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constitution, in other words, would enable civil society to have it both ways—prerogative to deal with unforeseen contingencies, and the rule of law to ensure that its exercise would not be abused. The United States Constitution seeks to strike the proper balance; but, Kleinerman argues, Hamilton's reading of Article II, especially in his Pacificus essays (written in 1793 to defend President Washington's Proclamation of Neutrality), tilts the balance too far in the direction of executive prerogative. It was Madison, he says, who, by questioning the thrust of Hamilton's argument for implied powers, got the balance right.

Fatovic would generally agree, although for slightly different reasons. His main theme concerns the irreducible necessity for virtue in a republic—in the people no less than in their chief executive. He argues that modern political theory's emphasis on creating institutional surrogates for the want of character will not avail. Government cannot be reduced to a machine, and although some institutional solutions are better than others, constitutional structures can accomplish only so much. At the same time, he agrees with Kleinerman that a well-constructed constitution will induce habits of mind and heart conducive to individual liberty and responsibility. And, like Kleinerman, he fears that if prerogative is understood as being within the ambit of the law, its use will become regularized; the governed, like the frog in the pot of slowly warming water, will be lulled into complacency. For that reason, he inclines toward the Jeffersonian belief that, although necessary, prerogative should be understood as extra-constitutional.

If Marshall's opinion of Jefferson was low, his estimation of Jefferson's partisans was subterranean. On the eve of the third president's inauguration in 1801, Marshall opined that

the democrats are divided into speculative theorists & absolute terrorists: With the latter I am not disposed to class Mr. Jefferson. If he arranges himself with them it is not difficult to foresee that much calamity is in store for our country—if he does not they will soon become his enemies & calumniators.

Marshall was a vigorous defender of the power and dignity of the federal judiciary—the scourge of Jefferson and the Jeffersonians. (Chief Justice John Roberts's recent defense of the Supreme Court against President Obama's criticism in his State of the Union Address was eminently Marshallian; Roberts is known to be a fervent admirer of his predecessor.) Marshall wrote that Jefferson's "ranting declamation, this rash impeachment of the integrity, as well as opinions of all those who have successively filled the judicial department," bothered him considerably. "I find myself more stimulated on this subject than on any other," he wrote to Bushrod Washington in *McCulloch's* aftermath, "because I believe the design to be to injure the Judges & impair the constitution." To Justice Story, Marshall explained:

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—Steven F. Hayward
author,