

## Loyalists vs. Patriots and the American Revolution

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**[00:00:00] Jeffrey Rosen:** Hello, friends. I'm Jeffrey Rosen, president and CEO of the National Constitution Center. And welcome to *We The People*, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan non-profit, chartered by Congress to increase awareness and understanding of the Constitution among the American people. This week, we're sharing an episode from our companion podcast *Live at the National Constitution Center*. In this episode, Joyce Lee Malcolm and Eli Merritt joined me to explore the origins and clashing ideologies during the American Revolution. They also discussed the framers' fears of demagogues and Civil War. The program was streamed live on December 13th, 2023. Enjoy the show.

**[00:00:44] Jeffrey Rosen:** It is wonderful to introduce our great panel. Joyce Lee Malcolm is professor Emerita of Law at the Antonin Scalia Law School at George Mason University. She is the author of several great books, including *The Tragedy of Benedict Arnold: An American Life*, *Peter's War: A New England Slave Boy*, important work on the Second Amendment, and a new book which she'll discuss today, *The Times That Try Men's Souls: The Adams, the Quincys, and the Families Divided by the American Revolution--and How They Shaped a New Nation*.

**[00:01:16] Jeffrey Rosen:** And Eli Merritt is a political historian at Vanderbilt University where he researches demagogues democracy and the founding principles of the United States. He's the author and he's the editor of *How to Save Democracy: Inspiration and Advice From 95 World Leaders*, and *The Curse of Demagogues: Lessons Learned from the Presidency of Donald J. Trump*. He writes The Substack Newsletter, American Commonwealth. And his new book, which he'll discuss today, is *Disunion Among Ourselves: The Perilous Politics of the American Revolution*.

**[00:01:47] Jeffrey Rosen:** Thanks for joining. Welcome Joyce Lee Malcolm and Eli Merritt. Eli let me start, if I may with you, in your wonderful new book, *Disunion Among Ourselves: The Perilous Politics of the American Revolution*, you argued that fear of disunion and Civil War was prevalent throughout the revolutionary period and shaped so much of the politics of that crucial decade. You've written a previous book about demagogues and democracy and the presidency of Donald Trump. Tell us about the fear of disunion and Civil War in the revolutionary period, and in particular, the fear of demagogues. What is a demagogue? What,

what kind of demagogues were the founders afraid of, and how did they play out their fears in different ways?

**[00:02:33] Eli Merritt:** Sure. It's great to be with you, Jeff. Starting in 1774 when the first Continental Congress convened there, I think we live under a gross misconception that the founders or at that time delegates to the Continental Congress that what they dominantly feared was the might and power of the British Army and Navy. And certainly they did, but for the most part, what they feared more than that was disunion and leading to Civil Wars among themselves. And so what they feared is that within the development of a very early and fragile American government, or first government later united after five years under the Articles of Confederation, but called the Continental Congress, they feared that some sort of discord within the Congress would lead to a three step chain reaction, whereby one or more of the colonies and then later states would secede from that new central government.

**[00:03:31] Eli Merritt:** And what would happen next, they would form separate confederations. And after that, if they thought these separate confederations could unify and fight together against the British and then not have internal Civil Wars, they probably would've gone in that direction because it was a much more natural direction for the colonies to go. But they were positively convinced that if they broke apart into separate confederations, they would fall into Civil War over commerce. And then as the war progressed, their entangled finances and most importantly over land. And there was also some concern if a Civil War did start, that the enslaved persons in the Southern colonies would rise up for their own freedom. So that was another aspect to the Civil War that was feared at that time.

**[00:04:20] Eli Merritt:** So I would say in general, expanding a bit to the question of demagogues, simply one of the foremost fears was that the discord within the Continental Congress would lead to disunion and Civil Wars among themselves, leading them to take the high road often and to comprise almost what I call a shotgun wedding. They had no choice. But a second fear that they had was that demagogues would rise up. I think the best way to describe what a demagogue is, it's a political figure who is driven by egocentrism dominantly seeking fame and power. And the way that is accomplished is through the use of fearmongering, hatemongering, and bigotry. So an independent fear was that demagogues would try and blow up this very fragile new concept called the central government.

**[00:05:11] Eli Merritt:** That was an independent fear. Washington described that in letters to the Marquis de Lafayette two weeks after the constitutional convention began, and most famous of all, his Federalist 1, Alexander Hamilton's theory of Democratic collapse was that a president would commence a demagogue and into tyrant. And so then if we take a third pathway, we combine the fragility and disunion, disunion of sentiments within the central government with demagogues who are interested in breaking apart the government in order to assume power over confederacy themselves. We have really, what was their nightmare scenarios, demagogues and demagoguery combining with the inherent risk, the president on almost a daily basis within the early government of disunion, and then the problem with that, of course, that would lead to Civil Wars.

**[00:06:00] Jeffrey Rosen:** So interesting. Thank you so much for so well introducing us to the thesis of the fear of disunion and then connecting it to Hamilton's theory of Democratic collapse in Federalist 1. Joyce Lee Malcolm, does that sound right, the fear of demagogues combining with the fear of disunion? And help us understand how that fear of demagogues coexisted with a varying degrees of toleration for armed protest, including armed insurrection manifested by protest against British central rule, such as the Sons of Liberty?

**[00:06:37] Joyce Lee M.:** It really was a Civil War of the American Revolution, and that's one of the things that got me particularly interested in this division within the American families of some who sided with the government and some who were ready to protest, even to the point of taking up arms. But when it comes to demagogues, I think there wasn't any particular individual who was a demagogue. There are two things I'd like to say. First of all, as the policies became harsher and harsher toward the Americans and they divided one of the things that they most feared was an army even during the war, was that they began to plan a war.

**[00:07:26] Joyce Lee M.:** They were extremely afraid of their own forces because they had this long tradition of being afraid of standing armies, professional armies, and that an army or the leader of an army might take control. And they kept a very close tight reign on Washington because they were really afraid that Washington would become such an idol that he would have that power. And in fact, it was after the war that George III said it, if he resigns his commission, he was the, he, he must be the greatest man in the world because they were worried about their own history. Oliver Cromwell taking over after the English Civil War. And of course, Napoleon would take over after the French Revolution.

**[00:08:11] Joyce Lee M.:** So we were extremely lucky in Washington. On another subject, there was, with this increasing intolerance and intimidation among themselves, the Sons of Liberty, who are often extolled and rightly for taking a good important stand for individual rights also were the first to really use mob violence. And at the time of the stamp in 1765 in planning how they were gonna combat the Stamp Act and get the British to withdraw it Sam Adams and some of the Sons of Liberty in Boston actually got together with a man who was the leader of a gang in South Boston to bring together a mob. And he brought 3000 people to go through the streets of Boston.

**[00:09:05] Joyce Lee M.:** They ended up tearing apart the customs house. They tore apart the building that they thought that the person in charge of stamps for this, for the colony was gonna be located. And then they moved on to people's houses. So they were, they were tough to control. There were a lot of the Sons of Liberty, like the Adams is, and the Quincys who were more law minded and wanted to write articles and have petitions. But once you got the mob started, it was very hard to stop it. It wasn't one demagogue in that sense, it was the use of a violent mob.

**[00:09:44] Joyce Lee M.:** Sam Adams, who was I guess as close to a demagogue in the sense that he wanted to see revolution he said it worked. People resigned their commissions, they were scared and that this was wonderful. But there are a lot of people that thought that this

was a terrible way to proceed, however it may have achieved their ends, they really, it was the sort of chaos that they did not want to see that there was this mob violence.

**[00:10:15] Jeffrey Rosen:** So interesting to note that vision of 3000 people marching through the streets of Boston, led by Sam Adams, and the idea that he was close to a demagogue in the sense that he wanted to start a revolution and endorsed mob violence. Eli Merritt, if Sam Adams was one demagogue, who were others who were broadly feared, of course, before the Constitutional Convention, the famous mob is Shays Rebellion, and Daniel Shays is leading an armed mob of debtors who don't want to pay their debts in front of the bankruptcy courts. But during the revolutionary period, who are some of your main demagogues? And was there disagreement about who was a demagogue? Given the fact that anti-Federalists succeeded by Jeffersonian Republicans seemed more tolerant of armed violence or insurrectionist protest than their federalist opponents?

**[00:11:06] Eli Merritt:** I'm such a great fan of Sam Adams, that I don't think he was a demagogue. I do think he was a very talented political operator. He in fact, was not a good public speaker. He didn't even speak in public very often. But Joyce is right in some ways. In his attempts and desire to bring about, shall we say intimidation in order to help foster the project, which he had near at heart. Unlike most of the early founders, he early on was hoping for independence. So I have to, I have to save Sam Adams, I think, from the label of demagogue in the fashion that we have seen in the United States in the last 10 years, I would say tracking forward a bit from the American Revolution, it is very clear that demagogue number one that was feared by Virginians, including Madison, Jefferson and Washington, was Patrick Henry.

**[00:12:00] Eli Merritt:** Patrick Henry we know in some ways you could say demagogue in the 1760s in his famous speech, Give Me Liberty Or Give Me Death. That's a pretty profound statement of, of conviction. And he was, he fits the model of a demagogue in the fact that no other orator in the 1770s and 1780s and 1760s compared to him. Everyone wrote home about oratorical skills. So it was greatly feared in 1787, 1788, before the Constitution was finally ratified in June of 1788, that Patrick Henry was going to be behind the scenes, stirring up a movement for the formation of a Southern Confederacy, in part, of course, because the northern states dominated eight to five. And there had been a series of events in 1786 mainly that were very threatening to the Southern states at that time.

**[00:12:55] Eli Merritt:** One was their fear that the northern states would cooperate with Spain to close the Mississippi River, which was the commercial channel enabling Southern westward expansion. And the other was control of commerce in one way or the other, that they feared would be the great disadvantage to the Southern states. So it took all manner of skillful negotiation and persuasion for Federalists. The term wasn't used then, like Madison to persuade the Virginia Convention to ratify the Constitution. I know this is one of your favorite books, Jeff, so I thought I would hold it up.

**[00:13:31] Jeffrey Rosen:** Wonderful.

**[00:13:32] Eli Merritt:** In the Virginia Ratifying Convention, it barely made it, I forget the exact numbers, but it was not, the Constitution did not pass that ratifying convention with glowing colors. I would pick Patrick Henry and one other very intelligent constitutional minded individual from North Carolina during the American Revolution, who was considered to be somewhat of a demagogue, Thomas Burke of North Carolina. Many people credit him for the strength of the state's rights positions we find in the articles of Confederation. And he certainly was a big mouth in Congress and was constantly stoking fears within Congress that the union could never succeed due to the differences.

**[00:14:17] Eli Merritt:** At least privately, he was promoting separate confederations. And so, but to their credit, this is another thing that we should learn today. From the way the founders handled hotheaded individuals and demagogues within government, they worked very hard privately more than publicly to make sure those individuals were not invited back to Congress. So we have a problem right now which is as many causes where we're not doing such a good job at that very important, ambition, which is simply to keep demagogues out of high posts of government in the state as well, but most importantly in the federal government, that's a whole nother question of why that's happening. But they did much better than we are doing in excluding demagogues from positions of power.

**[00:15:05] Jeffrey Rosen:** Well, that's very powerful observation and helpful to know both that Patrick Henry and Thomas Burke were quintessential examples of demagogues who were using mob violence and exhortation to promote disunion and that the others work to keep them out of the halls of power. Joyce Lee Malcolm does that sound right as a definition of demagogues to add to our list? And tell us about the different ways that people responded to this, these threats of insurrection. Some thought that the threat was overstated and the protest should be allowed, and others thought that the free speech of the insurrectionist had to be suppressed. Tell us about the arguments on both sides there, and who do you think was right?

**[00:15:50] Joyce Lee M.:** I wouldn't have put Sam Adams as a demagogue. He were behind the scenes. He was one of the few that really wanted independence. And in fact, Franklin, after the Battle of Lexington, went around the country and couldn't find anybody who wanted independence. So I think it's kind of a hard period to say that there were particular demagogues. 'Cause there were so many people active in different states on one side of our colonies, down on one side or the other. But I think that it was the tactics that were being used, the mob violence, the intimidation that drove a lot of people who previously could sit down with their family and have quiet conversations about whether we should oppose this particular attack or not oppose it, or how it should be done.

**[00:16:38] Joyce Lee M.:** After the Stamp Act, and then particularly after the the Tea Party, which destroyed in today's money, \$1.7 million worth of tea there were all of these Draconian laws that clamped down on Massachusetts and raised fears and other colonies. A lot of people decided that they couldn't take the intimidation and the threats anymore. And they first went into ones in Massachusetts at least first took shelter in Boston where the Arm could protect them, and where they were not as vulnerable. And then either fled or when the British pulled out, they went into exile.

**[00:17:23] Joyce Lee M.:** And the ones that I mentioned particularly are the Quincys, where the older son, Samuel, was the solicitor general for Massachusetts and actually prosecuted this, the soldiers for the Boston Massacre. And his younger brother, Josiah, who was a member of the Sons of Liberty, very hotheaded kid, but he was a writer, and he defended them. And it's kind of odd that who defended who and who prosecuted who in that. But the older brother went into exile, leaving his wife and children to be taken care of by her brother. She was a patriot, and he never saw them again. He thought his great opportunity was for some reason, to have lost cases in England.

**[00:18:13] Joyce Lee M.:** And John Adams' closest friend, Jonathan Sewall, who had been the Attorney General for Massachusetts, they were very close and had studied together in the same law office and broke constantly. He fled with his family after his house had been attacked. I just wanted to add one little thing. He wasn't home when his house was attacked by a mob, about 70 people. The windows were smashed, but his wife went out and made a deal with the attackers that they could have all of his wine cellar if they just dispersed, which they accepted and dispersed.

**[00:18:50] Joyce Lee M.:** But after that, he decided not to take any more chances and took the family into Boston. But those two friends split. And it's interesting that Sewall's wife, who was so brave, her sister was the wife of John Hancock. So you have these families where sisters were on different sides where people left their families or, or their children never saw them again. There are all these letters. So there was a lot of growing fear that this was going to be dividing close relationships. And I think that's what makes a Civil War so really poignant. And I just wanna add that when I told people, they asked me what I was working on, and I said, "Divided families," they assumed it was the American Civil War. Just assumed it.

**[00:19:40] Joyce Lee M.:** And there was all of this splitting and worrying about chaos as Eli likes to point out what's the right thing to do, and whether at the end of the day, people can come back. There's a lot of sort of growing intolerance that goes on where people, where there's you have to take an oath of allegiance to, to support the revolution. And if you went into exile, even though you never thought you were banished, so you could never come back and your property was sold.

**[00:20:13] Joyce Lee M.:** The divisions as the thing went on, got broader and more painful. I find it hard to find any one particular demagogue. I think there were just people who felt very strongly and who wrote and argued in these different colonies, and they had a lot of differences. One of the things that Josiah, the younger did, or Congress was that he made a trip in 1773. He went from New England down to South Carolina and traveled through all those colonies coming back and recorded his points of view about what he saw. And there were obviously great differences.

**[00:20:52] Joyce Lee M.:** He loved Charleston and the ladies of Charleston, but they had terrible law, almost no law. And by the time he got back to New England, that was the best place for anyone to live. But it did sort of illustrate how far apart the cultures of these different colonies were at that point. I think even with the revolution, it was hard to bind them all together.

One last thing, I'm sorry to monopolize. The biggest worry that they had during the revolution and afterwards was the Army.

**[00:21:26] Joyce Lee M.:** They really worried about the army becoming a separate class. They didn't wanna give them any pensions. They kept this tight reign on Washington. One of the reasons that Arnold was so castigated was that he was a hero. And so they were afraid of people who were disloyal. They were really worried about it. And in the constitutional convention, there's a lot of talk about how to control an Army. Do you need an Army? Could you just do with the militia? And if you have an Army, how do you make sure that they're always under the control of the civilians in the country?

**[00:22:09] Jeffrey Rosen:** Absolutely fascinating. And that fear of a standing Army is crucial in every respect. Eli, the story you tell, which is fear of disunion and Civil War played itself out after the Constitution in American politics for the rest of our history, in the debate between Hamiltonian champions of strong union and national power, and Jeffersonian champions of liberty and state's rights and critics of strong power, and both claimed to be vindicated by the dangers which they saw differently.

**[00:22:44] Jeffrey Rosen:** The Hamiltonians most feared democratic mobs that will choose demagogues like Shays rebellion and disorder, and the Jeffersonians fear of Caesar and tyrants who will install themselves permanently and suppressed liberty. Is that right? That both feared demagogues, but they thought it would come from a different place? And then maybe take us up, 'cause we're learning so much a little further in American history in the 19th and maybe 20th centuries of other demagogues.

**[00:23:15] Eli Merritt:** Well as you bring that up, and we can revisit sort of earlier parts of your question, if you would like, as you, as you bring us forward in time, I will share that in the past 24 to 48 hours McCarthyism has very much been on my mind, and I would say, and he is of course, until Donald Trump, I say that in a very nonpartisan way, there is simply no question in my mind that Donald Trump will be studied by democracies, probably for the next 500 years as a supreme demagogue. He just embodies all the greatest talents and destructive talents of the demagogue.

**[00:23:54] Eli Merritt:** But in any event, until Trump, the most famous demagogue was McCarthy. And as we all know, during the period of the Red Scare, which he was a part of, he demagogued greatly. And so the reason I've been thinking about over the past 24, 48 hours, I don't mean to compare the degree, but what's happened, of course, the committee that McCarthy used to perpetuate his lies and impugn and ruin tens of thousands of lives was the House Committee on un-American activities. And we have recently seen something that feels like a scare going on with the three presidents of Harvard, MIT, and UPenn, where we're living in a culture now of great sense of fear and danger leading in, in part to the polarization that's causing the weaponization of everything.

**[00:24:44] Eli Merritt:** So I think that McCarthy's particularly important right now, and a very good book came out three or four years ago, simply called Demagogue about McCarthy. I

would also barring from something that Joyce was speaking of, one of the things that fascinates me the most about alluding out to the title of this conversation, which is Loyalists versus Patriots, is that's obviously very stark and binary and black and white Loyalists versus Patriots. And what fascinates me so much is the real truth that if you go back to 1774, 1775, which you see in the development of Patriots and Loyalists, is a transformation or a process of conversion that took place.

**[00:25:27] Eli Merritt:** And from my book, one of the stories that I find the most fascinating, and it helps to elucidate this in fact, has to do with how and why and when the 13 colonies were able to come together behind the Declaration of Independence or initially a resolution for independence. So just in brief there, the middle colonies in South Carolina in 1776, including June and July of 1776, were very loyal. In fact, all the founders were both loyal to the empire, loyal to their colonies, and there was this slowly growing sense of patriotism or loyalty to, it's even wrong to call it a national entity, but a continental entity that would preserve American rights later became the Continental Congress.

**[00:26:17] Eli Merritt:** What happened there is most of the delegates of the middle colonies and South Carolina in June and July were flatly opposed to a resolution of independence. And so what happened, Richard Henry Lee, some people might recall, stood up before the Continental Congress on June 7th 1776, and said, "Now the time has finally come when we must unite behind a Declaration of Independence. Otherwise, we will be subdued, we'll be subdued and defeated by the British." And the first day of debates was June 8th. Thomas Jefferson took notes in which he wrote that many middle colony delegates and South Carolinian delegates stood up and basically drew a bright red line in the floors of the Congress. And the word he used was secede. They said, "If this resolution is proceeded now, we will secede from the union." Or there's a risk of that we'll secede.

**[00:27:08] Eli Merritt:** Boy, did that send a shiver down the backs of everyone and it stopped the discussion of a resolution of independence dead in its tracks. And what they decided to do, because it felt so dangerous, was they postponed debate after June 8th to July 1st, 1776, to give the colonies all an opportunity to really figure out what they needed to do. And we need to remember all these colonies felt like they were separate republics rather than the United States within one union. Well, July one comes along and they vote on independence. And it was another disastrous outcome. Nine states, a super majority voted in favor of independence. Two states, Pennsylvania and South Carolina voted flatly no against independence. And Delaware split and New York have abstained because it didn't have proper orders from its colonial assembly. So this was quite a situation here.

**[00:28:04] Eli Merritt:** Now, what's critical to understand is not politics as usual, New England and Virginia were ready at that moment. They were ready to pursue independence, and they were going to pursue independence with or without those middle colonies in South Carolina. They would say, "We're going forward, we can't stop. It's that important. You can join later perhaps." But what happened to this loyalism, which was taken, which was most strong in the middle colonies of South Carolina, what happened to it? There was a deep spirit of join or die on July 1st, 1776 on this vote. You can see how divided it was.



**[00:28:40] Eli Merritt:** And so what did they do? Did the middle college in South Carolina say, "All right, we're staying with the empire. You guys, go ahead." Think of the map where the middle colonies are between New England and the Southern colonies and Virginia. Those middle colonies were going to become the worst fields of bloodshed in the entire war because the Army, Armies of Virginia and of New England needed to communicate. They would, they would need to have lodging in the middle colonies, they would need to forge, et cetera. So the resolution is quite interesting. What happens here.

**[00:29:11] Eli Merritt:** I mean, what I would've done is what they did, they decided, we'll vote again tomorrow. They decided, let's just make this be a straw vote. We'll vote again tomorrow. And if I could have one wish as a historian to be back in history as a fly on the wall, I would have overheard probably into the wee hours of the night the negotiations that were going on so they could figure out how to preserve themselves in safety from not just imperial Civil War with Britain, but from Civil War among themselves. Lo and behold, the next day they revote and they essentially have a unanimous vote in favor of independence on July 2nd. It doesn't mean all the delegates voted that way, but a majority and all of the separate delegations voted in favor. New York came around later.

**[00:29:55] Eli Merritt:** So to me, it's really fascinating to see that progression for transformation and conversion from one foot in the camp of protect American rights with the Continental Congress to remain in the empire. They were rather forced by, risk to life and limb to join one side or the other. And they chose to join the patriot side. And so this way of interpreting history, which you made allusion to, Jeff, I call it in the American Revolution, the survivalist interpretation of the United States history. And I stopped in 1783 with the, with, with the Treaty of Paris, which ended the War of Independence.

**[00:30:37] Eli Merritt:** But this concept of the survivalist interpretation to the political decision making of government officials at the federal level, it goes as you made allusion to, I think it goes all the way to the Civil War when once and for all, it was decided that disunion was not constitutional. That was unknown and an ambiguous constitutional legal question until the Civil War finally struck. Reunited, the union made disunion unconstitutional and illegal and also emancipated enslaved people.

**[00:31:09] Jeffrey Rosen:** Wow. Such a powerful reminder of the incredible contingency of history. And that idea, that crucial vote being retaken is so interesting and powerful, and your notion of the survivalist interpretation of history is as well. And you also remind us that things could have gone the other way. Joyce Lee, Merritt, you emphasized the lack of compromise over slavery and taxation as a central division that joins the division between families. Tell us more about those counterfactuals. How might things have turned out differently if there had been more compromise on those crucial questions?

**[00:31:48] Joyce Lee M.:** It's sad that there was less and less room for compromise as people took hard and fast decisions. Well, one thing I'd like to add to Eli's comment was you think about it took them a whole year after bloodshed started against the British with all these battles and people being killed and atrocities and everything before they decided that they had to vote

on independence. An entire year. So I always find that kind of astonishing, that it took so long. Without really serious efforts to make compromises on either side, the king who was not a tyrant really but was intent on enforcing the law and the statutes was unwilling to make any changes.

**[00:32:40] Joyce Lee M.:** That the people in America who felt their rights were being trampled on were unwilling to pull back. But there, but, but as Eli pointed out, there were a lot of people and as part of Benjamin Franklin found who wanted reconciliation, who did not want to see independence. And no colony had ever won independence from an empire. The British had a great empire. They had a Navy. There, there were all of these ties to Britain from Americans.

**[00:33:16] Joyce Lee M.:** Morison wrote a lovely paragraph about it and his history of America about how all the mystic chords of memory tied the colonists and the Americans to Britain and to England. And so that was very, it was a tough decision. And one of the things that I find most poignant is that Thomas Jefferson in one of his drafts for the Declaration of Independence Rights, we might have been a free and a great nation together, and it's as if that could have happened, but somehow the opportunities slipped away, and it was harder and harder to bring people back.

**[00:33:58] Joyce Lee M.:** So even though it took a long time to get them willing to sail on an independent sea they still didn't see any other way around it. Even when they send this, so-called Olive Branch Petition to the king, to George saying, "We're your humble servants," and blah, blah. "We'd love to get everything sorted out." It's in that same session, they vote something like \$3 million for arms. So there's no way that the king could have taken anything that they said very seriously.

**[00:34:30] Joyce Lee M.:** It just really is sad and looking forward to the free and great people together, I feel like over the centuries, the British and American people have become in some ways free and the great people at least side by side, if not together. But it's really interesting hearing about how close that boat was, even after a year's worth of warfare.

**[00:34:54] Jeffrey Rosen:** It really is striking indeed. And Eli, you talk about the counterfactuals and realities of slavery. You say that one factor that weighed heavily on the minds of the founders was that the belief that any attempt by the federal government to end slavery or the slave trade would tear apart the United States. And you continue one significant reason for the founders inaction on slavery on the federal level, is there a fear of disunion and Civil War? Tell us more about that central fear and then play out the counterfactual. You argue that had there been movement to restrict slavery earlier, that would've hastened disunion and secession?

**[00:35:31] Eli Merritt:** Well, Jeff, let me say, I'm grateful that you're bringing up the discussion about slavery. I think that as I look at history and juxtapose it to contemporary politics and contemporary pains in our society, and also as we're approaching the 250th anniversary of the Declaration of Independence here, I actually believe that conversations about slavery are some

of the most important, certainly the most important historical questions we could be looking at, in an effort to truly understand what happened in our history. But also if it's done in the right way, I think that these conversations can also be healing.

**[00:36:15] Eli Merritt:** Specifically what I discussed in the introduction as I discussed the survivalist interpretation of United States history. I endorse the study of complex history rather than simple history. And so if we look at this profound question, which I plan to continue to work on in the coming years, is why did the founders of the United States perpetuate slavery even after launching and concluding a war whose central premise had to do with the dignity of human life and the just desserts of liberty for all human beings and equality.

**[00:36:49] Eli Merritt:** How is it possible that these extremely enlightened individuals perpetuated slavery? How did they not come up with immediate plans for abolishing the slave trade and at least a plan for the gradual emancipation of enslaved people? And so, in answer to that, and I invite others to give other interpretations, I would say that there's numerous interpretations. And one is what I call the white supremacist interpretation, which probably needs no further comment as one strong reason why the founders perpetuated slavery. Another is the economic interpretation of slavery and the slave, of slavery and the slave trade at that time, which I'll just say briefly, it wasn't just the Southern economies, which were deeply tied and attached to the slave trade and slavery, it was also the, the northern colonies some more than others.

**[00:37:40] Eli Merritt:** That's another interpretation. So that's very valid. It's not an either/or question. When we're looking at history, a complex history like this, it's more of both approach. So what I do is I add the survivalist interpretation that you made allusion to, and that is precisely that if a northern state or two during the American Revolution or after the American Revolution, it stood forth and said, "We just fought a war for liberty and equality. And so we cannot join a confederated union with any states who will not agree with us. That we will put an end to the slave trade and adopt a gradual plan, at least a gradual plan for the emancipation of enslaved people."

**[00:38:24] Eli Merritt:** I hate to say I know what would've happened, but I feel confident based on the historical record that South Carolina and Georgia would've seceded from the union, went back and probably asked the British Empire for protection. But ultimately, now you get into the three step chain reaction that I discussed earlier. You have a couple of states seceding from the union, and now you've got chaos going on. There's gonna be a reconfiguration of everything very possibly a Southern confederation could have formed at that time, and then a mental confederation and a New England confederation.

**[00:38:58] Eli Merritt:** That could have worked. The fact that the Southern confederation would separate in part to preserve slavery is tragic. But it could have worked if they weren't fearful of falling into Disunion and Civil War. So one reason at the federal level, we all know that in the 1780s, many of the northern states began to take action against legislative action against slavery. At the federal level, nothing was done really.

**[00:39:24] Eli Merritt:** Very little was done in the constitution ultimately, and the dominant reason for this I think is a combination of these interpretations of the white supremacist interpretation, economic interpretation, but very critically, the survivalist interpretation. They didn't want to fall into Civil Wars or a major, major Civil War among themselves after just having fought a terrible imperial Civil War with Britain for nine years. I'll just conclude with encouraging us all to engage in dialogue and conversation. This is a great opportunity for us to deepen our understanding of tragic questions like why the founders perpetuated slavery. We have to look at history, sociology, economics, and also psychology, I believe.

**[00:40:10] Jeffrey Rosen:** Thank you very much for that.

**[00:40:12] Joyce Lee M.:** Yeah. I just wanna point out that at the time of the revolution and the Constitution drafting, every colony had slavery. So it wasn't just the South. There were slaves in the northern colonies. And in fact, New York State had the most slaves basically in, in the north. And, little colonies. So it wasn't just the South. And gradually, starting with Massachusetts in, I think it was 1781, they began to have rules for emancipating the slaves. Court decisions that sometimes going at using the new state constitutions, that if all men are created equal, then slavery is not constitutional.

**[00:40:58] Joyce Lee M.:** So that's what happened in Massachusetts and gradually state by state, some of them gradual emancipation. So for instance, in New Hampshire, which had that same clause in its Constitution or something similar they had a gradual emancipation. So those people who were already slaves were slaves, but their children would not be. And the last New Hampshire slaves died right before the American Civil War. So it was not as easily divided because of their figuring out the best way to do this and persuading people that the slavery was a terrible institution and they needed to get rid of it.

**[00:41:38] Joyce Lee M.:** But it wasn't such a neat divide between north and south in that respect that at that point they were ready to not get involved in the Constitution. I'll also say that this is just a first person poll that I've discussed. I've often asked my students at the law school, "What should have been done if you were there, would you have made this compromise to keep slavery and because it was the only way you were gonna have a united country?" And they always voted yes, knowing of course, that down the road it was gonna be changed.

**[00:42:17] Joyce Lee M.:** But nonetheless, because of the urgency of trying to keep the, all of these counties with and now states that did regard themselves as separate entities together. One of the things that I would also point out is that one of the worries about if they split was that foreign countries would take advantage of them. That they would be afraid of France, they would be afraid of Spain they would not be able to remain independent. So I think that it's important to realize that it was the entire country at that point that had that issue, but that the Northern colonies very quickly states after the Constitution gradually eliminated slavery.

**[00:43:04] Joyce Lee M.:** Britain in 1772, had just had a big court case in which they decided that no slave could live and threaten as soon as they got to England, the air was too free for a

slave to grieve. And it enabled them during the American Revolution to try and rally the people who were enslaved in different parts of the country toward the British side.

**[00:43:32] Jeffrey Rosen:** Very, very powerful reminder of the complexity of the slavery issue, the fact that it was not limited to the South and the unsatisfying efforts to find any kind of compromise over it. Eli, I wanna return to the demagogues question just to bring home the theme that we began with in the volume that you contributed to which was called *The Curse of Demagogues*, what we can learn from the Trump presidency. You had two essays, why demagogues were the founding father's greatest fears, and Alexander Hamilton would've led the charge to oust Donald Trump.

**[00:44:09] Jeffrey Rosen:** Remind us once again why it was their fear, why Hamilton would've wanted to exclude Trump the way he did Aaron Burr. And, then you gave us one example of the founder's response to the fear of demagogues, namely keeping them out of, or kicking them out of Congress and other federal offices. Tell us other solutions that the founders in the revolutionary period had to avoid demagogues.

**[00:44:38] Eli Merritt:** I think it's actually quite accurate to say as the title of that LA Times opinion piece said that the demagogues were the founding father's greatest fears, and they should today be our greatest fears. And, essentially I think partisanship stands in the way of that. But I also think we are not educated about forms of governments and Republican government and democracies, and the structure of government and what their threats are in the same ways that the founders were. They were, it read extensively even before they decided to set up their own government. It was just the nature of the way that they were educated.

**[00:45:14] Eli Merritt:** And so why is the demagogue, and again, to repeat sort of an ego-driven political figure who wants to rise to fame and glory and uses rhetorical talents, which are highly destructive of fearmongering and hatemongering and bigotry in order to sadly sometimes achieve either the plurality of votes or the majority of votes necessary to gain political office. Well this type of political figure, the demagogue on the way up to power, or even if they lose the election on the way up to power, they're being very destructive to the spirit of a nation. As we all know, it's an attempt to divide an internal polity to divide the polity versus to bring out, as Lincoln says, "The better angels of our nature."

**[00:46:06] Eli Merritt:** And the demagogue is trying to bring out the savage angels of our nature, which is simply highly destructive to a democratic peoples or any sort of nation. That's the number one thing. But really, Hamilton feared worse, and Washington and any of them, most of them understood demagogues and their dangers is once the demagogue gains high power, the demagogue is already an individual with a clearly a very compromised moral compass and a passionate desire for power and fame. But as Lord Acton and otherwise, people have called us, once you sit at the cup of power then that power corrupts you even further. The idea of power corrupts and absolute power corrupts absolutely.

**[00:46:50] Eli Merritt:** So then the great fear of Hamilton in particular, he revisits this question in the federal newspapers is that the demagogue commences as a demagogue, but becomes

transformed into a tyrant. And our modern language into an authoritarian, meaning that demagogue will not, at this point, just use heated rhetoric in order to achieve goals, but will actually take on more authoritarian anti-constitutional, anti democratic strategies. And again, I say in a very non-partisan way, that's precisely what we saw with Trump commencing a demagogue and ending an authoritarian who in his desperate desire to hold onto power, tilted certainly into authoritarianism and anti-constitutional measures and anti-democratic overturning the peaceful transfer of power.

**[00:47:43] Eli Merritt:** So isn't it just remarkable that we can learn these lessons from history, we can learn these lessons from Hamilton, and I think we really have to learn those lessons and recognize that we have to be all political parties and citizens who love democracy and freedom need to be gatekeepers against the rise of demagogues for the reasons that we described. But of course, you made quick illusion, Jeff, there are other ways that they wanted to help us exclude demagogues and authoritarians from the government? And of course, that is true.

**[00:48:14] Eli Merritt:** The electoral college was put into place in part to achieve this. That's been a failed aspect of the Constitution with regard to preventing the rise of demagogues. And then most significantly, the powers to impeach, convict, and disqualify from future federal office. And sadly, in the case of Trump, and if it had been a Democrat, I would be saying sadly as well.

**[00:48:36] Eli Merritt:** Sadly, for complex reasons, those critical mechanisms failed. And I think one of the most tragic days in American history to me is, I think it's February 13th or 9th, 9th, 13th, when the Senate did not vote. It was 10 votes shy of convicting Trump of under the impeachment article. And then most importantly, going on to disqualify him from future office. We wouldn't have the ongoing chaos and great feelings of danger and fear in our society that we do today if that, if they had understood history and executed the powers of the Constitution more successfully.

**[00:49:12] Jeffrey Rosen:** Wow. Powerful warning. And listeners can learn more by reading your essays in the book about the curse of demagogues. Joyce, as I said at the introduction, a nonpartisan discussion, but I do wanna ask whether you agree that history suggests that the Trump presidency was the founder's greatest nightmare, and are there other lessons from history, either during the revolutionary and Constitution making period, or the 19th or 20th centuries that we can learn about how the founders tried to avoid demagogues?

**[00:49:47] Joyce Lee M.:** I don't agree that was going to be the end of democracy. However, whatever Trump said, he never acted on a lot of the policies, his policies worked out. But just to get back to the founders' efforts to protect us, I think that one of the important things was that they made us a federal republic and not a direct democracy. And they worried about, and you can say a demagogue appealing to the crowds of people, but they worried about pure democracy as being a danger that a federal republic would have more balance.

**[00:50:27] Joyce Lee M.:** And then one other thing, and this takes us a little bit beyond America, most countries in the world are parliamentary. And there are very few that are presidential. And most of the presidential ones were in South America, and they almost all failed. They all failed because someone became president and remained president. And one of the things that I think has really saved us in it, it's maybe a hidden agenda or a protection that's in the Constitution, is our amendment process. It's so hard to amend the Constitution.

**[00:51:05] Joyce Lee M.:** So you can't say, okay, well, we'll have a vote and I get to serve indefinitely, or presidents can serve four terms or something like that. And we're really protected by that. It's extremely hard to change the Constitution. It's been done very few times. Lots of people have been upset that it takes so long, but compared to all of those other presidential systems, I think we have managed to keep this gradual republic going in a way, perhaps the founders never thought it would because it's very hard to change it.

**[00:51:43] Jeffrey Rosen:** Beautifully said, powerful examples of how the founders hope that a federated Republic not a direct democracy might avoid demagogues, and the fact that some at least have greater hope than others that the experiment might survive. Well, it's time for closing thoughts in this very rich and wide-ranging discussion. And Eli, I'll leave it to you to best distill the powerful themes of your wonderful new book as you think best. But tell us why it was that fear of Civil War and disunion was so central to the time of a revolutionary period, and why we should remember those fears today.

**[00:52:22] Eli Merritt:** Well, that brings to mind a phone call I received some months ago from the director of a historical organization in Massachusetts. And we were on the phone for only a couple of minutes, and he said, "I gotta be honest with you, your book scares the hell out of me." And he went on to say that he had understood our history as early history as being a period of harmony, at least for the first 30 or 40 years. And then the founders fell out of the, fell off of the, the front stage or the stage, and they were replaced by individuals who were not constantly pursuing their better angels, as we alluded to earlier. And he said, "Well, now it seems like a disunion in Civil Wars is kind of embedded in the DNA of Americans." And I see what he's saying.

**[00:53:11] Eli Merritt:** My book does really reflect these dangers starting in 1774. But I think what you find is this just a fact of the matter. If we look carefully, it wasn't just the loyalist who were describing fears of disunion and Civil War as a matter of propaganda. That's been a gross misconception that it was only loyalists saying this. If you look carefully, you find all of the thoughtful founders were very aware of this fear and worked very hard to overcome again disunion and Civil Wars. And I think what we can learn is that it's critical not to toy with these things. It's critical not to think, we have a sound government and our union has lasted almost 250 years, and it'll continue.

**[00:53:55] Eli Merritt:** I think we need to take care of what we have. We need to work very hard to not falsely assume that our government is going to hold together. I think we are at a place of extraordinary danger and fear. If we get the installation of arbitrary government, meaning someone from either political party overcomes the peaceful transfer of power and

installs illegitimate government, we're gonna be at quite a, it's not just a constitutional crisis. It's going to lead us for probably 5 to 10 years into attempts to diplomatically solve it. But we could fall into a situation where the American Revolution, I'll put it that way, might become a role model for what we do in fighting against arbitrary government.

**[00:54:43] Eli Merritt:** And I would just again, conclude by suggesting that the conversation about slavery starting well before the American Revolution, but certainly at the period of 1776, is something I think we can benefit from profoundly. And it is my hope that we'll keep talking about slavery. We didn't mainly talk about that today, but I'm so glad we were able to touch on that and begin to look at the complexities of the motivations of the founders back in the 1770s and 1780s.

**[00:55:11] Jeffrey Rosen:** Thank you so much for those powerful summations and also for that sobering warning about the future of democracy. Joyce Lee Malcolm, the last word in this meaningful conversation is to you, what are some important lessons about the conflicts between loyalists and patriots that we can take with us and learn from today?

**[00:55:35] Joyce Lee M.:** I think certainly looking at the founding generation and the Revolutionary War, there were many points at which they might have sat down and ironed out their differences that the crown in England might have allowed the colonial legislatures to pass the taxes for them without trying to manage everything from Parliament. There were a lot of lost opportunities. I think that's what led to this final break with Britain and along and painful war and separation of the families and friends. So I think that has resonance for today.

**[00:56:17] Joyce Lee M.:** I think that it really would pay people to sit down and try and talk through some of their fears and worries about this union and authoritarian government and what makes for an active and prosperous government, where people can live together and debate their different points of view without weaponizing the government or being at loggerheads or having riots. But just try and sensibly discuss these things. When Jefferson said, "We might've been a free and a great people together," we might be a free and great people together. We have to really concentrate on trying to do that and learning from the past where that hadn't been done.

**[00:57:06] Jeffrey Rosen:** Trying to sensibly discuss these things without going to loggerheads and having riots. An eloquent way of summing up both the goal of the founders and the goal of this great discussion like all of our discussions on America's Town Hall. And thanks so much, Joyce Lee Malcolm and Eli Merritt for providing a model of precisely that kind of civil, thoughtful, and deliberative conversation about the future of democracy.

**[00:57:29] Jeffrey Rosen:** Thanks to you, dear friends, for taking an hour in the middle of the day. It's always so inspiring to me that you've, you've set aside this time to learn about the Constitution in American history. Continue your learning by reading these two books, *The Times That Try Men's Souls* by Joyce Lee Malcolm, and *Disunion Among Ourselves* by Eli Merritt. And sending warmest wishes for, for good holidays, and much looking forward to reconvening our learning together in January. Thanks, and bye, everyone.



**[00:57:58] Joyce Lee M.:** Thank you.

**[00:57:58] Eli Merritt:** Thanks, Jeff.

**[00:58:03] Jeffrey Rosen:** This episode was produced by Lana Ulrich, Bill Pollock, and Tanaya Tauber. It was engineered by Greg Scheckler and Bill Pollock. Research was provided by Yara Daraiseh, Cooper Smith, Samson Mostashari, and Lana Ulrich. Check out the full lineup of programs starting next year at [constitutioncenter.org](https://constitutioncenter.org). Recommend the show to friends and colleagues, sign up for the newsletter, and as the holidays approach, remember that the National Constitution Center's a private nonprofit. We rely on the generosity, the passion, the hunger for light, and learning of people from across the country who are eager for constitutional debate and civil dialogue.

**[00:58:37] Jeffrey Rosen:** Support the mission by becoming a member at [constitutioncenter.org/membership](https://constitutioncenter.org/membership) and give a donation of any amount to support our work, including the podcast at [constitutioncenter.org/donate](https://constitutioncenter.org/donate). Thank you so much for learning with me during this meaningful year of constitutional discussion on We the People. Sending warm wishes for the holidays and see you in 2024. On behalf of the National Constitution Center, I'm Jeffrey Rosen.