

Moral Reasoning 74:
The Theory and Practice
of Republican Government

Lecture 18:
Hamiltonian and Jeffersonian Visions I

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II. Repudiation of 1776
Starts in the States

Franklin: "We have been guarding against an evil that old States are most liable to, excess of power in the rulers, but our present danger seems to be defect of obedience in the subjects."

Wood's reading: "The liberty of the people in the traditional mixed government must be lessened, and the power of the monarchical and aristocratical elements must be strengthened."

II. Repudiation of 1776
Starts in the States

"The early state constitutions had rendered government too feeble. "The principal fault," constitutional reformers agreed, "seems to be, a want of energy in the administration of government." In nearly all of the states there were growing demands that the libertarian bias of 1776 be corrected, that the apparent licentiousness of the people be offset by an increase of magisterial power in order to provide for the "execution of the laws that is necessary for the preservation of peace, justice and internal tranquility."

Massachusetts Constitution of 1780

Written by John Adams, Samuel Adams, James Bowdoin.
Long process of drafting, revision and ratification.

Huge effect on subsequent state constitutions (NH
[1784], VA[1784] and federal constitution of 1787

Other trend: enlargement and empowerment of judiciary.

Massachusetts Constitution of 1780

Bicameral legislature (House, Senate of 40 members, apportioned
by tax burden)

Property qualifications for office-holding, ascending in House →
Senate → Governor.

Bill of rights preceded Constitution

Governor directly elected by people

Gubernatorial veto power, with 2/3rds override provision

Full gubernatorial appointment powers (civil & judicial officers)

Fixed gubernatorial salary

<http://www.nhinet.org/csc/docs/ma-1780.htm>

http://press-pubs.uchicago.edu/founders/print_documents/v1ch1s6.html

Federal-Level “Crisis”

Shays’s Rebellion – important b/c of admiration
for Massachusetts

Actions of PA legislature [confiscation,
disenfranchisement]

Most Concerned: Hamilton, Madison, John
Adams

Hamilton, *Federalist* #15

To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national **disorder, poverty, and insignificance** that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

Hamilton, *Federalist* #15: We Are Humiliated

We may indeed with propriety be said to have reached almost the last stage of **national humiliation**. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge.

Reference to debts: mainly revolutionary war claims (soldiers and supply). A pre-eminent distributive issue of Founding period and of Early Republic.

Hamilton, *Federalist* #15

HAMILTON'S CENTRAL PROBLEM: Lack of confidence in institutions, which is partially reflected in depressed land values.

Is a violent and unnatural decrease in the value of land a symptom of national distress? The price of improved land in most parts of the country is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending is reduced within the narrowest limits, and this still more from an opinion of insecurity than from the scarcity of money.

*Federalist #15: Need Government of Law,
which means courts & executive power*

“Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. ...

This penalty... can only be inflicted in two ways, by the agency of the courts, and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms.” [Rossiter ed., 78]

Note Montesquieu’s influence here: Republic of liberty is founded in law. Magistracy (non-legislative actors) needed for law’s success.

Courts not just interpreters of law, but also agents of it. Put differently, magistracy is not only “judicial,” but also “executive.”

Major Themes

I. A Bill of Rights? On the Place and Specificity of Liberty

II. On the Executive

III. Jefferson’s Worries

IV. The Respected Republic [segue to credit/finance/manufacturing, next time...]

IV. The Anti-Federalist Critique
of the Constitution of 1787

IV-I. Liberty is secure only in small republics (Montesquieu).

IV-II. There should be many more restrictions on government than the Constitution contains.

- A. narrow S. Ct. jurisdiction
- B. council of review for Prez.
- C. rely on state militias
- D. increase size of House
- E. reduce tax power of Congress

IV-III. Need a separate guarantee of rights.

Anti-Federalists' Point #5 (Brutus):
Need a Bill of Rights

The danger of authority: "Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers."

Look at England: "The country from which we have derived our origin, is an eminent example of this. Their magna charta and bill of rights have long been the boast, as well as the security, of that nation."

Anti-Federalists' Point #5 (Brutus):
Need a Bill of Rights (cont.)

Look at the state constitutions: "...in all the constitutions of our own states; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them." [Note Massachusetts]

Const powers of the fed govt are like those of our states: "The powers, rights, and authority, granted to the general government, are as complete, with respect to every object to which they extend, as that of any state government – It reaches to every thing which concerns human happiness – Life, liberty, and property, are under its control. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits, as in that of the state governments."

Hamilton's response to Brutus (# 84)
Bill of Rights unnecessary

1. Constitution contains rights.

- writ of habeas corpus required
- no bills of attainder
- no ex post facto laws
- right of trial by jury in criminal cases
- no religious test for office
- no law impairing the obligation of contracts may be passed by the states

2. Indeed, let us look at those state constitutions

NY has "not a syllable" of rights for press, has flourishing newspapers (Rossiter ed., p. 482)

Hamilton's response to Brutus (# 84)
Bill of Rights *dangerous*

3. Bill of Rights will lead to less liberty.

"I go further and affirm that bills of rights...are not only unnecessary in the proposed Constitution but would even be dangerous. They would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?"

Q: Does Hamilton have a point? Does he have a point within the traditions of republican government, political thought?

II. The Presidency:
The Model of the Framers

A. Presidential power:

(1) **directed**

- executor of law passed by Congress
- appoints, but w/ advice and consent of Senate
- commander of troops called into action by Congress

(2) **little or no initiative** – law-making power of president consists in Art. II, S 3, "he shall recommend to [Congress] Consideration such Measures as he shall judge necessary and expedient";

B. The Arguments of Hamilton

Federalist #69: Fear not, anti-Federalists. Comparison of const president w/ King of Britain and governor of NY.

Federalist #70: like Madison's #10, a model essay. Desiderata: (1) energy, (2) safety in the executive.

For energy, need unity and duration: "Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished."

"In the legislature, promptitude of decision is oftener an evil than a benefit...But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department."

III. Jefferson's Worries

I do then, with sincere zeal, with an inviolable preservation of our present federal constitution, according to the sense in which it was adopted by the States, that in which it was advocated by it's friends...; and I am opposed to the monarchising it's features by the forms of its administration, with a view to conciliate a first transition to a President & Senate for life, & from that to a hereditary tenure of these offices, & thus to worm out the elective principle. I am for preserving to the States the powers not yielded by them to the Union, & to the legislature of the Union it's constitutional share in the division of powers; and I am not for transferring all the powers of the States to the general government, & all those of that government to the Executive branch."

III. Jefferson's Worries

I am for relying, for internal defence, on our militia solely, till actual invasion, and for such a naval force only as may protect our coasts and harbors from such depredations as we have experienced; and not for a standing army in time of peace, which may overawe the public sentiment; nor for a navy, which, by it's own expenses and the eternal wars in which it will implicate us, will grind us with public burthens, & sink us under them. I am for free commerce with all nations; political connection with none; & little or no diplomatic establishment."

IV. The Respected Republic

Hamilton favors

- national institutions (bank, diplomacy, regulation)
- greater centralization
- energetic and durable executive
- adoption of common law.

Jefferson opposes.

What is Hamilton's reasoning? And what is Jefferson's?

IV. The Respected Republic

Hamilton's concern for a strong republic

Letter to James Duane, 1780: "And in future, My Dear Sir, two things let me recommend, as fundamental rules for the conduct of Congress – to attach the army to them by every motive, to maintain an air of authority (not domineering) in all their measures with the states. The manner in which a thing is done has more influence than is commonly imagined. Men are governed by opinion; this opinion is as much influenced by appearances as by realities; if a Government appears to be confident of its own powers, it is the surest way to inspire the same confidence in others; if it is diffident, it may be certain, there will be a still greater diffidence in others, and that its authority will not only be distrusted, controverted, but contemned." (*Writings*, p. 86)

IV. The Respected Republic

Report on Public Credit (1790): "To justify and preserve their confidence; to promote the respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources both to agriculture and to commerce; to cement more closely the union of the states; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy. These are the great and invaluable ends to be secured, by a proper and adequate provision, at the present period, for the support of a public credit." (*Writings*, p. 534)
