CHAPTER

05

Constitution

1787 – 1791

Independence Hall in Philadelphia kept as it was from the 1700s — go visit!

The ink on the Treaty of Paris was barely dry before the new nation discovered a problem nobody had entirely solved: thirteen states that had united to fight a king were not especially eager to be united under anyone else.[1] The Articles of Confederation — a **confederation**, meaning a loose union where each state keeps most of its own power — gave each state nearly everything it wanted and the national government almost nothing. Then a rebellion broke out in Massachusetts, and the founders realized they had built a house without walls.

[1] The Treaty of Paris was signed in 1783; the Constitutional Convention met just four years later, in 1787.

Quote & Music for this Chapter

QUOTE *"There are approximately 1,010,300 words in the English language, but I could never string enough words together to properly express how much I want to hit you with a chair."*
— Alexander Hamilton (allegedly[2]), to Thomas Jefferson

Hamilton and Jefferson disagreed on almost everything — which is exactly why both of them are on the money. Their arguments built the country.

SONG *"The Room Where It Happens"* — Lin-Manuel Miranda, from *Hamilton*
Hamilton, Burr, and Jefferson cut a deal over dinner that shaped American government for 250 years. The boys made a deal — the capital could be in the South in exchange for a strong national bank.

Map & Places to Know

The Constitution was written in Philadelphia — though its story stretches from a Caribbean island where Hamilton was born to the halls of Congress in Washington. **Hamilton** admired **England**'s strong central government and wanted to model it; **Jefferson** loved **France** — its ideals, its revolution — and pushed for a decentralized republic that kept power with the states. The locations on this map all play a role in the chapter.

[2] Historians are pretty sure he never actually said this though the quote gives a sense of what it was really like.

Interesting Facts: *Alexander Hamilton wanted a government like England; he was born on the island of Nevis in the Caribbean. Jefferson, on the other hand, loved France and wanted the capital in the South — Washington D.C., which was pulled from Virginia and Maryland.*[3]

Timeline: The Constitution, 1781–1800

From a broken confederation to a working constitution — the seven years that reshaped what it means to build a country.

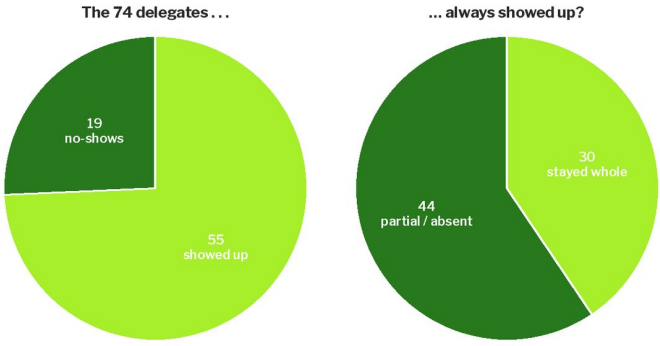
AMERICAN HISTORY		JEWISH AMERICAN HISTORY
	1781	Haym Salomon arrives in Philadelphia. He will spend the rest of his life funding the new nation.
Articles of Confederation adopted — America's first constitution. States keep nearly all power.		
	1783	Jews can vote in most states. Holding public office still requires a Christian oath in some. New York grants full rights.
Treaty of Paris ends the Revolutionary War. Soldiers come home — without their back pay.		

[3] This map shows the Atlantic with the Americas at left and Europe and Africa at right. There's no reason "up" on a globe has to be north — in old Jewish maps Eretz Yisroel was often drawn with the Mediterranean on top.

Shays' Rebellion: unpaid Massachusetts veterans march on courts. The national government can only watch.	1786	American Jews number fewer than 2,000 — tiny, but disproportionately active in trade and finance.
Constitutional Convention in Philadelphia. Haym Salomon pays for Madison's trip. Constitution drafted.	1787	Salomon dies in debt in January — he will never see the document he helped make possible.
Nine states ratify the Constitution. It takes effect.	1788	Several states include religious liberty in their own state constitutions.
Washington elected first President. Capital in New York City. First Supreme Court assembles.	1789	Washington writes to Newport's Hebrew Congregation: the government gives "to bigotry no sanction."
Bill of Rights — the first 10 amendments — added to the Constitution. What this actually means — including rights that benefited Jews regarding religion, commerce, and property.	1791	The 1st Amendment, guaranteeing freedom of religion, becomes the most important sentence in the document for American Jews.
Capital moves to Washington, District of Columbia.	1800	John Marshall becomes Chief Justice. His decisions will define what the Constitution actually means.

The Articles of Confederation — 1781 to 1787

Before the Constitution there was a first attempt. After winning independence, the founders faced a question nobody had answered quite this way before: how do you build a government strong enough to function but not so strong it becomes a tyranny? Their answer, the Articles of Confederation, leaned hard toward keeping power with the states — so hard that the national government could barely function. States were free to undercut one another for trade, each slashing taxes or wages until commerce broke down across the country — a **race to the bottom** where everyone competes until everyone suffers.



Of the 74 delegates invited to the Constitutional Convention, only 55 showed up. Only 30 stayed for the whole convention. Just 39 signed the final document.

1. Equal vote, any size
2. States make own deals
3. Every vote needs 9 states

4. No power to tax
5. No national army
6. Too many keys, no treasure

The six fatal weaknesses of the Articles of Confederation.

The Six Weaknesses of the Articles of Confederation

- 1. Each state had the same single vote in Congress, no matter its size. Virginia and Rhode Island each got one. Large states refused to accept this forever.
- 2. Each state could make its own trade deals with other states and foreign countries, creating chaos in commerce.
- 3. Every vote needed 9 of 13 states to agree[4] before the government could do almost anything. Getting 9 states to agree was nearly impossible.
- 4. No power to tax. The government had to beg states for money — and the states mostly said no.
- 5. No national army. When trouble came, there was nobody to call.
- 6. Too many keys to power. Not enough treasure.

Shays' Rebellion — 1786

The crisis that broke the Articles came from western Massachusetts. Former soldiers from the Revolutionary War — men who had survived Valley Forge and the Delaware crossing — were owed back pay Congress could never send because it had no money to collect. Debt collectors were now seizing their farms. When courts moved against them, the farmers marched on the courthouses with muskets.[5]

Massachusetts had no reliable army to stop them. The United States had no national army at all. Congress could only watch while a private militia — paid for by Boston merchants — eventually put the rebellion down. The lesson was not lost on the founders. James Madison, Alexander Hamilton, and George Washington — who had spent the entire Revolution begging states for soldiers and money — agreed: the Articles had to go. They called a convention in Philadelphia to fix them. What they built instead was something new entirely.

[4] Which included voting for a new constitution.

[5] The rebellion is named for Daniel Shays, a former captain and one of its leaders.

The Constitutional Convention — May 1787

With windows closed for privacy in the hot summer, unlikely they were wearing layers of clothing ... probably didn't smell so good either.

Fifty-five delegates eventually arrived in Philadelphia.[6] Only the delegations from Virginia and Pennsylvania showed up on time. Rhode Island refused to send anyone at all. New York left early. Of the 74 delegates invited, 19 never appeared; only 30 stayed for the entire convention; and just 39 of the 55 present signed the final document.

One man made it possible for the principal architect of the Constitution to even be there. Haym Salomon — the same financier who had funded Washington's march to Yorktown — paid James Madison's travel and hotel bills for the entire summer.[7] Madison, a Virginia delegate nearly broke from public service, took notes at every single session and never missed a day. His notes are our primary record of what was said in that room ... and it was quite a hot room because they kept the windows shut in the summer heat to keep the meeting private.

The Constitution was completed in September 1787. By June 1788, nine of thirteen states had ratified it — the number required for it to take effect. Several states agreed to sign only on the promise that a Bill of Rights would immediately follow.

The Articles gave the states almost everything they wanted, which is exactly what the founders intended. They had just escaped the authority of a distant king — making the national government weak felt like protection against tyranny repeating itself. The problem was that protection against tyranny and protection against everything else are different things. The Articles gave the national government no power to tax, no army, no real ability to act without nine of thirteen states agreeing — a near-impossible threshold. When Shays' Rebellion broke out, the government could only watch while Boston merchants hired their own militia to put it down. The message was stark: a government that cannot protect people from violence cannot be called a government at all.

---

[6] The convention was officially called only to *fix* the Articles of Confederation. The delegates considerably exceeded that assignment.

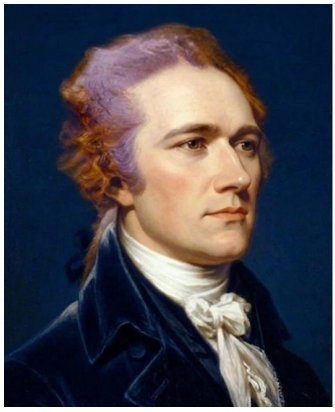
[7] We only know this because we have a letter from Madison who says the 'Jew banker' paid for him to be there. Madison, by the way, became the 4th president of the United States.

Of the 74 delegates invited to the Constitutional Convention, 19 never showed up, 30 left before it ended, and only 39 of the 55 present signed the final document. More than a quarter of the delegates refused to put their names on it. The compromises were imperfect from the start — but the founders understood that an imperfect union was better than none.

What Should the United States Look Like?

The convention ended with a document. What it *meant* — and what kind of country it described — became the next argument. Three fights dominated the founding generation. We are still having versions of all three today.

Farms or Factories?



Alexander Hamilton *(left) and* Thomas Jefferson[8] *(right) — the Federalist and the Anti-Federalist.*

Alexander Hamilton wanted a country of merchants, banks, and factories. He came from the state of New York in the North, was anti-slavery, wanted an **economy** (the sum total of all buying, selling, and trading in a place) built on *manufacturing* and business, and pushed for a strong *national* government — the **Federalist** position. He created the first national bank, designed America's first industrial city at Paterson, New Jersey (powered by the Great Falls of the Passaic River), and believed national wealth would come from making and trading things.[9]

[8] We tend to think of them as old men because those are the portraits we have. In 1783 Hamilton would be 30 and Jefferson, 44. Hamilton had red hair and blue or violet eyes. The picture at left is a recreation based on real paintings and writings. The portrait of Jefferson was found later, unlabeled, and is believed to be of him.

[9] Hamilton served as the first Secretary of the Treasury. He is on the $10 bill.

Thomas Jefferson came from Virginia in the South, was pro-slavery (sort of — because he enslaved people), wanted an economy of *farming*, and pushed for strong *state* governments — the **Anti-Federalist** position. The independent farmer, Jefferson argued, was the ideal citizen — self-sufficient, uncorrupted by cities and bosses. He also personally enslaved hundreds of people to farm his Virginia plantation, a contradiction he chose never to resolve.

Followed by ...

- **Hamilton (Federalist).** The *Federalist* Party: 1791–1824 → *Whig* Party: 1833–1854 → *Republican* Party: 1854–~1914.
- **Jefferson (Anti-Federalist).** *Democratic*-Republican Party: 1792–1834 → *Democrat* Party: 1828–~1914.
- **After the Civil War in 1865:** Hamilton's side wins the economic argument; Jefferson's side loses his ideals to an industrial society. *The two parties (arguably) swapped their views with each other around the time of World War I.*

Their compromise, negotiated over a dinner in 1790, gave Hamilton a national bank in exchange for placing the permanent capital in the South, on the Potomac River. Today fewer than 2% of Americans are farmers, and a single farmer feeds 155 people. Hamilton won the long argument. Jefferson got the capital.

How Much Power Should Each State Have?

The Great Compromise

Virginia (large state): "We have the most people. We should have the most seats in Congress."

New Jersey (small state): "Absolutely not. Every state gets an equal vote, or we leave."

Connecticut: "What if Congress had *two* houses — one for each of you?"

Virginia: "The Senate could give two votes to every state, regardless of population ..."

New Jersey: "... while the House of Representatives gives seats based on population."

Virginia: "Okay — though our slaves increase our share in the House of Representatives."

New Jersey: "Can they vote?"

Virginia: "No."

Both sides shook hands. Both sides left slightly unhappy. That is how you know it was a real compromise.

What this looks like today: California, with 40 million people, and Wyoming, with 600,000, each send two senators. But California sends 52 representatives to the House while Wyoming sends one.

What Do We Do About Slavery?

This was the question nobody wanted to answer — and the founders did not really answer it. They postponed it. The Northern states wanted slavery contained or ended. Southern states said they would not join any union that threatened it. The compromise they reached:

The Slavery Compromise — What Was Agreed

- No more importing enslaved people after 1808. After that — "we'll deal with it." What could possibly go wrong?
- Enslaved people count as three-fifths of a person for deciding how many seats a state gets in the House. Slaveholders got extra representation for people they enslaved — who could not vote.
- Escaped enslaved people who reached free states must still be returned. This became Article IV — the Fugitive Slave Clause — which we will revisit in Chapter 10.
- Overall: slavery was left to survive, grow, and eventually cause the Civil War. Founders who knew it was wrong chose not to fight that battle.

The details of the slavery compromise were, in their way, more cynical than they appear. The ban on importing enslaved people after 1808 was not a victory for freedom — it was a gift to slaveholders. The average enslaved person lived only about seven years under the brutal conditions of forced labor, so demand never stopped. Cut off the supply of new people while demand stayed high, and basic supply-and-demand does the rest: the value of the human beings a slaveholder already owned shot up. The three-fifths clause gave slave states extra representation in Congress — seats filled by free white men to represent people they enslaved, who could not vote and had no say. The founders who knew slavery was wrong chose not to fight that battle in 1787. The country fought it seventy-eight years later, at the cost of 600,000 lives.

The United States Are Born

The United States of America — the founders, the document, and the celebration that followed.

With ratification complete, the Constitution created a government of three branches designed to check and balance one another — so that no single person or group could accumulate too much power. The phrase "the United States" was originally *plural* — "the United States *are* ..." — because the country was still understood as a collection of independent states. After the Civil War, it became singular: "the United States *is* ..."[10]

The Three Branches

Three branches, designed to keep one another in check. Step on one's toes and the other two will trip you back. Here is what each one actually does.

Legislative — Article I. Congress **writes** the laws. Two chambers slug it out before anything passes: the **Senate** (100 members — two per state, no matter how big or small) and the **House of Representatives** (435 members, capped because the country kept growing).[11]

Executive — Article II. The President **carries out** the laws — and a whole lot more. **Commander-in-chief** of the armed forces. Maker of **treaties**. Boss of every federal department. Can **veto** laws Congress has passed. The **Vice President** runs the Senate and casts tie-breaking votes.[12]

Judicial — Article III. The **Supreme Court interprets** the laws.[13] Below it sit **appellate courts** by region, and **district courts** below those — a three-tiered structure Yisro recommended to Moshe thousands of years earlier:[14] simpler cases to lower courts, harder ones to higher courts, the very hardest to the top.

---

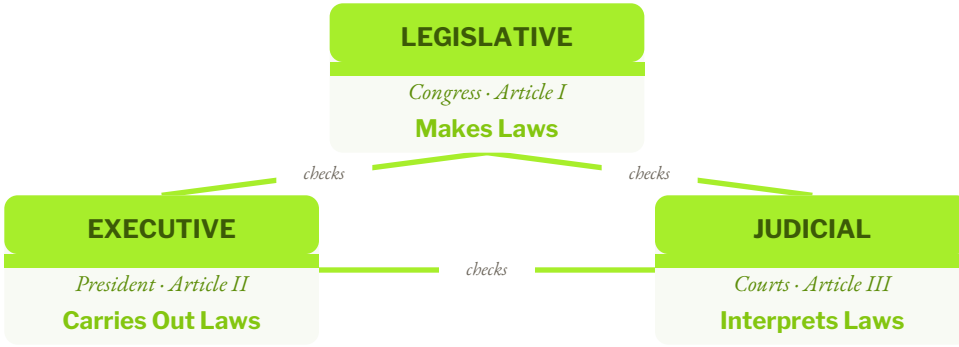
[10] A famous Ken Burns documentary on the Civil War argues this verb shift happened during the war. Others say it was a slow change over decades. Either way, we now speak as one country.

[11] The cap of 435 was set in 1929. Without it, the House today would have well over a thousand members.

[12] The commander-in-chief and treaty powers each come up again in later chapters.

[13] The Constitution does not say how many Supreme Court justices there should be. The number has not always been 9.

[14] Shemos 18. Yisro saw Moshe judging every case himself from morning to evening and told him to delegate.



The Three Branches of Government

Fun Fact: King Hamilton?

- Hamilton proposed that the President be called a "king" and serve for life — he was a big fan of the British system. He lost. The convention settled on a four-year term and called him "President."

The three branches — Legislative writes laws, Executive carries them out, Judicial interprets them — are not equal in practice, but each has tools to stop the others from going too far. Wyoming sends two senators to Washington for the same reason Rhode Island sent one delegate to the Constitutional Convention with the same vote as Virginia: the small states insisted on equality as the price of signing. Hamilton's president-for-life proposal would have had the opposite effect of a democracy: a leader who cannot be removed needs fewer keys, fewer voters to satisfy, fewer groups to keep happy — and as any tyrant's career shows, the smaller the inner circle, the worse ordinary people tend to fare.

Constitutional Amendments

The Constitution was designed to be *hard* to change — deliberately. More than 16,000 amendments have been proposed since 1787. Twenty-seven have passed.[15] The first ten, the **Bill of Rights**, were the price of ratification: several states refused to sign without a promise to add them immediately. Hamilton thought the Bill of Rights was unnecessary — if the government only had the powers the Constitution gave it, what was there to protect against? Jefferson thought it was essential. Jefferson won.

The Bill of Rights — Amendments 1 through 10 (ratified 1791)

- 1st: Freedom of speech, press, and religion; right to petition the government.
- 2nd: Right to keep and bear arms.
- 3rd: Citizens cannot be forced to house soldiers in peacetime. (The British had done exactly this. It also creates interesting questions about eruvin because an eruv requires control over the area inside.)
- 4th: Protection from unreasonable searches; warrants required.
- 5th: Due process — you cannot be imprisoned without legal proceedings.
- 6th: Right to a jury trial.[16]
- 7th: Additional protections in civil court.
- 8th: No cruel or unusual punishment.
- 9th: The people keep rights not listed in the Constitution.[17]
- 10th: Powers not given to the federal government belong to the states.[18]

Later amendments changed the country as much as the original Constitution did. The 13th (1865) ended slavery. The 14th (1868) guaranteed equal protection under the law. The 15th (1870) gave Black men the right to vote. The 16th (1913) allowed a federal income tax. Each amendment came after a new need arose and the country changed enough to get the votes to make that change.

Hamilton thought the Bill of Rights was unnecessary — if the Constitution only gave the government specific powers, listing rights might even imply the government had

[15] Long-time and well-respected Supreme Court Justice Antonin Scalia said this is the biggest problem with the Constitution: since it is not flexible enough, the courts end up changing the laws instead of the people.

[16] This right is for all matters over $25! This has not been updated so it seems we ignore this amount. Inflation (things costing more over time) didn't really start happening until the Civil War, 80 years later.

[17] This one is pretty much ignored today. Sorry, Anti-Federalists.

[18] This is pretty much ignored too. The federal government and states often disagree about what powers were 'not given' to the federal government.

power over everything not listed. He lost. The 1st Amendment became the most important sentence in the document for American Jews: freedom of religion means Jewish observance cannot be banned, eruvin cannot be forbidden, yeshivos cannot be shuttered. That amendments are hard to pass is, arguably, a feature — it prevents temporary majorities from rewriting fundamental rules, and when one does pass, it reflects an agreement broad enough to hold. The founders could have ended slavery in 1787. Southern states would not have joined. They chose union over justice, and the country paid the price seventy-eight years later.

Supreme Court Cases That Shaped America

Once there is a constitution, someone has to decide what it means. That someone turned out to be the Supreme Court — though it took a clever legal maneuver to establish that power. All five cases below were decided under Chief Justice John Marshall between 1803 and 1832. All five are still cited today.

John Marshall served as Chief Justice from 1801 to 1835 — longer than anyone. He was appointed by John Adams in the final days of his presidency (a detail that matters for the first case below). More than any single person, Marshall turned the Supreme Court from a weak advisory body into the powerful co-equal branch of government it is today.

The Supreme Court building in Washington, D.C.

Every case below follows the same pattern: Marshall found a way to expand federal power and judicial authority while appearing to give his opponents something they wanted. He avoided losing battles — and won the war.

Case 1: Judicial Review — Marbury v. Madison (1803)

Background. In the last hours of his presidency, John Adams rushed to appoint as many Federalist judges as possible — so that even after the Democratic-Republican Jefferson took over, Federalists would control the courts. William Marbury was appointed, but his official papers were never delivered before midnight. Jefferson's new Secretary of State, James Madison, refused to deliver them. Marbury sued.

It was almost midnight.

The case went to the Supreme Court, run by Chief Justice John Marshall — who happened to be the man Adams had appointed to that job in those same final days ... and also happened to be Jefferson's second cousin.

Marshall faced a puzzle: if he ordered Jefferson to deliver the papers, Jefferson would ignore him and the Court would look powerless. So Marshall did something brilliant: he ruled *against* Marbury, while using that ruling to claim the most important power in American law.

Marbury v. Madison — in Brief

Adams (last night in office): Quick — appoint as many Federalist judges as possible before midnight!

Marbury: Gevalt! Jefferson, deliver my papers — I am a judge!

Jefferson: Too late. It is after midnight and I am president now. Not happening.

Marbury: I am taking this to the Supreme Court.

Marshall: The Supreme Court — which I happen to run — will hear this case.

Marshall: Marbury, you should be a judge. Jefferson, you are wrong not to deliver those papers.

Marshall: However ... this is certainly a pickle. I cannot make Jefferson do anything — if I try, he will ignore me.

Marshall: So I will rule *against* Marbury. But in doing so, I claim the power for this Court to strike down any law that violates the Constitution.

Jefferson wins the battle. Marshall wins the war. Judicial review is born.

What it means: Judicial review — the power of a court to decide whether a law follows the Constitution — means the Supreme Court can declare any law unconstitutional, making it void. Congress can write whatever it likes; the President can sign it; but if the Supreme Court says it violates the Constitution, it does not exist. This power is the most important the Court has — and it is not explicitly written anywhere in the Constitution. Marshall invented it here.

Case 2: Federal Law Beats State Law — Cohens v. Virginia (1821)

Congress sold lottery tickets in Washington D.C. to raise money.[19] Two Jewish brothers, Philip and Mendes Cohen, began reselling them in Virginia for a profit. Virginia said its state law banned lottery sales. Pay a fine.[20]

The Cohens took the case to the Supreme Court. Virginia argued that the Supreme Court had no authority to review state court rulings — that Virginia's courts were the final word in Virginia. Marshall disagreed.

Worshippers at the Western Wall in Jerusalem, in an old American Colony photograph.

Cohens v. Virginia — in Brief

United States: "We need money. We'll sell lottery tickets in Washington D.C."

Two Cohens: "Cool. We'll resell those tickets in Virginia for a profit."

Virginia: "You can't sell those here. Go away. Pay a fine."

Marshall: "The Cohens still owe the fine on a technicality ... though Virginia cannot stop such a federal law in the future."

Virginia keeps the fine. Federal law beats state law from here on.

What it means: State courts are subject to federal review. Federal law overrides state law when the two conflict. Marshall found a technical reason the Cohens still owed the fine — he did not want a direct confrontation he might lose — though he established the **precedent** (a court decision that guides how future judges decide similar cases) that states cannot simply ignore federal law.

Case 3: States Cannot Tax the Federal Government — McCulloch v. Maryland (1819)

The United States created a national bank. Maryland, which had its own bank and did not want the competition, imposed a heavy tax on the national bank — an effort to drive it out of the state. The bank's cashier, James McCulloch, refused to pay.

[19] The lottery law was written to apply only in D.C.

[20] The Cohen brothers — Sephardic Jews — were among the first people whose case established that federal law is supreme over state law.

McCulloch v. Maryland — in Brief

United States: "We're creating a national bank."

Maryland: "We have our own bank. We'll let you stay ... though you have to pay a lot of taxes."

McCulloch: "I will not pay."

Marshall: "The power to tax involves the power to destroy. States cannot tax the United States."

What it means: A state cannot tax federal institutions, because taxing them is a way of controlling or destroying them — and states have no authority over federal operations. This case also confirmed that the federal government has *implied powers* beyond those written in the Constitution.

Case 4: Native Americans Cannot Sell Their Own Land — Johnson v. McIntosh (1823)

Sioux chiefs, photographed by Edward S. Curtis, 1905.

Johnson bought land from the Illinois and Pianke-shaw nations — with their consent and his payment. McIntosh then bought the same land from the United States government. Who owned it?[21]

The Supreme Court said McIntosh. Marshall's reasoning: when European countries "discovered" land, they acquired the exclusive right to transfer ownership from the native people. The Native nations could live on the land — though they could not sell it to private buyers. Only the discovering government — now the United States — could grant legal ownership.

[21] The parties each had different land, McIntosh never even contested the facts, and it seemed everyone involved simply wanted the case to reach the Supreme Court for a ruling that Native nations did not own land.

Johnson v. McIntosh — in Brief

Johnson: "I bought this land from the Indians — so this is MY land."

United States: "No."

McIntosh: "I bought this land from the United States — so this is MY land."

United States: "It's all yours."

Marshall: "The United States discovered the land and other countries agree we own it. Indians own nothing."[22]

What it means: Native Americans have no property rights the United States is obligated to recognize. This decision was handed down in 1823. It has never been formally overturned. It is very hard to defend.

Case 5: Only the Federal Government Can Deal with Native Nations — Worcester v. Georgia (1832)

Georgia agreed with the Cherokee that white settlers would not live on Cherokee land. Samuel Worcester, a Protestant missionary who genuinely liked the Cherokee, moved onto their territory.

Cherokee territories in Georgia, 1830s.

Georgia arrested him. Worcester moved back. Georgia arrested him again. He moved back. Georgia arrested him again.[23] The case reached the Supreme Court.

Marshall's ruling: only the federal government can make treaties with Native nations.

The Cherokee function as a separate country, and Georgia had no authority over their territory.

[22] Many historians think this was all setup by both Johnson and McIntosh to get the result they wanted.

[23] Worcester reportedly rolled doubles — repeatedly.

Worcester v. Georgia — in Brief

Georgia: "Cherokee, we agree no white people will live on your land."

Worcester: "I just bought land from the Cherokee. I'm moving in."

Georgia: "Go to jail."

Worcester: "I just moved back to the Cherokee land."

Georgia: "Go to jail again."

Worcester: "I just moved back to the Cherokee land."

Georgia: "Go to jail again. And again."

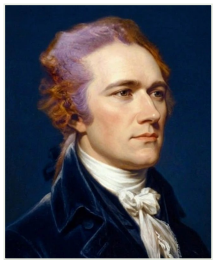
Marshall: "Only the United States can make treaties with other countries — and the Cherokee are one such other country."

President Jackson reads the ruling and ignores it. The Cherokee are driven from Georgia on the Trail of Tears.

What it means: Native nations are treated as sovereign — like separate countries — in their relationship with the United States. Individual states cannot override those relationships. The catch: President Andrew Jackson read the ruling and ignored it entirely. The Cherokee were driven from Georgia on the Trail of Tears. We will return to that story in a later chapter.

Judicial review — the power to strike down unconstitutional laws — is not written anywhere in the Constitution. Marshall invented it in the act of deciding a case. By ruling against Marbury, he avoided a confrontation with Jefferson he might have lost, and claimed a far more important power than one judgeship appointment would have given him. The Cohens case was brought by two Jewish lottery-ticket sellers with no particular political power — a reminder that the people who establish landmark precedents are often minorities, immigrants, individuals the system was ignoring. Their cases become the law everyone else lives by. Johnson v. McIntosh, decided in 1823, has never been formally overturned; precedents can outlast the values of the society that created them. Worcester v. Georgia shows what happens when the Court is right and the President ignores it: the Court has no army. When a president ignores its rulings, the check fails — and the people who suffer pay in blood, not rhetoric.

Alexander Hamilton's Jewish Connection



Alexander Hamilton, who walked to a Jewish school, memorized the Ten Commandments in Hebrew, and never joined a church.

Of all the founding fathers, none had a closer connection to Jewish life than Alexander Hamilton — and his connection began before he could read.

Hamilton was born on the Caribbean island of Nevis,[24] then a Dutch colony where roughly 25% of the population was Jewish. His school was run by a Jewish woman. He walked to it through the center of the island's Jewish quarter, along a road known as "Jews Walk." He memorized the *Aseres HaDibros* in Hebrew. His mother's name was Rachel Levine — spelled in the Sephardic style, Lavien.[25] Her grave cannot be found in any Christian cemetery. She may have converted to Judaism — see the footnote.[26]

Hamilton's father may have been Jewish. It is impossible to verify — few records survive from 18th-century Caribbean islands. Hamilton himself never joined a church. He officially called himself Christian but attended no congregation.

Hamilton came to New York as a teenager. Where he held power — and he held enormous power in New York — Jews had full and equal rights. In other states, holding public office sometimes required a Christian oath. Hamilton worked with Gershom Seixas to remove the requirement that only Christians could attend Columbia University (then King's College) when it was reorganized in 1787.

As a lawyer, Hamilton had many Jewish clients. Once, opposing counsel argued that a Jewish witness must be lying — because he was a Jew. Hamilton replied:

[24] I've been there — it's a fairly small island. There were actually more Jews in the Caribbean at the time than in the United States: Curaçao was 40% Jewish, and the government in Jamaica closed on Shabbos because of how many Jews served in it.

[25] The name Seixas, which appears in the previous chapter, comes from the Sephardic word for "six."

[26] Hamilton's grandson, Dr. Allan McLane Hamilton, wrote in a 1910 biography that Alexander's mother married a 'rich Danish Jew.'

> *"Why distrust the evidence of the Jews? They once were under the immediate government of God himself, and they were selected as the witnesses of His miracles and charged with the spirit of prophecy."*
>
> **— Alexander Hamilton, in court**

He won the case. The jury award was, at the time, the largest in American history.

When New York scheduled a parade to celebrate the ratification of the Constitution, Hamilton discovered the date fell on the 17th of Tammuz — a Jewish fast day.[27] He moved the parade to the following day, so the Jewish community could actually attend ... and his grandson would later refer to Hamilton's mother's marriage to a Danish Jew as a fact of family history.

Hamilton's connection to Jewish life was not abstract or theoretical — it was woven into his childhood. He walked to a Jewish school, memorized the Aseres HaDibros in Hebrew, and grew up in a Caribbean community where Jews were neighbors, teachers, and colleagues. Jefferson's contact with Jews was almost entirely theoretical; his relationship with human equality was deeply compromised by his slaveholding. Hamilton, who gave New York Jews full equal rights and moved the Constitution parade so the Jewish community could actually attend, showed the difference between rhetoric and action. That he never joined a church while officially calling himself Christian is a biographical mystery that has intrigued historians ever since.

◆◆◆

Looking back: the Articles of Confederation gave the states nearly everything and the national government almost nothing — no taxing power, no army, a voting threshold so high it paralyzed every decision. The Constitution fixed all of it, but the price was compromise at every turn. The Senate gave equal votes to every state; the three-fifths clause gave slaveholders extra representation; the Bill of Rights was added immediately to get the last holdout states to sign. Hamilton won the economic argument — fewer than 2% of Americans are farmers today, and a single farmer feeds 155 people. Jefferson got the capital. On the Supreme Court, Marshall won the constitutional argument, sometimes by ruling against the immediate winner. And Andrew Jackson reminded everyone that a

[27] The 17th of Tammuz marks the breach of Jerusalem's walls before the destruction of the Temple — one of the four Jewish fast days.

court with no army depends entirely on everyone choosing to obey it.