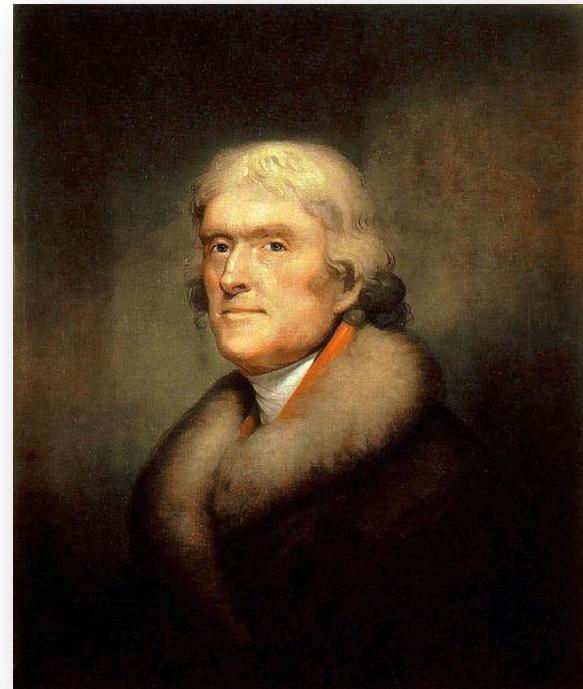


From VOA Learning English, welcome to THE MAKING OF A NATION, our weekly program of American history - for people learning English. I'm Steve Ember.

In our last program, we talked about President Thomas Jefferson's decisions about who would be in his new government. Jefferson was the leader of a new political party, the Republican Party. But not the Republican Party we know today; in fact, Jefferson's party laid the roots for today's Democratic Party.



During the election of 1800, the Jeffersonian Republicans struggled bitterly with the opposition party, the Federalists. Jefferson won that election. In his inaugural address of 1801, he said he wanted to work with the Federalists for the good of the nation.

But he chose no Federalists for his cabinet. All the cabinet officers were strong Republicans. All were loyal to Thomas Jefferson.

Once President Jefferson formed his cabinet, he began planning the policies of his administration.

"Jefferson, of course, thought central government should be almost invisible. He saw its prime role as acting as a referee between the states. He wanted to keep it to a minimum."

Andrew O'Shaughnessy directs a center for Jefferson studies at Monticello, Thomas Jefferson's home in Virginia. He says Jefferson was especially concerned about the public debt. In the first year of Jefferson's presidency, the government owed millions of dollars. Each year, the debt grew larger because of the interest charged on these loans. Jefferson wanted to balance the budget.

Jefferson discussed his financial policy with his two closest advisers. The advisers were Secretary of State James Madison and Treasury Secretary Albert Gallatin. The men agreed that the government must stop spending as much money as it did under former president John Adams. And they agreed that the government must pay its debts as quickly as possible.

Albert Gallatin said: *We must have a strong policy. The debt must be paid. If we do not do this, our children, our grandchildren, and many generations to come will have to pay for our mistakes.*

Jefferson began saving money by cutting unnecessary jobs in the executive branch. He reduced the number of ambassadors. And he dismissed all the tax inspectors.

Congress would have to take the next steps. Most government offices, Jefferson said, were created by laws of Congress. Congress alone must act on these positions. The citizens of the United States have paid for these jobs with their taxes. It is not right or just for the government to take more than it needs from the people.

President Jefferson also wanted to cut taxes on the production and sale of some products, including whiskey and tobacco. He hoped the government could get all the money it needed from import taxes and from the sale of public lands.

The Federalists were furious. They warned that Jefferson's financial program would crush the nation. They declared there would be anarchy if Federalist officials were dismissed.

Most people, however, were happy. They liked what Jefferson said. They especially liked his plan to cut taxes.

Jefferson's biggest critic was his long-time political opponent, Alexander Hamilton. Hamilton had served as the nation's first treasury secretary. Now, he was a private lawyer in New York City. He published his criticism of Jefferson in a newspaper he started, the New York Evening Post.

In Congress, elected officials also debated the president's proposal to cut taxes. Federalists said it was dangerous for the government to depend mainly on import taxes. They said such a policy would lead to smuggling. People would try to bring goods into the United States secretly, without paying customs fees on them.

Federalists also said that if the United States cut taxes, it would not have enough money to pay its debts. Then no one would want to invest in the United States again.

Republicans said they were not afraid of smugglers. The danger, they said, would come from taxing the American people. There was no need for production and sales taxes. And, they said, the American people knew it. The Republicans also said they were sure the government would have enough money to pay its debts.

The Republicans won this legislative fight. Both the Senate and the House of Representatives voted to approve the president's plan to cut taxes.

Congress also had another of Jefferson's proposals to debate. Jefferson wanted to reduce the number of federal courts. The issue had roots in the political divisions between the Federalist and Republican parties. And it started in the closing days of the previous president's term.

John Adams was a Federalist. Before Adams left office, Congress passed a Judiciary Act. This act gave Adams the power to appoint as many judges as he wished. The act was a way for the Federalists to keep control of one

branch of government after losing the presidency and their majority in Congress in the election of 1800.

So, President Adams quickly created new courts and named new judges. Just as quickly, the Senate approved them. The papers of appointment were signed. The appointed men were known as "midnight judges."

However, some of the midnight judges did not receive their papers, or commissions, before Thomas Jefferson was sworn into office. The new president refused to give them their commissions.

Federalist congressmen claimed that the president was trying to interfere with the judiciary. This interference, they said, violated the Constitution.

Republican congressmen argued that the Constitution gave Congress the power to create and eliminate courts. They said the former administration had no right to appoint the so-called "midnight judges."

The Republicans won this argument, too. Congress approved President Jefferson's proposal to reduce the federal courts.

Congress then turned to other business. But the question of the midnight judges would not die. One reason the issue remained important was because of a man named William Marbury. Marbury was one of the midnight judges who had never received

his commission. He asked the Supreme Court to decide whether the government was required to give him his commission.

The chief justice of the United States, John Marshall, was a member of the Federalist Party.

"Jefferson and Marshall hate each other. In fact, Marshall gives him the oath for the inauguration, and goes back to his room and says, 'Well, a terrorist has just taken over the government. I hope we will be able to survive him.'"

Joseph Ellis is a historian who has written many books about early American history. He says John Marshall was "a towering figure" who had an entirely different view of the federal government than Jefferson.

Marshall believed the Supreme Court should have the right to veto bills passed by Congress and signed by the president. In the Marbury case, he saw a chance to put this idea into law.

Marshall wrote his decision carefully. First, he said that Marbury did have a legal right to his judicial commission. Then, he said that Marbury had been denied this legal right. He said no one -- not even the president -- could take away a person's legal rights.

Next, Marshall noted that Marbury had taken his request to the Supreme Court under the terms of a law passed in 1789. That law gave citizens the right to ask the high court to order action by any lower court or by any government official.

Marshall explained that the Constitution carefully limits the powers of the Supreme Court. The court can hear direct requests involving diplomats or the states. It cannot rule on other cases until a lower court has ruled.

So, Marshall said, the 1789 law allowed Marbury to take his case directly to the Supreme Court. But the Constitution did not. The Constitution, he added, is the first law of the land. Therefore, the congressional law is unconstitutional and has no power.

Chief Justice Marshall succeeded in doing all he had hoped to do. He made clear that Marbury had a right to his judicial commission. He also saved himself from a battle with the administration. Most importantly, he claimed for the Supreme Court the power to rule on laws passed by Congress.

The case of Marbury versus Madison established that the Supreme Court — not the president or the Congress — has the final say on what the Constitution means. Jefferson did not like Marshall's decision, but Joseph Ellis says that Jefferson was awed by how the chief justice argued his case.

"Jefferson says to his friend, 'If you ever talk to Marshall, don't say anything. Because whatever you say, he will take it and he will twist it.' He calls it the 'twistifications' of John Marshall."

Jefferson waited for the Supreme Court to use this new power to change Congress' laws. Several times during Jefferson's presidency, Federalists claimed that laws passed by the Republican Congress violated the Constitution. But they never asked the Supreme Court to reject those laws.

The case of Marbury versus Madison was one of the most important decisions about how America's government operates. But historians say another act during Thomas Jefferson's presidency affected America in an even bigger way. That will be our story next week.

I'm Steve Ember, inviting you to join us each week for THE MAKING OF A NATION – our program of American history from VOA Learning English.

---

This is program #32