

Moral Reasoning 74:
The Theory and Practice
of Republican Government

Lecture 2:
What is a Republic? Arguments for (and
against) the Revolution and the Constitution

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Announcements

Office Hours: Wednesday 3-5PM, in Knafel 430 [CAPS Conference Room]

Course Home Page [incl. syllabus, lecture notes, assignments]:
<http://people.hmdc.harvard.edu/~dcarpent/repgovt/repgovt.htm>

Sectioning: We'll distribute section forms on Thursday (2/5) at the end of class, and Eric will send out section assignments that night? Sections will begin next week. The dates/times will be

- Mondays, 1-2 PM; Thursdays, 4-5 PM; Fridays, 10-11 AM

Undergraduate Research Opportunities [paid] for the summer; see me after lecture today or Thursday.

Questions About the Founding

- (1) Why so much interest in Montesquieu?
- (2) Why so much interest in Rome, and a general assumption that readers knew its history?
- (3) Why so much concern about stability?

Questions About the Founding (cont.)

- (4) Why is the spirit and letter of the Declaration ignored?
- (5) Why are legislatures and democracies given a bad name?
- (6) Why so much concern with corruption, with virtue?

I. The American Revolution and the Revolt against Executive Authority

Start w/ the Declaration of Independence (1776).
What is its chief message? Not “unalienable rights,”
not “life, liberty and pursuit of happiness.”

What is that message?

George III blows

The Problem with George III

“The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states.”

“He has obstructed the administration of justice....”

“He has erected a multitude of new offices....”

“He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of the people.”

The Problem with George III (cont.)

He is blamed

- for “quartering large bodies of troops among us...”
- for “imposing taxes upon us w/o our consent”
- for “depriving us, in many cases, of the benefits of trial by jury.”

Notice correspondence with const provisions (House launches revenue measures; 6th Am guarantees trial by jury; 3rd Amendment prevents arbitrary troop quarterings)

What are these grievances about? **Unalienable rights**. So the first thing a Constitution will do is to limit executive power.

II. The Constitution: A Repudiation of 1776?

A. The Constitution is a *two-dimensional contract*.

- (1) a compact across states (e.g., bicameralism & the Great Compromise btw VA & NJ Plans)
- (2) a compact across different levels of government

B. It **enables** the federal government vis-à-vis the states:

- Congress’ powers: Art I, Section 8.
- President’s powers: Art II, Section 2.
- Judiciary’s powers: Art III, Section 2.

The Constitution of 1787

C. It also **constrains** (even w/o Bill of Rights)

- no bill of attainder or ex post facto law (Art I, S 9)
- no econ discrimination among states (Art I, S 9)
- no religious test (Art VI)
- no taxation unless the majoritarian part of Congress starts it (Art I, S 7)

- w/ Bill of Rights – trial by jury, no quartering.

- One other notable constraint on states: All debts valid (Art VI, S 1).

The Federalist

A tract of political philosophy, but also a political selling job, particularly to the smallest states (DE, NJ) and to NY.

Published in parts under “Publius.”

Hamilton, not Madison, is the real soldier here.

#1 (Hamilton): The utility of the union for “political prosperity.”

- Hamilton motivated by “an enlightened zeal for the energy and efficiency of government.”
- “vigor of government is essential to security of liberty.”

Federalists *presuppose* desirability of republican form

Hamilton #1: I propose, in a series of papers, to discuss the following particulars: -- The utility of the UNION to your political prosperity – the insufficiency of the present confederation to preserve that Union – the necessity of a government at least as energetic with the one proposed, to the attainment of this object – The conformity of the proposed Constitution to the true principles of republican government – Its analogy to your own State constitution – and lastly, The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.

Federalist Argument: Best Governments are Republican

Madison: *Federalist 39*:

“The first question that offers itself is whether the general form and aspect of the government [proposed by the constitutional convention] be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the revolution; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.”

Federalist Argument: Best Governments are Republican

Madison: *Federalist 39*:

“...we may define a republic to be, or at least bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic.”

Hamilton, *Federalist 1*

It will be forgotten, on the one hand, that...the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will equally be forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interests can never be separated; and that 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 court to the people, commencing demagogues and ending tyrants.

Jay *Federalist #2*

Argument: Look at the country. Union is natural and right for America.

Shared language, religion, background...

Not clear that this is a very sound argument. And contradicts Hamilton (#9) and Madison (#10) somewhat.

Anti-Federalist Point #1: Liberty is secure only in small republics (Montesquieu).

The Anti-Federalists asked: *Why should we unite?*

The Address and Reasons of the Pennsylvania Minority:

“We dissent, first, because it is the opinion of the most celebrated writers on government, and confirmed by uniform experience, that a very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the management of their general, and foreign concerns.”

Federalist Response:

Do Not Restrict, but Expand the Representative Sphere

#6 (Hamilton): Real threat to liberty comes from within, from domestic faction.

#9/#10 (Hamilton, Madison): FACTION IS THE ENEMY. HOW TO AMELIORATE FACTION.

Madison, #10: “By faction I understand a number of *citizens*, whether amounting to a *majority* or minority of the whole, 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*.”

How to solve the problem of faction?

Ameliorate its effects by pure democracy? That's just 1/2 solution

“If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.”

The Republican Solution to Faction
“Extend the Sphere” and “The Rule of the Wise.”

“Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.”

“The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States.”

Anti-Federalist Point #2: Too much mixture
of powers across the 3 branches

- Why is legislative authority split among two chambers?
- House impeaches (judicial power)
- Senate ratifies treaties (exec power)
- President has a veto over all laws, and recommends laws to Congress’ consideration (leg power)
- VP is President pro-tempore in Senate, and can cast deciding vote in cases of a tie (leg power)

Federalist Response:
Look at Rome

Hamilton: *Federalist 34:*

“It is well known that in the roman republic the legislative authority in the last resort resided for ages in two different political bodies – not as branches of the same legislature, but as distinct and independent legislatures, in each of which an opposite interest prevailed; in one the patrician; in the other, the plebeian.
...It will be readily understood that I allude to the COMITA CENTURIATA and COMITA TRIBUTA. The former, in which the people voted by centuries, was so arranged as to give a superiority to the patrician interest; in the latter, in which numbers prevailed, the plebeian interest had an entire predominancy. And yet these two legislatures coexisted for ages, and the Roman republic attained to the pinnacle of human greatness.

Federalist Response:
Republicanism suggests Mixed Regime

Madison's response: *Federalist* # 47, #48, #51

- (1) state constitutions do this as well
- (2) *need* a sharing of power (men are not angels...)
- (3) Mixed regime conforms to principles of good republican government

See also Hamilton, *Federalist* #9, discussion of "excellencies" of republican government.

Questions (again)

- (1) WHY SO MUCH INTEREST IN MONTESQUIEU? Montesquieu, and not Locke, is the acknowledged authority.
- (2) Why so much interest in Rome?
- (3) Why so much concern about stability? (This answers question number 2.)

Questions (again)

- (4) WHY IS THE SPIRIT AND LETTER OF THE DECLARATION IGNORED?
- (5) Why are legislatures and democracies given a bad name?
- (6) Why so much concern about corruption, virtue, the fitness of the people to government themselves?
