From Founders to Politicians: Political Divisions at America's Birth

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[00:00:00] Tanaya Tauber: Welcome to Live at the National Constitution Center, the podcast sharing live Constitutional conversations and debates hosted by the center in person and online. I'm Tanaya Tauber, the senior director of Town Hall Programs. In this episode from Election Day 2023, we explore political partisanship and nationalism in early America. The election of 1800 was the first hotly contested, divisive election in American history. Still peaceful transfers of power continued for the next two centuries, but how? Acclaimed historians Carol Berkin and H.W. Brands join Jeffrey Rosen, president and CEO of the National Constitution Center, to discuss. This program was streamed live on November 7th, 2023. Here's Jeff to get the conversation started.

[00:00:55] Jeffrey Rosen: Hello friends and welcome to the National Constitution Center. I'm Jeffrey Rosen, the president and CEO of this wonderful institution. Let's inspire ourselves, as always, for the discussion ahead by reciting together the National Constitution Center's mission statement. Here we go, the National Constitution Center is the only institution in America chartered by Congress to increase awareness and understanding of the US Constitution among the American people on non-partisan basis.

[00:01:23] Jeffrey Rosen: It is now such a pleasure to convene two of America's greatest historians to discuss the rise and history of political parties in the US. This is a crucial question and both of them have superb new books out that cast great light on the topic and I can't wait to share the discussion with you. Carol Berkin is presidential professor of history, emerita, of Baruch College and the Graduate Center at the City University of New York. She's written so many wonderful books, including A Brilliant Solution, Revolutionary Mothers, The Bill of Rights, and her most recent book which we're here to talk about today is A Sovereign People: The Crisis of the 1790s and the Birth of American Nationalism.

[00:02:08] Jeffrey Rosen: And H.W. Brands holds the Jack S. Blanton senior chair in history at the University of Texas at Austin. He is the author of acclaimed and wonderful books, including The First American, Heirs of the Founders: The Second Generation of American Giants in our First Civil War. And his most recent book which is about to come out and I just can't wait to share with you is Founding Partisans: Hamilton, Madison, Jefferson, Adams, and the Brawling Birth of American Politics. Thank you and welcome, Carol Berkin and Bill Brands.

[00:02:43] Jeffrey Rosen: Bill, let's begin with you because you begin at the beginning of this story. In your wonderful narrative history you trace the rise of partisanship and political parties back to the initial split between Federalist and anti-Federalist, between Hamiltonians

and Jeffersonians that arose in the, in the conflict between Hamilton and Jefferson during the Revolutionary War. Tell us about the broad fissures between nationalism and state's rights, agrarianism and urbanism that manifest itself through the stories of Hamilton and Jefferson during that early period.

[00:03:21] H. W. Brands: Sure, Jeff, delighted to be here. It's important to keep in mind that the American Republic was born amid a war and America's first attempt at creating institutions of state and national governments took place amid war. And so there was this sort of external force that was compelling Americans in some ways to, well, perhaps seed more authority to the central government than they might have under other circumstances. Because as Benjamin Franklin said signing the Declaration of Independence, “We all have to hang together or we might be hung separately."

[00:03:57] H. W. Brands: So the states, first under the Continental Congress, then under the Congress of the Articles Confederation, they were America's first national government. And they sufficed, I could say, but barely to win independence for the United States. And a lot of this depended on the goodwill of the states, but even then it was clear to certain people, Alexander Hamilton and James Madison foremost among them, that this government, this essentially a military alliance wasn't working well enough. There wasn't enough strength at the center. So demands to create what became the Constitution of 1787 originated as early as 1780 or 1781 out of concern that maybe, maybe we'll win the war as a result of this, but then we have to deal with peace after that.

[00:04:45] H. W. Brands: And so this question, the fundamental question, the first question that gives rise to what would become the partisan split is, how much authority do the states cede to a central government? Many people in the states were very jealous of the rights of the states. They conceived themselves as independent countries, as indeed they were. The central government of the Articles Confederation had almost no coercive authority over the states, but to people like Madison and Hamilton who had viewed the operation and the failure of operation of Congress from the inside, they said, "This will never allow this Union to last, so we have to create a stronger central government." Again, there were those people in the states said, "No, we don't want anything stronger. We'll just repeat the problems the government we had under the British crown." So that's where this, the split originated, a stronger central government or not. Looking to the center or looking to the state.

[00:05:40] Jeffrey Rosen: Wonderful. Carol Berkin, what would you add to that account of the initial split between those who want a stronger central government and those who didn't? And, maybe take us up to the account of Madison and the Federalist Papers of factions, obviously in creating the Constitution the founders were afraid of faction. What was a faction for Madison and did he expect the new government to have political parties or not?

[00:06:10] Carol Berkin: I wanna start by talking a little bit about the difference in experience that the men who would become Federalists and Federalist leaders had from the men who were first anti-Federalists and then Jeffersonians. And the differences were striking, many of the Federalist leaders like Hamilton and Patterson and others were not born in what became the United States. And so their loyalty did not run as deeply into the state as say Patrick Henry's did or Jefferson's did. That there was a big difference between those who I'm talking about the leadership now, between those who had been born abroad and those who had been born here. There was also an enormous difference about where they were educated.

Those who were educated in France, like John Jay or educated in England in the Inns of Court, so many of them the pink knees in private schools developed as many of us do the first time we ever travel, a kinda perspective on the vision of their country is really quite different. And they tended to see the country as a whole instead of their individual states.

[00:07:34] Carol Berkin: And finally, among these people, many of them had been officers in the Continental Army. And so they had traveled the length and breadth of what became the United States, and they saw the similarities so that the parochialism or the provincialism that you see in the anti-Federalists and to some extent that you see in the Jeffersonians, was not present in the leadership of the, of the Federalist Party. And I think that that's important to see because while we say ideology and political ambitions shaped the development of the two-party system, to some extent it's really a difference in personal history that brings some of these men to be Federalists and supporters of a strong constitution as opposed to those who were opposed.

[00:08:39] Carol Berkin: For instance, Patrick Henry only left Virginia once in his life, went to Philadelphia, didn't like it, and came home. A man like Hamilton had grown up in the West Indies, had lived in New York had traveled with Washington in the army. And so they had a really very different conception of what was possible. And that struck me very deeply when I started looking at political parties. I think that the image that you went from anti-Federalist to Jeffersonian and a little simplified, but to a great extent it's true. The people who saw the American Revolution as a war when they said, "No taxation without representation," what they meant was no taxation without no taxation without their state, their local representation. They only wanted to be governed by people who shared their economic interests, earned their living in a similar way to the average voter. You could keep an eye on your local assembly to see what it's doing so that it couldn't become tyrannical or corrupt. They did not think that that meant for all America, it meant their state. And that concept of no taxation without representation means government by our local citizens, stands in contrast to the kind of nation building that a man like Alexander Hamilton envisioned. I mean, Hamilton and Madison at the time.

[00:10:34] Carol Berkin: Hamilton and Madison both saw the possibilities of a strong nation. And certainly Hamilton was above anything else, a nation builder. From before the war was won, he was writing letters to friends saying, "Okay. This is my plan for how we can become competitive with England in a generation." I mean, Hamilton never had any doubts about his ability to solve all problems. He had doubts about people who didn't understand they should give in to him. But he already envisioned national expansion, the growth of trade, and a seat at the table with the great European powers.

[00:11:24] Carol Berkin: And so the contrast between these provincials and who held the principles of the Revolution to be government by people who they knew, who they lived among, and the people who wanted to build a nation is the central theme of the 1780s and 1790s.

[00:11:48] Jeffrey Rosen: So interesting. Thank you so much for bringing together the influence of background as well as ideology on this fundamental split. And you sum it up so well, the clash between Federalists and anti-Federalists Hamiltonians and Jeffersonians includes splits about provincialism versus national power strict construction versus loose construction, agrarianism versus urbanism, Virginia versus New York. And all of this is

rooted not just in Hamilton and Jefferson's personal experience, but in the personal experience of their followers as well as their ideology.

[00:12:26] Jeffrey Rosen: So Bill Brands, now that we've put on the table these basic antithesis and set them up after the war, which you do so well, help us understand the evolution from the time when Madison says in the Federalist Papers, that the main goal of the Constitution is to avoid factions or class-based or ideology-based politics to the period very early in the Washington administration, as you describe it, where the split between Hamiltonian Federalist and Jeffersonian Republicans is beginning to emerge.

[00:12:59] H. W. Brands: Madison's a key figure here because he is the driver of the movement to create a new constitution, which is going to replace the Articles Confederation, this very loose central government, with a much stronger more coherent one. And he is, of course, one of the writers of the Federalist Papers, along with Alexander Hamilton and John Jay. So he really is, as much as anybody else, he is the creator of the Constitution. And while he's arguing in favor of ratification of the Constitution, of course he's gonna argue that a new, stronger central government will be a good thing for American self-government. And he does this, famously in Federalist 10, by pointing out that factions will exist in any political entity. And the role for a government or a constitution, whoever's designing the system, is to minimize the deleterious effects of factions, because factions that the term that they would use instead of parties, he at that point was arguing that these are a negative influence on politics.

[00:14:00] H. W. Brands: So how do we corral them? And he says that in an extensive republic, one that goes from South Carolina to Massachusetts, it's easier to keep them under control because no faction will be able to gain a majority or strong influence all across the nation. And maybe a faction could gain control in New York or Virginia or Massachusetts, but it would be offset by other influences elsewhere. So at that point he's saying very clearly, factions are a bad thing and this new government will keep them under control. Now, he wins the argument, the Federalists win the argument, the Constitution takes effect. And before too long, he's changing his view because he's coming to realize that, well, in competitive politics, especially in in political situations where votes are either yes or no, where you have a binary choices, one or the other, it's not a multiple choice test, it's basically a true or false, political expediency requires people, encourages people to form alliances wherever they can.

[00:15:03] H. W. Brands: And so people with different ideas voted in favor of the Constitution, just as people with different ideas voted against the Constitution for different reasons. Once we get the government, then all of American politics are based on this, you get 51% of the vote and you win, you get 49% and you lose. So there's nothing like proportional representation in American politics in those days, which would allow a minority to grow over time. And so as Madison's views begin to shift from this really strong view in favor of a stronger central government to something more subtle. Some of this comes out of the arguments during the ratification process over a Bill of Rights. So Madison, being the principal author as he saw it, the Constitution, took the typical author's attitude that every word is perfect, don't touch a thing, to, "Okay. Well if this is the only way we're gonna get the Constitution passed, well we have to agree to have a Bill of Rights. Okay, we'll do it, but I'm gonna write the Bill of Rights." And so he does. And the Bill of Rights is added to the Constitution, first 10 Amendments.

[00:16:09] H. W. Brands: And in doing this, he begins to realize sort of the depth of suspicion of this new central government. And as he watches Hamilton develop these very strong programs of federal authority assumption of debt, the creation of a national bank, various other things that are gonna centralize control, then Madison starts to think, "Well, I don't know, maybe we went too far. Or at least maybe I don't wanna go as far as Hamilton wants to go with this." And so Madison basically shifts sides. He was an arch Federalist, but then he becomes, eventually, Jefferson's principal lieutenant in the anti-Federalist Republican Party in the, the 1790s. And, it's all about the issues that emerge with the new government, but it betrays this underlying philosophy, if you are comfortable with a strong central government, you're likely to be a Federalist.

[00:17:07] H. W. Brands: Now, there are various things that will feed into why you are comfortable with a strong central government. And if you are less comfortable with that, and if you are more comfortable keeping, as Carol said, keeping power close to home with those elected officials that you can keep your eye on, then you're gonna lean toward the Republicans.

[00:17:25] Jeffrey Rosen: So interesting. Carol, amplify and help us understand that crucial period around 1790, as Bill said, the debate over the National Bank, over the assumption of state debt, and the report on public credit is one where briefly Madison and Jefferson make a deal with Hamilton in the famous room where it happened, to relocate the capital to the Potomac in exchange for assumption of the debt. But soon after that, open partisan warfare breaks open, there are partisan newspapers that each of them start up, Madison changes minds and start defending parties. So, help us understand that period and, and what role Madison's shift had in the rise of political parties.

[00:18:06] Carol Berkin: I think we should go back a little earlier than that. I don't think we should call them Federalists until the 1790s. They were nationalists, they were nationalists and Madison was a strong nationalist in part because of the crisis that having the Confederation had produced. I mean, there were enemies all around them. I mean, there was good reason to want to rethink 13 separate states acting separately because the post-war economy was in terrible shape because each state passed tariffs and restrictions on trade. So if you wanted to sell something from Massachusetts to Virginia, you had to go through different currencies. It was just like Europe before the common market, I mean, you had to change money. And so the economy was not booming. The economy, in terms of European imports, was not booming. And there was Native Americans to the right of them, Spanish to the south of them English to the north of them.

[00:19:20] Carol Berkin: It was a critical period. And this is what more than anything else, drove people to the Constitutional Convention because they thought maybe the country would be taken over piece by piece. And they were not wrong because in fact, on the eve of the convention meeting the French Minister to America is writing home to the king, "What part of the United States would you like when it falls apart?" states were almost at war with one another. I mean, there were issues that led many people other than just the abstract idea of where should taxing power lie, led many people to be nationalists. And it's interesting to look at Madison's career. He is a chief nationalist, in fact, at one point Hamilton writes and he says, "I miss the cooperation that Madison and I had. We had a real working synergy together."

[00:20:25] Carol Berkin: All of a sudden Madison thinks when the first report on public credit comes out, he says, "Hm, this is gonna benefit the North much more than my home state of Virginia, that I love, and I never intended for the Yankee traders as in trading, not traitors to dominate and take over from Virginia, which after all is the largest, most populous and richest of the states. He finds his Virginia roots again. And the reason this is possible is because the Constitution has been passed and it solves many of the crises that the government was about to face. It had, had been formed to face. What? They get a uniform currency, they get trade regulation, they get domestic trade. You can't set a tariff barrier between Maryland and Virginia, who incidentally had gun boats aimed at one another on the Potomac to make sure smuggling didn't take place.

[00:21:45] Carol Berkin: All of that begins to be solved. And then when Hamilton goes further with his plans to build what is basically an imperial state, that is a powerful state, Madison says, "Hm, I don't know, this is gonna hurt Virginia. This is not what I wanted." And he withdraws from being a nationalist to being a localist. And the second thing I would like to say is this image that people feared a powerful central government, that government wasn't powerful. I mean, if anything, you can read George Washington's two terms as a hard effort to try to get people to even accept the national government, even though the Constitution had been ratified. You know the Congress passes a tax on whiskey and basically people in West, what became West Virginia and people in Pennsylvania go, "Boo, we don't care what Congress says, we're not gonna do that."

[00:22:57] Carol Berkin: I mean, this was not a government that could bring out the long arm of the bureaucracy. They were not especially powerful. What was worrisome to the people who were forward-looking, like Madison, is they saw the writing on the wall. They saw that if the bank was approved, it certainly wouldn't benefit Southern planters. They saw that the report on public credit was really something that would favor Northern mercantile activity and banking. So what they were worried about was what was gonna happen down the line much more than they were worried about the immediate present of an overpowering government. I don't think certainly Washington did not feel his government was overpowering. When the Whiskey Rebellion was over and it was finally put down Hamilton wanted to send the army in immediately to crush the rebellion. And Washington, who turns out to be a brilliant administrator says, "Hm, I don't know whether that would look very good for people who are afraid of tyranny in the national government. Let's try other things first."

[00:24:24] Carol Berkin: So they try negotiations, they try court cases, and finally, they send troops in. Washington then issues a statement saying, "I apologize. I overstepped my limits. Because it was an emergency and Congress wasn't in office. I'd like the Senate, representing the states, I'd like the Senate to confirm that what I did was all right." So it's not as if they are yet an overbearing state. Honestly, if you look at Madison, you can see that what he feared was what Hamilton was laying down for the future. And this fight about state's rights and national right is, I think to a great extent, a fight about whether agriculture or trade is going to dominate the country. Trade didn't dominate it yet. It's not as if Virginia farmers were all trying to become merchants.

[00:25:35] Carol Berkin: But he saw the future. He was one of these men, Madison, one of these hypochondriac who thought he wouldn't live until next week most of the time, Madison saw that what Hamilton was laying down was the future. And so, I don't think that the 1790s can be read as a great conflict between nationalism and provincialism, I think it can be read

as a slow effort of the national government to establish its legitimacy. That's what Washington was trying to do. That's what Adams was trying to do, to get Americans to accept the legitimacy of the central government.

[00:26:27] Jeffrey Rosen: So interesting. And so powerful for you to use the first of your four examples, the Whiskey Rebellion, as an example of that slow effort by the national government to establish its legitimacy. And your really interesting point about how Madison changed his mind because of ultimately the fight over whether agriculture or trade would dominate, is crucial.

[00:26:48] Jeffrey Rosen: Bill Brands help us understand concretely what happened after the Bank Bill passes. Hamilton said that Madison had changed his mind on assumption and he's upset that Madison is breaking with him. Then Jefferson and Hamilton start up the National Gazette by Freneau, as an opposition paper and start publishing attacks on Hamilton. Hamilton responds. How does Madison justify his embrace of parties in the National Gazette? And as you think about this conflict, who is more responsible for the rise of the parties, Hamilton, on the one hand, or Madison and Jefferson on the other?

[00:27:29] H. W. Brands: Well, in answer the last part of your question, they each pointed the finger at the other. In fact, it's gonna be a long time before anybody in the United States acknowledges the legitimacy of partisan activity on the other side. They defend their own partisan activity because this is necessary, we're right and they're wrong. And it's really gonna be a lot before Americans embrace the idea of the need for a strong opposition party. I wanna bring up an issue that was crucial during this period but we haven't really spoken directly to yet, and that is the influence of foreign affairs because once you start to talk about, "my group and your group," it is tempting to say that, "We are the real patriots, we're the real Americans, and there's something wrong with you."

[00:28:16] H. W. Brands: When war broke out in the early 1790s between France and Britain, another war between France and Britain, and when Jefferson, in particular, people of Jefferson's persuasion, began to look favorably on the French side of this because they still had a fairly positive view of the French Revolution even though they recognized that it had gone to some excess. And people on the other side, Hamilton most conspicuously said, "American interests lie with Britain and we ought to forge closer connection to Britain." Then you have the possibility and the temptation becomes greater to say that those bad people on the other side are gonna sell us out to a foreign country.

[00:28:56] H. W. Brands: And so when Jefferson and Madison would talk about Hamilton and his party as the Anglomanes, these are the ones who are gonna invite King George back into America. I mean, no, that was an exaggeration. But still, the idea that, "Wait a minute, we fought this war for independence against Britain and now all of a sudden you're saying we ought to mimic Britain, we ought to join arms with Britain against France?" And on the other hand there were those, when Hamilton is critiquing Jefferson, his view, "You think we're gonna line up with those crazies who'd beheaded their king and who drove France to anarchy and mass violence?" So there is this element of you're not simply of a different political persuasion than me, you are potentially a traitor to the American cause. And that really gives bite to this.

[00:29:47] H. W. Brands: Now, as long as Washington is president, this stuff sort of keeps under control because both Jefferson and Hamilton are trying to persuade Washington, but they recognize that he's not gonna buy into any of this partisanship, and Washington considers himself above parties. Now, he did lean toward Hamilton on several important issues, but both Hamilton and Jefferson, the leaders of their opposing sides, they grow farther than farther apart. They implore Washington not to leave after one term, because they're afraid of how this is really gonna split the country. And it's important to bear in mind in all of this, that the Constitution isn't yet half a decade old in operation and they've seen the first American constitution, the Articles Confederation, it was junk before it was five or six years old.

[00:30:42] H. W. Brands: And so the biggest concern of all these people is that the country not fall apart. Even the Republicans, the ones who are in favor of leaving power with the states, they don't wanna see the United States break up into 13 separate states. They realize, just as Carol pointed out, that there are foreign countries that are circling around, would love to peel off one or the other. But within that realm, within the realm of the Union, where does the balance of power lie? Does most of the initiative lie with the states? Does it lie with the central government? And then you add this foreign element, whose side are you on? Are you gonna marry us to the British, or are we gonna stay with the French? Then it really sharpens this difference of partisan opinion.

[00:31:29] Jeffrey Rosen: So interesting. You mention the crucial rule of foreign policy. And Carol Berkin, two of your examples have to do with foreign policy, the crisis involving Genêt in France and also over the Jay Treaty. Tell us about Genêt, who I gather made you laugh unexpectedly, and what those two foreign policy crises did to solidify the growth of parties.

[00:31:51] Carol Berkin: Before I do that, which I really wanna do because it's rare that you wind up laughing when you're writing a book like this. I wanna say that we have to look at, I don't wanna sound like a materialist, but Hamilton did not especially love the British. What he loved was increasing trade and borrowing from British investments in American growth. And he thought he could get those things. He thought that the alliance with Britain simply made more economic sense. French wine was nice, but that was not where the, the investments in the Bank of the United States were gonna come that would help entrepreneurs build the American commercial success. And so his attachment to England had more of a quality of, "Where can we get the best deal?" than, "Oh, I love British royalty.” there was none of that really in Hamilton.

[00:33:07] Carol Berkin: The affection for France, I have to say, was Jefferson's neurosis. He had seen the terror, Gouverneur Morris said, who had been in France, he said, "People's heads were being chopped off right and left. This is not like the American Revolution. This is not a sister revolution to ours. This is an absolute. It's gonna become a tyranny." And of course, Napoleon, "It's not going to be a democracy." Jefferson clung to the idea that the French Revolution was a continuation of the principles of the American Revolution because rhetoric became in his mind, really important whereas reality, which was absolute raw power and violence, did not seem to move him. Hamilton had a calmer view, he said, "It's good for business. It's good for American business if we align ourselves with Britain."

[00:34:19] Carol Berkin: But to go back to your question about Genêt there is a perfect example of the fact of the weakness of the federal government. In the early 1790s, Genêt comes over as the representative from France before the Jacobins takeover. He's coming over from a more moderate group. He's like 26 years old, he's never had any real experience as a diplomat. He's a showman. He arrives in a ship that's flying the French flag and the American flag, and he says, "We supported you in the American Revolution, our blood and your blood was shed together," he doesn't come in quietly. He does not present his credentials to Washington. A foreign ambassador comes in, today we would expect them to present-Oh, no, he goes to South Carolina and he starts fundraising to build ships, privateers to fight under the French flag on their side against England.

[00:35:36] Carol Berkin: This is an invasion of American sovereignty. And that's how Washington saw it, he said, " There's a sovereign government here." Then Genêt sets up French courts in New York and in Philadelphia and in Charleston, French courts for when these privateers bring in captured British ships to decide what to do with the ships. What happened to American sovereignty? What happened to American courts? Washington sees very clearly that he has to do something about this because otherwise South Carolina can have its own foreign policy and Virginia can have its own foreign policy and New York can have its own foreign policy and it will be chaos. Genêt meanwhile, finally makes his way from South Carolina up to Philadelphia where the federal government is and he's greeted as a hero and he keeps stressing how French blood and English blood had been mingled in this war for liberty, equality. I mean, he just goes on and on and on. And, the crowds eat it up, they really do.

[00:37:02] Carol Berkin: He then proceeds to send these really hilarious letters to Washington that are bombastic and filled with visions of the unity of the souls of Americans and tells Washington that he ought to fund the privateers for support France. Washington says, "We are neutral. I've just issued a proclamation of neutrality." And, Genêt won't accept this, he tantrum and he says "What are you doing? Do you support the people who oppressed you?" His letters are hysterical, they really are. I just sat and laughed at this flowery language. And finally, Washington says, Hamilton wants Genêt driven out of the country. Hamilton, Washington says, writes to the French government finally, he builds a case against Genêt. Now the Jacobins have taken over and they want Genêt recalled so they can behead him, so they can guillotine him. They see him as a traitor.

[00:38:26] Carol Berkin: And then Washington does the loveliest thing. This man has been an aggravation, a thorn in Washington's side, caused so much trouble, caused so much embarrassment. And when Washington learns that the French government is going to arrest Genêt, he grants Genêt amnesty and allows him to remain in America. He moves to New York, he marries Governor Clinton's daughter, he becomes a landowner in upstate New York and you never hear from him politically again. And people ask Washington, "Why did you do this?" And Washington, who I have come to just so admire before this book, I thought he was a secondary character, a figurehead. What a fabulous man. He says, "When he represented the French government he was a danger, as a private citizen he is no problem at all." So this episode with Genêt shows you the primary thrust of Washington's administrations, which is to establish the legitimacy of the central government over diplomacy.

[00:39:45] Carol Berkin: And he tells South Carolina, "You can't sign contracts with a foreign power. No that's not allowed anymore. My government, the executive is in charge of

setting foreign policy like that." and he achieves it. I mean, what is really quite amazing is that Washington, who is very patient, achieves what he is trying to do, which is building the sovereignty and the authority and the legitimacy of that central government. And Genêt becomes a Federalist in the end. You can imagine Washington looking at this 26 year old twerp, right? All hat and no cattle when it comes to really his bombast. When he's no longer the representative of France, Washington just feels bad for him.

[00:40:55] Jeffrey Rosen: Wow. What a great story. And the fact that he becomes a Federalist in the end is a Hollywood ending. Bill Brands, your book ends with the Revolution of 1800 and beyond. So we're now ending the Washington administration, take us up through the Adams administration to that crucial election of 1800. It includes both conflicts over the treaty with England as well as the Alien and Sedition Acts, but what are the major events and how do the parties solidify in the way that in 1800 we have our first contested partisan presidential election?

[00:41:27] H. W. Brands: When Washington retired after the 1796 election, it basically took the lid off of the emerging partisanship in politics and the partisans began to act more and more like partisans. Now, partly this was that there was no longer this person that everybody respected sort of keeping things under control. But also, the 1796 election was the first presidential election that was contested. So Washington was voted in by acclimation in 1789 and again in 1792, he decides he's had enough. In fact, he's been criticized enough by the Jeffersonian press that he said, "Okay. Enough of politics, I'm outta here." And so he leaves. And the 1796 is the first election that is really contested. And the leaders of the two sides are John Adams, the incumbent vice president, and Thomas Jefferson, former Secretary of State. And this is all confused by the original method for choosing presidents where the electors all had two votes.

[00:42:34] H. W. Brands: And apparently the thinking on the part of some of the framers of the Constitution as to how this would work was, "Okay. We've got this national country where people in Massachusetts don't know the people in South Carolina and we're never gonna get a vote in favor of a majority. So what we do is we'll give everybody two ballots and presumably one of the ballots will be cast for the local favorite son. And then the second ballot will be somebody who has national reputation. So this way, everybody, all the strong advocates of Virginians and New Yorkers and Pennsylvanians and so, they'll get to cast a vote for their guy, but then who's your second choice?" And quite likely the second choice would be the one who would become president.

[00:43:25] H. W. Brands: But the way they arrange it though was that when the electoral votes were counted, the first place candidate, if he had a majority of the number of electors, he would become president and the runner up, his principle rival, would become vice president. Now, it sort of makes sense if you think, "Well, okay, America gotta get its first choice as president and its second choice as president in waiting in case something happens to the president." But it certainly made it difficult, indeed impossible, for a president and a vice president to work together. In fact, they had every incentive to work at cross purposes. And this became very clear during Adams' presence, presidency when war between Britain and France heated up to the point where Adams persuades Congress to fund an undeclared war against France.

[00:44:19] H. W. Brands: Now, there was just as much reason for Americans to go to war against Britain because Britain's depredations on American shipping were just as bad as the French depredations. But the Federalists, they inclined toward the British and against the French, so that's the way they're gonna go. In the process, the Federalist take the position that criticism of the Adam's administration, criticism of the government during this period of war amounts to sedition. And so they approve the Alien and Sedition Acts. And the Alien part of it is, so that foreigners can't come in and meddle in American elections the way Edmond Genêt tried to do. I mean, not just elections but in American affairs. Now, the Sedition Act says that it is illegal to criticize or bring into dishonor members of the government. And it appears, on the face of it, it's a clear violation of the First Amendment to the Constitution. The question then is, who will rein in the central government, the federal government if it oversteps its bounds?

[00:45:25] H. W. Brands: Now, from the distance of the 21st century we have agreed we Americans collectively agree, you take it to the Supreme Court, but nobody knew what the Supreme Court was supposed to do in the 1790s, what is it supreme over? It's supreme over the other federal courts. Okay. But does it have authority over the states? Does it have authority over the federal government? Can it declare a federal law unconstitutional? This had never been done and nobody knew if it could be done. So Jefferson, the vice president of the United States, feels that on behalf of the rights of the American people he's gotta take some action, the government has clearly abridged the Constitution. What do we do about this? So Jefferson and Madison, working largely in secret, they draft what come to be called Virginia and Kentucky Result or Resolutions. And they outline a method for the states to rein in the federal government and it will give rise to the doctrine of nullification. Assuming if the federal government passes a law that a state finds obnoxious, then the state will nullify the law, the state will refuse to enforce the law within its boundaries.

[00:46:42] H. W. Brands: Now, this turned out not to have very negative effect at the moment, but it did form the philosophical basis for a further nullification crisis in the 1830s and it would become the basis, finally, for secession in the 1860s. So things had gotten pretty extreme here and it's quite ironic that Jefferson had been a Federalist at the time of the debate over the Constitution, he wanted the Constitution to take effect. James Madison in help write the Constitution, but he was especially sensitive to abridgments of the First Amendment because he was the author of the First Amendment. They conspire to undermine the government of the United States on this crucial issue of, how will laws be enforced and who will rein in the federal government if it oversteps?

[00:47:36] Jeffrey Rosen: So interesting. Carol, you offer the Alien and Sedition crisis as an example of the fact that although, as Bill said, Jefferson and Madison are taking strong states rights positions that lead ultimately to nullification and secession, it was the reaction to the Alien and Sedition Act that actually establishes and extends national authority. Tell us about that story and then take us up to the effects of the state of parties in the election of 1800 and beyond.

[00:48:03] Carol Berkin: Lemme start here, much is made about the Alien Acts are very easy to understand. The Jeffersonians were mobilizing the German voting population and the Irish radicals who had come over, intellectual radicals, who had in fact meddled in foreign policy. And in order to stop this one of the Acts said you had to live in America 14 years before you had the right to vote. And this was really a straightforward effort to destroy this

voting block potential that had been used in, in Pennsylvania and in New York and in other areas where there was a German population and the French, the Irish intellectuals. The Sedition Act, which is what everyone talks about, you have to take a look at what happen.

[00:49:09] Carol Berkin: I did a very careful count of all the sedition cases. First of all, it was to end in 1800, it was not permanent. Was to end in 1800, which is sort of interesting since that's when Jefferson took over the government. Of all the cases, there were maybe 20 cases, maybe. It's been a while since I did this book, so I might not have the number exactly right. Five people ever went to jail and they were allowed five editors of newspapers. They were allowed to continue to edit their newspapers while they were in jail, that is the Sedition Act did not clamp a lid on protest in America, it was ineffectual in effect.

[00:50:10] Carol Berkin: And what's interesting is the Federalists who really believed a Sedition Act was important, believed in the rule of law. So you had to be arrested. You can get out on bail. They had to bring charges against you. You had to have a jury trial. And almost no one was convicted and the ones who were convicted were told, "Okay. While you're in jail you can still edit your newspaper or your magazine." So it's not as if the Sedition Act was really a powerful statement of government oppression. The Alien Acts never did anything. He refused to enforce them. What's the phrase today? It was a big nothingburger in a sense right?

[00:51:06] Carol Berkin: But the Virginia and Kentucky Resolutions not only introduced the concept of nullification and Jefferson said, "If worse comes to worst, blood must be shed." I mean, he was always ready to shed somebody's blood as long as it wasn't his. But in writing the two resolutions they acknowledged that the Constitution was the law of the land. And the reason they had to write these was to correct an abuse, they believed, of the Constitution, including the Bill of Rights. And in that sense, both sides wound up resolving, finally, the anti-Federalist/Federalist debate. Both sides conceded that the Constitution was the law of the land. One might find one way to prevent its excesses, the other might find another way, but they both acknowledge the legitimacy. And, in many ways, that decision is the crowning moment of American nationalism. Not the kind of nationalism today, the kind of recognition that there was a nation. This becomes so well established that, I found this very interesting, people refer to, "these United States of America." After the war of 1812, they began to call it, "the United States of America." And that is the final triumph of a national identity is after the war of 1812.

[00:53:08] Carol Berkin: But the Virginia and Kentucky Resolutions both introduce the snake in the garden of nullification, but they also acknowledged that they were not attacking the Constitution as the legitimate source of the national government. So it's really a striking turning point in the rise of a belief in the national government.

[00:53:42] Jeffrey Rosen: So interesting. Time for concluding thoughts on this marvelous discussion. Bill, when you take stock, as you did in your wonderful book, was the rise of parties a failure of vision on the founding surprising the idea of neutral adjudication that Madison laid out in Federalist 10? Or is there a more optimistic account that Madison said that both factions and parties were inevitable, that you can mitigate their effects. And despite all the factiousness, there was a steady growth of nationalism that led to the era of good feelings and securely establish the Union with parties rather than in spite of them. How should we think about this crucial question?

[00:54:26] H. W. Brands: As I suggested earlier, it took a long time for Americans of either party to acknowledge the importance of the opposition party, but eventually Americans did. One of the reasons that parties developed and became such a sturdy influence in American politics, was precisely that the Constitution is so spare in explaining how stuff is gonna take place. And it says nothing about how, for example, presidential candidates will be nominated. And that became a major deal in what parties do. It says nothing about how Congress is gonna organize its affair, so we organize Congress by parties. So parties have developed into these institutions. MaDison did acknowledge, he adds, "Probably inevitable, when you have competitive politics, you're gonna have people who have different ideas and they're gonna try to gather with people who have similar ideas and try to win a majority." So a party certainly do seem to be inevitable, they seem to be permanent in American politics.

[00:55:21] H. W. Brands: And, one way of looking at it, when we look at the partisan politics we have today is that, "Oh, man. It's never gonna go away because it's been there since the beginning." On the other hand, we've lived with it, the country has thrived under the parties, maybe despite the parties, but they're part of American history and whether they were inevitable? Quite possibly, but they're a part of what developed. And if you wanna blame problems in America, you can't point at the parties solely, you have to look at the people who are involved in the parties. You can't say, "If we didn't have parties for five minutes, we develop parties shortly thereafter, as long as we have competitive politics." And that's the thing. So parties are an indication that the system of self-government is working, there's a role for the opposition.

[00:56:12] Jeffrey Rosen: Wonderfully said. Carol, last word in this great discussion? To you, are parties inevitable or not? And did the American experiment succeed at least initially in spite of the parties or along with them?

[00:56:24] Carol Berkin: Well, I have a different view on why parties had to develop. The original idea of 18 century men, who were not professional politicians, but were men of a certain social class that believed it was their obligation to serve in government. They thought that once you were elected, each person should vote his own individual judgment and moral position, that everyone was to vote as they independently thought. Well, if you did that, you'd never pass any law at all. I mean unless you could link the lower House to the Senate to the Executive in some fashion, you would have 100 different views, and no bill could ever pass. So in a sense, political parties operate to make the government work, that is they operate so that a block in the House can pass a law and a block in the Senate can approve it. And the president can either veto it or support it and administer it.

[00:57:41] Carol Berkin: And so in a sense, political parties are the glue that hold these highly disparate segments of the government together. And the idea that you vote your individual conscience it is, is very high-minded, but it doesn't, doesn't really, doesn't really work. And I think that as long as we have both the division of power, in federal government, and then the division of power between the state and the federal government, you really need political parties.

[00:58:17] Jeffrey Rosen: You really need political parties, is a powerful note of optimism perhaps to end this great discussion on. Thank you so much, Bill Brands and Carol Berkin, for illuminating and teaching us so much about this crucial period in American history. Dear friends who are watching, thank you so much for taking an hour out of your day to learn

about American history. And please read Bill Brands and Carol Berkin's books beginning with, but certainly not ending with, their most recent ones. Founding Partisans: Hamilton, Madison, Jefferson, Adams and the Brawling Birth of American Politics, by by Bill Brands. And A Sovereign People: The Crisis of the 1790s and the Birth of American Nationalism, by Carol Berkin. Bill Brands and Carol Berkin, thank you so much for joining.

[00:59:01] H. W. Brands: My pleasure.

[00:59:02] Carol Berkin: Thank you.

[00:59:06] Tanaya Tauber: This episode was produced by Lana Ulrich, Bill Pollock, and me, Tanaya Tauber. It was engineered by Kevin Kilbourne. Research was provided by Yara Daraiseh, Cooper Smith, Samson Mostashari, and Lana Ulrich. Check out our full lineup of exciting programs and register to join us virtually at constitutioncenter.org. As always, we'll publish those programs on the podcast, so stay tuned here as well or watch the videos, they're available in our media library at constitutioncenter.org/media-library. Please rate, review, and subscribe to Live at the National Constitution Center on Apple Podcast or follow us on Spotify. On behalf of the National Constitution Center, I'm Tanaya Tauber.