



The Historical Legacy of Thomas Jefferson July 6, 2023

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[00:00:00] Jeffrey Rosen: Happy 4th of July, and this week we explore the legacy of Thomas Jefferson.

[00:00:08] 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's a nonpartisan nonprofit chartered by Congress to increase awareness and understanding of the Constitution among the American people.

[00:00:27] Jeffrey Rosen: In a National Constitution Center conversation a few months ago, Professor Akhil Amar of Yale Law School announced his intention to break up with Thomas Jefferson, and in this episode of We the People, we explore why he's decided to break up with Jefferson and what aspects of Jefferson's legacy deserve defense.

[00:00:49] Jeffrey Rosen: We're honored to be joined not only by professor Amar, but by one of the leading Jefferson Scholars in America, professor Peter Onuf, and it was so wonderful to convene both of them today.

[00:01:01] Jeffrey Rosen: Akhil, welcome back to We the People.

[00:01:04] Akhil Amar: Thanks for having me, Jeff.

[00:01:05] Jeffrey Rosen: And Peter Onuf is Thomas Jefferson Foundation, professor Emeritus in the Corcoran Department of History at the University of Virginia. And Peter, it's a wonderful to welcome you to We the People.

[00:01:16] Peter Onuf: Yes, thanks. I'm happy to be here.

[00:01:18] Jeffrey Rosen: Akhil, in your appearance at the NCC and in a forthcoming essay which will be published soon in the National Review, you argue that you've decided to break up with Jefferson and you emphasize that his constitutional legacy, in particular, his vision of states' rights versus national power and strict construction versus broad construction of the Constitution, as well as his legacy on slavery, have persuaded you to announce this dramatic breakup. Tell us more about what Jefferson's constitutional legacy is and why you've decided to break up with him.

[00:01:56] Akhil Amar: And I think the metaphor of breaking up is, is heartfelt for me, because I did grow up kind of in love with the guy. And I think Jeff, I mentioned, and this is true, that when I was a young man, I think I kind of dreamed about, if I ever had a son one day I was going to, with my spouse's permission of course, I was going to name my son, Jefferson.

[00:02:23] Akhil Amar: Cause there's a lot to admire. And before I identify causes which impel a separation... And in the Declaration of Independence, there's actually a very emotional passage about, in which Jefferson, writing for America, announces that we're breaking up with our brethren, with the British people, and not just with our king, our father figure.

[00:02:48] Akhil Amar: And it is very emotional, you know, a breakup, a dissolution. And so, I grew up admiring Jefferson as the poet of the American Revolution as a dreamer of a better world as someone who believes in rights and who insists that there be a Bill of Rights. It maybe uniquely insists that there be a Bill of Rights even before Madison has seen the light.

[00:03:15] Akhil Amar: And at the time when most of the others at Philadelphia actually had not paid much attention to this issue, they wanted to get out of town. Even before that, Jefferson had championed religious freedom in particular, a bill of religious freedom, in Virginia in the 1780s. He would later push back against a federal oppression with the Sedition Act of 1798 as part of the Virginia Kentucky resolves. As a young man.

[00:03:48] Akhil Amar: He is dreaming of ways to limit slavery. He's the architect. You might even say he's the original author of what will become the Wilmot Proviso, an idea that, that there should be no slavery in the West. He believes in a certain vision of democracy, and is a passionate advocate of decency and good sense of ordinary common people. He's a champion of education.

[00:04:16] Akhil Amar: As president, he will double the size of the United States, with the Louisiana Purchase. So there's a lot there to genuinely admire. Now the breakup is basically all about, especially slavery. And I think he gets worse on slavery as time goes on, and we might want to talk about that.

[00:04:37] Akhil Amar: I think he has too exuberant a sense of states' rights. He plays footsy with ideas of nullification and even sort of secession, he sort of smiles upon that too much for my taste. But slavery is the big one. And, and in particular Jeff, it's personal for me. It is personal for him. He enslaves his own children.

[00:05:06] Akhil Amar: And we didn't, I didn't, know that. The world didn't know that, 30 years ago, we didn't have the DNA evidence. And, for me, that's one of the causes that has impelled my Declaration of Independence from Jefferson, so to speak.

[00:05:42] Jeffrey Rosen: Thank you so much for that. Peter Onuf, Akhil Amar has identified aspects of Jefferson's legacy that deserve veneration, including his championship of a Bill of Rights and the Virginia Bill of Religious Freedom, and pushing back on the Sedition Act, as well as his vision of democracy and his faith in common people.

[00:06:01] Jeffrey Rosen: But has said that because of his playing too exuberant a sense of states' rights with nullification and secession, and in particular his position on slavery, Akhil decided to break up with Thomas Jefferson. Would, would you... Are you prepared to break up with Jefferson or would you like to remain alive with him?

[00:06:21] Peter Onuf: Well Jeff, I appreciate Akhil's dilemma, but I never got that close to Jefferson, even though I've studied him for a long, long time. He's an interesting and engaging character, and I think it behooves us as Americans to understand him, the world he lived and what he imagined our future might be.

[00:06:47] Peter Onuf: And on the issue of slavery, I just want to make a simple argument and I think I hope Akhil finds this compelling. And that is, we need to know more about Jefferson as he's writing the Declaration, what his background is. And he is a Creole Virginian, a provincial who sees that slavery is an evil. This is a new understanding in the enlightened Atlantic world, the slavery's a bad thing. It's an injustice.

[00:07:16] Peter Onuf: Jefferson believes this and wants to do something about it in Virginia. But what Jefferson understands, and this becomes clear, I think, in the passage, in the Declaration of Independence, that it's so easy to make fun of when he blames George III for slavery, when, of course, it's Jefferson's fault and the fault of slave owners who are exploiting human beings. There's no question about that. But what Jefferson is really communicating is a great disappointment. And that is: slavery is an imperial problem. It's not just an American problem. It's a British problem. It's an English problem. It's a problem of creditors and politicians in Britain as well as privileged planters in the new world.

[00:08:07] Peter Onuf: You have to put Jefferson in that Imperial Atlantic context. And the great tragedy of the Declaration. Of course it announces these principles that we hold dear and should, but it also marks the end of any hope for an imperial end to slavery. The institution of slavery was supported by British capital, by British consumers, by British politicians, and Americans were cogs in a larger machine. They wanted to take the lead. They recognize the evil because they lived with it, and in it. Anti-slavery activity begins in British America. It becomes a great indictment of the American project. And the reason for that is what's left after independence of the old British Empire is a set of colonies that are heavily dependent on slavery and for whom union, a more perfect union, is absolutely essential to secure independence.

[00:09:19] Peter Onuf: Patriots in America did not want to break away from the British Empire. It was with a great reluctance, they did so, and that's because they saw that the great British Empire expanding to the West in the wake of the victories of the Seven Years War, the French and Indian War, would be a great empire of liberty.

[00:09:46] Peter Onuf: Instead, the tragedy of the Declaration is that no, the United States would achieve and actually win independence. It would be as, in a union committed to the principle of slavery, because there would be no union without slavery. That's the tragedy. And it's that question of scale and scope that I want to emphasize to Akhil.

[00:10:13] Peter Onuf: He talked about how Jefferson went downhill on slavery. Started off well, didn't end up well. Well, I wish he hadn't been involved in the Missouri Controversy either. But the sad thing about American independence is it made, created the conditions for an independent empire of slavery.

[00:10:36] Jeffrey Rosen: Akhil, tell us more about why you believe that Jefferson got worse on slavery. Beginning with his attempt to blame the king for it in the declaration and ending with his endorsement of diffusion, secession, and a pro-slavery national party, the Democratic Republican Party.

[00:11:01] Akhil Amar: So, I think what Peter said is very compelling. It puts things in context. And you're asking me then, so what went wrong with Jefferson? Why, how, why did he go downhill, go south, so to speak?

[00:11:21] Akhil Amar: Truthfully, I do think some of these issues are issues of character, and Peter began by saying correctly that slavery and the slave trade were Imperial policies supported by the British King, a British parliament, a British Board of trade, a British system, British aristocracy.

[00:11:44] Akhil Amar: And I think one person who in forthcoming work will really show that very powerfully is a scholar named Holly Brewer. So, the Brits bear a lot of responsibility, but Peter also said Jefferson is too quick to deflect all moral responsibility onto the Brits when, of course, he and his fellow Virginians and other Americans in what will become ultimately the southern states, there are a lot of individual culpability.

[00:12:16] Akhil Amar: They made choices. They had agency. They chose to boycott tea, but they didn't choose to abandon slavery. And Jefferson doesn't even at the end, even privately. See at the end of his life, he doesn't free his slaves because he's buying wine and, and chasing women, and engaging in, I guess song would be music for wine, women, song.

[00:12:46] Akhil Amar: So, and that's a moral weakness. Yes. Washington scrimps and saves and pit so that he can free his slaves at the end of his life. And Jefferson doesn't. You see? And this passage that gets cut out of the Declaration of Independence, blaming the Brits for all of that, he's letting himself off the hook way too easily.

[00:13:05] Akhil Amar: He's not a New England puritan, you know, who would be more self-critical. And it's not the Brits who are forcing him at the end, you know, later, to enslave his own children, and deny that he's doing that. That's him. And as time goes on, I do think he gets worse on this. He starts out saying we shouldn't spread slavery to the west.

[00:13:28] Akhil Amar: And as Peter and Jeff, you have reminded us by the end of his life, he is pushing the idea of spreading slavery into the west, diffusing slavery, which will be the policy of Dred Scott that you have to expand slavery into the West. And this begins with Jefferson and Madison on the Missouri Compromise, repudiating the early Jefferson idea which will be Lincoln's idea. Read my lips, no new slavery. Let's stop it from spreading. That's going to be Lincoln's mantra. And he's building on the early Jefferson who actually authors an early version of the Northwest Ordinance saying no new slavery in the West.

[00:14:04] Akhil Amar: So that's the early Jefferson, and he gets worse on that. So it reminds me of a Jackson Browne song called The Pretender. Are you there? Say a prayer for the pretender who started out so young and strong only to surrender. He starts out a dreamer, but in part because there is a character flaw, he lets himself off the hook too easily.

[00:14:22] Akhil Amar: And he builds a party. He needs to for liberty, in part because John Adams is making it a crime to criticize John Adams, when John Adams is president. And Jefferson needs to stop that. And he builds a political party to stop suppression. And that's the Virginia Kentucky Resolves, and that's his party.

[00:14:43] Akhil Amar: But once he builds that party and it's a party with a southern base, he doesn't want to give it up. And he goes with his party increasingly, as time goes on. If he were alive today, he would not be Liz Cheney. He would be Kevin McCarthy. He's a politician of a certain sort. And he goes with his party and he starts to compromise his principles in a certain way.

[00:15:06] Akhil Amar: And Peter said one other thing that I think is really important. That the American Revolution, even though Jefferson is a complicated character, and in the end will not free his slaves. The American Revolution is not a pro-slavery revolution as some have been taught in the 1619 Project. Peter put it... well, actually, the American Revolution immediately gives rise to abolitionist ideas, not just to freeing slaves, but ending slavery.

[00:15:40] Akhil Amar: The World's first Abolition Society is from the World's First in Philadelphia in 1775, and its presidents are going to eventually be people like Benjamin Franklin, Benjamin Rush, who signed the Declaration of Independence very soon. And it's Jefferson's declaration in part, but it's also Franklin's and, and Adams's. And Franklin's and Adams's states, now that they're independent, Pennsylvania and Massachusetts, are going to end slavery very soon after the Declaration of Independence in state constitutional language, and then, in Pennsylvania's case, statutory language saying, all men are born, all persons are born free and equal.

[00:16:22] Akhil Amar: And that language in the Massachusetts Constitution building on the Declaration of Independence will lead to abolition in Massachusetts and Pennsylvania's constitution. A similar language in Pennsylvania is going to have a statute in 1780 ending slavery on a gradual basis. So immediately after breaking with the Brits, actually many of the states that we call the North today and basically north of the Mason Dixon line between Pennsylvania, Maryland. Many of the states rather immediately take steps to end slavery. The Deep South doesn't do that. Virginia's caught in between. And the great Virginians like Jefferson and Washington and Madison at the time of the revolution basically understand that slavery is a bad thing and it should be eliminated.

[00:17:14] Akhil Amar: Washington continues to actually believe that with increasing intensity and conviction, and he does something about it. At the end of his life, he frees his own slaves, and Jefferson doesn't. Instead, Jefferson enslaves his own children. A few of them are freed, of course, the Hemings is, but not any of the others in general.

[00:17:37] Akhil Amar: And that's the tragedy of Jefferson because he knows it's wrong. But he is, I think, too easy on himself. He is weak-willed. And he's a spendthrift and he's spending his money on wine, women and song rather than scrimping and saving so that he can free his slaves on his death bed, which he, to repeat, he does not do, and Washington does do.

[00:18:00] Jeffrey Rosen: All right. Well, let's turn it from the question of slavery to the question of states' rights. Peter, Akhil has said that Jefferson's response to the Sedition Act of the Federalist Congress, which he attacked on grounds of states' rights, led to the founding of the Republican Party on the principle of states' rights versus national power.

[00:18:23] Jeffrey Rosen: And this increasingly led to arguments for secession and nullification. Tell us about Jefferson's vision of states' rights versus national power and whether or not you agree with Akhil that it is not to his credit.

[00:18:41] Peter Onuf: Well, there's no question that Jefferson has different standards for free speech and the politics of the day. We have to remember, were vicious. And the possibility of a polarized American people falling apart was a live one in the 1790s. Just as I've argued that we need to keep geopolitics in mind when we think about the slavery problem and what a problem it was in the political economy of a new nation that depended heavily on the institution and would continue to do so throughout its existence until the Civil War.

[00:19:23] Peter Onuf: We also need to think about the way actors in the 1790s and the emergence of the party system, if you could call it that. And Akhil is quite right, Jefferson is a partisan, but he's an anti-partisan partisan who believes that the Republican party does represent the American people. And the American people's greatest legacy was needed to be defended was against the resurgence of monarchy and aristocracy hierarchy. That fear that maybe Anglo-Americans were not all that different from Britain's and the mother country, that there is something about them and maybe about human beings generally, that's going to leads to the emergence of a powerful state and monarchy and so forth.

[00:20:11] Peter Onuf: And that struggle, which became an international struggle in the context of the French Revolution, nearly divided and destroyed the union. And we have to keep in mind that because of slavery, that union was destroyed eventually. What I'd like to say here though, Jeff, right now on exhibition and on his politics more generally is that the issue for Jefferson is to preserve the union, to sustain the American people in a dangerous world that requires mobilization, that is bringing people together, making them active.

[00:20:59] Peter Onuf: And this is what we remember Jefferson for, as the mobilization of the people in the context of the party battles of the 1790s to avoid returning into the orbit of the British Empire and to maintain American independence was the all-important thing.

[00:21:19] Peter Onuf: What I'd like to emphasize though is that the binary opposition of state and nation is anachronistic. Just because Jefferson was an advocate of the Republic or Commonwealth of Virginia and its interest didn't mean that he was not a nationalist. At the same time, these are not incompatible things and his conception of federalism that is the Constitution itself. And I would emphasize to Akhil that the great achievement of the Constitution was to

create a peace plan for the former provinces of the British Empire in North America to create a pact or a plan or treaty organization, a more perfect union that would eliminate the possibility of war.

[00:22:14] Peter Onuf: And this is part of the pathos of the Constitution and you can feel it acutely there at the Constitution Center, is the whole point of it was to maintain peace and it didn't, and that peace nearly fell apart on several occasions until it finally did in the Civil War. In some ways to talk about party conflict as if they're the parties that, well, we used to know in America. [laughs] I don't know what they are now, and that that somehow there was no larger issue of the survival of the union, that there was no larger threat to the union.

[00:22:57] Peter Onuf: Americans needed to keep the peace at home if there was to be an America, they needed a plan to do that. And keep this in mind too, that when we talk about union, it is a union of the states. They're not going to be abolished. And of course, that's the fear that the High Federalists would, if they could, reduce, as Hamilton would've liked, reduce the states to administrative units, abolished to the states. That wasn't going to happen. The point of the Constitution was to preserve the states so that the Republican experiments could continue there as well as on the larger scale of the extended republic in expanding union of free states. This is the broader context. Yes. But of course, the protectors of free speech were supposed to be against, as Akhil well knows, the Bill of Rights was going to protect the states against an overarching federal government.

[00:24:07] Peter Onuf: And it's in this context... This is not an apology for Jefferson. What I want to say though is that for him, the all-important thing, more important than slavery, more important than free speech, was to sustain that union.

[00:24:23] Jeffrey Rosen: Akhil, Jefferson's views on states' rights versus national power emerged not only in the debate over the Alien and Sedition Act, but also in his crucial debates with Alexander Hamilton in the Washington administration over funding an assumption over the National Bank and in his report on manufacturers. And in all of these debates, Jefferson embraced a position of strict construction versus broad and flexible construction of the constitution. Tell us about Jefferson's constitutional vision of strict construction and states' rights and why it has led you to break up with him.

[00:24:57] Akhil Amar: Let me take two or three components of that. So first you mention the bank. Jefferson says the bank is unconstitutional. And he urges the bank bill, Washington to veto the bank bill.

[00:25:16] Akhil Amar: Hamilton, who'd come up with a bank plan, writes an opposing memo to Washington saying the bank is perfectly valid. We need it for national defense. Banks are really useful for national defense. Britain won the war against France. We call it in America the French and Indian War. The world calls it the Seven Years' War, in part because Britain had a better financial structure.

[00:25:44] Akhil Amar: France is three times as big, but Britain is able to raise more money and credit because of its banks. Washington signs the bill into law, and he was right to do so. And

eventually, it's not just that John Marshall in *McCulloch v. Maryland* that sides with Hamilton and Washington, but the Supreme Court unanimously does so. And this is a court that has on it people that Jefferson has put on the court and people that his ally, James Madison, have put on the court. They, the majority of the courts is basically Madison and Jefferson appointees and they laugh this idea out of court, so to speak, because it's a silly thought. And Madison himself flip-flops as like Emily Litella, in *Never Mind*.

[00:26:27] Akhil Amar: As president, he signs a bank bill into law, and part of the reason he does is because when you didn't have a bank, he allowed the first bank to lapse. And there was another war with Britain, a second War of Independence. And the Brits burned the capital to the ground. And then Madison and Jefferson begin to realize, "Oh, actually banks are useful to win wars."

[00:26:46] Akhil Amar: Hamilton and Washington weren't hallucinating. Jefferson actually does not understand banks. He doesn't, he doesn't understand a modern finance. Hamilton does. Washington does. So that, yeah, put aside all this stuff that you've heard about how Jefferson's a genius in all these ways. He had certain, for all his democratic tendencies, aristocratic virtues.

[00:27:07] Akhil Amar: "Oh, he knows poetry. Oh, he knows art. Oh, he knows music. Oh, he's a great architect". Only problem is actually, if you want to run a country, you need to understand banks. And armies and war and finance and international trade. And he actually doesn't understand these things. He thinks the banks are kind of Ponzi schemes, which they're not quite.

[00:27:27] Akhil Amar: So that's Jefferson on the bank. Washington rejected him. Marshall rejected him. Unanimous Supreme Court rejected him. His pally his little protege, wingman Madison actually flips and flops in his presidency, signs the bank bill into law. Now, my bigger objection on states' rights... And Madison says, "Oh, you can't have a carriage tax."

[00:27:51] Akhil Amar: And, eventually, and the Supreme Court says, unanimously, "Yes, you can have a carriage tax. You need taxes for armies, and you need armies to, to prevent being reconquered by the Brits." But my biggest objection is that he does play footsie with the secession idea. He doesn't completely repudiate that and that's going to be important later on in American history.

[00:28:14] Jeffrey Rosen: Peter, what is your evaluation of Jefferson's legacy on questions of strict construction states' rights versus national power. And tell us about the footsie that he played with secession and how it was embraced by Calhoun and by the more radical southern secessionists. And how this plays into his legacy?

[00:28:37] Peter Onuf: Well, that's a great question Jeff. And I think the best way to think about Jefferson and his legacy is in two ways. First, Akhil is emphasizing the centrality of states. We're talking about states' rights. I'm not going to argue with that, and I've explained why I think that's so important in Jefferson's scheme.

[00:28:59] Peter Onuf: But Jefferson and his conception of federalism, and I mean with a small F, has an idea or a vision or a hope of nested jurisdictions which strengthen each other. And the main... What Jefferson is thinking about what... And for legacy, I think he leaves us as well, is a

conception that embraces federalism in which the American people then achieved their greatest strength and possibility and flourishing, peace and prosperity. This notion of a people I think is critical for Jefferson, and it's something that I think we owe to him. And there's a downside to this idea of a people, because it is defined in terms that we find reprehensible and exclusive, exclusionary.

[00:29:57] Peter Onuf: Yet the idea of democracy as unleashing, containing, the power of the people and pursuing the good of the whole. That idea of a distinct American people as opposed to any other people is a very powerful one. And it's the reason why we make such a big deal about the 4th of July and the Declaration. That people embrace the states in which they live, the counties, the towns, all the way down in Jefferson's scheme, to the farms and plantations, the households. All the way up to the union as a whole.

[00:30:37] Peter Onuf: This is a system of course, much of our history of constitutional history, as Akhil knows and as brilliantly written about, is about the strains and tensions within that federal constitutional framework. How difficult it is to maintain union in diversity. We talk about a different sort of diversity now, but the idea of self-government, of local self-government, of empowered people participating.

[00:31:07] Peter Onuf: Jefferson has been the icon of strong Democrats throughout our history, and not only in the US and around the world, by endorsing and supporting participation at the local level. What does that mean? Well, I have mixed feelings about Jefferson. I think everybody should have mixed feelings about Jefferson; if you take that notion of federalism all the way down to the bottom, you're imagining that each household is like a republic itself, a little republic.

[00:31:40] Peter Onuf: But we're, what we're talking about when we talk about those little republics, we're talking about the sovereignty of masters in their households. We're talking about the sovereignty of the slave owner, the slave master over his enslaved people. These are the tragedies that I think are built into the very notion of a people rallying together against enemies at home and abroad, the American people. Well, yes, white American people. Because Jefferson saw enslaved people as a captive nation. An internal enemy that represented an existential security threat is that people were not removed, something like a cancer. Say, this is horrible. Jefferson's solution to the slavery problem is deportation, or what he would call expatriation, moving enslaved people to freedom somewhere else.

[00:32:38] Peter Onuf: This is the dark side of the notion of immobilizing people winning their independence at the expense of defining themselves against their British, the mother country, but also defining themselves against the enslaved people who had assured their prosperity. That's the dark side of Jefferson. Just as federalism has a dark side. Democracy is a problem. It's a challenge. And historically, we can see what those challenges are, looking at how it played out in the US. So on the one hand, we owe to Jefferson a robust conception of the people and the power of the people that his sovereignty does add fear in the people.

[00:33:26] Peter Onuf: Jefferson had this notion, we will get better, morality will emerge from Republican self-government. That's not true. But what a thing to imagine. What a thing to hope

for. Are we good enough to be a democracy? Well, the United States in 1776, 1789, whatever time you pick, it's a mixed question. We can admire the idea of citizen equality. We can admire the idea of a participatory citizen, the power of the people. But toward what end? We can see that in the revolution, the context of making war to achieve independence, America defines itself against its enemies at home and abroad.

[00:34:19] Peter Onuf: Federalism, we say states' rights still has that onus of segregation, of slavery, of supporting the tyranny of local majorities. Yet that idea of an empowered, mobilized active people is still an aspiring one. We can see how the notion of a people or a nation can be a horrible, destructive thing. War making an empire of slavery.

[00:34:49] Peter Onuf: Yet we can also see in that idea a vision of human flourishing, of peace and prosperity. I think that's the legacy of Jefferson, is problems. Problems that we still face, and we can't wish them away by making believe, by expunging Jefferson, by divorcing him. No, no, don't do that because you're going to be divorcing yourselves.

[00:35:17] Peter Onuf: This is part of the fabric of who we are, and that's what Jefferson's legacy is in so many ways to represent what's the best and what's the worst about our history.

[00:35:30] Jeffrey Rosen: Akhil, tell us about Jefferson and democracy. Peter has identified his devotion to local self-government and his faith in the people as the strongest point in his legacy. When Franklin Roosevelt read a book by Claude Bowers about Jefferson versus Hamilton in the 1920s, he said, "at last, a defense of democracy against Hamiltonian aristocracy." And he gave Bowers a slot speaking to the Democratic Commission and presented himself as a new Jefferson, the improbable faith in activist government. Tell us about precisely what Jefferson's vision of democracy was, what the limits were on it, and whether his faith in democracy gives you pause as you decide to break up with him?

[00:36:19] Akhil Amar: So Jefferson believed, as Peter rightly said, in the common man, and that was gendered. He actually didn't believe quite that women should be participants in politics. He thought that the "tender breasts of women..." This is a, a quote, you know, "Are not fit for the Hurley Burley of political contestation." So common man was his idea. It's going to be the center of Andrew Jackson's vision.

[00:36:48] Akhil Amar: Peter told us one thing that it is, it's common white man. And so Jefferson is a great theorist and poet, architect, dreamer of democracy. Democracy is about the demos of people. But there are a couple of issues. Okay? So who isn't part of the people? So, women are not politically quite part of the people. Neither are Blacks. They're, at least slaves, they're the enemy within. And democracies can be that, you know, you're either in the circle or, or not.

[00:37:17] Akhil Amar: Who gives us democracy? It's the Greeks and the word from *demoskratia* is "ruled by the demos." And the Greeks actually thought that people who weren't Greek were, they had a word for it, they called them barbarians. Because to the Greek ear, if you didn't speak Greek that you're, it sounded as if you were saying "bar, bar, bar."

[00:37:36] Akhil Amar: So, and this is what Peter said, there's a downside. Democracy is a beautiful thing, that there can be a downside. Who's excluded from the democratic circle? Demographically. Okay? Common man. Yes. So, for Jefferson, he didn't care that much about property qualifications, and good for him. And even literacy tests, he would say, you know, give people the vote and they'll learn how to use it.

[00:38:01] Akhil Amar: So that's all admirable... Oh, and he did have a commitment to education which is admirable. And, and he wanted them to serve on juries and they'd learn how to do democracy, but who's in the demos? Okay. Maybe the common man. And, regardless of property qualifications or something, or educational attainment, yeoman farmers are celebrated. But not women and not other races. Or at least Blacks and definitely not slaves who are perceived as enemies within.

[00:38:34] Akhil Amar: So that's one problem of how you define democracy. And then the second one, which we've already alluded to, is over what geographic domain. Jefferson tended to be at the end of the day. Yes, he believed in a kind of states' rights, but even localism and neighborhoods and government that is closest to your neighborhood is the best of all, if possible. What Europeans call subsidiarity.

[00:39:04] Akhil Amar: But bottom line, he believed, ultimately, in sovereign states, he was a Declaration of Independence person and he thought the relevant unit of the demos was Virginia. Ultimately, that's why he played footsy with secession. He's a Declaration person and here is the key payoff line of the Declaration. Not just "all men are created equal" but that these "United colonies are and of right, ought to be free and independent states" with an S, plural. He missed the American Constitution where 13, and the declaration actually is 13 states unitedly together allying, in effect, and jointly declaring their independence of Britain. But they're 13 different entities at the end of the day. And they're allied later in a confederation, a league, a treaty like NATO, like the EU.

[00:40:00] Akhil Amar: And that's Jefferson's vision to his dying day. He left in the service of America, went off to France as a diplomat and missed the Constitution, which isn't just a text, but a deed. Constituting, creating an insoluble, indivisible union. That's what Hamilton understood. That's what Washington absolutely understood. That's what Lincoln would understand.

[00:40:22] Akhil Amar: Jefferson missed all of that. And you know, when he comes back, he's a little bit of a Rip Van Winkle, Lin Miranda captures this on "what did I miss?" you know, in his Hamilton musical and he missed the Constitution. He missed this moment of one nation, indivisible.

[00:40:41] Akhil Amar: So, democracy doesn't self-define the geographic boundary and the demographic contours. And on both of those, actually I think Jefferson's vision can be faulted. That said, Peter and I agree. He is a great visionary and dreamer of democracy.

[00:41:00] Jeffrey Rosen: Thank you very much for that. Well, it's time for closing thoughts in this great discussion, and both of you have argued that Jefferson's vision rooted in state's rights

as strict constructionism and a devotion to democracy is less appealing than the alternative usually embodied in the thought of Hamilton, who stood for a national power, broad construction, and Republicanism.

[00:41:27] Jeffrey Rosen: Peter if you're breaking up with Jefferson, do you embrace Hamilton or not?

[00:41:33] Peter Onuf: Well, Jeff, I'm not breaking up with anybody. [laughs] I'm not making up to anybody either. I think there's a lot to learn from all of the founders and a lot to learn from the problems of the founding. But I think we need to see that those problems in proper historical context and understand better what actors were capable of understanding, seeing, and visioning.

[00:42:00] Peter Onuf: And Jefferson certainly thought, and maybe it would depart from Akhil in this, that the Declaration of Independence itself was not a declaration on behalf of state sovereignty. It was, as he said... I'm quoting him, "Of the fundamental act of union of these states." They came together to declare and that people existed and then it drafted a confederation of the first effort at a continental Constitution, and then a more perfect union. Jefferson had mixed feelings about that more perfect union at first, as Akhil knows, but of course became part of the new constitutional government.

[00:42:49] Peter Onuf: The people had a Constitution. The people came first. And if the people could not sustain their union, if they fell, the union fell apart and Americans made war on each other, that would be the great failure of the whole idea of Republican self-government. Could these republics, the state republics, live peacefully together? One last thought about sovereignty to understand the importance of the idea of sovereignty. If sovereignty is what Parliament sought to exercise over the American colonies, and that would be a total control in the end, it had to be controlled by coercion - martial law - to occupy those. That's what sovereignty meant. Is it possible to create a regime, which for purposes of collective security would have sovereign powers, and Jefferson thought so, while retaining the autonomy of state jurisdictions so that they could do the things that only local governments could do?

[00:44:09] Peter Onuf: And states did a lot of the hard work of governance in the early period, all the early internal improvements the development of novel forms of administration and rule that was happening on the state level. Don't discount that. States didn't disappear. Slavery of course destroyed that union. That's our tragic story, and it's a union that had to be destroyed.

[00:44:34] Peter Onuf: The Declaration, the American Revolution, I agree with Akhil was not a revolution for slavery. That wasn't the original intention, but that's what it was in fact. It created the context within which slavery would flourish. That's the tragic thing, and anti-slavery people appreciated that, understood that. That was the great dilemma. The American dilemma, as Gunnar Myrdal called it.

[00:45:05] Jeffrey Rosen: Many thanks for that. Akhil, the last word is to you, if you are breaking up with Jefferson, do you want to get together with Hamilton or not?

[00:45:15] Akhil Amar: So we call them Founding Fathers, and I want to take that seriously. So there's not just one, there's a group by convention, by acclimation. We tend to think of six

preeminently over all others. The first four presidents, Washington, Adams, Jefferson and Madison, plus Hamilton and Franklin.

[00:45:41] Akhil Amar: Now, yes, in some ways I'm impelled to a separation from Jefferson in part because they broke up with each other. And this is something that I learned over the course of my research. George Washington at the end of his life absolutely broke up with Jefferson. He refused to have any dealings with him whatsoever in his last two years, not a single letter to or from Jefferson. And he's exchanging all sorts of letters with someone who was loyal to him, Hamilton.

[00:46:12] Akhil Amar: So partly, you know, I have to choose in part because Washington broke up with Jefferson. And if I stick with Jefferson, what does that say about Washington? Oh, it's a little complicated. Now, why did Washington break up? And this is all about fathers. I'm going to come back to fathers two or three times here.

[00:46:28] Akhil Amar: Washington broke up because Washington was the father of the country and he was the father figure to all. And Jefferson lied to him. And actually, Jefferson lied to others. Jefferson lied to himself. He led himself off the hook too easily, and that's a character flaw. But when you lie to Washington, oh, you lose me.

[00:46:46] Akhil Amar: And I didn't know that 30 years ago, and I do know that today. So let's take another aspect of fathers. What does he lie about? He lies about fatherhood. On his obelisk, he says he's father of the University of Virginia, but he doesn't tell us he's father of the Hemings children whom he enslaves. He's enslaving his own children.

[00:47:04] Akhil Amar: Forget about his relationship to Sally. You know, that can be, you know, complicated in all sorts of ways. She's the half-sister of his dead wife and, who knows what that was all about. But enslaving your own children and not telling the world that they are your own children. Lying about that, that's not good. That's father- These are founding fathers. So can I stick with him with that? And then finally on the Civil War, let's be absolutely clear here. His grandchildren, his grandsons and his grand-nephews take up arms against a duly elected government. They're getting that from Jefferson himself, from their grandfather and great uncle. Okay?

[00:47:43] Akhil Amar: Because he's bad on the secession issue. He plays footsie with that. He is not like Hamilton and Washington or other Continentals, not like Lincoln and Webster, who are other indivisible folks. He's not so great on that. And that's why, literally, his grandchildren are taking up arms against the duly elected government, against Lincoln's government, and shame on them. And they're getting that in part from Jefferson. And we need to be honest about this.

[00:48:19] Jeffrey Rosen: Akhil Amar and Peter Onuf, for a clear-eyed bracing and illuminating discussion of whether or not to break up with Thomas Jefferson, thank you so much.

[00:48:30] Jeffrey Rosen: Today's episode was produced by Lana Ulrich, Bill Pollock and Samson Mostashari. It was engineered by Bill Pollock. Research was provided by Yara Daraiseh, Lana Ulrich, Samson Mostashari, Tomas Vallejo, Connor Rust, and Rosemary Lee.

[00:48:48] Jeffrey Rosen: Please recommend the show to friends, colleagues, or anyone anywhere who's eager for a weekly dose of constitutional debate. Sign up for the newsletter at constitutioncenter.org/connect. And always remember that the National Constitution Center is a private nonprofit. We rely on the generosity, the passion, the engagement of people from across the country and around the world who are inspired by our non-partisan mission of constitutional education and debate.

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