

## Second to One: Walking in the Shoes of a Giant

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*This book review of John Adams by David McCullough situates the reader in President Adams' tumultuous position during the American Revolution. In the spirit of the law, the article utilizes his legal milestones to reveal the inherent risk in his actions and the rewards of living by a cause.*

### The Time

Boston is crumbling, and you are fleeing your home as a penniless refugee. Rewind: what just happened? While it may be out of fashion in the twenty-first century, imagine being a proud colonial British farmer in the 18th century. The sunrise is a signal to pick up a plow or force someone else to, depending on local values. When the yield is plentiful, mighty British trade routes are convenient to export surpluses. Most goods are English and support “the good life.” There is a scuffle in Boston, and the royal taxes become increasingly pervasive. The situation escalates, and suddenly, your fellow countrymen are declaring independence. Which side do you choose?

In retrospect, it is easy to declare allegiance to the winners, but it would have been a dangerous decision in the historical milieu. Britain was the world's major superpower, with the most powerful army, navy, and commerce network. Rebelling would put one's life and livelihood at catastrophic risk. Playing it safe by remaining loyal to the Crown would result in being among the thousands who fled in haste.<sup>2</sup> Through riveting storytelling, David McCollough, the author of *John Adams*, illustrates that those who risked treason for liberty were the unlikely victors.

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<sup>1</sup> Brandeis University, Class of 2025, *Brandeis University Law Journal*, Editor-in-Chief.

<sup>2</sup> David McCullough, *John Adams* 76 (2001).



## The Man

John Adams faced a far more arduous decision than many of his countrymen. Put yourself in his shoes, coming from a patrilineage of New England farmers with a prestigious maternal heritage.<sup>3</sup> The family works hard to put food on the table, taking advantage of vast land holdings.<sup>4</sup> Your father is a deacon who recognizes your potential to follow in his footsteps.<sup>5</sup> Breaking the family's long-standing maxim against selling land, he parts with ten of his seventy-five acres to send you to Harvard.<sup>6</sup> You toil in books while others labor in the soil. While not exceedingly rich, the harvest provides a life of relative comfort.

Thinking you “would make a better lawyer than preacher” leads to employment as a schoolmaster after graduation to save up for a legal apprenticeship.<sup>7</sup> The work is exhausting and builds on a preexisting yearning for more prestige. Sociological research shows that periods of major societal upheaval lend to excellence.<sup>8</sup> Later on, arguing as Vice President that President Washington should be referred to as “his excellency” may be a tacit early recognition of the time's significance. There lies a desire to seal the prestige of the position in perpetuity. While ambition is externally viewed as vain, a fire burns within.

Two years of legal training culminates in admission to the Massachusetts Bar. A cascade of success emerges, including moving your law office from Braintree to Boston, beginning to acquire land, and becoming “Boston's busiest attorney.”<sup>9</sup> Many newly minted law school graduates say they'll put in their time with “white shoe” law and move on to

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<sup>3</sup> *Id.* at 30.

<sup>4</sup> *Id.* at 32.

<sup>5</sup> *Id.* at 34.

<sup>6</sup> *Id.* at 35.

<sup>7</sup> *Id.* at 37.

<sup>8</sup> Malcolm Gladwell, *Outliers: The Story of Success*, 60 (2008).

<sup>9</sup> McCullough, *supra* note 2 at 63.



other work. You embody this modern ideal, yet you refuse to forgo the time's iconic metal-clasped, black colonial shoes, appearing before the "superior court... in more than two hundred... cases" in a single year.

Your public profile grows, serving as Braintree's surveyor and selectman. Then, early in a soon-to-be storied career, a crossroads emerges. A dear friend, Jonathan Sewall, shares "an offer you cannot refuse" to lead the "office of advocate general in the Court of Admiralty," a plush royal position and a massive career advancement.<sup>10</sup> The thirst for prominence has never been closer to being satisfied. Yet, in the face of the Stamp Act, you begin a legal movement for national independence instead, halting the prospect of immediate ascendancy. You campaign with the historic phrase, "no taxation without representation," building out ironclad revolutionary ideals.<sup>11</sup> You have "no difficulty saying no" to Sewall.<sup>12</sup> Having everything to lose, you inextricably tie your fate to a budding nation. Achieving the coveted societal status of a landowner warrants the conviction of expanding liberty to your countrymen through war.

Soon after choosing a side, an opportunity arises to exercise your values. The people of Massachusetts are outraged at the events of the Boston Massacre. No lawyer will take the British soldier's case until the one and only John Adams Esq. rises to the occasion. This choice leads to "public scorn... painful in the extreme."<sup>13</sup> Being extremely self-conscious and loathing criticism, the negative publicity scars your ego, which is a surprisingly grounding experience. Nevertheless, the "principle" that "no man in a free country should be denied the right to counsel" trumps all personal considerations. Unknowingly, this will aid political ambitions later.

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<sup>10</sup> *Id.* at 64.

<sup>11</sup> *Id.* at 61.

<sup>12</sup> *Id.* at 64.

<sup>13</sup> *Id.* at 66.



## The Government

While some have the initial instinct to take up arms or aimlessly bash the present circumstances, you take a more calculated path, detailed in various publications. The instrumental ideas you authored in *Thoughts on Government* recognize that the “form of government which communicates... happiness... to the greatest number of persons... is the best.”<sup>14</sup> The subject is a government with three branches: the executive, legislative, and judiciary. Each should be independent to serve as a check on the others. In the face of war, there is a release valve called “militia law,” where the executive takes the reins of the state to straighten out conflict.<sup>15</sup> You pride yourself in solutions, so deride Thomas Paine’s *Common Sense*, which identifies a problem without proposing an adequate fix. These seminal works, endowed with legal prowess, will constantly inform your activism.

Congress is indecisive when debating independence. Some prefer a semi-autonomous status, others sovereign freedom.<sup>16</sup> You leverage your oratorical skills to keenly apply procedural rules and ensure the effectiveness of the debates.<sup>17</sup> The first attempt at a declaration failed, leaving two more weeks for negotiations. You draw on your lawyering days to whip together a unanimous final vote.<sup>18</sup>

Authoring the *Declaration of Independence*’s preamble is an honor. Modern readers can see that it alone can serve the document’s purpose. The document explains that government legitimacy lies upon the consent of the governed to provide the “unalienable rights” to “life, liberty, and the pursuit of happiness.”<sup>19</sup> Since the British Crown was “destructive towards

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<sup>14</sup> John Adams, *Thoughts on Government*, 1 (1776), <http://founders.archives.gov/documents/Adams/06-04-02-0026-0004> (last visited Jan 2, 2025).

<sup>15</sup> *Id.* at 2.

<sup>16</sup> McCullough, *supra* note 2 at 126.

<sup>17</sup> *Id.* at 123.

<sup>18</sup> *Id.* at 129.

<sup>19</sup> John Adams, *Preamble to the Declaration of Independence*, (1776).



these ends[,] it is the Right of the People... to abolish it... and to institute [a] new Government.” The circumstances in the colonies were “reduced[ed to] despotism,” and it was the “duty” of Americans to “throw off such government.”

As if signing the document is not a sufficient mortal risk, you double down by championing it with vigor. Leading up to the vote, you defended it in a speech that Thomas Jefferson describes as having “a power of thought and expression that moved us from our seats.”<sup>20</sup> While unbeknownst at the time, McCullough will say it was “the most powerful and important speech heard in the Congress since it convened, and the greatest of [your] life.” Later, the British will write a list of founding fathers to pardon in the case of reunification. “Adams” is absent, corroborating the risk inherent in these choices.<sup>21</sup>

### **The Statesman**

The precarious global circumstances make it abundantly clear that America needs global support, so you become its top statesman, liaising between France, Britain, and the Netherlands.<sup>22</sup> A vital duty is to negotiate terms for peace with Britain, defense from France, and financing from the Dutch. The Treaty of Paris cements American independence, defense from France provides naval armaments in the war, Dutch loans finance the War of Independence, and the correspondence you spearhead with France leads to the conditions necessary for Jefferson’s Louisiana Purchase.<sup>23</sup> Your spoken legal eloquence serves your pursuit of liberating America.

The U.S. Constitution is modeled after the values you enshrined in authoring Massachusetts’, which will become “the

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<sup>20</sup> McCullough, *supra* note 2 at 127.

<sup>21</sup> *Id.* at 158.

<sup>22</sup> *Id.* at 384.

<sup>23</sup> *Id.* at 586.



oldest functioning written constitution in the world.”<sup>24</sup> The constitutional role of the vice president comes easily.<sup>25</sup> You dutifully undertake your job and go above and beyond to preside over all the Senate’s sessions.

As president, the law holds the fledgling republic together. With the nearing prospect of war with France, your long-term ambition of establishing a Navy to maintain the borders and reactionary measures of the Alien and Sedition Acts attempt to maintain unity in tumultuous times.<sup>26</sup> The Navy is one of the most vital institutions for America’s independence. It critically aids Madison’s defense of the shore during the War of 1812. Though initially a critic of the branch, Jefferson will come to admit his mistake in judgment in personal correspondence.<sup>27</sup> The Alien and Sedition Acts neglect the First Amendment, acutely policing speech. The administration does not prosecute anyone under the Alien Act but does police the Sedition Act by imprisoning Republicans who have slandered you. You judge these actions to be necessary as a temporary measure during times of war.<sup>28</sup> While your heart may be in the right place to promote unity in a divided time, history will prove this measure wrong. The legacy of this mistake will perpetually cast a dark shadow over the period in the history books.

As the nation’s second presidency is coming to a close and the government is becoming increasingly partisan, it seems a fruitful time to bolster the courts. You nominate justices that will be called the “midnight judges” despite being confirmed more than a week before leaving office.<sup>29</sup> If you lived until the twenty-first century, you could take this historical inaccuracy up with its chief propagator, Lin-Manuel Miranda. Yet, among

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<sup>24</sup> *Id.* at 225.

<sup>25</sup> *Id.* at 434.

<sup>26</sup> *Id.* at 499, 504.

<sup>27</sup> *Id.* at 606.

<sup>28</sup> *Id.* at 505–506.

<sup>29</sup> *Id.* at 563.



the judges is Justice John Marshall, who will become the most celebrated justice to have served on the Supreme Court.<sup>30</sup> Along with these appointments, you create six more circuit courts to protect against the despotism of unfettered power, as strengthening the courts by any means is among your central values. Nonetheless, these courts will not survive Jefferson's impending presidency.<sup>31</sup>

You believe parties are destructive to the government's functioning, as factions definitionally cause more, not less, disagreement.<sup>32</sup> This leads to the maintenance of Washington's cabinet and the consideration of appointments void of partisan loyalties.<sup>33</sup> At the cost of mental well-being, you endure the slander and subversion of the cabinet to sustain the people's best interests.

### **The Legacy**

You question your self-worth on account of criticism from all angles yet stay wedded to your ideals. You are open-minded but remain resolute to acknowledge when you are right. When the odds are stacked against you, you double down. Time will count billions who ride the tide, but you break the current. Your project will become a force for good that lifts billions from poverty, serves as a model for governance, and flourishes for 248 years and counting. You could have been on that boat to London and reconstituted a law practice abroad. Watching your city recede into the horizon would have hurt, but the feelings would have been temporary. Instead, you will not give up on your freedom without a fight and will secure a seat in the annals of history for taking the road never traveled.

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<sup>30</sup> *Id.* at 560.

<sup>31</sup> *Id.* at 577.

<sup>32</sup> *Id.* at 422.

<sup>33</sup> *Id.* at 518.

