

The 8th United States Congress

Chair:
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Vice Chairs:
Angad Singh
Noah Powers
Alexander Nehrbass



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Hello Delegates,

It is my great pleasure to be your chair this SSUNS 2016 in the 8th US Congress. As an avid history buff and red blooded American it was my pleasure to research such a formative and interesting time in American history. Along with my vice-chairs: Noah Powers, Angad Singh and Alex Nehrbass – we will determine the fate of the West, balance matters of judiciary might, and battle pirates off the African coasts. I couldn't have asked for a better topic for my last SSUNS committee.

Till November 10th,

Benjamin Butz-Weidner



Topic 1: Barbary Wars

The Barbary States: A Short History

The Barbary States were a group of four city-state nations on the North African Coast whose main business was piracy. The Independent State of Morocco, and the three Ottoman Regencies of Algiers, Tunis, and Tripoli engaged in centuries of piracy along the Mediterranean Sea and into the Atlantic Ocean.¹ Piracy, the act of robbing and/or kidnapping ships traveling the seas has been alive in this part of the world since the 14th century, and pirates were a huge headache for European ships traveling these waters. These states depended on piracy for their livelihoods. It is written that piracy began in Northern Africa after the conquest of Granada in 1492, where Catholics in Spain drove the Moors (Muslims) into exile². The Moors are said to have started robbing and attacking ships as revenge. In the early 1500s two brothers, Arouj and Khaired-Din were known as the most successful, legendary pirates of the time. The European sailors called them Barbarossa, or Redbeard.³

Spain responded to these raids by conquering towns along the Northern Mediterranean. When Arouj was killed in 1518, his brother, filled with rage, went before the Sultan of Turkey and asked for help. The Sultan gave Barbarossa troops, who used

¹ "Barbary Pirates." University of Chicago. Encyclopaedia Britannica, 1911. Web. 08 Aug. 2016.

² Ibid.

³ Ibid.



them to drive the Spaniards from the North African Coast in 1529.⁴ With this, Barbarossa effectively installed the Turks in power in the region. In 1541 the Holy Roman Emperor Charles V sent men to try and rid the Turks; they failed.⁵ The Turkish Pashas, or government administrators from Turkey, were sent from Constantinople (Turkish Capital) to rule Northern Africa from 1587 to 1659.⁶ Military revolts in Algiers removed the Turkish influence, and after 1659 the land was returned to small military states that were dependent on piracy.⁷

Throughout the North African coast, people would come together and form isolated, self-sufficient communities. They would plunder the lands and sea for wealth for their own glory and survival. Each pirate ship would have a captain, who would command his men and sail the seas. Ten percent of his loot was to be paid to the Pasha – the local Turkish official – of his respective homeland⁸. Until the 17th century, pirates used galleys – ships with oarsmen – until a Flemish man named Simon Danser taught them advanced European ship building techniques.⁹ Thanks to Danser, the pirates had faster ships that could now sail as fast as the European ships they wanted to pillage. The galleys were limited to the calm Mediterranean Sea, but with the innovation of sailing ships the pirates

⁴ "Barbary Pirates." University of Chicago. Encyclopaedia Britannica, 1911. Web. 08 Aug. 2016.

⁵ "Barbary States." The Columbia Electronic Encyclopedia, 2012. Web. 08 Aug. 2016.

⁶ Ibid.

⁷ "Barbary Pirates." University of Chicago. Encyclopaedia Britannica, 1911. Web. 08 Aug. 2016.

⁸ "Barbary States." The Columbia Electronic Encyclopedia, 2012. Web. 08 Aug. 2016.

⁹ "Barbary Pirates." University of Chicago. Encyclopaedia Britannica, 1911. Web. 08 Aug. 2016.



range of activity was expanded to the Atlantic Ocean, the Canary Islands and even Iceland.¹⁰

By the 17th century, the Barbary pirates were on the rise. Algiers alone was said to hold more than 20,000 kidnapped sailors.¹¹ In response, the European powers attempted to end the piracy, attacking pirate strongholds and sending Naval vessels to protect commercial ships. While these attacks diminished the number of pirate attacks, they did not shut the pirate coast down. Eventually, the European powers felt it more efficient and worth their time to simply pay tribute to the Pirates, and avoid having to deal with their activities by paying them off.¹² Any ship sailing under a European flag that had not paid its tribute was liable for attack. Kidnapped persons with money were able to pay for their release, and captives unable to pay were many times condemned to slavery.¹³ Historians write that the Barbary Pirates were a hindrance to Europe's trade and commercialism, but for individual European states piracy had its small temporary benefit. France, for example, in competition with Spain, encouraged the pirating of Spanish ships. Another example of European powers using piracy to their advantage was the British and Dutch. As an alliance, these two nations would increase the tribute they gave to North African pirates to have their ships ignored on the high seas, simultaneously asking the Pirates to harass French ships.¹⁴

¹⁰ "Barbary Pirates." University of Chicago. Encyclopaedia Britannica, 1911. Web. 08 Aug. 2016.

¹¹ Ibid.

¹² "Barbary States." The Columbia Electronic Encyclopedia, 2012. Web. 08 Aug. 2016.

¹³ Ibid.

¹⁴ Ibid.



The Barbary pirates of North Africa caused havoc for European commercialism. It caused the death and kidnapping of European citizens, but it was also diplomatically manipulated by individual European powers for their personal benefit. The pirates innovated to compete with European ships, but many times this innovation was from information given to them by European travelers. The lead up to the American conflict, the First Barbary War, was a part of a multi-century long conflict that was against North African piracy.

American Relations with the Barbary States:

When Thomas Jefferson was inaugurated as President of the United States of America in March of 1801, the US had treaties with each of the four Barbary States. Relations with the four states were becoming troubled, and a conflict was looming.¹⁵ When Thomas Jefferson was the first US Secretary of State, he had reported to Congress on the Barbary pirates, and had been involved with efforts to combat them during his previous position as United States Minister to France, which title he held from 1785 – 1789. In 1784 Thomas Jefferson, Ben Franklin, and John Adams were appointed by Congress to be Diplomats in Europe and the Mediterranean.¹⁶ In their travels these American emissaries learned that if a nation did not have a treaty and pay tribute to the Barbary States, its ships would be subject to harassment. Jefferson, Franklin, and Adams knew this

¹⁵ Huff, Elizabeth. "Thomas Jefferson's Monticello." The First Barbary War. Thomas Jefferson Foundation, 2012. Web. 08 Aug. 2016.

¹⁶ Ibid.



problem would affect American shipping interests in the region. In November of 1784 Jefferson wrote, “Would it not be better to offer them an equal treaty. If they refuse, why not go to war with them?”¹⁷ Shortly after this Moroccan Corsairs (state sponsored Pirates) captured an American ship, Jefferson wrote,

“ Our Trade to Portugal, Spain, and the Mediterranean is annihilated unless we do something decisive. Tribute or war is the usual alternatives of these pirates. If we yield the former, it will require sums [of money], which our people will feel. Why not begin a navy and decide on war? Why cannot begin in a better cause nor against a weaker foe.”¹⁸

Jefferson thought that to avoid the pirates the United States either had to pay tribute money, which the young country’s people (in the eyes of Jefferson) could not afford, or fight them. To fight them they would need a navy. Jefferson wanted to build a navy and go to war. He felt this was cheaper than paying tribute and also the more honorable solution.

¹⁹

Jefferson tried to convince Congress that war was the best option, but they opposed this idea, and instead authorized \$80,000 to be used in negotiations for peace-agreements

¹⁷ Huff, Elizabeth. "Thomas Jefferson's Monticello." The First Barbary War. Thomas Jefferson Foundation, 2012. Web. 08 Aug. 2016.

¹⁸ Ibid.

¹⁹ Ibid.



with the pirate states.²⁰ In 1786, American consul Thomas Barclay was sent to Morocco, where he presented a draft treaty to the Moroccans, who accepted with only a few changes. The treaty made American ships safe from Moroccan corsairs and also assured that the US would never have to pay tribute again. Captain John Lamb, from Connecticut, was sent to Algiers. Algiers relied much more on piracy for its survival, and in particular relied on the captured goods, slaves, ransoms, and tribute that piracy yielded them and were not open to being paid off by the US. During the negotiation process, Captain Lamb was informed that Algerian corsairs had captured two American Ships, the *Maria* and the *Dauphin*. Captain Lamb was to try and negotiate ransoms for the two ships and their crews, as well as negotiate and sign a peace treaty. This was impossible with the small budget that Congress had approved. Lamb's mission failed, and US relations with the North African Pirates remained unstable. Jefferson continually tried to negotiate with the North African states, but was unable to implement any treaties²¹.

Because of piracy, American and European Ships would often sail together in convoys across the Mediterranean, in an effort to avoid attack. Many times these convoys would have European naval protection.²² If American ships were traveling alone though, they would illegally fly the flag of a European Country that they knew had a treaty with the pirates to try and avoid attack. If they did not do either of these two things to try and protect themselves, they were wide open to the pirates' attacks.

²⁰ Huff, Elizabeth. "Thomas Jefferson's Monticello." The First Barbary War. Thomas Jefferson Foundation, 2012. Web. 08 Aug. 2016.

²¹ Ibid.

²² Ibid.



In 1793 a US diplomat in Portugal wrote that if the United States was able to have a strong enough war fleet it could fight, intimidate, and eventually eradicate the Piracy problem entirely; the cost of building this navy would be recuperated by the amount of future trade that could happen safely without the Pirates in the picture.²³ In this same year Portugal signed a treaty with Algiers, ending a war that had kept the Algerian Pirates busy from attacking US Ships. This treaty allowed the Algerian pirates to go back to their normal activities, and they captured eleven US ships, kidnapping over 100 American crewman and passengers in the process. After these events, the US government put more efforts to keep the pirates at bay, and signed a treaty with Algiers in 1795, in which the US agreed to pay annual tribute in exchange for some kidnapped Americans release.²⁴ In 1796 the US signed a treaty with Tripoli, and the next year with Tunis. After this, the US created diplomatic posts for each of the Barbary states, meaning the US would have a full time representative in each. In addition, the US began to build ships, and to commission the construction/assembly of a formal Navy to deal with these potential current and other future threats. The US Navy was formed in part as response to piracy.

In 1801 US relations with Tripoli were tense, with the Pasha of Tripoli threatening war if America did not give more in tribute. The Pasha had threatened that if the US did not give him a gift, he would attack the US ships and nullify the previous treaty. Shortly

²³ Huff, Elizabeth. "Thomas Jefferson's Monticello." The First Barbary War. Thomas Jefferson Foundation, 2012. Web. 08 Aug. 2016.

²⁴ Ibid



after he sent this threat, his corsairs captured the *Catharine*, a US ship.²⁵ The Pasha had the men released when he heard, he said he wanted a response to his request for a present from the US before they took action, showing he was a man of respect. He felt disrespected that the US was paying more money to the other Barbary states than to his state of Tripoli. After he released the *Catherine* he demanded a response from the US President on the status of his decision. The US Consul in Tripoli, James Cathcart, recommended to the President of the United States to not pay any gift to the Pasha, and said the Pasha regularly threatened other governments and demanded money, and in fact was concurrently extorting the Swedish for money via threat of war. In February of 1801 Cathcart warned US ships should be careful to avoid attack from Tripolian corsairs, but a few weeks later asked all US ships sail under a different flag or in a convoy.

When Jefferson took office, he paid a lot of attention to the troubles in North Africa. He made sure to send the rulers of Algeria and Tunis any money that was owed. Domestically he ensured the Navy was being built. In June of 1801, three months into his term as President of the United States, Jefferson sent a small squadron of three frigates and a schooner to the Mediterranean under Commodore Richard Dale. The squadron was to protect American ships from pirates, and to “Chastise [the pirates’] insolence... by sinking, burning, or destroying [North African pirate] ships and vessels wherever you shall find them.” They were also to blockade pirate ports, and to bring tribute, letters, and assurances of their treaty to the rulers of Algiers and Tunis. The Commodore was to visit Tripoli, and

²⁵ Huff, Elizabeth. "Thomas Jefferson's Monticello." The First Barbary War. Thomas Jefferson Foundation, 2012. Web. 08 Aug. 2016.



deliver a letter from President Jefferson. The letter expressed a desire to have peace and commerce with the people of Tripoli, and told that the US had sent a squadron of Navy ships to observe the seas, and to protect the commercial ships flying under the US flag. While this letter was in transit, traveling with the squadron across the Atlantic, the Pasha of Tripoli took action, and declared war on the United States on May 14, 1801. His declared war by cutting down the flagpoles at the US consul in Tripoli²⁶.

Commodore Dale engaged in the war: for the next two months his squadron blocked two Tripolian pirate ships in Gibraltar, helped deliver messages and goods by escorting US ships in the region, and at times would block ships from entering and leaving the Tripolian Harbor. On August 1st, off the coast of Malta, the US schooner, the *Enterprise*, had a battle with a Tripolian ship²⁷. The US won this engagement.

President Thomas Jefferson addressed Congress at the end of 1801, and in his speech he asked for formal Congressional approval of war, and official funds to expand the effort. He expressed that the Pasha's demands could only be met with action. Two months later Congress authorized the funds, and authorized US ships to start seizing ships and goods from the Tripolians. They also commissioned more men to help the effort²⁸.

Throughout 1802, US ships continued to patrol the Mediterranean, and diplomatic efforts to make peace were tried as well. Jefferson continued to express publically that war was the path to a treaty. Sweden was also aiding the US with their fight against the

²⁶ Huff, Elizabeth. "Thomas Jefferson's Monticello." The First Barbary War. Thomas Jefferson Foundation, 2012. Web. 08 Aug. 2016.

²⁷ Ibid.

²⁸ Ibid.



Tripolian Corsairs. While the US and Swedish Navy ships interfered with Tripolian trade, it did not bring the war to an end. The rulers of Tunis and Morrocco are siding with their fellow Barbary power, and the potential threat of them joining Tripoli in the war against the United States becomes stronger.

In the US, President Jefferson has to ask himself the question, *is war more expensive than just paying tribute?* The United States is a very new nation, and it has to make strategic choices to ensure it had a strong economy. The President feels that war is cheaper than just paying tribute, so the conflict is to continue²⁹. As the year continues, the war seems to get more and more expensive. Jefferson said it was a matter of principle that the US must not stop fighting and simply pay tribute. The United States must assert its dominance as a new but powerful nation. Jefferson is very pro-war, but Congress is wary of cost, and put a strict budget in place, recommending that any engagement should be kept small, for a small battle is cheaper than a bigger one. Delegates in this committee have to decide which path to take.

²⁹ "Barbary Pirates." University of Chicago. Encyclopaedia Britannica, 1911. Web. 08 Aug. 2016.



Bibliography:

"Barbary Pirates." *University of Chicago*. Encyclopaedia Britannica, 1911. Web. 08 Aug. 2016.

"Barbary States." The Columbia Electronic Encyclopedia, 2012. Web. 08 Aug. 2016.

"Barbary Wars, 1801–1805 and 1815–1816." *Milestones: 1801–1829*. United States Office of the Historian, n.d. Web. 08 Aug. 2016.

Huff, Elizabeth. "Thomas Jefferson's Monticello." *The First Barbary War*. Thomas Jefferson Foundation, 2012. Web. 08 Aug. 2016.

Kilkenny, Niall. "Islam Versus the United States." *Islam Versus the United States*. N.p., 2009. Web. 08 Aug. 2016.

"Naval Act of 1794." *Mount Vernon*. Mount Vernon Ladies Association, 2016. Web. 8 Aug. 2016.³⁰

Topic 2: Federal Judiciary System

Marbury v Madison (1803)

As this Congress discusses the future of the country, one important point of contention is the role that the judicial branch should play in shaping the laws of our nation. Some believe that in order for a large democratic system to succeed, a balanced centralized government must be established; and that the judiciary, legislative and executive branches should thus be organized in a system of checks and balances that leaves each branch with roughly equal power. According to this view, the judiciary branch should be able to use “judicial review.” “Judicial review” is a principle recently established by the Supreme Court case decision in *Marbury v*

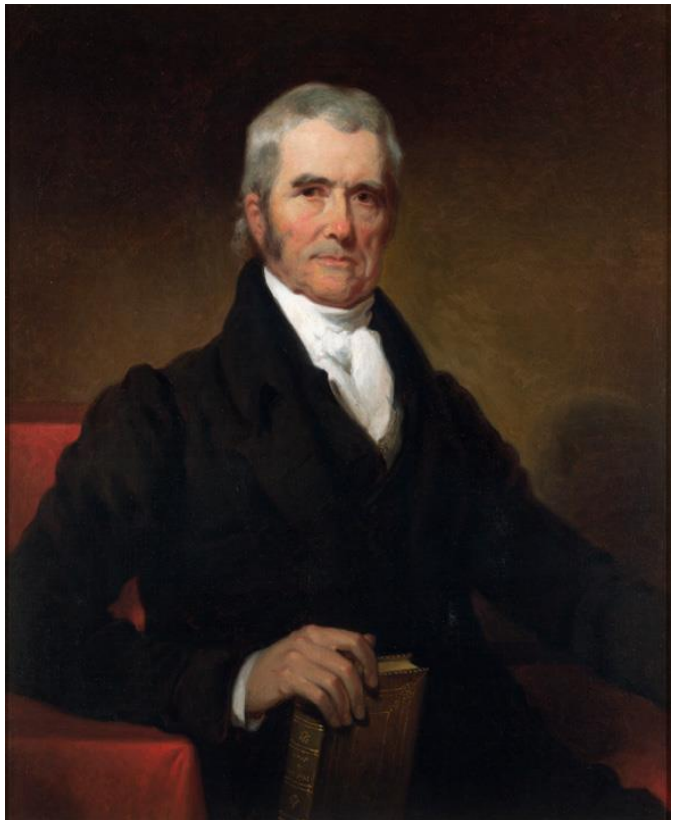


Figure 1: Portrait of Chief Justice John Marshall by Henry Inman.

Madison (1803), according to which the Supreme Court of the United States (SCOTUS) has the right to declare certain laws and regulations unconstitutional, thereby nullifying

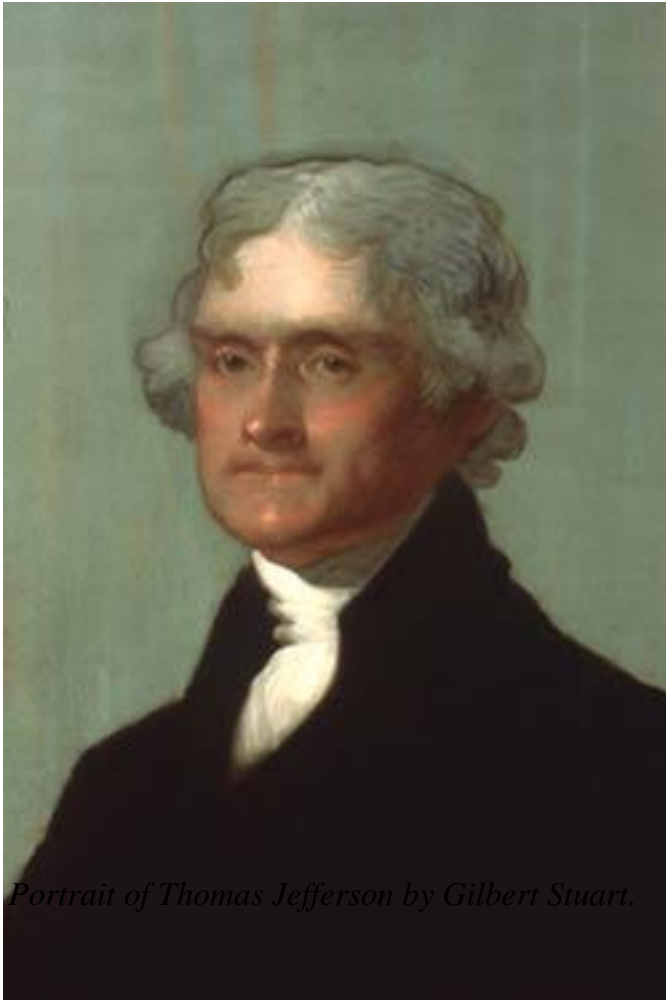


their power.³¹ This new and potentially groundbreaking development grants the SCOTUS an equal share of power in the federal government, as it can effectively shoot down pieces of legislation written by Congress if it deems that particular laws violate provisions of the Constitution of the United States. As such, it is important to gain a deeper understanding of the specifics of the *Marbury v Madison* (1803) case.

Dealt with by Chief Justice John Marshall's Supreme Court, *Marbury v Madison* (1803) is a case known for the pioneering use of judicial review and the Supreme Court's assertion that the judicial branch was indeed equal to and separate from the legislative and executive branches, thus strengthening the principle of separation of powers within the federal government. The case started when Federalist President John Adams appointed a large number of fellow Federalists to positions within the judiciary branch on the very last day of his presidency. These appointments came to be known as "midnight appointments."³² When Thomas Jefferson, a Democratic-Republican, came into office, he recommended that his cabinet ignore such appointments and instead appoint Democratic-Republican justices to positions of power. One of the so-called midnight appointees was

³¹ "John Marshall." *John Marshall*. Library of Virginia, 8 Jan. 2001. Web. 14 Oct. 2013. <<http://www.lva.virginia.gov/exhibits/marshall/>>.

³² *The John Marshall Foundation*. John Marshall Foundation, n.d. Web. 14 Oct. 2013. <<http://www.johnmarshallfoundation.org/john-marshall/life-legacy/>>.



Portrait of Thomas Jefferson by Gilbert Stuart.

Figure 2: Portrait of Austin Marbury

William Marbury, whom Adams had appointed to the position of Justice of the Peace, was refused his commission by Secretary of State James Madison and demanded a *writ of mandamus* (a court order compelling someone to do or not do something) from the Supreme Court to force Madison comply with former President Adams's appointment. The case thus revolved around whether or not the Supreme Court should—or even could—give out a writ of mandamus. The Judiciary Act of 1789 gave the SCOTUS the right to issue such writs, and thereby extended the reach of the Court's power.³³ Surprisingly,

however, John Marshall's Supreme Court ruled that they did not have the right to grant such a writ. Marshall explained that while Congress's Judiciary Act of 1789 did give the Supreme Court this power, the congressional act interfered with the Constitution's Third Article, which specifies that judicial power extends "to all cases affecting ambassadors, other public ministers and consuls," none of which

³³ "Marbury v. Madison." *The Supreme Court*. PBS, n.d. Web. 17 Oct. 2013. <http://www.pbs.org/wnet/supremecourt/democracy/landmark_marbury.html>.



Marbury was a part of (seeing as how he was appointed a Justice of the Peace).³⁴ Though on the surface this ruling weakened SCOTUS power, it was actually the judiciary branch's first implementation of the principle of judicial review. As Marshall asserted in his decision: "it is emphatically the province and duty of the judicial department to say what the law is." This principle is now a fundamental counter-balance to executive and congressional power in the hands of the Supreme Court, which permits it to strike down Congressional or Presidential actions that the Court deems violate the Constitution.³⁵ By scrutinizing an act of Congress and destroying its authority by declaring it unconstitutional, Chief Justice Marshall's court thus actually greatly expanded the power of the judiciary branch.

While many in the committee will see the decision in *Marbury v Madison* (1803) as a necessary step in the establishment of an effective and balanced three-branch system of government, others may find that Marshall's court stepped outside the bounds of its powers. Indeed, while judicial review offers the SCOTUS a chance to keep the legislative and executive branches in check, it also delivers a blow to democracy. After all, should the nine elite members of the Supreme Court really have the right to void acts of Congress or the Executive branch, both of which are constituted in large part of democratically elected officials? Could this not make it more difficult for the will of the people to be expressed in

³⁴ "Article III." *Legal Information Institute*. Cornell University Law School, n.d. Web. 17 Oct. 2013. <<http://www.law.cornell.edu/constitution/articleiii>>.

³⁵ "Gibbons v Ogden." *Legal Information Institute*. Cornell University Law School, 7 Mar. 2005. Web. 17 Oct. 2013. <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0022_0001_ZS.html>.



the legislation that is passed? As the committee considers these questions, it must choose to either accept the principle of judicial review established by the Marshall court, or seek to create an Amendment to the Constitution that would explicitly prohibited the SCOTUS from wielding the power to strike down laws or acts based on their constitutionality.

The Judiciary Act of 1801

Among the first pieces of legislation dealing with reform of the national judiciary system was the Judiciary Act of 1789. Essentially it attempted to specify the organization of a federal judiciary, which Article III of the Constitution had only vaguely outlined. While Article III provided a guide with regards to the role the federal judiciary should play in cases that occurred within the United States, it did not cover many of the specifics that were necessary for the effective operation of the system. For instance, there was no mention even of how many justices should be appointed to the Supreme Court or circuit courts. In an effort to fill the many gaps of Article III, Senators Oliver Ellsworth of Connecticut and William Paterson of New Jersey authored the Judiciary Act of 1789.³⁶ The act provided a far more detailed map of what the judiciary system should look like: the SCOTUS would have a Chief Justice and five associate justices, every state would have a United States district court headed by a federal judge (which oversaw largely maritime and admiralty

³⁶ "John Marshall, Marbury v. Madison, and Judicial Review—How the Court Became Supreme." *EDSITE*. National Endowment For The Humanities, n.d. Web. 17 Oct. 2013. <<http://edsitement.neh.gov/lesson-plan/john-marshall-marbury-v-madison-and-judicial-review-how-court-became-supreme>>.

cases), as well as circuit courts—which would be the primary courts for trials in the federal jurisdiction and were each headed by a District Judge and two of the Supreme Court Justices.³⁷ Though it was certainly an improvement upon the absence of any guidelines, this structure led to a major concern as Supreme Court justices found themselves having to travel from circuit court to circuit court to handle cases (referred to as “circuit riding”), rendering their work extremely difficult. This also meant that SCOTUS justices did not have as much time to consider cases of the Supreme Court.

The act also expanded the reach of federal jurisdiction to include any cases where

the opposing parties were

from different states,

making the federal

judiciary considerably

more important.

Nevertheless, in an effort to

appease a large part of the

population that feared an

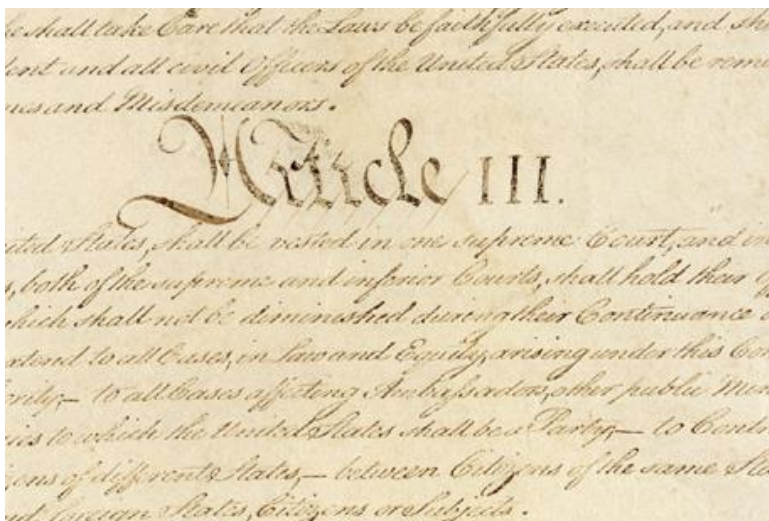


Figure 3: Article 3 of the Constitution of the United States. overly powerful federal

judiciary branch, the act left state courts with the right to exercise a substantial amount of concurrent jurisdiction in cases that were actually federal. In essence, the act represented a compromise between a faction seeking to expand the federal government’s power, and

³⁷“Judiciary Act of 1789.” *History of the Federal Judiciary*. Federal Judicial Center, n.d. Web. <http://www.fjc.gov/history/home.nsf/page/landmark_02.html>.



another that was trying to limit it. Some significant weaknesses in the act, however, such as the brunt work born from “circuit riding,” made it necessary for Congress to reconsider the structure of the federal judiciary system. This led to another sweeping piece of legislation being passed by Congress.

The Judiciary Act of 1801, also known as the Midnight Judges Act, is an act passed by Congress that brought several notable changes to the United States’ judiciary branch. The act lowered the number of Justices on the Supreme Court from six to five, and increased the number of justices on circuit (lower) courts from three to six. The act was designed to relieve the Justices of the Supreme Court of the duty of sitting on circuit court benches, allowing them time to focus on the cases that reach the bench of the SCOTUS. Furthermore, the act strengthened federal rather than local or state powers by giving federal courts jurisdiction over more aspects of the law. Indeed, while federal circuit courts had previously held far less power in the United States judiciary system, the Judiciary Act of 1801 gave them the right to make rulings “over all cases arising under the Constitution and acts of the United States.”³⁸ The act also expanded the circuit court system, allowing for a total of sixteen judgeships for six judicial circuits. The act also made it easier for cases to fall into federal rather than state or local jurisdiction by expanding the criteria for what constituted a federal case.

The debate around the bill came down to party lines. Federalists argued that an expansion of the federal judiciary was necessary if it was to act as an effective

³⁸ "Judiciary Act of 1801." *History of the Federal Judiciary*. Federal Judicial Center, n.d. Web. <http://www.fjc.gov/history/home.nsf/page/landmark_03.html>.



counterweight to hostile state governments that sought to undermine the legitimacy of the central government. Jeffersonian Democratic-Republicans, however, felt that the act only weakened state sovereignty and allowed Federalists to gain more power by allowing them to secure judges and appointees within the judiciary system that would be favorable to their political agenda—as was made most worrisome by Adams's appointment of Federalists to various jobs in the federal judiciary on his last day in office, leading to *Marbury v Madison*.

Since the Judiciary Act of 1801 was passed, President Thomas Jefferson has taken office, allowing Democratic-Republicans to reopen the debate around judiciary reform. As this Congress considers whether to leave the act intact, or to entirely scrap and replace it, it must consider the important question of how large a role it wants the federal government to play in the country, and how best to tailor the judiciary system to fit either the Federalist or Democratic-Republican perspective?

Bibliography:

"Article III." *Legal Information Institute*. Cornell University Law School, n.d. Web. 17 Oct. 2013. <<http://www.law.cornell.edu/constitution/articleiii>>.

"Gibbons v Ogden." *Legal Information Institute*. Cornell University Law School, 7 Mar. 2005. Web. 17 Oct. 2013. <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0022_0001_ZS.html>.

"Gibbons v. Ogden." *The Supreme Court*. PBS, n.d. Web. 17 Oct. 2013. <http://www.pbs.org/wnet/supremecourt/antebellum/landmark_gibbons.html>.

"John Marshall." *John Marshall*. Library of Virginia, 8 Jan. 2001. Web. 14 Oct. 2013. <<http://www.lva.virginia.gov/exhibits/marshall/>>.

The John Marshall Foundation. John Marshall Foundation, n.d. Web. 14 Oct. 2013. <<http://www.johnmarshallfoundation.org/john-marshall/life-legacy/>>.



"John Marshall." Library of Virginia. N.p., n.d. Web.
<http://edu.lva.virginia.gov/online_classroom/shaping_the_constitution/doc/marshall>.

"John Marshall, Marbury v. Madison, and Judicial Review—How the Court Became Supreme." *EDSITE*. National Endowment For The Humanities, n.d. Web. 17 Oct. 2013.
<<http://edsitement.neh.gov/lesson-plan/john-marshall-marbury-v-madison-and-judicial-review-how-court-became-supreme>>.

"Judiciary Act of 1801." *History of the Federal Judiciary*. Federal Judicial Center, n.d. Web. <http://www.fjc.gov/history/home.nsf/page/landmark_03.html>.

"Judiciary Act of 1789." *History of the Federal Judiciary*. Federal Judicial Center, n.d. Web. <http://www.fjc.gov/history/home.nsf/page/landmark_02.html>.

"Marbury v. Madison." *EDSITE*. National Endowment For The Humanities, n.d. Web. 17 Oct. 2013. <<http://www.supremecourthistory.org/history-of-the-court/history-of-the-court-2/the-marshall-court-1801-1835/>>.

"Marbury v. Madison." *The Supreme Court*. PBS, n.d. Web. 17 Oct. 2013. <http://www.pbs.org/wnet/supremecourt/democracy/landmark_marbury.html>.

Topic 3: Louisiana Purchase

The Louisiana Territory

The Louisiana territory was established on April 9, 1682 when Robert Cavalier, Sieur de La Salle, erected a cross near the mouth of the Mississippi and read a declaration to a group of stunned Indians that this territory now belonged to France. He seized an area approximate to most of the Mississippi River Basin foras France, eneh territory and proclaimed in the name of "Prince Louis the Great, King of France and Navarre, 14th of

that name” he named the land Louisiana³⁹. In the years afterwards, settlements began to form around the Mississippi as it already proved to be a vital resource for transport and fresh water to early settlers. However, n~~None~~ of these settlements even came close to rivalling the importance of one settlement in particular: New Orleans.

The city of New Orleans was founded in 1718⁷, when French explorer Jean-Baptiste le Moyne founded a settlement ~~close to~~near where Cavalier had made his proclamation. He named this settlement la Nouvelle Orleans in honour of~~after~~ Phillipe, Duke of Orleans and Regent of France⁴⁰. At this time, the composition of the city included ~~including~~ settlers, slaves as well as free ~~blacks~~slaves. Due to its proximity to the water, i~~It~~ was a vital hub for trade and transport.

For more than a hundred years after La Salle took possession of the Louisiana territory, it was traded among European royalty back and forth at their whim, mainly to influence European politics or create pacts and alliances. The Louisiana territory was widely settled by the French, Spanish, Acadian and German settlers as well as ~~Indians and~~ American-born frontiersmen. A wide array of Native tribes also inhabited the area, making it a culturally diverse territory. The influx of European settlers sometimes provided vital

³⁹ “Biography – CAVELIER DE LA SALLE, RENÉ-ROBERT – Volume I (1000-1700) – Dictionary of Canadian Biography,” Dictionary of Canadian Biography, 1966, accessed September 16, 2016,

http://www.biographi.ca/en/bio/cavelier_de_la_salle_rene_robert_1E.html.

⁴⁰ “City of New Orleans Celebrates 295th Birthday,” May 7, 2013, accessed September 16, 2016, <http://www.canalstreetchronicles.com/2013/5/7/4309564/new-orleans-255-birthday-celebration>.



trade for some tribes, making them more dominant than rival tribes, as well as settled land already used by First Peoples.

~~A wide variance in cultures has lead Louisiana to be one of the most unique territories in the continent.~~

Around this time, the French looked at America with fascination. They could not decide if America was a new utopian land or, as the naturalist Georges-Louis Leclerc de Buffon declared, a primitive place fit only for degenerate life-forms. The official French position was announced by Antoine de La Mothe Cadillac, whom Louis XIV named governor of the Louisiana territory in 1710, which was that “the people are a heap of the dregs of Canada”, expressed in a report to Louis XIV.⁴¹ This opinion compounded also declared that the territory was “not worth a straw at the present time” and that the soldiers there were untrained and undisciplined. Concluding that the area was worthless, Louis XV gave the territory to his cousin Charles III of Spain in 1763. Under Pinckney’s Treaty, signed on October 27, 1795, Americans had the right to deposit goods for trade in New Orleans, therefore allowing American traders to export goods, mainly from areas north up the Mississippi⁴². These goods included flour, tobacco, pork, cider and cheese, some of which came from slave plantations in neighbouring regions.

⁴¹ Joseph Harriss, *About France* (Lincoln, NE: iUniverse.com, 2005).

⁴² “Milestones: 1784–1800,” accessed September 16, 2016, <https://history.state.gov/milestones/1784-1800/pickney-treaty>.

Social composition of the Territory in 1804

The Louisiana territory is a region with rich and complex history and a variety of social backgrounds. Of course, when explorers first settled this region, they met Native tribes and began to trade with them in return for their help surviving and navigating this new land. Nowadays, most tribes have left the settled regions, turning to unhabitated areas and trading furs with settlers. Multiple trading outlets exist along the Mississippi and its ~~tributaries~~~~bute rivers~~, and as such it is crucial to the economic stability of the region. The French have a relatively stable relationship with multiple tribes from Canada all the way down to New Orleans and as such has exploited them for vast knowledge of the region as well as advantageous connections for~~for~~ the fur trade. These tribal networks are critical for trade in the region, as the local tribesman best know how to navigate the region. As it stands, American settlers do not have the best relationship with many tribes due to settlements in the West and the plagues and wars that initial settlers brought from Europe.

While America is divided on the topic of slavery, black slaves and non-slaves do live in the Louisiana territory. New Orleans is a hub of the African slave trade, though Indian slaves are also traded, to a lesser extent.~~as well as the enslavement of Indians~~. As Spain had continued the international slave trade, there is a large population of African slaves that were only recently brought from Africa. Plantation products – mainly tobacco – are traded in New Orleans for trade, shipped along the Mississippi from other regions.⁴³ It is

⁴³ Hugh Thomas, *The Slave Trade: The Story of the Atlantic Slave Trade* (n.p.: Simon and Schuster, 1997).



important to realise that if this Congress decides to acquire the Louisiana territory what it will have to determine the fate of the “peculiar institution” of slavery in the Louisiana territory~~would decide on the manner of slavery, will this Congress adopt the laws of the surrounding areas and keep slavery in place, or shall we abolish in in tune with other states.?~~

While most Indian tribes subscribe to their own respective cultural religions, Catholic missionaries have been visiting Native tribes and in some instances have converted ~~ed~~ing entire ones to Catholicism with relative ease. This has made them more susceptible to European ideals, as the French, Spanish and Mexican settlers are predominantly widely Catholic. ~~While there is no official religion in Louisiana territory, if the region is to become a part of the United States, this Congress must decide if it is appropriate to limit European influences in the region through the suppression of the Catholic missionaries and populace.~~

Economic Activities of the Territory

The economy of the Louisiana territory depends on trading agricultural products coming from the north down~~north-up~~ the Mississippi. Wheat, cheese, ale, fruits and vegetables all make their way to New Orleans to be shipped elsewhere, whether that be to American states or internationally. This means ~~that~~that the port of New Orleans has extreme value for whoever controls it, as it allowsed unrestricted access to the Mississippi River. The threat of a French monopoly of this port would lead to a restrictive and potentially closed use of the Mississippi to American tradersrs, which would cripple the

economy of this region, as well as the export sectors of other regions after a relaxed Spanish rule. In October of 1802, this did happen. Juan Ventura Morales, who administered the colony before his French replacement could arrive, ended the American right to deposit goods in New Orleans without taxation.⁴⁴ This threatened the economies of most Western territories, as pelts, produce and goods couldn't be stored in warehouses in New Orleans and as such had to be left on the wharfs, open to the threat of thieves and open exposure to the elements.

Also essential to trade in the region is the fur trade with the North American Indians. Multiple factions are competing for the fur trade in the Louisiana territory. The Spanish have come north from Mexico, while the French still have a large presence, especially around where the Mississippi and Missouri Rivers combine. They have also ventured further west, established connections with Indians along the way, creating a reliable and profitable fur trade network. Furthermore, British explorers and the Hudson Bay Company are venturing south from Upper Canada and east from Oregon, further threatening the American fur trade in the Louisiana territory. The fur trade has been incredibly profitable for American settlers – as they traded relatively inexpensive manufactured goods like guns, knives, hatches, beads, wool blankets and other clothing for valuable pelts that were later made into coats, clothing or pressed into felt for hats. President Jefferson realises the importance of the fur trade to the economy of the region, and has asked this Congress

⁴⁴ Junius P Rodriguez, *The Louisiana Purchase: A Historical and Geographical Encyclopedia* (Santa Barbara, CA: ABC-CLIO, 2001).



~~previously~~ for funds to send explorers up the Missouri River and to the Pacific Ocean⁴⁵.

The main purpose of this was to determine if there was a way to cross the new territory by following rivers and streams. It would have also been crucial for these explorers to create networks ~~with the different~~~~among~~ Indian tribes in the region to further bolster the American fur trade.

The territory is also open to vast natural resource exploitation ~~by~~~~for~~ a rapidly growing ~~country~~. Lumber, tar and pitch will be essential for a growing navy as well as general construction – all of which this territory has an abundance of. Furthermore, this territory has large deposits of minerals and ores, including iron, gold and silver⁴⁶ increasing the value of the land dramatically, and inviting many looking to make their fortune or start a new life.

Current Issues

Manifest Destiny

A popular sentiment ~~amongst the~~~~of the~~ American people at this time is that any expansion of American territory is objectively just. ~~A certain aggressiveness of the American people for conquering the continent from East to West and from North to South has only put more pressure on this Congress to respond~~Various regional and business

⁴⁵ Kenneth C. Davis, *Don't Know Much about History: Everything You Need to Know about American History but Never Learned* (United States: Turtleback Books, 2004).

⁴⁶ “Louisiana Purchase the Louisiana Purchase and the Lewis and Clark Expedition,” Education, May 29, 2014, accessed September 16, 2016, <http://geography.about.com/od/historyofgeography/a/louisianapurcha.htm>.



interests have pressured Congress aggressively to assist in this expansion. The French control the Louisiana territory and the British still control Oregon, two ~~crucial~~ pieces of land, filled with economic potential ~~inthrough~~ the fur trade, forestry and trade of the Pacific Ocean. Furthermore, the Spanish control most of California and the western territories; with their great ports it is especially important land for their economy. Shall this Congress decide to support these American ideals of expansionism, or is diplomacy and restraint the better way to approach this issue? As it stands, the trade along the Mississippi and Missouri rivers is still dominated by British and French traders from Canada and their allied Native tribes, mainly the Sauk and Fox tribes.

~~If this purchase goes through, what must this Congress do to establish and assert the United States' possession of this territory, where would strategic positions for forts, settlements or trading outposts be so that the American influence is ingrained into all who pass along the Mississippi?~~

French influence

Napoleon Bonaparte, the new emperor of France, wants to reaffirm a French ~~presence~~bastion in the Americas. We have received word that Napoleon has sent a 20,000-man army to Saint-Domingue to suppress the slave revolt and re-establish ~~a~~ French ~~control~~presence ~~of~~in the island⁸. President Jefferson is aware of this and knows that French control of New Orleans and the Western territories of the Mississippi could create an overwhelming threat to North American interests. However, many southern plantation owners and northern traders fear the precedent a successful black revolt on that scale could set. Although America would rather remain neutral between warring European nations,

President Jefferson has done some back channel politics to make this deal possible. He suggested to England, that an alliance against the French ~~might~~may be in the works. Furthermore, he has directed two prominent American figures, James Monroe and Robert Livingston ~~to make the~~to offer to buy, and to negotiate the sale of New Orleans, ~~(not New Orleans)~~ and the territory of Florida from the French. Napoleon has received word from French officials in the territory about our rapidly increasing population. As such, this highlights the difficulty France might have in holding back the western frontier of American settlers.

Closing of the Port of New Orleans

Furthermore, the settlers in New Orleans are outraged by the abrogation of their rights to deposit goods in the city after Morales declared Pinckney's treaty to be void. As aforementioned, the idea of ~~The~~ Manifest Destiny ~~ideals~~ has~~ve~~ become exceptionally mainstream among the American people. Traders and settlers in and around New Orleans have threatened with force to seize New Orleans from the French. Some of our lawmakers have even taken up this militaristic idealism. Senator James Ross of Pennsylvania recently drafted a resolution calling on President Jefferson to form a 50,000-man army to retake the city and resume American trade and deposition of goods. Certain media outlets have also begun to voice these sentiments. The New York Evening Post recently declared that the United States had the right "to regulate the future destiny of North America"⁴⁷ and the Charleston Courier suggested "taking possession of the port by force of arms". James

⁴⁷ Anthony J Hall and Tony Hall, *The American Empire and the Fourth World: The Bowl with One Spoon, Part One: Vol. 1* (Montreal: McGill-Queen's University Press, 2005).



Madison, our Secretary of State, had perfectly summed up the importance of Louisiana territory to these settlers, stating that “the Mississippi is to them, everything. It is the Hudson, the Delaware, the Potomac and all the navigable rivers of the Atlantic States, formed into one stream.”⁴⁸

The Sale of the Territory to the United States

As it stands, the sale of the territory to the United States seemed widely unlikely, as such a large piece of territory would have required a large amount of money, and Napoleon is quite interested in it. However, there have been reports that the French forces sent to St. Dominique to regain control after the slave uprising were practically wiped out by yellow fever shortly after ~~taking they took~~ back the island. The rest of the French presence on the island has withdrawn to the Eastern half, and it does not seem likely that they will attempt to regain the island again. Without a stronghold on the island, a French presence in the Louisiana territory is highly unlikely. We have reason to believe that Napoleon has given up on his New World conquest, and would rather focus on a new European military campaign instead. It was ~~because of at~~ this notion that Napoleon ordered his foreign minister to not only offer New Orleans, but all ~~but the rest~~ of the Louisiana territory as well, to the United States. Livingston and Monroe are currently negotiating over price, but that is up to this Congress to decide, as well as other implications.

⁴⁸ Lynne Cheney, *James Madison: A Life Reconsidered* (n.p.: Penguin Group (USA), 2014).



Implications of the Purchase

The potential purchase of Louisiana is one that could have a lasting impact on the history of America, as this decision has the possibility to almost double the territory of the United States with extreme implications.

America Under One Flag

A crucial implication of this purchase is the possibility of uniting America. While the Pacific ~~most regions~~ ~~states~~ belong to the Spanish, and Oregon to the British, the possibility of this acquisition would allow ~~the US~~ ~~us~~ to further ~~its~~ ~~our~~ expansion ~~into these regions~~, even by force if it so demands. This purchase could be an extremely important step in uniting the Atlantic states in New England to the rest of the country as well as expanding American territory in the South.

~~However, there are political implications. Louisiana territory encompasses a broad range of social backgrounds. Indians, Spaniards, the French and of course Blacks (slaves and non-slaves) all inhabit at least some part of the Louisiana territory. Would these groups be happy with an American ruler? How would some of these groups react to the news that the land they inhabit is now owned by America? These questions must be answered to find a suitable and qualified governor that will be able to deal with the vast social background of the territory in a peaceful and hopefully efficient manner, without dividing the territory instead.~~



Economic implications

Secondly, the Louisiana territory has vast economic potential. If there can be a successful negotiation of the sale of the Louisiana territory for a reasonable amount of money, the economic pay off would be astronomical. As previously mentioned, the varying minerals including gold and silver would bring in extreme wealth for the United States. Furthermore, the land is extremely arable due to the Mississippi and its tributarieses. Slave labour could be used to a very efficient extent in this territory for agriculture and to further expand plantations, though this is a matter of contention. With easy port access in New Orleans, tobacco, cotton, grain, dairy, ale, liquor and fresh produce could be transported efficiently to other states north in the Atlantic states or internationally.

Foreign Policy

This purchase will have profound effects on the foreign policy of the United States. Not only does this increase America~~our overall world recognition~~prestige, as it ~~can potentially~~would more than double the country's land-~~size~~, ~~—but it~~ would show the power of American diplomats. This trade has potential to put America on the world stage and assert that the country~~we~~ is a rising global power. It also puts pressure on European governments, mainly the Spanish and the British colonies in the rest of America including Florida, the Viceroyalty of New Spain and Oregon, as it proves American expansionism can happen and may occur again. With the political bargaining chip that this brings, the United States can grow.



Expanding on this, the purchase of the Louisiana territory could increase the United State's international presence. Central and South America become easy targets for expansion, or allies and trade partners for produce from the Mississippi. With New Orleans as the main port and transport hub, slaves could be brought in from Caribbean islands or from Africa directly. New Orleans could be the new slave trading capital of the United States and could become a beacon for the value of slavery to Southern states – depending on how this Congress views slavery.

Slavery

In today's time, slavery is not divided by ~~North and South~~ virtue of geography. The northern states of Pennsylvania, New York, Connecticut, Rhode Island, Vermont, Massachusetts and New Hampshire as well as Indiana territory and Northwest territory are free; ~~slavery~~ has been abolished. However, the states of New Jersey, Delaware, Maryland and District of Columbia are slave states. Furthermore, the states of Virginia, Kentucky, North Carolina, South Carolina, Kentucky, Tennessee and Georgia as well as the Mississippi territory are all regions where slavery is ~~permissible~~ not only the norm, but vital to economic activity. An important decision this Congress has to make is not only how the territory of the Louisiana will be divided, but how and if slavery would be allowed. Would northern portions be free states, and southern slave states? As we know, slavery is the backbone of the southern economy, and if this sale goes through the United States will have unfettered access to the Mississippi, allowing the exploitation of slave labour to be



extremely profitable. This Congress will have to come to a compromise as to the issue of slave labour in the territory of Louisiana.

There have been rumours spread by recent refugee plantations owners from the slave revolt in Saint-Domingue that there is fear that with the large population of African slaves, it is possible that a slave revolt could happen in the territory. There is a large amount pressure from mainly Francophone planters ousted from Saint-Domingue who brought their slaves with them and want to continue this trade without the possibility of another revolt. This Congress must make sure our slavery laws for this newly established territory are firm and limit the possibility of a slave revolt.

Native-American slavery is also up for debate in this territory. As the Spanish forbade the slavery of Natives in 1769, this Congress must also decide if we should revoke this previous law and if Indian slaves shall be allowed in this territory. The implications of this, such as degrading our already fragile relationship with the Indians as well as upsetting the Spanish populations in the region are up for debate.

Questions to Consider:

- Will the purchase of the Louisiana territory be made?
 - o If so:
 - How will the purchase be made? For how much?
 - Who will govern this new territory?
 - What economic and social policies will be in place to further the success of America?
 - The territory is wildly unexplored, who will be sent to report on areas that have not been explored?
 - Will the territory be broken up to reflect the varying ethnic backgrounds of the inhabitants?



- **Keep in mind that each Congressman's respective interests will be crucial to this discussion – slavery, dealing with the Indians as well as international trade will be crucial discussion points**
- **Who would benefit the most from this purchase? Who would suffer?**
- **If not:**
 - **How will this Congress deal with the restrictions on American trade in the Mississippi?**
 - **How will America expand without the Louisiana territory?**
 - **Is the risk of angering the French and Spanish worth the potential reward?**
 - **Are there more valuable targets that this Congress should focus on?**
- **What is the best way to deal with the Barbary States? Diplomacy or Force?**
- **Who is the ultimate arbiter of the constitution?**

Bibliography:

Hall, Anthony J and Tony Hall. *The American Empire and the Fourth World: The Bowl with One Spoon, Part One: Vol. 1*. Montreal: McGill-Queen's University Press, 2005.

Cheney, Lynne. *James Madison: A Life Reconsidered*. New York, NY, United States: Penguin Group (USA), 2014.

Rodriguez, Junius P. *The Louisiana Purchase: A Historical and Geographical Encyclopedia*. Santa Barbara, CA: ABC-CLIO, 2001.

Davis, Kenneth C. *Don't Know Much about History: Everything You Need to Know about American History but Never Learned*. United States: Turtleback Books, 2004.

Stief, Colin and Geography Intern. "Louisiana Purchase the Louisiana Purchase and the Lewis and Clark Expedition." May 29, 2014. Accessed September 16, 2016. <http://geography.about.com/od/historyofgeography/a/louisianapurcha.htm>.

"Milestones: 1784–1800." 1795. Accessed September 16, 2016. <https://history.state.gov/milestones/1784-1800/pickney-treaty>.



Thomas, Hugh and Thomas. *The Slave Trade: The Story of the Atlantic Slave Trade, 1440 - 1870*. New York, NY: Simon & Schuster, 1997.

2016. "Biography – CAVELIER DE LA SALLE, RENÉ-ROBERT – Volume I (1000-1700) – Dictionary of Canadian Biography." 1966. Accessed September 16, 2016. http://www.biographi.ca/en/bio/cavelier_de_la_salle_rene_robert_1E.html.

Cariello, Dave. "City of New Orleans Celebrates 295th Birthday." May 7, 2013. Accessed September 16, 2016. <http://www.canalstreetchronicles.com/2013/5/7/4309564/new-orleans-255-birthday-celebration>.

Harriss, Joseph. *About France*. Lincoln, NE: iUniverse.com, 2005.