

Creating the Government

Introduction

The American colonies declared their independence from the British Empire on July 4th, 1776. Thomas Jefferson wrote the Declaration of Independence. George Washington led the Continental Army. Benjamin Franklin served as diplomat to France and secured their assistance in the war. The colonists fought the Battle of Trenton, the Battle of Saratoga, and the Siege of Yorktown. And, in 1783, the British Empire signed the Treaty of Paris and formally recognized the United States as a sovereign nation.

But one very important question remained—now what?

They were an independent nation, but what sort of nation would they be? How would the government function? How much power would it have? And what would be the relationship between the national and state governments?

With hindsight we can see that the Founders didn't really know. Many of them shared a basic political philosophy, but the government they created was not forged in harmony. It was a contentious process, riddled with infighting, uncertainty, controversy, and compromise.

Today we're going to tell the story of the first decades of independence. We'll look at the challenges the young nation faced, and we'll examine the struggle of how the Founders created the United States government.

Let's dig in.

--Intro Music--

[Welcome to American History Remix, the podcast about the overlooked and underexplored parts of American history. We're glad you're here!]

Articles and Critical Period

The United States' Constitution was not the original law of the land. It was not written until 1787, 11 years after the colonies declared their independence. Before the Constitution, the Nation was governed by the Articles of Confederation.

Proposed in 1777, the Articles formally united the states in their opposition against the British Empire.¹ The government under the Articles was pretty weak. Congress was the only branch and most power remained with the states.²

Winning the War for Independence was this new government's greatest success. But when the war ended in 1783, the Nation entered an era historians call the "Critical Period."

¹ Gordon S. Wood, *The American Revolution: A History* (New York: Modern Library, 2002), 70-71.

² Wood, *The American Revolution*, 71-72.

First, Congress had to pay off the debt from the war, but, under the Articles of Confederation, Congress had no power to tax, it could only request money from the states, who would then tax their citizens. After the war, states refused to provide the requested money, and Congress was forced to stop paying interest on its debt.³

Congress also had no power to regulate trade. That too was left to the states. But this meant the Nation had no cohesive policy. The thirteen states imposed a variety of duties on imported goods from foreign nations *and* from other states, which made trade complex and burdensome.⁴

Even though states regulated trade, the Articles gave Congress authority over foreign relations. States, however, often ignored Congress' treaties and waged their own wars against Native Americans. Congress had no power to stop them because it could not raise an army. Like with taxation, it could only request the states send soldiers.⁵

Meanwhile, at the state level, legislators often pursued their own personal interests. Farmers in debt wanted low taxes and the printing of paper money. Merchants and creditors wanted high taxes on land and the promotion of foreign trade. Artisans wanted price regulation on agriculture and tariffs on imported goods.⁶ You don't need to memorize this, but the point is that a revolving door of representatives kept changing the laws. More laws were passed in the States in the first ten years after independence than in the whole colonial era. As an observer said, laws are "altered - re-altered - made better- made worse and kept in such a fluctuating position that persons in civil commission scarcely know what the law is."⁷

State legislators even began directing the militias and overturning court decisions, thus usurping power from their own governors and judiciaries.⁸

The instability culminated in 1786 when Daniel Shays of Massachusetts led 2000 men in a rebellion, called Shays' Rebellion. Shays' followers were indebted farmers facing foreclosure. Their goal was to prevent creditors from collecting their debts. The rebellion successfully closed the courts in three Massachusetts counties, and they nearly captured a federal arsenal before they were squashed by the Massachusetts militia. But afterward, men sympathetic to the rebellion won elections in Massachusetts and enacted the debt relief Shays had hoped for. The mob was crushed, but the policies of the mob became state law.⁹

The situation was far from the republican ideals expressed during the Revolution. Several times during the Critical Period, Congress tried to amend the Articles, but doing so required unanimous consent from the states and the attempts all failed.¹⁰ In reaction to the power of the British Empire, the Articles of Confederation purposefully made the national government weak. But, as

³ Wood, *The American Revolution*, 146.

⁴ Wood, *The American Revolution*, 150.

⁵ Edmund S. Morgan, *The Birth of the Republic, 1763-89* (Chicago: University of Chicago Press, 2013), 125.

⁶ Wood, *The American Revolution*, 142.

⁷ Wood, *The American Revolution*, 142.

⁸ Morgan, *The Birth of the Republic*, 125; Wood, *The American Revolution*, 142-43.

⁹ Wood, *The American Revolution*, 152; Morgan, *The Birth of the Republic*, 143.

¹⁰ Morgan, *The Birth of the Republic*, 125.

Thomas Jefferson remarked, “An elected despotism was not the government we fought for.”¹¹ Many realized that local governments were not inherently less corrupt and self-serving than a distant government.

Constitutional Convention

Realizing the need to amend the Articles of Confederation, states sent delegates to a convention in Philadelphia in May 1787.¹²

Virginia sent George Washington as a delegate, signifying the importance of the meeting. Washington was a national hero, and on the first day of their meeting, was elected president of the convention. Also present were James Madison, Benjamin Franklin, and Alexander Hamilton. Some Founders were missing, however. John Adams and Thomas Jefferson were both in Europe serving as ambassadors to England and France, respectively. Samuel Adams and Patrick Henry both chose not to attend. Henry was suspicious of the meeting. He said he “smelled a rat.” And Rhode Island, fiercely independent, refused to send any delegates at all.¹³

Despite some of the absences, everyone knew how important the meeting was. “The fate of the Union will be decided by the convention,” said a delegate from Massachusetts. Many felt that if they did not improve the government, the US would likely dissolve.¹⁴

Great. So, everyone agreed. They needed to alter the Articles of Confederation. The convention, however, did something a little surprising. They didn’t revise the Articles. They threw them away and decided to create a whole new government. But *how* should the new government function? That was a tough question. They considered several plans but, ultimately, a group of resolutions written by James Madison, called the Virginia Plan, became the Constitution. Thus, James Madison was the architect of the Constitution.¹⁵

His plan was based on the idea of the separation of powers developed by enlightenment philosopher John Locke. Unlike the government under the Articles, the Constitution would establish three branches: a legislature with two chambers, an executive, and a judicial branch.

It took months to iron out the details. The biggest issue was the legislature. Who does Congress represent? The states or the people? Large states wanted representation by population. Small states wanted representation of the states themselves, each having an equal vote. The debate over this issue was so contentious several small states threatened to leave the convention if there was not equal representation.

Eventually, the delegates reached the so-called “great compromise.” They would split representation in Congress. In the House of Representatives, it would be proportional to the

¹¹ Morgan, *The Birth of the Republic*, 143.

¹² Morgan, *The Birth of the Republic*, 129-30.

¹³ Morgan, *The Birth of the Republic*, 130-31.

¹⁴ Morgan, *The Birth of the Republic*, 131.

¹⁵ Morgan, *The Birth of the Republic*, 137-39.

state's population. The Senate, however, would represent the states, with two senators per state, regardless of its size.¹⁶

That was the contest between large and small states. But what about free and slave states? Many at the convention saw the inherent contradiction between the principle of liberty and the institution of slavery. Northern states had begun the process of gradually abolishing slavery. While southern states had a vested interest in protecting slavery, because it was the basis of their economy. Although they didn't want to give enslaved persons the right to vote, southerners wanted the slave population to count towards their representation in Congress.

The framers of the Constitution did a number of things. First, to appease southern states they allowed for enslaved persons to count in the population numbers but only as 3/5th of a free person. This was called the "three-fifths compromise," and it gave southern states greater representation in Congress.

Second, they dealt with the slave trade. The Founders gave the federal government the ability to regulate trade and commerce. But did that mean it could therefore end the international slave trade as northern states favored? Again, they compromised. The federal government *would* have the power to end the international slave trade, but not for twenty years. They added a provision that only after 1808 could the government end the trade.¹⁷

Essentially, they kicked the can down the road.

The Constitution

Let's take a moment to look at the final document that came out of the convention. It's kind of important, right?

The Constitution is arranged into articles. And Articles 1-4 are divided into subsections. That's why you hear lawyers and Supreme Court justices refer to Article 2, Section 1; Article 3, Section 2, etc.

Articles One, Two, and Three created the legislative, executive, and judicial branches of government, in that order.

The power of the states was defined in Article Four. Article Five established the rules for amending the Constitution.

Article Six is a hodgepodge. It says that the new government would be the supreme law of the Nation, superseding the states. It would retain the debts and agreements the government held under the Articles of Confederation. And state and federal officeholders would take an oath to uphold the Constitution, but there would be no religious requirement for those offices.

Finally, Article Seven gave the rules for how the states would ratify the Constitution.

¹⁶ Morgan, *The Birth of the Republic*, 140-41.

¹⁷ Morgan, *The Birth of the Republic*, 141-42.

Ratification

The convention sent the Constitution to the states for ratification in the fall of 1787. Finally, there would be stability...except...not everyone liked the Constitution. Not everyone wanted a new government. Remember Rhode Island didn't even bother to send delegates to the convention.

So, what followed was a heated national debate. At least nine states needed to ratify the Constitution for the new government to go into effect.¹⁸ Those who favored ratification were called "Federalists," and those who opposed ratification were called "Antifederalists." The term "Federalists" is going to hang around for a few decades, and its meaning changes over time. Stay tuned.

The Antifederalists were not a unified group. Some wanted to alter the Constitution and then would feel comfortable ratifying it. Others didn't want a stronger federal government, no matter what.¹⁹

Some believed that giving Congress the right to tax could squeeze the people dry and leave no revenue for the states.²⁰

Others objected that the convention had altered the government more than was necessary. They feared the government would be oppressive. The representatives would form an unofficial aristocracy. Or perhaps the executive would become a monarch.²¹

George Mason of Virginia was a delegate at the Constitutional Convention. But he refused to sign the document and argued against ratification, saying, "This government will commence in a moderate aristocracy; it is at present impossible to foresee whither it will, in its operation, produce a monarchy, or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in one or the other."²²

Thus, the Anti-Federalists argued that the new government under the Constitution was a betrayal of the values of the Revolution.

What did the Federalists argue? Similar to the Anti-Federalists, the Federalists had differing opinions. Some liked the document. Some wanted to ratify it and then amend it. Luckily for the Federalists, they had an all-star lineup. John Jay, Alexander Hamilton, and James Madison collectively wrote the *Federalist Papers*, 85 essays in support of ratification.²³ The essays addressed the concerns about the size of the Republic, factionalism within the government, and

¹⁸ Morgan, *The Birth of the Republic*, 143.

¹⁹ Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781-1788* (New York: Norton, 1974), 119.

²⁰ Main, *The Antifederalists*, 123.

²¹ Morgan, *The Birth of the Republic*, 146-7; Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (Oxford: Oxford University Press, 2009), 34-36.

²² George Mason, "Objections to the Proposed Constitution," in *Major Problems in American Constitutional History: Documents and Essays*, ed. Kermit L. Hall (Boston: D.C. Heath and Company, 1992), 184; Morgan, *The Birth of the Republic*, 154.

²³ Wood, *The American Revolution*, 162.

the role of the separate branches of government.²⁴ It's some of the clearest political philosophy in American history.

And surprise! The Federalists won and we have the Constitution. But the process of ratification was messy.

Most of the small states saw they were getting as much as they could hope for, and they ratified quickly. Delaware, New Jersey, Connecticut ratified by January of 1788.²⁵

When the Pennsylvania legislature received the Constitution, they had to formally call for a ratification convention to either approve or disapprove it. Antifederalists there were outnumbered, so they decided to boycott the meeting. Their absence meant there would not be enough members present to officially vote and call for a ratification convention. In response, a mob of Federalists marched out and found the Anti-Federalists in their lodgings. They picked up the men, literally carried them to the statehouse, put them in their seats, and barred the door. And that is how Pennsylvania held a ratification convention.²⁶

Ratification in Massachusetts, Virginia, and New York was even more difficult. These states agreed to ratify, BUT they did so by also listing recommendations for amendments to the Constitution. They said they would join, but there should be some changes.²⁷

Both North Carolina and Rhode Island rejected the Constitution and only joined the Union in 1789 and 1790, respectively.²⁸

But despite their initial rejection, 11 states approved the Constitution, and it became the supreme law of the United States.

So, instead of being immediately celebrated, the Constitution was controversial, and ratification was a rocky process.

Washington as President

So, America had a constitution. Now all it needed was a government. Literally, they had to have elections. George Washington was unanimously selected by the electors. And no one was surprised. Everyone at the Constitutional Convention expected Washington to be the first president. He was a war hero and, more importantly, he embodied the virtue that was necessary for a healthy republic. After the war, he had laid down his sword and retired from public life. Powerful generals don't often retire to their farms after a revolution. Usually, they just kept fighting and became dictators. Not Washington. He put the Republic above himself, and that's

²⁴ James Madison, "Federalist No. 10," in *Major Problems in American Constitutional History: Documents and Essays*, ed. Kermit L. Hall (Boston: D.C. Heath and Company, 1992), 195.

²⁵ Morgan, *The Birth of the Republic*, 152.

²⁶ Morgan, *The Birth of the Republic*, 150-51.

²⁷ Morgan, *The Birth of the Republic*, 153-54.

²⁸ Morgan, *The Birth of the Republic*, 153.

why he was the unanimous choice for president.²⁹ He took office in April 1789 in New York City, the Nation's first capital. The presidency, at least, was secure.

John Adams was elected vice president, but he was unsure of his exact responsibilities. The Constitution doesn't say a whole lot about the vice presidency. Adams knew that the vice president was the president of the Senate, and, in the case of a tie vote, he could break the tie. Was *that* his whole job? Adams didn't know. "I am nothing," he said, "but I may be everything."³⁰

The rest of Washington's cabinet took time to fill out. Alexander Hamilton served as Secretary of the Treasury, but the Department of the Treasury was not created until September of 1789.³¹ Washington selected Thomas Jefferson as Secretary of State. But he was in France and wouldn't return to take his post until March of 1790. So, for almost a year, that position was vacant.³²

And here, almost immediately, the Founders ran into trouble. The Constitution states that cabinet members are appointed by the president with the advice and consent of the Senate. Cool. What about removing cabinet members from their positions? Can the president do that on his own, or does he need the Senate's approval? The Constitution doesn't say.

In the *Federalist Papers*, Alexander Hamilton had argued that the president would need the consent of the Senate to approve *and* remove officials from his administration. It took James Madison, who was serving in the House of Representatives, to convince his fellow congressmen that it would encroach on the executive's job if the Senate needed to consent to removing cabinet members. At this point, Madison was not worried about the power of the executive branch. Not yet anyway. The Senate was also divided on the issue. When they voted, the result was a tie. Which John Adams, as the vice president, broke. I guess he was important. And that is why that, today, a president can remove members of his administration at will.³³

This may seem like a small issue, but it's not. Figuring out the proper function of government, especially between the separate branches, was incredibly important. Especially when the Constitution was unclear.

First Congress

We'll come back to Washington's administration in a bit. But let's take a closer look at the First Congress. James Madison, the Father of the Constitution, was serving in the House of Representatives as its unofficial leader. Remember all those states that ratified the Constitution while also recommending changes to it? Madison took it upon himself to sift through the two-hundred-some proposals. He compiled and consolidated them into seventeen amendments and presented them to the House. Many were reluctant to make changes, but Madison compelled his

²⁹ Wood, *Empire of Liberty*, 73-74.

³⁰ Wood, *Empire of Liberty*, 63-64.

³¹ Bernard A. Weisberger, *America Afire: Jefferson, Adams, and the First Contested Election* (New York: Perennial, 2001), 55.

³² Weisberger, *America Afire*, 52.

³³ Wood, *Empire of Liberty*, 86-87.

fellow congressmen to approve the amendments. They were then sent to the Senate, who approved 12 of them, which were then sent to the states. In 1791, the states ratified 10 of them, and those first ten amendments to the Constitution became the Bill of Rights.³⁴

So, what were these amendments? The Founders had created a stronger government than anyone expected, and the states wanted assurances. So, the purpose of the amendments was to protect the rights of the people.

The First Amendment established the freedom of religion, speech, the press, and the right to peaceably assemble and petition the government. The Second Amendment protects the right to bear arms. The third protects the people from quartering troops in their homes. That one doesn't come up much anymore. The fourth protects from unlawful searches and seizures. The fifth protects the rights of a defendant in a criminal trial, such as not having to testify against yourself, and it gives the protection of property. The sixth assures the right to a trial. The seventh, the right to a jury. The eighth prevents excessive bail. The ninth is a big one. It states that citizens have unenumerated rights. The rights specifically mentioned in the Constitution are not exhaustive. The tenth says that the states retain powers not specifically delegated to the federal government.

So, that's the Bill of Rights.

But the First Congress did one more thing. In 1789, they passed the Judiciary Act, which in essence created the court system and granted specific powers to the courts. This was important, we'll revisit it.

Federalist Program

Let's come back to Washington's administration and talk about everyone's favorite subject—fiscal policy. The policies of Alexander Hamilton, the Secretary of the Treasury, reveal a schism among the Founding Fathers. They reveal two very different visions of what the Nation should be.

So, what were his policies?

Well, as the head of the Treasury, Hamilton had to address the war debt. In 1789, the federal government owed \$42 million dollars, and the state governments owed \$25 million. Hamilton's plan was for the federal government to assume the debt of the states. He actually wasn't concerned with totally paying off the debt. Instead, the government could make regular payments on it, show that it was reliable, and then it could borrow *more money* from creditors. This is like when you pay on a credit card reliably, improve your credit score, and then take out a larger loan.³⁵ It was just at the national level.

Second, Hamilton wanted to promote manufacturing so that the Nation's economy would no longer be based in agriculture.³⁶

³⁴ Wood, *Empire of Liberty*, 68-69.

³⁵ Wood, *Empire of Liberty*, 95-97.

³⁶ Weisberger, *America Afire*, 56.

Finally, to fund this new program, Hamilton proposed raising taxes and creating a national bank. The bank would be a private corporation with a charter from the government to handle its deposits, make loans to citizens, and print paper money.³⁷

Hamilton's plan produced *a lot* of fighting and caused a rift between Hamilton and Madison. The two wrote the *Federalist Papers* together. But now it seems they had very different ideas about the nation they were creating. Hamilton wanted a powerful, European-like nation. Madison now worried about federal power.

The plan caused months of gridlock in Congress. It may seem odd that states preferred to keep their debt rather than let the federal government pay it, but they worried that the national government was making them irrelevant.³⁸

Eventually, the Founders struck a deal whereby the federal government would assume state debts. But to appease southern states, the national capital would move to a more central location, a site along the Potomac River, what became Washington DC.³⁹

We're not talking about fiscal policy to bore you. No. Our national capital exists because of Hamilton's plans. These are important.

The national bank was just as controversial. In 1791, the bill to create the bank passed through Congress, even though Madison claimed the bank was unconstitutional. Nowhere in the Constitution does it give Congress the power to create a bank. However, Article 1, Section 8 gives Congress the power to make laws "necessary and proper" to execute their prescribed duties.⁴⁰ Does that mean Congress does have the power to create a bank?

Only a few years removed from the Constitutional Convention, the Founders were debating the meaning of the Constitution. Do you take a broad or a narrow interpretation? Washington himself was unsure. He considered vetoing the bill. But Hamilton argued that the federal government must have the implied authority to achieve its mandated responsibilities. The argument convinced Washington, and he signed the bill.⁴¹

In response to Hamilton's policies, James Madison and Thomas Jefferson began an informal opposition. Political parties as we know them didn't exist yet. But this faction became known as the "Jeffersonian Republicans." Not to be confused with the modern party, that's something different. Hamilton's faction, which also included John Adams, retained the name "Federalist." So, Federalist no longer meant someone who favored the Constitution but someone who favored a strong, active federal government.⁴²

³⁷ Wood, *Empire of Liberty*, 99.

³⁸ Weisberger, *America Afire*, 55.

³⁹ Weisberger, *America Afire*, 61; Wood, *Empire of Liberty*, 142-43.

⁴⁰ Cong. Rsch. Serv., *Article I-Legislative Branch, Section 8-Enumerated Powers*, Constitution Annotated (accessed August 8, 2022) <https://constitution.congress.gov/browse/article-1/section-8/>.

⁴¹ Weisberger, *America Afire*, 64; Wood, *Empire of Liberty*, 143-45.

⁴² Wood, *Empire of Liberty*, 151, 145, 172.

The infighting between Jefferson and Hamilton got really intense. They were both members of Washington's cabinet, and cabinet meetings were often hostile. Washington hated factions, he hated parties. He was able to stay above the division, and he asked for peace between the sides, but each man blamed the other for the fighting and then kept fighting.⁴³

Whiskey Rebellion

The Federalist policies affected everyday people as well. To raise revenue in 1791, Washington's administration placed a tax on distilled spirits. At the time, transportation networks were primitive. On the frontier it was difficult to transport grain without it perishing in the process. So, farmers would distill it into alcohol and transport it that way. But now they had to pay taxes to do that.⁴⁴ And, boy, do Americans love taxation.

In 1791 and '92, violent opposition spread to every state outside of New England. The farmers of western Pennsylvania were especially affected by the tax. When tax collectors arrived, the men stripped them naked and tar and feathered them. If you're unfamiliar with tar and feathering, it's exactly what it sounds like. They poured hot tar over their bodies and covered them with feathers.⁴⁵ It was a form of torture. It was also used by Kevin McCallister in *Home Alone*.⁴⁶

Washington was at first reluctant to use force to stop the resistance, and things calmed down. But in 1794, the government issued new taxes that reignited the issue. And it caused what we call the "Whiskey Rebellion." In western Pennsylvania, 6000 men marched on Pittsburg, robbed the mail, closed federal courts, set up their own court system, and threatened to capture a federal arsenal. So, Washington raised a militia of 15,000 men, larger than any army he led during the Revolution, and it easily quelled the rebellion. The event showed the power of the federal government and cemented its authority. But it also revealed a common resistance to Federalist policies.⁴⁷

Adams Elected

After serving two terms, Washington was ready to step down and return to private life, therefore establishing a tradition of presidents only serving two terms. Devotion to Washington was about all the Federalists and Jeffersonians could agree upon. With him gone, the two presidential candidates were John Adams and Thomas Jefferson. There weren't party tickets yet. Instead, under the original Constitution, the person who received the most votes became president, and the runner up became vice president. Adams won, and Jefferson became his vice president. So, you had a Federalist and a Jeffersonian leading the executive branch. It was a bad system.⁴⁸

During the Revolution, John Adams was a champion of Americans' ability to govern themselves. But, over the years, his opinion changed. By the time he became president in 1797, he had lost

⁴³ Wood, *Empire of Liberty*, 155.

⁴⁴ Wood, *Empire of Liberty*, 134-35.

⁴⁵ Wood, *Empire of Liberty*, 136.

⁴⁶ *Home Alone*, directed by Chris Columbus (Los Angeles, CA: Twentieth Century Fox, 1990).

⁴⁷ Wood, *Empire of Liberty*, 137-38; Weisberger, *America Afire*, 112-116.

⁴⁸ Wood, *Empire of Liberty*, 210-212, 278.

that faith and confidence. People, he believed, were not naturally virtuous. They were passionate and selfish. Government then needed to be active and hold these tendencies in check. To Adams, voters should select wise and virtuous men to power, and then leave governing to their betters.⁴⁹

Thomas Jefferson had a very different worldview. He was idealistic and optimistic. He celebrated the common man, especially farmers. He believed that most evil in history came from the top down, from bloated governments impeding the rights of the people. The government didn't need to hold people in check, it needed to get out of their way. This may sound a bit like modern conservatism, and there are some similarities. But, for Jefferson, it went much deeper. People, he believed, were inherently good, and, if they were free and virtuous, he believed world peace was possible.⁵⁰

No wonder the policies of the men differed. They were operating from very, very different views of humanity.

The Federalist and Jeffersonian conflict was spreading throughout government. Federalism remained strong in New England, but Jeffersonianism had broad appeal, including slave owners who disliked Hamilton's fiscal policies and Northerners who disliked the elitist tendencies of Adams. The coalition increased its numbers in Congress during Washington's second term. They were becoming stronger.⁵¹

Adams as President

One of the most important events during John Adams' presidency, and probably in modern world history, were the Napoleonic Wars in Europe. We don't have space to discuss Napoleon and his wars in their entirety. For our purposes, we just want to note that they too added to the fighting between Federalists and Jeffersonians. France began seizing US ships as they sailed to England. Then, when a diplomatic solution to the issue failed, Congress authorized a "quasi-war" with France, allowing the Navy to defend American merchant ships. This caused federal spending to increase. In fact, some Jeffersonians claimed that Federalists were using the conflict as an excuse to grow federal power.⁵²

Worried about an insurrection within the United States should a full war occur, Adams signed the Alien-Friends Act of 1798, which authorized the president to expel any foreigner whom he deemed dangerous.⁵³

Meanwhile, Jeffersonians in the press were constantly smearing Adams and the Federalists. This was a world where honor and respect were crucial for leaders who governed because of their supposed virtue.⁵⁴ In the face of constant attacks, Adams signed the Sedition Act of 1798, which made it illegal to print "false, slanderous, and malicious...writings about the government." Those

⁴⁹ Wood, *Empire of Liberty*, 136, 213-214; Morgan, *The Birth of the Republic*, 148.

⁵⁰ Wood, *Empire of Liberty*, 286, 292, 302.

⁵¹ Wood, *Empire of Liberty*, 157, 165, 169.

⁵² Wood, *Empire of Liberty*, 239-42, 245-46.

⁵³ Wood, *Empire of Liberty*, 249-250, 265; Weisberger, *America Afire*, 211.

⁵⁴ Wood, *Empire of Liberty*, 256-57.

found guilty were subject to prison time or a fine. But the plan backfired, and Jeffersonian newspapers only increased. Even Hamilton criticized this law.⁵⁵

Jefferson and Madison actually got Virginia and Kentucky to declare that the Alien Friends and Sedition Acts were unconstitutional. Can states even do that? It wasn't clear at the time. In private letters, Jefferson and Madison wondered if it would be best if some states seceded from the Union.⁵⁶ Nothing came of these efforts, but they show how divided that nation was.

In Congress, the conflict turned violent in 1799, when two representatives physically fought with each other on the floor of the House. One man used a cane to attack his colleague, the other man defended himself with tongs he took from the fireplace.⁵⁷

America was in a crisis. The young nation was on the verge of destroying itself. And, then it was time for another election. Adams v. Jefferson 2.0.

Jefferson Elected

Unfortunately for the Federalists, their faction was splintering. British victories over the French in Europe made an invasion of the United States much less likely. Some, like Hamilton, wanted to continue building up the military, but Adams wanted peace. The two men had a public falling out. They were divided. There was no leader for the Federalists anymore. And Adams lost the election of 1800.⁵⁸

But it wasn't clear at first which Jeffersonian-Republican had won. Electors at the time submitted two names on their ballots but didn't specify which name was their choice for President or Vice President. They just gave vice president to the runner-up. Jefferson and Aaron Burr (the same Aaron Burr who later killed Alexander Hamilton in a duel) both received the same number of votes from electors. So, when there is no clear winner of an election, the decision goes to the House of Representatives. They voted...with no clear winner. They voted again...with no clear winner. The House of Representatives voted 36 times before Jefferson was elected president. This event led to the ratification of the 12th amendment which eliminated the practice of giving the vice presidency to the runner-up, and it clarified how ballots would be cast.⁵⁹

The election was important for another reason, perhaps even more significant. This was the first time a sitting president was defeated in an election. On paper, there was supposed to be a peaceful transfer of power. But, at this point, the system had not been tested. No one knew for sure that it would work. There had already been violence in Congress, attacks in the papers, some talk of secession, fear of insurrection. While Congress was voting and re-voting for

⁵⁵ Wood, *Empire of Liberty*, 259-60.

⁵⁶ Wood, *Empire of Liberty*, 270.

⁵⁷ Adams actually called Hamilton a "bastard." Wood, *Empire of Liberty*, 229; Weisberger, *America Afire*, 185.

⁵⁸ Wood, *Empire of Liberty*, 271-74.

⁵⁹ Wood, *Empire of Liberty*, 284-85; Weisberger, *America Afire*, 256.

president, several states called up their militias, unsure what would happen next.⁶⁰ Would Adams refuse to leave? Would he call up the militia?

No. Despite the defeat, he recognized the legitimacy of the election. Say what you will about Adams' policies as president, but he established the tradition of a peaceful transition of power.⁶¹

Jefferson as President

Thomas Jefferson's political philosophy was absolutely radical. As we've mentioned, he believed governments were the source of much of the evil in the world. He didn't want a bureaucratic government, a complex banking system, or a mercantile economy. He idealized the small, independent farmer.⁶² So, he did something nearly unheard of until that point in history: he purposefully decreased the power of his own government.

He shrank the Department of the Treasury by 40%. He cut tax collectors and inspectors. He cut the military budget in half.⁶³ He cut the number of foreign diplomats, leaving ambassadors to only France, Spain, and England.⁶⁴

Hamilton's plan depended on using the debt, Jefferson's on eliminating it, and all his cuts worked. By 1810, Jeffersonian-Republicans had shrunk the debt in half, from \$80 to \$40 million.⁶⁵ Jefferson considered eliminating the National Bank. He only reluctantly allowed it to continue after pressure from his cabinet.⁶⁶

Jefferson was a complex man. He was an aristocratic slaveowner who fathered six children with one of his slaves, Sally Hemings. But, still, he became a hero to the common man. Under his influence, states began removing property requirements for voting. Full voting rights was a long process, but it began with Jefferson. Under Presidents Washington and Adams, only 20% of eligible voters participated in politics. But, under Jefferson, that number increased to 80%.⁶⁷

The West

Jefferson had a clear vision for what the Nation should be. But even he was not always sure of the best way to realize his goal. Let's look to the West.

The Louisiana Territory, the region west of the Mississippi River and comprising most of the Great Plains, had passed hands between European empires multiple times. France claimed it, then Spain, and then France acquired it again. Jefferson hated the idea of the French on the continent, so he offered to buy the land rather than risk a potential fight over it. Napoleon,

⁶⁰ Wood, *Empire of Liberty*, 284.

⁶¹ Wood, *Empire of Liberty*, 285-86; Weisberger, *America Afire*, 1-3.

⁶² Wood, *Empire of Liberty*, 286.

⁶³ Wood, *Empire of Liberty*, 292.

⁶⁴ Weisberger, *America Afire*, 288.

⁶⁵ Wood, *Empire of Liberty*, 298; Weisberger, *America Afire*, 288.

⁶⁶ Wood, *Empire of Liberty*, 293.

⁶⁷ Wood, *Empire of Liberty*, 302; Joyce Appleby, *Inheriting the Revolution: The First Generation of Americans* (Cambridge, MA: Belknap Press, 2000), 26-29.

preoccupied with war in Europe, agreed to sell the Louisiana Territory to the United States for \$15 million. It was 830,000 square miles, comprising all or part of what would become 15 states from Louisiana to North Dakota, sold at only 3 cents per acre.⁶⁸

To Jefferson, the vast territory would fulfill his dream of a pure and agrarian society. But was the purchase of the Louisiana Territory constitutional? Jefferson wasn't sure. The Constitution does not explicitly say that the executive branch has the authority to acquire foreign territory. For the president to make the purchase, he had to acknowledge "implied powers" given to the executive branch. Again, it's the issue of a broad or narrow interpretation of the Constitution. After the deal was agreed to, Jefferson hesitated, unsure if he should send it to Congress for approval. Only when he learned that Napoleon was reconsidering the agreement did Jefferson decide to send the treaty to Congress without articulating his constitutional concerns. The deal passed in 1803.⁶⁹ So I guess a president *can* purchase foreign territory.

Judicial Review

It wasn't just the executive branch that evolved under Jefferson. During his presidency, the Supreme Court issued the most important court decision in American history in the case of *Marbury vs. Madison*.

Let's back up a bit. The Constitution doesn't give a lot of specific direction for the Supreme Court, or the court system in general. The courts were set up by Congress when it passed the first judiciary act in 1789. We talked about this earlier.

Later, in 1801, at the end of Adams' term, Congress passed another judiciary act which created twenty-three new judicial positions for Adams to fill in the last months of his presidency. The Federalists had lost the election, but, before they left office, they wanted to create and fill as many positions as possible.⁷⁰

One of Adams' appointees was a man named William Marbury. But he wasn't able to finalize the appointment before leaving the presidency. To put it very simply, Marbury was promised a position, but the paperwork wasn't filed in time. Jefferson then became president and didn't want any Federalist judges, so he ordered James Madison, serving as his Secretary of State, not to deliver the commission – that is, not to file the paperwork – essentially blocking Marbury's appointment.

So, Marbury sued James Madison, the author of the Constitution, and *Marbury v. Madison* came before the Supreme Court. Marbury asked the court to issue what is called a writ of mandamus, a fancy word for a court order compelling someone to take some action, in this case to deliver the commission so Marbury could take up his post.⁷¹

⁶⁸ Weisberger, *America Afire*, 293-94.

⁶⁹ Weisberger, *America Afire*, 295-96; Wood, *Empire of Liberty*, 371.

⁷⁰ Weisberger, *America Afire*, 266-68.

⁷¹ Wood, *Empire of Liberty*, 440.

The Chief Justice of the Supreme Court was John Marshall, a Federalist recently appointed by Adams.

Here's where things get even weirder. John Marshall was the one who was supposed to deliver Marbury's commission, but he failed to do so—he's the one who messed up the delivery of the paperwork—and then he was appointed to the Supreme Court.

To summarize, John Marshall failed to submit the paperwork properly. Then, there was a Supreme Court case about that paperwork. And John Marshall was the Chief Justice deciding the case. It's wild!

Marshall's decision was a scathing rebuke of Jefferson for denying Marbury the position to which Adams had appointed him. *But* Marshall claimed the Court could do nothing to help Marbury. It could not give a writ of mandamus, because the power to do so was not given to the Court in the Constitution. The power to give a writ came from that Judiciary Act of 1789, the one that set up the court system, but now, the Supreme Court ruled that that provision of the act was unconstitutional and therefore null and void.⁷²

Cool...what does that mean exactly? Well, on the surface, it appears that the Court limited its own power, much like Jefferson did in the executive branch. But no. Marshall was doing something much bigger. With this decision, the Court established what we now call “judicial review,” whereby the Supreme Court can nullify a law it deems to violate the Constitution.

Some Founders thought that perhaps each branch could interpret the Constitution.⁷³ And, remember, Jefferson and Madison thought maybe even states could do that. But no. *Marbury* established that interpreting the Constitution was the job of the Supreme Court. The Court determines what is and is not constitutional.

Conclusion

Winning the Revolutionary War was just the beginning. Next, the Founders had to create America's government, and no one knew exactly what the Nation would be.

First, the states embraced the Articles of Confederation, but despite some significant successes, they ultimately didn't work. So, they had a convention, wrote the Constitution, debated, and ratified it. The Constitution created three branches of government. But how exactly those branches would function had to be worked out in real-life situations.

The first few decades of independence revealed that the Founders had conflicting dreams for the Nation. And no one Founder's vision prevailed. They fought over executive power, economics, foreign relations, and the roles of the three branches. Thomas Jefferson called the whole thing an experiment.⁷⁴

⁷² Wood, *Empire of Liberty*, 440.

⁷³ Wood, *Empire of Liberty*, 445.

⁷⁴ “From Thomas Jefferson to George Washington, 23 May 1792,” *Founders Online*, National Archives, accessed Dec. 19, 2020, <https://founders.archives.gov/documents/Jefferson/01-23-02-0491>.

It's a story of conflict and of compromise. But, despite that, or perhaps *because* of it, the system endures to this day.

Thanks for listening.

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