Building Democracy: The Story of Legislatures
Ep 2 The Story of Legislatures Through the Revolution
March 2020

SFX: EVENING, OUTDOORS, SUMMER. A FEW CRICKETS. RUSTLE OF SMALL GROUP OF MEN MEETING IN WOODED AREA

JOHN: It's a warm August evening in 1765. A group of men gather near an old elm tree in Boston. They're talking taxes, and they aren't happy.

After a heated debate, it's agreed they would make a scarecrow-like effigy of Andrew Oliver, the royal official charged with implementing a new tax on the colonies.

The following morning, a crowd gathers around the old elm, from which the effigy is to hang.

When Sheriff Stephen Greenleaf tries to intervene, the crowd turns ugly. Turning the sheriff away, the growing mob marches through the city. They pay a call-

SFX: THE SMALL-ISH, UNRULY CROWD SMASHES A WINDOW

-on the Lieutenant Governor's residence, before moving on to the home of Andrew Oliver.

SFX: MORE WINDOWS SMASH, DAMAGE TO HOME

SFX: MIX IN FLAMING EFFIGY UNDER:

The mob smashes qOliver's windows, raids his wine cellar, beheads and burns the effegie, and torches Oliver's stables.

No blood has been shed, but the point has been made: The colonists are willing to fight against those who would enforce the new British taxes.

MIX TO: SFX: LONDON. MANY HOOFS ON COBBLESTONE, PEDESTRIANS

MIX TO: PARLIAMENT (200 MEN CHATTERING IN CHAMBER, UNDER MEGAN'S V/O)

MEGAN: Back in London, Parliament considers how to react. Tory politician and supporter of the recently-passed Stamp Act, Charles Townsend, condemns the growing colonial resistance. This threat to British sovereignty can't be tolerated.

ISAAC BARRE: [Speaks indistinguishably in background- House of Commons reverb, Barre concludes sentence with "sons of liberty"- which tucks under Megan's use of the phrase:]

However, not all agree. Irish member Isaac Barre defends the colonists: Without any Parliamentary representation,

the tax violates their rights as British citizens. Barre refers to the protesters as the "Sons of Liberty."

MUSIC: FC OM189 12 Defending Old Glory Main Track Flores Hunter Jr Slott Still 807018: one measure of the snare intro, then drop under:

News of Barr's moniker makes its way back across the Atlantic. Samuel Adams, his cousin John, and other community leaders in Boston and New York begin to refer to their growing covert resistance as the Sons of Liberty.

As other colonies follow suit, the message of the Sons becomes clear: "No taxation without representation."

JOHN: On either side of the Atlantic there was little doubt: a storm was coming. One that would sweep away a 150-year-old link with the mother country.

In that vacuum, a handful of disparate colonies would scramble to oversee a transformation from monarchy to republic; converting practical concerns and ideals of individual liberty into governing documents... and *building democracy*.

[MUSIC]

ANNOUNCER: *Building Democracy*, the Story of Legislatures.
With Megan McClure and John Mahoney.

TITLES

SECTION 1 – SET UP

MUSIC: FC ARI107 6 King Of Kings Instrumental Flach Taylor 1049829 establish for 3-4 seconds, while adding:

SFX: REESTABLISH BRITISH H OF COMMONS 1765

JOHN: In early 1765, England's parliament struggled to pay back boatloads of debt racked up during the Seven Years War with France.

That conflict had begun about a decade earlier near modern-day Pittsburgh. In time it spanned five continents and cost nearly 75 million pounds – that's about 14 billion US dollars today.

MUSIC: SNUCK IT OUT BY NOW

SFX: FOREST AMBIANCE, SUMMER DAY
SFX: A FEW DISTANT MUSKET SHOTS FROM SKIRMISHERS; SMALL GROUPS OF MEN MOVING IN BRUSH (ESTABLISH THEN OUT: LEAVING JUST THE FOREST SOUNDS)

MEGAN: About a quarter of that cost was spent defending British colonial possessions from the French and their Indian allies in the American theatre of the conflict - *creatively* [sarcastically] referred to as *The French and Indian War*.

For some members of Parliament, the solution was simple: tax the colonies, and let them share the cost of their own defense.

JOHN: The English government knew well that the colonies were no longer poor - the territory, population and economy of

British North America had greatly expanded from those early days on the banks of the James River.

Thanks to a series of conquests over the early European Dutch and Swedish settlers, the territory had grown to around half a million square miles. Much of which consisted of rich, fertile land ripe for agricultural production.

And, since the end of the war, there were few conflicts to disrupt the colonial economy. Relations had largely stabilized with their French neighbors to the west and north, the Spanish to the south, and the multitude of nearby indiginous nations.

Agriculture largely drove colonial economies, made highly profitable through the practices of slave labor and indentured servitude. The colonies also served as one of the largest importers of English luxury goods and other items like sugar, molasses, and tea.

MEGAN: This wasn't the first time Parliament had tried to tax the colonies. Previous attempts were met with little success.

It was a tricky business telling a mostly-independently-governed people what to do from thousands of miles away.

Pev Squire is the Griffiths Chair in American Political Institutions at the University of Missouri.

MUSIC/FX: OUT UNDER INTERVIEW CLIPS

SQUIRE: There was always this notion of the colonists having some say in how they were governed and because of course the

parent country was so far away, three months sail away from the colonies, they had a fair degree of latitude to pursue self-government and by the 1760s they took it as a given that they were to a great degree allowed to make their own decisions.

MEGAN: This made it difficult enough for the British to impose a direct tax, but the diversity between colonies made it even more challenging. Each colony was a unique mix of people, cultures, and history, which made for widely different political systems.

SQUIRE*:* It's clear that when you talk about the colonies of course they each had a different economic base and somewhat different social composition, all of which manifested itself in the assembly. Assemblies were not mirror images of each other - they each had their own political culture…

MUSIC: FC GAL66 2 The Fifers Patrol Main Track Roger 287885.mp3 ESTABLISH, THEN UNDER

MEGAN: Pennsylvania, for example, originally formed as a proprietorship, granted to William Penn as payment for royal debts owed to his father. As a member of the Quaker faith, Penn ensured that citizens of the colony were granted substantial rights, including individual property rights.

But Penn was also distrustful of democratic rule. He drafted the colony's charter to provide for a strong royal governor and an elected assembly with very limited authority. This contributed to relatively strong ties and a greater sense of loyalty to England.

If all colonies had shared Pennsylvania's attitude, Britain might have had a much easier time imposing additional tax to pay war debts.

JOHN: But of course they didn't. On the other end of the spectrum was Rhode Island. Its 1663 charter provided that all governing officials be elected, including the Governor, and the legislature had the exclusive right to make laws for the colony - provided, of course, that they were consistent with British law.

It's probably no coincidence that Rhode Island would later be the first state to declare independence and the last to join the Union.

Loyal or not, nobody is excited about paying taxes, especially as the American economy was still recovering from the war.

Earlier attempts to collect taxes on imports or exports were often rendered ineffective by rampant smuggling operations, while "quitrents"- a sort of individual property tax, were largely ignored by many landowners.

So Parliament decided to pursue a much broader and more direct tax: one the colonies would find difficult to avoid.

SECTION 2: CONFLICT BREWS

TRANSITION TO:

SFX: BOSTON PUB 1770s, MID-BUSY

JOHN: Its first salvo was The Stamp Act. It required that all paper documents, such as law licenses and land grants, bear a stamp sold by British officials.

The colonies pushed back: not because they completely rejected the right of the crown to rule over the colonies, but because the taxes were being levied upon people with no official, sanctioned representation in Parliament.

This is where the Sons of Liberty came in. They were deliberative bodies and extra-legal groups of citizens who used public shame, economic boycott, threats and sometimes actual violence, all to persuade Britain to repeal the Stamp Act. Among their ranks were Robert Henry Lee, Samuel Adams, the brewer, and his cousin John, the lawyer.

MEGAN: The Stamp Act did not go into effect. But that in itself was not a victory for the colonists. Next came the Townshend acts- retaliatory taxes on a wide range of imported goods, and with them a new payment scheme for royal officials.

These new acts prompted more colonial resistance, and with that, came troops. British martialed soldiers to enforce the implementation of taxes, and to protect both the tax collectors and regulators assigned by the crown. On top of that came the Quartering Act, requiring the colonists to house and provide for these troops.

Resistance to British control came in many forms, and from many places. One was the pen of an often-overlooked Massachusetts patriot. Our Nicholas Birdsong has more.

MUSIC: FC BBCPM90 10 Dark Glasses Instrumental Harms 1242755 up under

NICK: James Otis was a prominent Massachusetts attorney and member of the state's provincial assembly. Once described by John Adams as "a flame of fire" with "impetuous eloquence," Otis challenged one of the early divisive British Acts before the colony's highest court. His arguments helped galvanize the American resistance, and inspired Adams himself, by forming the legal and philosophical basis for the principle of "no taxation without representation."

Otis suffered from some kind of mental illness, which was poorly understood at the time. As his behavior became increasingly erratic during the early years of the Revolution, his cause was taken up by his sister, Mercy Otis Warren – a truly overlooked figure in the Patriot movement.

At John Adams' request, Warren wrote an inspiring tribute to the Boston Tea Party. Published on the front page of the Boston Gazette, it was an enormous hit.

Her subsequent- and equally incendiary- plays and pamphlets were published anonymously- possibly to conceal her gender.

In time, she would be described as "the conscience of the revolution."

Some historians consider her writings as the most widely read, most influential, and among best written of the Revolutionary authors, making her instrumental in the success of the war for Independence.

MUSIC: SNEAK AN EDIT TO END OF THE PIECE: FINISHES

Megan?

MEGAN: With the royally appointed governors and some judges now being paid by Parliament, instead of local colonial assemblies, the colonists were feeling their right to self governance slipping away.

The resistance grew as colonists continued to organize, this time in concert across the colonies. Sharing information, organizing meetings and non-importation agreements. Coalescing a unified front of resistance.

SFX: PUBLIC MEETING HOUSE- 1770's, MEN CHATTING

JOHN: Coordinating these cross-colonial initiatives were *committees of correspondence*. Extra-legal shadow assemblies of citizens. Groups that encompass economic, religious and ethnic backgrounds not previously reflected in the governance of the colonies under British rule.

The Sons of Liberty knew that success hinged on the support of the masses. The Committees of Correspondence were just the ticket: broadening their membership beyond gentleman planters and well-to-do merchants.

They recruited tavern keepers, sailors and other "commoners" to the cause. Effectively educating the populace-at-large in politics and strategy and spreading the Patriot message: promoting the rights of citizens over those who put their own prosperity before the welfare of all Americans.

These committees of correspondence served as the first intercolonial communication network, allowing colonies to

compare notes on British actions, to ensure a united version of events, and to build coalitions across boundaries of class and culture.

MEGAN: In this classic 'Us' versus 'Them' struggle, some of the 'thems' were *us*. Among the colonists, factions emerged, as some resisted the growing desire for independence. As Britain pressed for control and compliance, violence seemed inevitable.

Splits between patriots and loyalists grew: in legislative bodies, along geographic lines and even within individual (and sometimes, influential) families.

JOHN: A key player in London's parliament was firebrand radical John Wilkes-

MEGAN: -a man with no known connection to Lincoln assassin John Wilkes Booth-

JOHN: - and a man never accused of holding his tongue.

Richard Pearce is counsel in the South Carolina House Clerk's office.

PEARCE: My mother would say that John Wilkes was a crummy person. She was very diplomatic and that would be about the worst thing she would say about anyone ever. So, with that in mind, he was somebody who was a member of Parliament of course and was considered a radical because he was not afraid to say the Emperor had no clothes. And I think, it wasn't his rakishness or the fact that he was divorced, it was the fact that he was willing to say "No, King, that's not right."

SFX: WILKES BEING LED DOWN DANK STONE CORRIDOR TO JAIL

JOHN: Wilkes agitated against the curtailment of the rights of British citizens. That won him admirers in the South Carolina Colonial Assembly, and among voters who returned him to office, even after parliament expelled him. It also won him time…

SFX: JAIL DOOR CLOSES

...as a guest of His Majesty.

Which only helped his popularity among colonists. In October of 1768 a group of politicians aligned with the Sons of Liberty made it part of their electoral platform to extend support for Wilkes. Once elected they decided to allocate funds from their treasury to help pay Wilkes' debts.

PEARCE: You see the South Carolina government appropriating 1,500 pounds sterling for what was called "The Society for the Support of the Bill of Rights in England." Well that's a very nice way to say, "We're going to pay the legal expenses for John Wilkes." Well 1,500 pounds sterling, that doesn't mean a lot until you convert that to present day dollars. That was $130,000 and South Carolina was certainly doing well in the colonial period. But that still was a lot of money and it shows that South Carolinians really liked what John Wilkes was doing so he became a bit of an independence hero I think.

Little did they know that this allocation, made on the final day of session, would spell the end of the colonial assembly in South Carolina.

In appropriating the money it drew a line, it was not a line in the sand. It was a very bright line where South Carolina said, "we have these funds, we've collected these funds, and

that's how we direct the funds." And that picked a fight with London. This thing dragged out for years.

SFX: SOUTH CAROLINA COMMONS HOUSE IN SESSION

MEGAN: Some time before, South Carolina's Commons House had wrested control of the purse strings from the royal appointed governors and council. They did this by issuing funds from the treasury without the governor's signature and then just repaying the treasury with the following year's tax bill. Thus, giving only the elected chamber the authority to spend money. But, this practice, up until now, has flown under the radar of the authorities back in London. Now, with the cat out of the bag, tension mounted.

The British Prime Minister decreed that no funds, including those allocated for Wilke's defense, would be paid out of the treasury without the governor's signature. The House of Commons took this as an attack on their right to self-governance, and refused to adhere to the Prime Minister's edict. The legislative body in South Carolina ground to a halt. No tax bill was passed in the colony after 1769, and no legislation at all after 1771.

SFX: OUTDOORS, S. CAROLINA, 1776

SFX: HORSE WHINNIE AND GALLOPS AWAY UNDER:

The last royal governor of South Carolina, Lord Charles Montegue dissolved the Colonial Assembly in 1776, and fled the colony shortly thereafter.

JOHN: Tensions were also regional. In many of the southern colonies, as Richard Pearce explains, a split grew between

those in relatively wealthy port cities and towns, and the so called. . . “backwoodsmen”.

PEARCE: I think as you get away from the cultural center of Charleston, and go inland. You get away from the French Huguenots, away from the Brits and the Irish who settled in Charleston, and as you go inland, it becomes Germanic and Slavic and you don't find as much as a beef with England as you go to South Carolina's interior. So much so that during the Revolutionary War, Richard Richardson and 4000 soldiers in the Snow Campaign actually have to subdue the Tories and get them over to the side of Revolution and separation from England.

SFX: OUTDOORS: N. CAROLINA FRONTIER LANDS

JOHN: In the frontier lands west of Charleston, militia colonel Richard Richardson launched a campaign to recruit patriot troops and disrupt loyalist defenses, after managing to steal a shipment of munitions. It would be known as ‘the Snow Campaign’, named for the bitter winter weather the week before Christmas in 1775.

It was one of the first major military operations of the Revolutionary War in the southern colonies, and eliminated large-scale loyalist activity in the backcountry.

MUSIC: FC FRX25 11 Moonlit Manoeuvres Instrumental Wright 1176909

MEGAN: Inevitably, and stop us if you’ve heard this one, differences were felt within families.

Thomas Gage, the newly appointed military governor of the unruly, powder-keg city of Boston, was a former battlefield

colleague of George Washington. But his loyalty lay with Britain.

First he outlaws town meetings, then dissolves the Massachusetts colonial assembly. By that time, though, the Boston committee of correspondence and others had formed an unsanctioned shadow government.

When Gage catches wind that John Hancock and Samuel Adams are on their way with stolen gunpowder and cannons to Lexington, he devises a plan to sneak a cadre of troops into the area and kidnap the two men before they can complete their mission.

The plan was going beautifully. Or it was, until someone tipped off John Warren, one of the founding members of the Boston Committee of Correspondence. Warren dispatched three riders- including the soon-to-be-famous Paul Revere- to spread the word about the plot.

Gage's men are met with a large group of armed patriots and proceed to fight the first full-fledged military engagement of the American Revolution-

SFX: INITIAL MUSKET FIRE

-the Battle of Lexington and Concord.

But who tipped off Warren? Some historians have theorized that the patriot spy was none other than Thomas Gage's wife, and New Jersey native, Mary Kemble Gage. She made no secret of her divided loyalties, she once said she hoped her husband "would never be the instrument of sacrificing the lives of her countrymen." Yet he was, and if historians

were right about her tipping off Warren, she may have been too.

MUSIC: CONCLUDES

SECTION 3 - THE INTERREGNUM

JOHN: With the relationship between Britain and the colonies well and truly broken down by the end of 1775, the colonists needed to come together to plan their next steps.

SFX: CONTINENTAL CONGRESS MEETS, 1774

MEGAN: Back in the fall of 1774, representatives had been sent from 12 of the 13 colonies to Philadelphia to convene the first continental congress.

It was the first collective effort on behalf of the colonies to form a unified response to what they saw as unjust and unprovoked acts of aggression by the British.

That congress agreed to boycott British goods and resolved to meet the following year if their grievances were not addressed.

MIX TO: CONTINENTAL CONGRESS MEETING AGAIN, MAY 1775 (different vibrancy to the chatter)

JOHN: And meet again they did, in May, 1775. But by then, the war was a month old. Now the Continental Congress had to grapple with how to arm a fledgling nation in a time of war.

MEGAN: In May of 1776, the Congress decreed that any colonial government not inclined toward independence be disbanded and replaced with a revolutionary government.

With that, the stage was set for the death of British colonial government in North America and the establishment of the first states.

JOHN: But within the colonies, that left a gap in governance that needed to be filled. . . and filled quickly.

MEGAN: In some states this was seamless process, as Pev Squire explains

PEV: In Connecticut and Rhode Island under the charters under which they operated the governors were elected by the colonists, not appointed from outside, and so there was no need to go to a provincial Congress because there was no governor who could prorogue or suspend the assembly. And Delaware also didn't have to do this because they had some greater independence under the charter under which Pennsylvania and Delaware operated.

SFX: COLONIAL STREET: CHARLESTON S. CAROLINA 1770S

MEGAN: In other states, however, **new** legislative bodies had to be formed, even if 'new' was just in name.

The provincial legislatures would operate under the same basic rules and procedures as they did under British rule.

JOHN: In South Carolina, as was the case in a handful of states, the reigns of the colonial assembly and the new provincial congress actually overlapped. Though, the colonial assembly had been largely inactive since the Wilkes fund controversy of 1769. The provincial congress first met in January 1775 and, according to Pev Squire, by November of that year had

replaced the colonial assembly by 'commandeering the statehouse'.

In Virginia, the House of Burgesses was disbanded by the royal governor Lord Dunmore after the body called for a day of prayer in response to British acts of aggression in Boston. So the members of that assembly simply walked down the street to the nearest tavern and reconvened as the 'First Virginia Convention.' With that, Lord Dunmore became Virginia's last royal governor.

MEGAN: State by state, colonial rule collapsed and was replaced, in one way or another, and by 1776 each of the thirteen colonies had new or reformed 'American' assemblies providing regional governance.

While there was significant continuity between the colonial assemblies and these new provincial congresses, thanks largely to similarity in membership, the provincial congresses had a handful of notable institutional qualities. Pev Squire.

PEV: And those provincial congresses generally when compared to the Colonial assemblies were larger bodies, unicameral bodies, only one chamber, and they conducted executive actions as well as legislative actions. But they were larger in part because places that had been unrepresented in many of the colonies, usually on the Western peripheries, were given representation that they hadn't been given in some of the colonies. And so you had what were referred to at the time as backwoodsmen who came in and participated in the provincial congresses making them arguably even more representative than the colonial assemblies had been.

MEGAN: Yet this increase in representation was not universally praised, even among 'progressive' and revolutionary colonists.

PEV: It made some of the sort of veteran members of the colonial assemblies uncomfortable to have some of the backwoodsmen in these provincial congresses because they were concerned that they were not well versed in parliamentary procedure. And so you have some wonderful quotes particularly out of South Carolina where most of the assembly members were patricians from the Charleston area who looked askance at the backwoodsmen who were coming in from the uplands and simply didn't seem to follow how to do things the way that have been developed in South Carolina and weren't following proper parliamentary procedure from their perspective.

SFX: PROVINCIAL CONGRESS IN SESSION, 1770's

JOHN: The provincial congresses, while very much legislatures-in-full, were not permanent bodies. The advent of full-time legislatures was still more than a century away.

These bodies would only meet when there was an urgent need for consensus. In their absence, the fledgling states turned to their Committees of Correspondence, as well as the newer committees of safety and inspection, to support the war effort and provide basic government services.

MEGAN: With governance of the states now firmly under American control, there was a need in each state for a guiding document- either a charter or constitution.

As we mentioned, the charters of Connecticut and Rhode Island granted the colonists so much relative power that there was little need to draft a new document. However, the 11 other colonies went to work, hastily drafting the first state constitutions.

Pev Squire.

PEV: Well when the states drafted their constitutions and it should be appreciated that these constitutions were, in the terms we would put them today, quick and dirty works, they were being done by people who in most of the colonies now States hadn't really contemplated what government ought to look like and they had to be done literally on the run because of course if the war turned out badly anybody who participated in this activity would be left open to charges of treason.

JOHN: While these hastily constructed documents did little more than adapt their colonial assemblies and institutions to the revolutionary era- while also making them slightly more democratic- they shared one defining characteristic, influenced by the bad taste left in the colonists' mouths by the royal governors.

PEV: The one decision which they did make was that as you sort of looked at separation of powers across these new States that there would be one institution that would be dominant and that would be the legislature. And in most of the new

States the legislature was given the power to select who would serve as the governor and also ~~given~~ the power to determine who would be put on the benches as judges. So, it's an era that we refer to as legislative Supremacy.

MUSIC: REPRISE FC OM189 12 Defending Old Glory Main Track Flores Hunter Jr Slott Still 807018 (MAY WANT TO LOOP EARLY PART)

JOHN: The colonial system, while igniting the revolutionary flames, had also provided the colonists a foundation on which to build their young republic.

The colonial assemblies may have helped raise the founding fathers, but they were left with a sense that a strong executive was to be feared and not replicated.

MEGAN: No wonder then that when the Continental Congress proposed a union between the states, their vision did *not* include a strong central government.

The document that body first drafted in 1777, the Articles of Confederation, laid out a system of federal governance that provided for a loose confederation of sovereign states brought together under a weak central government.

JOHN: While this may have seemed like the best course of action, by the time Maryland became the final state to ratify the Articles in February of 1781, cracks in the confederacy had begun to show.

MUSIC; OUT BY NOW

SFX: BUSY COLONIAL STREET

SECTION 4 - FIRST STATES

MEGAN: The Revolutionary War formally ended in 1783, and with it went the external threat of British control.

In the absence of a central authority, disputes between the thirteen sovereign states gradually escalated. Among them was a trade war between Virginia and Maryland over control of interstate waterways and trade.

JOHN: Hoping to resolve the conflict, five states sent delegates to a regional convention at Annapolis, Maryland in 1786. The meeting's attendees all agreed that a successful resolution would require broader reforms beyond the authority of the small delegation.

Those delegates included 29-year-old Alexander Hamilton, who drafted the convention report that determined a need for a broader convention to determine how a "uniform system"… [of] commercial regulations and other important matters might be necessary to the common interest and permanent harmony of the several States.

MEGAN: George Washington was less subtle, describing the state of the confederacy, calling it a "half-starved, limping government."

JOHN: The new nation struggled to collect taxes required to repay war debts. A barely-suppressed armed uprising in Western Massachusetts underlined the need for a stronger federal government.

The Confederate Congress unanimously adopted the Annapolis report. A convention of delegates from each state, met in 1787, the lone exception being Rhode Island, which feared that a strong central government would erode its hard-fought independence. The convention would reshape the federal authority, ultimately drafting the United States Constitution.

Even if the word 'united' was yet to resonate.

Pev Squire.

PEV: ...those 13 colonies that were now states did think of themselves as independent entities. They had this confederal congress that was overseeing the war effort, but each of them did guard their sovereignty zealously, and that gave us the articles of confederation of course the articles suffered from enormous problems and had to be replaced.

SFX: REPRISE: BUSY COLONIAL STREET

MEGAN: With the Constitution written, it fell to each state to ratify it before becoming part of the United States.

December 7, 1787: Delaware is first.

The state's legislature adopted legislation calling for a ratification convention, and then elected 30 delegates, ten from each of the three Delaware counties. The delegates quickly and unanimously voted to adopt the Constitution.

And, for a brief time, the new federal government was technically the "United State of America." For five days, at least, until Pennsylvania's convention also voted to ratify.

Although states voted quickly- some unanimously- to join the Union, tensions between Federalist and anti-Federalist factions played out differently from state to state.

PEV: There was great tension during the constitutional convention and then in the ratification conventions that each of the new states following the constitution being signed. That debated exactly how much power should be given to this national government and how much should be reserved for the states, and again they had to go to the bill of rights to try to flush out some of those things.

SFX: ARMED PROTESS IN RHODE ISLAND

JOHN: There were armed protests in Rhode Island over a proposed fourth of July reading of the Constitution. North Carolina passed a resolution in 1788 pledging to only enter the Union with a guarantee of individual rights. Virginia's ratification convention agreed, after much contentious debate, to join only with a formal recommendation that Congress adopt a declaration defending "the essential and unalienable rights of the people."

SFX: OUT BY NOW

The Bill of Rights provided the compromise.

SFX: CONGRESS, 1789, GENERAL, CALM RHUBARBS

Introduced to Congress on June 8th, 1789 and approved for ratification on September 25th that same year, the first 10 federal amendments were modeled after the rights enumerated in the constitution of Virginia. It was a particularly smart political move as Virginia was home to a substantial contingent of anti-federalists, including one of the primary leaders of the movement, Patrick Henry.

By ensuring the rights federally, James Madison claimed that they would satisfy public concern that the Constitution "lay the foundation of aristocracy or despotism."

Rhode Island and North Carolina were the last of the original 13 colonies to join, and they did so only after the Congress submitted the Bill of Rights to the states for ratification.

SECTION 4.1 - VOTING RIGHTS/NEW JERSEY

SFX: OUTDOOR GATHERING: 250 PEOPLE GATHERED IN A PUBLIC PARK TO VOTE, SUMMER, C. 1770s

MEGAN: Along with statehood came state constitutions. Some, more liberal when it came to representation and enfranchisement than others. Legislatures became more representative and the right to vote expanded.

Gone were religious restrictions on voting, allowing Catholics and protestants to vote and hold office. Yet most states continued to limit the vote to property holding white

men. Some allowed the vote for African Americans and even some Native Americans. However, New Jersey stands out from its peers in the first 13 states as having the most open voting rights in the new union.

At a time when most states recognized “freemen” or “male inhabitants” in their constitutions, New Jersey’s gave the right to vote to “all inhabitants” and used the gender neutral “they”. So it was that from 1776 to 1807 women and African Americans participated in elections.

Voters were different, and so was the process of voting.

Alexander Keyssar is a Professor at the John F. Kennedy School of Government at Harvard.

ALEXANDER:

Keyssar - In the 18th century almost all balloting was “viva-voce” by voice. There were no written ballots. What there might have been, and surely there was in some settings, was a kind of tacit communal intimidation. The notion of voting, was that you should be casting your vote as a public act.

As you can imagine, the secret ballot has a long and unusual history in our states. We asked our Nicholas Birdsong to investigate.

MUSIC: reprise FC BBCPM90 10_Dark Glasses Instrumental Harms 1242755 up under

NICK: Throughout most of history, casting votes has been a public act. From the democracy of ancient Greece to the 19th Century, the standard method of measuring public support or opposition to an act was viva voce, Latin for "with living voice," and meaning by voice vote.

The theory behind open voting is rooted in the concept of accountability. To paraphrase John Stewart Mill, under the eye and criticism of the public, a voter will put common interests above their own. And, of course, it's hard to fill out a ballot if you can't read- literacy rates were much lower before the 20th century.

But in practice, open balloting had a record of making it easier to coerce voters, both with bribes and threats.

It all began to change in 1856, as Australians implemented a widespread election process using a secret written ballot prepared and provided by the government. This so-called "Australian ballot" caught on - albeit slowly.

In post-civil war America, politics were growing increasingly divisive - and violent. Cash for votes became relatively commonplace, and white supremacy groups in some areas perpetrated acts of violence to try and control the vote.

This led to a gradual adoption of Australian ballots, and by the early 1900's, every state used them.

And though today, states continue to embrace all manner of voting procedures, the 'secret' ballot has endured.

Megan?

MEGAN: Expanded enfranchisement and these -quote unquote- *petticoat electors* in New Jersey were not without controversy. Some men were said to have dressed as women to vote multiple times, and without a secret ballot, intimidation wasn't uncommon.

As Professor Keyssar explains, there was considerable 'harumphing' as to which classes of people should be qualified to vote.

Keyssar - There was a common presumption that to vote someone should be, "independent". That's to say, not subject to the will of somebody else. Which would mean, for example, that a servant would be considered not independent.

SFX: REPRISE BUSY COLONIAL STREET

Gender-inclusive language was neither an accident nor a product of interpretation. In 1797 a New Jersey statute explicitly referred to prospective voters as "he or she" making the intent of the 1776 constitution plain.

While the landholding requirement of at least 50 pounds usually excluded married women, it provided voting rights to widows and unmarried women of means. Which, as researchers at the Museum of the American Revolution are finding, they often exercised.

In 1807 the fact that in New Jersey, women were actively voting in numbers that sometimes swayed election results, lead to negative press accusing voter fraud. This, combined with the difficulty of verifying the wealth and property requirement led to the decision to put an end to the state's broad enfranchisement. They changed the constitution to explicitly state "male". Something not to be remedied until the last part of that century.

SFX: OUT BY NOW

SECTION 5 - EPILOGUE

MUSIC: reprise FC OM189 12 Defending Old Glory Main Track Flores Hunter Jr Slott Still 807018: (loop first :40ish seconds) one measure of the snare intro, then drop under:

JOHN: In the quarter century between that meeting of patriots beneath the elm tree in Boston and the passage of the Bill of Rights, a nation took shape.

MEGAN: 13 colonies, once connected by an allegiance to the crown, became 13 states, bound both by law, and by a common belief in the principles of representative democracy.

JOHN: Such tumultuous and uncertain years could have produced much different results.

Yet the foundations laid in Virginia in 1619, then cemented in the colonial assemblies ensured that even in times of crisis – when continuity of government and source of authority were equally unclear –the people would be the ultimate arbiters of disputes, and the architects of development.

MEGAN: With a new federalist framework in place, the ranks of the union would soon grow.

JOHN: Vermont became the 14th state in the spring of 1791 – 9 months before the ratification of the Bill of Rights. It had been functionally operating as the 'Republic of Vermont' since 1777, when it's constitution was written – the first constitution to recognize universal male suffrage and to explicitly abolish slavery.

MEGAN: Kentucky would follow, just over a year later in the summer of 1792, becoming the 15th state. Historically part of Virginia, it saw a boom in population during the revolutionary period and advocated for statehood, arguing that Richmond, the capital of Virginia, was too far and too dangerous for regular travel.

JOHN: Tennessee and Ohio rounded out the first group of new states, in 1796 and 1803 respectively. The union had now grown to 17 states, which now stretched from the Atlantic to the banks of the Mississippi.

MUSIC: SNEAK 'DEFENDING OLD GLORY' OUT SOMEWHERE, AND SNEAK IN THE END TITLE MUSIC (BACKTIMED), RAMPING UP SLOWLY UNDER:

MEGAN: And then, mere months after Ohio's admission to the union, the Louisiana purchase, a massive territory of over 800,000 square miles doubled the size of the young nation and blew open the doors for western expansion.

JOHN: Setting the scene for our next episode, and a whole new era, of *building democracy.*

END TITLES

ANNOUNCER: *Building Democracy: The Story of Legislatures* is created by the National Conference of State Legislatures.

Your hosts are Megan McClure and John Mahoney.

Thanks to today's guests Richard Pearce, Professor Pev Squire, and Professor Alexander Keyssar. Thanks also to Nicholas Birdsong for his voice, expertise and research; and to Mike Tennant and Tyler Morrisette of Podfly for production and editing.

And heartfelt thank you to the Legislative staff who provided ideas and information. Join us for our next episode as we head to the wild west and tell the story of legislatures during the most dramatic period of expansion and internal conflict and radial transformation in the history of the American States. That's on our next episode. Watch for it later this spring..

Building Democracy is recorded at hastily crafted home studios in Denver, Colorado.