation? or may they elect to consider their operation as suspended, reserving also a right to judge finally whether any such changes have happened in the political affairs of France as may justify a renunciation of those treaties? It is believed that they have an option to consider the operation of those treaties as suspended, and will have eventually a right to renounce them, if such changes shall take place as can *bona fide* be pronounced to render a continuance of the connections which result from them disadvantageous or dangerous.

There are two general propositions which may be opposed to this opinion: 1st. That a nation has a right, in its own discretion, to change its form of government—to abolish one, and substitute another. 2d. That *real* treaties (of which description those in question are) bind the NATIONS whose governments contract, and continue in force notwithstanding any changes which happen in the forms of their government.

The truth of the first proposition ought to be admitted in its fullest latitude. But it will by no means follow, that, because a nation has a right to manage its own concerns as it thinks fit, and to make such changes in its political institutions as itself judges best calculated to promote its interests, it has therefore a right to involve other nations, with whom it may have had connections, *absolutely* and *unconditionally*, in the consequences of the changes which it may think proper to make. This would be to give to a nation or society not only a power over its own happiness, but a power over the happiness of other nations or societies. It would be to extend the operation of the maxim much beyond the *reason* of it, which is simply, that every nation ought to have a right to provide for its own happiness. . . . All general rules are to be construed with certain reasonable limitations. That which has been just mentioned must be understood in this sense, that changes in forms of government do not of course abrogate *real* treaties; that they continue absolutely binding on the party which makes the change,

I consider the people who constitute a society or nation as the source of all authority in that nation, as free to transact their common concerns by any agents they think proper, to change these agents individually, or the organization of them in form or function whenever they please; that all the acts done by those agents under the authority of the nation, are the acts of the nation, are obligatory on them, & enure to their use, & can in no wise be annulled or affected by any change in the form of the government, or of the persons administering it. Consequently the Treaties between the U.S. and France, were not treaties between the U.S. & Louis Capet, but

I proceed, in compliance with the requisition of the President, to give an opinion in writing on the general Question, Whether the U.S. have a right to renounce their treaties with France, or to hold them suspended till the government of that country shall be established? . . .

Thomas Jefferson on the Alliance with France, 1793

A treaty pernicious to the state is of itself void, where no change in the situation of either of the parties takes place. By a much stronger reason it must become *voidable* at the option of the other party, when the condition of act of one of the allies has made so material a change in the condition of things as is always implied in a radical revolution of government.

Contracts between nations as between individuals must lose their force where the considerations fail.

In such cases, reason, which is the touchstone of all similar maxims, would dictate that the party whose government had remained stationary, would have a right, under a bona-fide conviction that the change in the situation of the other party would render a future connection detrimental or dangerous, to declare the connection dissolved.

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Two nations may form an alliance because each has confidence in the energy and efficacy of the government of the other. A revolution may subject one of them to a different form of government—feeble, fluctuating, and turbulent, liable to provoke wars, and very little fitted to repel them. Even the connections of a nation with other foreign powers may enter into the motives of an alliance with it. If a dissolution of ancient connections shall have been a consequence of a revolution of government, the external political relations of the parties may have become so varied as to occasion an incompatibility of the alliance with the Power which had changed its constitution with the other connections of its ally—connections perhaps essential to its welfare.

Nothing can be more evident than that the existing forms of government of two nations may enter far into the motives of a real treaty. . . . But for good and sufficient cause he may renounce them. declares his election to renounce them; that in good faith he ought not to renounce them, unless the change which happened does really render them useless, or materially less advantageous, or more dangerous than before.

between the two nations of America & France, and the nations remaining in existence, tho' both of them have since changed their forms of government, the treaties are not annulled by these changes. . . .

Compacts then between nation & nation are obligatory on them by the same moral law which obliges individuals to observe their compacts. There are circumstances however which sometimes excuse the non-performance of contracts between man & man: so are there also between nation & nation. When performance, for instance, becomes *impossible*, non-performance is not immoral. So if performance becomes *self-destructive* to the party, the law of self-preservation overrules the laws of obligation to others. . . .

But Reason, which gives this right of self-liberation from a contract in certain cases, has subjected it to certain just limitations. The danger which absolves us must be great, inevitable & imminent. Is such the character of that now apprehended from our treaties with France? What is that danger. . . . Obligation is not suspended, till the danger is become real, & the moment of it so imminent, that we can no longer avoid decision without forever losing the opportunity to do it. . . . The danger apprehended, is it that, the treaties remaining valid, the clause guaranteeing their West India islands will engage us in the war? But Does the Guarantee engage us to enter into the war in any event? Are we to enter into it before we are called on by our allies? Have we been called on by them?—Shall we ever be called on? Is it their interest to call on us?

Can they call on us before their islands are invaded, or imminently threatened? If they can save them themselves, have they a right to call on us? Are we obliged to go to war at once, without trying peaceable negotiations with their enemy? If all these questions be against us, there are still others behind. Are we in a condition to go to war? Can we be expected to begin before we are in condition? Will the islands be lost if we do not save them? Have we the means of saving them? If we cannot save them are we bound to go to war for a desperate object?

Will not a 10 years forbearance in us to call them into the guarantee of our posts, entitle us to some indulgence? Many, if not most of these questions offer grounds of doubt whether the clause of guarantee will draw us into the war. Consequently if this be the danger apprehended, it is not yet certain enough to authorize us in sound morality to declare, at this moment, the treaties null. . . . Is the danger apprehended from the 22nd Art. of our treaty of commerce, which prohibits the enemies of France from fitting out privateers in our ports, or selling their prizes here. But we are free to refuse the same thing to France, there being no stipulation to the contrary, and we ought to refuse it on principles of fair neutrality.

But the reception of a Minister from the Republic of France, without

qualifications, it is thought will bring us into danger: because this, it is said, will determine the continuance of the treaty, and take from us the right of self-liberation when at any time hereafter our safety would require us to use it. The reception of the Minister at all (in favor of which Col. Hamilton has given his opinion, tho' reluctantly as he confessed) is an acknowledgement of the legitimacy of their government: and if the qualifications meditated are to deny that legitimacy, it will be a curious compound which is to admit & deny the same thing. But I deny that the reception of a Minister has any thing to do with the treaties. There is not a word, in either of them, about sending ministers. This has been done between us under the common usage of nations, & can have no effect either to continue or annul the treaties.

But how can any act of election have the effect to continue a treaty which is acknowledged to be going on still? For it was not pretended the treaty was void, but only voidable if we chuse to declare it so. To make it void would require an act of election, but to let it go on requires only that we should do nothing, and doing nothing can hardly be an infraction of peace or neutrality.

But I go further & deny that the most explicit declaration made at this moment that we acknowledge the obligation of the treaties could take from us the right of non-compliance at any future time when compliance would involve us in great & inevitable danger.

I conclude then that few of these sources threaten any danger at all; and from none of them is it inevitable: & consequently none of them give us the right at this moment of releasing ourselves from our treaties.