

1274: St. Thomas Aquinas finishes
the *Summa Theologica*

1513: Machiavelli writes *The Prince*

1689: Locke publishes *Two Treatises of Government*

1776: Smith publishes *The Wealth of Nations*

1788: Publication of the *Federalist Papers*

1650

1700

1750

1800

1850

1900

1651: Hobbes publishes *Leviathan*

1762: Rousseau publishes *The Social Contract*

1. Introduction

- End of the American war of independence (1775 – 1783)
 - The war was triggered over issues of trade and taxation, and then an escalation of violence between the British crown and the thirteen colonies
- During the war, the thirteen states had a constitution called the Articles of Confederation
 - The articles were not like the future US Constitution: the articles gave a lot of leeway to the individual states and its central government was very weak
 - It was hard to pass decisions (e.g. levy troops, taxes) without the approval of most if not all states
 - The articles were too inefficient and everyone agreed something else was needed

1. Introduction

- The Constitutional Convention (1787) in Philadelphia drafted the US Constitution and, now, it needed to be ratified by the states
- Federalists and anti-federalists:
 - They were the two contending sides of this debate: the first in favor of the ratification, the second against it
 - The writers of the *Federalist Papers* (John Jay, James Madison, and Alexander Hamilton) were part of the federalist faction
 - The anti-federalists were more divided, and they were a less united front in their critiques and in what form of government they wanted
 - Ultimately, they were united in thinking that the national government was too strong

1. Introduction

- Most of them used pseudonyms (“Publius,” “Brutus”)
 - It helps maintain anonymity and create a united voice (Jay, Madison, and Hamilton all speak as “Publius”)
 - Madison was involved in drafting the constitution and, therefore, it could diminish his credibility if he spoke as himself
- The *Federalist Papers* are not a systematic treatise and were published serially in journals and newspapers
- They are partisan and try to sway the public opinion – they address themselves directly to the reader as “you”

1. Introduction

- For these participants, are these debates of purely local interest? What is at stake here?
- “After full experience of the insufficiency of the subsisting federal government, you are invited to deliberate on a New Constitution for the United States of America (...).
- (...) it seems to have been reserved to the people of this country to decide, by their conduct and example, the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.” (Federalist n°1, p. 2)

1. Introduction

- For these participants, are these debates of purely local interest? What is at stake here?
- “The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you (...) If the constitution, offered to [your acceptance], be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn” (Brutus, p. 1)

1. Introduction

- From the point of view of its participants, this debate isn't just a fight over some rules of government or even just about something that is happening in the American continent
- There has never been a republican government of this size that has been so deliberately devised from the ground up

1. Introduction

- Although the problem of the ratification is uniquely American, its repercussions are universal in scope:
 - “(...) the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice.” (Publius)
 - “The most important question that was ever proposed to your decision, or to the decision of any people under heaven” (Brutus)
- They’re aware that they’re doing something unprecedented and that it will set the example for others later on

1. Introduction

- This wasn't just a local debate and its participants were aware of it
- The *Federalist Papers* and the writings of the anti-federalists are remarkable commentaries on the

major founding ideas of liberal democracy

- Its view of human nature
- Checks and balances
- Independence of the judicial power
- Its innovative republicanism

- The participants of these debates apply a lot of the insights that we've seen in our previous classes from Locke and Hobbes

1. Introduction

- Let's look at Brutus' "Against the Constitution" to see what the federalists were up against
- "The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not?"
- "This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it" (p. 2)

1. Introduction

- Brutus doesn't say that the present constitution outright removes the states' powers and independence, but he says that, once adopted, it will very quickly arrive at that point
- P. 3: he lists a series of competences over which the central government can legislate (treatises, contracting debt, army...)
- Which competences does Brutus highlight the most?
- Taxes and trade duties since they were the triggers that led to the American Revolution
 - “the authority to lay and collect taxes is the most important of any power that can be granted (...) it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one.” (p. 3)

1. Introduction

- Brutus does admit that the states have some powers, but he argues that the national government has no checks on the laws that it can make
 - He cites the Constitution: “the Congress shall have power to make all laws which shall be necessary (...) for carrying [its powers] into execution” (p. 2)
- His argument is based on a Hobbesian view of human nature (one that the federalists also endorse, as we will see)
 - “it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it (...) This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority” (p. 4)

1. Introduction

- In other words, given the way the Constitution is framed, nothing will stop the national government from expanding and encroaching on the states
 - Brutus' first critique: the national government has no checks
- Then, he says:
 - “Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things (...) In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent” (p. 5)

1. Introduction

- His second critique is one that we already talked about with Rousseau:
 - Only in a small community where people meet will it be possible to decide on what the people want
 - The bigger the community, the bigger the tendency for despotism since it becomes impossible to know the will of the people
- Before he introduces his third critique, Brutus says something reminiscent of Rousseau:
 - “In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government” (p. 6)

1. Introduction

- It's very reminiscent of Rousseau:
 - Without some homogeneity, factions and discordant interests arise
 - It becomes harder for the government to exercise its functions
 - And, more crucially, it becomes harder to understand, beyond the factional interests, what the true will of the people really is
- The third critique is the following:
 - “The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them” (p. 6)

1. Introduction

- In conclusion, Brutus voices these three critiques that we will see reemerge in the *Federalist Papers*:
 - The national government has no checks
 - A republic is not compatible with a large country
 - The people will know little about their representatives, they would not be able to change them, and they will ultimately not trust them

2. *The Federalist Papers*

- As we saw, Publius opens by admitting that the Articles of Confederation were inefficient, and by arguing that this Constitution will have vast and universal consequences
- He then says:
 - “Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument, and consequence of the offices they hold under the State establishments; and the perverted ambition of another class of men, who (...) will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies” (pp. 2-3)

2. *The Federalist Papers*

- Publius is throwing shade at the anti-federalists
 - He says that their group is composed of (1) people with entrenched interests that do not want their power to change and of (2) ambitious people who use this moment of confusion to advocate for the anti-federalist side
- But wouldn't the reader assume that the federalists could be just as ambitious? Why say "they're the ambitious ones, not us"?
- Publius answers this critique later on:
 - "(...) a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will teach us that (...) of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people, commencing demagogues and ending tyrants" (p. 4)

2. *The Federalist Papers*

- Let's move on to Federalist n°6 (p. 4)
 - “A man must be far gone in Utopian speculations who can seriously doubt that if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. To presume a want of motives for such contests as an argument against their existence would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent, unconnected sovereignties situated in the same neighborhood would be to disregard the uniform course of human events” (p. 4)

2. *The Federalist Papers*

- On the one hand, look at how Publius accepts, like Brutus, the idea that individuals are “ambitious, vindictive, and rapacious”
 - Both authors are in agreement: human beings always want to expand more
- But he arrives at the opposite conclusion of Brutus: it’s precisely because human beings are ambitious that, if the states remain separated, then this will be a cause of tensions and conflicts
 - “(...) it has (...) become a sort of axiom in politics that vicinity, or nearness of situation, constitutes nations natural enemies” (p. 5)
 - The anti-federalists are naïve if they think the states will not go at war with one another
 - The United States could become a sort of Europe 2.0

2. *The Federalist Papers*

- Let's now move on to Federalist n°10 (pp. 5-12)
 - It's one of the most important Federalist papers with n° 51
- N°10 tries to answer this problem: what to do about human beings' ambition?
 - We could have relatively separated states, but then they will make war with one another
 - We could have a national government, but then it will expand and devour the states
 - As you say in the US: "Damned if you do, damned if you don't"

2. *The Federalist Papers*

- “Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it.” (p. 5)

2. *The Federalist Papers*

- Publius is here countering the arguments of the anti-federalists, such as Brutus
 - It's true that sizeable republics will give rise to factions
 - But a stronger national government will not create unmanageable factions
 - On the contrary, it will be able to cure the evils of factions
- He neatly defines what a faction is:
 - A faction is “(...) a number of citizens (...) who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”

2. *The Federalist Papers*

- He then asks: how to cure the evils of factions? We either remove its causes or control its effects.
(p. 6)
 - For instance, if a CEO gives let a group of employees decide on the company's budget, we might see competing interests arise and groups might form
 - To eliminate factionalisms, the CEO could, for instance, eliminate the budget (remove the cause) or establish rules that will prevent factions from being too competitive (control the effects)
- Publius says: there are only two ways of removing the causes of factions and neither is desirable:
 - We can remove liberty, which would prevent factions from arising (we prevent individuals from expressing their opinions, from associating...)
 - Of course, this is despotism and nobody wants that

2. *The Federalist Papers*

- We could also prevent from arising if we follow the solution of Brutus and the anti-federalists: we could just have small groups that are relatively homogeneous
 - As Publius says, we give “every citizen the same opinions, the same passions, and the same interests” (p. 6)
 - For instance, if everyone had the same amount of property, their interests would not vary as much (or if we all have the same religion, the same culture, etc.)
 - We will see in our next classes that Karl Marx and the socialists take this route

2. *The Federalist Papers*

- But Publius replies that no community can be homogeneous enough to never have factions arise
 - There will always be differences between property, personal individualities, talents...
- Therefore, Publius concludes that factions can never be eradicated. You can only mitigate their effects. Therefore, he can then make this critique against the anti-federalists:
 - “(...) it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual (...).” (p. 9)

2. *The Federalist Papers*

- Publius proves that the anti-federalists' solution is inadequate to put despotism in check: small republics will always have factions, no matter their relative homogeneity, and majoritarian factions will violate individual rights
- Let's then look at how we can control the evils of factions by controlling their effects (pp. 6-7)
 - On the one hand, he says that, thanks to the present Constitution, the people will be able to vote for representatives out of a much larger pool of individuals than in small communities. Therefore, there is more chance to vote for virtuous individuals over ambitious ones. (p. 10)

2. *The Federalist Papers*

- Then, he says that a crucial difference between pure democracy and republic is...
 - “(...) the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression.” (p. 10)

2. *The Federalist Papers*

- Publius says that, in the small democracies of the anti-federalists, there would be a much greater chance of having large factions that could become majorities
- Thanks to a large republic where everyone is represented, this is much more difficult
 - There are many more factions and none of them can easily become an oppressive majority
 - It will be a lot harder for these factions to meet and conspire together

2. *The Federalist Papers*

- Federalist n°51 (pp. 12-17)
- We saw the federalists' answer to the problem of factions: having a wide variety of factions to prevent a majority from forming
- Now we will see how this works in practice
- Remember Locke's division of powers: there is a legislative power (the power to make laws, that the US Constitution puts in the Congress) and the executive power (the president)
- The US Constitution also creates a third judiciary power: independent tribunals that interpret the law in an impartial way and apply it to individual cases

2. *The Federalist Papers*

- “To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution? The only answer that can be given is that (...), by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.”

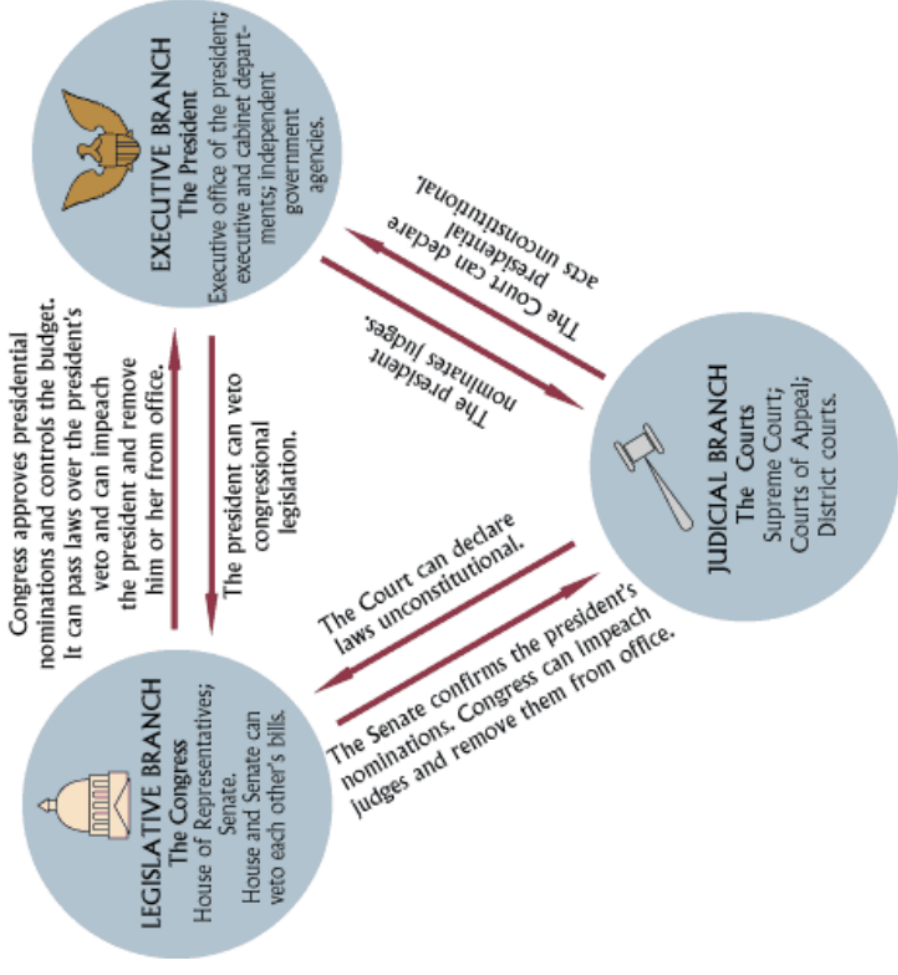
2. *The Federalist Papers*

- Publius says that we must *pit each part of the government against each other*
 - It makes sense: we put ambitious people against other ambitious people
- To “pit” each part of the government, he says, we need to make sure that each part has “a will of its own” (p. 13):
 - (1) Each part needs to be elected through different channels (e.g., the presidency and the congress have their own separate elections)
 - (2) Each part should appoint its own members and as little as possible members of the other parts

2. *The Federalist Papers*

- (3) Finally, each part has constitutional means to prevent the others from encroaching on their own powers: “those who administer each department [should have] the necessary constitutional means and personal motives to resist encroachments of the others” (p. 13)

- It’s the idea of checks and balances



2. *The Federalist Papers*

- Finally, he says that, in the particular case of the United States, there is a further “double security” in that the smaller states and the national government have (1) the same internal divisions and checks and balances and (2) they check one another to prevent the states or the national government from becoming too strong