

How the Seventeenth amendment Repealed the Great Compromise of 1787

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In *Federalist 45*, Madison writes that “The powers delegated to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite.”¹ He also wrote that the national government would never employ a large bureaucracy nor would it maintain an extensive role of governance during peace time. The main purpose in writing *Federalist 45* was to insure the individual states that their rights were not going to be crushed under the new national government. The large centralized state was one of our founders’ biggest and most legitimate fears.

Today, it seems that our founders’ fears have been realized. The large, central managerial national government of the United States influences your daily life from the food you eat to the interest rate on your bank account.² State governments, while still visible, are not comparable in the size or influence of the national government. No one even refers to themselves as an Ohioan or Pennsylvanian any more. The majority of both the *Federalist* and *Anti-Federalist Papers* are dedicated to articulating or defending this fear of a large central government. In fact, it was the will of the Constitutional Convention to eliminate the phrase “National government” from the new Constitution.³

So, what has led to the dramatic growth of the national government? Many point to the usurpation of power caused by Franklin Roosevelt and The New Deal. This argument can be easily justified by the simple number of federal acts and agencies created under the New Deal.

¹ Alexander Hamilton, John Jay, and James Madison, *The Federalist* (Indianapolis: Liberty Fund, 2001), 237-242.

² Walter C. Opello Jr., and Stephen J. Rosow, *The Nation-State and Global Order* (Boulder: Lynne Rienner, 2004), 142-143.

³ James Brown Scott, *James Madison’s Notes of Debates* (London: Forgotten Books, 2015).

Some might even point to the precedent set by President Lincoln in the Civil War. However, I believe that the growth of the national government can be credited more fundamentally to the systemic elimination of the powers and influence originally granted to the individual states. We can identify numerous usurpations of power by the national government imposed on the state governments beginning with the Civil War. No branch of the national government is exempt from this claim. There have been countless executive orders, legislative acts, and Supreme Court rulings that have each slowly striped state power and legitimacy away. However, the most egregious and destructive usurpation of power was the Seventeenth Amendment.

The ratification of the Seventeenth amendment marks the repeal of the Great Compromise. In 1913, the Seventeenth amendment to the Constitution was ratified ending the appointment of Senators by the individual state legislatures. For the first time in 124 years, Senators would not be appointed by the state legislatures. The individual states were no longer seen as constituents of the national government. This amendment was fundamentally a product of the “Progressive movement.” This movement, which will be explained more in the first section, attempted to increase democracy in every aspect of political life and thwart the economic power and wealth of the industrialist millionaires. Both the 16th and Seventeenth amendments are seen as limits to both the wealth and power of the industrialist bourgeoisie.

This paper will explore why the over-democratic progressive era Seventeenth amendment fundamentally distorted the balance of power between the individual states and the national government in favor of the latter. I will explain the original justification for the appointment of the Senate through the words of our founders as well as support their claims with the theoretical contributions of Aristotle and John C. Calhoun. The intention of this paper is to demonstrate why the Senate should be appointed by State legislatures and how the appointment of Senators is a

fundamental guard against tyranny. It will highlight certain socio-economic phenomena both unique and not unique to the U.S. that, when paired with political theory, supports a Senate appointed by the state legislatures. There were good reasons why the Senate was appointed until 1913. This thesis will demonstrate the cause for that provision and the advantages of returning to that style of government.

The paper will first introduce the Seventeenth amendment itself and explain the progressive motives behind its ratification. Next, I will examine the Great Compromise of 1787 and explain the original design of the Senate using our founders own words. Then, Aristotle's quest for the best regime will be used to connect the intentions of our founders to sound political theory. John C. Calhoun's theory of the concurrent majority will then help us compare Aristotle's polity to the United States federal republic. The final section will offer insight into potential issues solved by a repeal or replacement of the Seventeenth amendment as well as a potential prescription for the repeal.

The Seventeenth amendment to the Constitution of the United States

Article 1, Section 3, Clause 1

*The Senate of the United States shall be composed of two Senators from each State, **chosen by the Legislature thereof**, for six Years; and each Senator shall have one vote.*

bold section repealed and replaced by the Seventeenth amendment

The Seventeenth amendment to the Constitution

"The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.”

The Seventeenth amendment repealed the manner of choosing Senators from clause 1 of Article 1, section 3 of the Constitution. The privilege to elect state Senators was given to the populace. Incumbents of the Senate were allowed to finish serving out their term but would soon be replaced with the first wave of popularly elected freshman Senators. As said above, the Seventeenth amendment was the product of the Progressive movement in American politics. The progressive movement promoted an agenda of “Rousseauism.”⁴ According to the progressives, they were attempting to realize Rousseau’s general will on a national scale.⁵ This would mean that governance should be the will of the majority and striped of private intentions for a centralized national government, which many progressives acknowledged that this was not the will of the founders.⁶ The Progressive movement proclaimed the death of individualistic society. They believed that a society organized for collective action in the public interest was needed in the United States because they claim individualism has failed.

Progressives aligned themselves against old order politicians who allegedly supported special interest groups such as corporations, railroads, and utilities. In most cases, progressives also believed that our founding was fundamentally flawed. Some, like Woodrow Wilson, Frank Goodnow, and W.F. Willoughby believed that the separation of powers doctrine was a defect in

⁴ Jack Kenny, "The Seventeenth: the worst of all amendments?" (The New American, 2013), 37; also see Rousseau, *The Basic Political Writings*.

⁵ Ibid., 37.

⁶ Michael W. Spicer, *The Founders, the Constitution, and Public Administration* (Washington D.C.: Georgetown University Press, 1995), 7.

our constitutional republic that impeded the necessary administrative state.⁷ Their perfect regime was one that was fully democratic, responsive, accountable, emphasized the common needs of individuals, embraced a Rousseauian common good, and gave attention to the equality of outcomes.⁸ They praised the parliamentary regimes of Europe and claimed that our presidential system was designed to protect the economic interest of those who drafted the Constitution.

The Progressives provided a few, potentially legitimate, concerns in support of a directly elected Senate. First, William Jennings Bryan, a major proponent of the Seventeenth amendment, suggested that the advancements in communication technology provided reason to give the people the power to elect their Senators. He said, “With our daily newspapers and our telegraph facilities we need not delegate our powers.”⁹ It seems that he has assumed that direct election of Senators was not granted to the people due to a knowledge problem. He believes that the advancements in technology would give the founders a different opinion on the manner of choosing Senators. This assumption of Bryan’s will be refuted in the next section.

The second concern was that of political corruption. Garrett Epps said, “Whenever a senatorial election occurred, railroad barons, oilmen and monopolists descended on the state capitol and spread their cash like butter across the lawmakers’ outstretched palms.”¹⁰ There are many holes in this argument including the frequency of fraud and potential of the people to elect politicians that were not more corruptible than those they had elected to the state legislatures. The founders, John C. Calhoun, and David Mayhew will offer some points of dissent on this issue.

⁷ Ibid, 7.

⁸ Ibid., 8.

⁹ Jack Kenny, "The Seventeenth", 35.

¹⁰ Ibid., 36.

The final concern is more legitimate than the above concerns of Bryan and corruption. Many states at this point were not filling their Senate seats due to gridlock in the state legislatures. Ralph A. Rossum said that there were 71 deadlocks from 1885 to 1912 that resulted in 17 Senate seats going unfilled for an entire legislative session or more.¹¹ There may be an argument for the state legislature's right to not send Senators in the founder's writings. Even if their argument is not satisfying, I will offer a potential solution to this problem in the end of this paper.

Regardless of the motivations behind the promotion of the Seventeenth amendment, its ratification repealed the Great Compromise of 1787. The will of the populace was set to be the new will of the federal government. The balance of power between state and federal government was lost in the name of democracy. One could argue that there is now no fundamental difference between House of Representative members and Senators. Madison, in *Federalist* 39, claims that the appointment of Senators was a federal attribute of the republic.¹² However, in the words of Matthew Spalding, the Seventeenth amendment was, "a devastating defeat for federalism."¹³

The Great Compromise of 1787

The Constitutional Convention of 1787 created a three branched federal republic that expanded the role of the central government yet maintained individual state sovereignty. The original intention of the convention was to simply revise the Articles of Confederation in such a way that would satisfy the current needs of the individual states.¹⁴ The Articles could be referred to as a loose treaty between the many states. In fact, we could describe the Articles as a

¹¹ Ibid., 37.

¹² Alexander Hamilton, John Jay, and James Madison, *The Federalist* (Indianapolis: Liberty Fund, 2001), 197.

¹³ Matthew Spalding, *We Still Hold These Truths* (Wilmington: ISI, 2009) 114.

¹⁴ James Brown Scott, *James Madison's Notes of Debates* (London: Forgotten Books, 2015), 19.

diplomatic document due to its respect for the individual sovereignty of the many states and nonbinding voluntary provisions.¹⁵ However, this diplomatic document was failing the states. Most of its failures can either be linked to disputes between states or the inability to collect taxes. Despite the original intentions of revision, it became apparent that the Articles were going to be, “Revised with a vengeance.”¹⁶ A new scheme of governance was going to be drafted to fit the current needs of the sovereign states.

The attitude of the convention would force the delegates to focus on compromise. Due to the states’ nature as sovereign and independent, the only scheme of governance that would be agreed upon would be that in which union was in the common interest of all the individual states. James Scott Brown said that it was clear that, “The Constitution, if drafted, would have to be a creature of concession in the relations of the large and small, and of compromise in the matter of local or sectional interest of the people of the States.”¹⁷ This attitude of compromise produced a series of concessions none more important to the discussion at hand than the Great Compromise.

The Great Compromise, with the exception of the addition of a federal judiciary, defines the new Constitution of the Union. The Great Compromise created a bicameral legislature with an upper and lower house each with distinct interdependent roles. Each house reserved unique powers and different constituencies. Their individual existence was intended to counteract the existence of the other. This specific compromise may have been the only way to satisfy the multiplicity of interest present at the convention while preserving the sovereignty of the individual states.¹⁸

¹⁵ Ibid., 25.

¹⁶ Ibid., 19.

¹⁷ Ibid., 29.

¹⁸ Ibid., 32.

The Great Compromise was a concession between the two rival plans for a national government presented at the convention. The plans for the new central government were either favorable to states with large populations or favorable to those states with small populations. The Virginia Plan represented the interest of the large states while the New Jersey Plan represent the interest of the small states. There were a few other plans presented at the convention but the more fundamental debates on the composition of the new government were focused on these two plans.¹⁹

The Virginia plan was supported by the states with larger populations. This plan called for a bicameral legislature with one house elected by the people and the second chamber elected by the first. The legislative branch would then elect the executive resembling a kind of parliamentary system. The directly elected legislature would be proportionate to a state's population. The greater the number of voters in a state, the greater the number of representatives that state has in Congress. This plan is highlighted by its proportional representation. Under this system, large states like Virginia, Massachusetts, and Pennsylvania would have more power while small states like New Jersey and Delaware would have less representation.

The states with smaller populations believed the Virginia plan would crush their voice in the new national government. Their proposition was the New Jersey Plan. This plan called for a unicameral legislature that gave each state an equal number of votes. Their plan was more similar to a federal system or a confederacy. It would benefit the smaller states by giving them an equal say in legislative matters. The large states saw this plan as unfair. States like Virginia believed that a legislature that did not respect population would hardly be just. Despite the claims

¹⁹ Ibid., 33-34.

of injustice made by the large states, the small states would not give up an equal vote. In fact, New Jersey claimed that the only way they would concur to the national system would be if they retained an equal vote in Congress.²⁰

The only solution for the convention was to settle the dispute in a committee designed to compromise.²¹ The solution utilized both equal suffrage and proportional representation. Incorporating the bicameral legislature from the Virginia Plan, the committee replaced the upper chamber of the Virginia Plan legislature with one appointed by the individual state legislatures that guaranteed equal suffrage to each states. The House of Representatives would be the chamber of the populace with members holding office for a brief two years. The Senate would be the chamber of equal state suffrage with the members holding office for a longer six year term. The result was the perfect separation and perfect incorporation of the 13 individual states. It seems that this would be the only way to satisfy each state in forming a union that would maintain a stronger central government than the failed Articles.

The bicameral composition of the legislature is not only a tool of compromise for the small and large states, but it is also a fundamental characteristic to the irrefutable necessity of its specific construction. Anything other than a bicameral legislature in part elected directly by the people and also appointed by the individual state legislatures would be easily refutable. If the legislature were bicameral with both houses elected by the people at large, critics of the plan saying that a bicameral legislature is redundant would be correct. It would also once again leave the small states unsatisfied and crushed by the large states' interest.²² Likewise, without at least

²⁰ Ibid., 34-35.

²¹ Ibid., 35.

²² Bernard Bailyn, *The Debate on the Constitution* (New York: Literary Classics of the United States, 1993), Pt. 1, 138.

one house being directly elected based on population, the large states would be unhappy and underrepresented.

Examining the Great Compromise alone with no exploration of the political philosophy surrounding the founding does not particularly discredit the Seventeenth amendment. In fact, progressive supporters of the Seventeenth might not have qualms with a bicameral legislature that incorporates both proportional representation and equal suffrage to the many states because the general will can still be represented while minority rights in the Senate are not overlooked. What the progressive supporters of a directly elected Senate do not support and that the Great Compromise does not explain is how Senators are chosen and why they are selected in that particular fashion. In order to appreciate the genius of the Great Compromise and refute the arguments for the Seventeenth amendment, we must examine the political theory that led to construction and ultimately the ratification of the Constitution.

Federalism and The Separation of Powers

In order to understand not only why our founders designed a federal republic composed of many sovereign states but also why the legislatures of those states should appoint the Senate, we must examine the writings and debates of our founders. Only after examination of their recorded thoughts will we understand the theory that led to the unique construction of the federal republic that rests on the foundation of the Great Compromise. There are two key principles that guided the founders' thought in drafting and defending the Constitution. These principles are not explicitly stated in the Constitution but guide its words like the dogma of the Church. James McClellan says that, "It is impossible to understand the Constitution without first understanding

the principles upon which it is built.” These dogmatic principle are a) Federalism and b) the Separation of Powers.²³

a) “A Federal System of government is one in which political authority is divided between a general or national government and regional or state governments.”²⁴ The general government handles those matters that are “general” to the regime such as military and diplomatic powers. Those public actions that directly affect the citizens are left to the state or regional governments such as police and utilities. Despite the fact that the state governments do have less freedom than they would in a loose confederacy, they are not mere agents of the national government.²⁵ The individual state governments maintain constitutional rights that must be respected by the national government. The idea is that the people govern *through* their states. Although our republic is democratic, both the people and the individual states share sovereignty. This blend of interdependence and independence can be described as a system of government where there are two levels of authority each sharing in governance yet reserving supreme authority in its legitimate sphere.

We can trace this dogmatic appreciation of federalism in the writings and debates of our founders. It is very clear that neither the extreme decentralization of a confederacy was wanted nor was the complete centralization of government wanted. The Articles had failed. As said above, the convention was called specifically to slightly increase the power of the central government. However, it is more apparent that these new powers granted to the national government were not intended to overpower the legitimacy or interest of the individual states. In

²³James McClellan, *Liberty, Order, and Justice* (Indianapolis: Liberty Fund, 2000), 296. (McClellan includes “rule of law” on this list, leaving it out neither strengthens or weakens the argument)

²⁴ Ibid., 297.

²⁵ Ibid., 297.

the opening paragraph I mentioned that the word national was meant to be stricken from further proceedings to insure that too much respect was not given to the central authority.

A close reading of *Federalist 39* will also give the impression that federalism was the ideal organization of political life for the United States. This paper was written as an effort to refute the claim that the Constitution created a national or consolidated government that thwarted the legitimacy of the individual states. At the end of the paper, Madison admits that the new government was not intended to be wholly federal nor national. The new regime would be a combination of both.²⁶ However, when examining the nature of the three branches, we can see an original respect for federalism over a central or national government. The Senate and president are both elected in federal fashions and the judicial branch is appointed by those two heavily federal branches. The House of Representatives alone holds the national or central government characteristic of being consolidated.

The federalist doctrine is not simply the preference of the founders but it also comes with many benefits to governance. McClellan highlights five specific advantages of the federal system that are relevant to the United States.²⁷ First, it enables different peoples or states with differing interest to join together without requiring a homogeneous society. Each individual society retains its unique identity. Second, it allows states or regions to manage their own affairs without being directed by a central autocracy or bureaucracy. The proximity of the people to the governing officials allows local or state governments to better understand the needs of the citizens as opposed to the national government which is too detached from the average voter. Next, McClellan credits Mill with the observation that the decentralized system of government

²⁶ Hamilton et. al., *The Federalist*, 197.

²⁷ McClellan, *Liberty, Order, and Justice*, 316-319.

encourages independence and self-reliance. Mill believes that the decentralized system releases the creative energy and genius of the people. This specific attribute encourages non-government or at least non-national government solutions to local or individual problems that could otherwise be multiplied by the excessive entanglement of bureaucracy. Furthermore, federalism limits the ability of an unjust dictator or fanatical party to seize power on a national scale and rule unchecked. In fact, in order to usurp power in Germany, Hitler first had to destroy the federal structure blocking usurpations. McClellan says, "Totalitarianism cannot succeed where federalism thrives."²⁸ Finally, Federalism allows individual states or regions to be laboratories of political, economic, and social experiments without jeopardizing the fate of the entire nation. This will not only allow tailored and flexible solutions to issues but it will encourage creativity in solutions.

b) The doctrine of the separation of powers is integral to the construction of our federal republic. For our founders, the very culmination of unchecked political power in the hands of any quantity of rulers was the definition of tyranny.²⁹ Their reasoning behind their insistence that powers need to be separated and checked is a product of their understanding of human nature. In *Federalist 51*, Madison explains that government is needed among men because we are not angels. He then explains that since we are not governed by angels, we need to implement internal and external controls to check the power of government.³⁰ Political power is no different from accounting in this sense. Much like how a business would never let the same person write the checks and maintain the books, government should not let those who hold power of the purse also wield the power of the sword.

²⁸ McClellan, *Liberty, Order, and Justice*, 319.

²⁹ Hamilton et. al., *The Federalist*, 258.

³⁰ *Ibid.*, 267-272.

The separation of powers is simply the delegation and separation of power and functions of governance. The separation of power consists of four elements in the American system.³¹ The first and most visible is the three separate branches of government. The executive, legislative, and judicial branches of government all maintain a level of independence and interdependence while performing different functions. The second element is inherent in the first. This feature is the realization that there should be unique functions of each branch that are appropriate. As said in the previous paragraph, it would be inappropriate for the accountant of a business to also be writing checks. Similarly, it would not be prudent to give the Commander in Chief the power to appropriate funds due to his ability to use both the funds and might unjustly without being checked. The fourth element is a belief that members of each branch should be distinct. Someone working in the judicial branch should not also be a legislator. The same is also true for relationships between local, state, and national government. The final element rests on the understanding that the separation of powers is guaranteed by law. The final provision is that the legislature cannot alter the distribution of power at its own will. This simply means that they cannot change the rules in order to aggrandize power.

The separation of powers is also interwoven into federalism. As said above, the individual states are not simply agents of the larger central government. This fact is very important to the doctrine of the separation of power. Without this distinction, there would be no way for the state governments to check the power of the national government. *Federalist 45*, notes that the state governments should be regarded as constituent and essential parts of the federal government. If it were not then we could not delegate the necessary powers that would

³¹ McClellan, *Liberty, Order, and Justice*, 328.

allow the state governments to check the central authority. So, the doctrine of the separation of power is not only horizontal but also vertical.

So, if each part of the constitution was crafted around these more fundamental principles, how does the Senate's original construction specifically satisfy the two fundamental dogmatic principles of federalism and the separation of powers? How does the appointment of Senators satisfy the above principles and how does the Seventeenth amendment reject the above principles? Also, were there any reasons our founders did not fear the Senate's corruption like the progressives did and if so, why did they think that way?

The States' Chamber of Congress

It is no mystery that the Senate was intended to be a federal feature of the new republic while the House of Representatives was intended to be a national feature. This distinction between the separate chambers of Congress as one being federal and one national is not only a product of the Great Compromise, but it is fundamental in fulfilling the dogma of federalism.

When Madison describes the Senate and the House in paper number 39 he says:

The next relation is to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in the Legislature of a particular State. So far the Government is national not federal. The Senate on the other hand will derive its powers from the States, as political and co-equal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is federal, not national.³²

In accepting the bicameral legislature on the grounds that one chamber would derive its powers from the individual state governments, the Convention satisfied the above definition of

³²Hamilton et. al., *The Federalist*, 197.

federalism and the wishes of both the small and large states. I said in the previous section that federalism was a division of power and authority between the national government and state governments. The Congress of the new republic effectively divided legislative authority between the individual states and the nation at large.

It appears that Madison believed that the division of authority, that created a federal system, was a product of each chamber's intended constituency. In the above excerpt from *Federalist 39*, the only highlighted difference between the two chambers is where each derives its powers. This distinction is very important to our founders due to their understanding of how governments derived power. Our founders held a very Lockean understanding of the social contract.³³ They believed that authority is derived from the consent of the governed. The Senate, being appointed by the state legislatures, effectively derives its authority from the states. The same relationship of consent is also seen between the people at large and the House. As the Federal Farmer says, "The (House) is on the plan of consolidation, but the Senate is entirely on the federal plan."³⁴

The Senate deriving its powers from the individual states is fundamentally what makes it a federal chamber of Congress. Without this derivative unique to the Senate's agency, the Senate would cease to be federal. This was no mistake or unintentional benefit that the Senate was designed in concurrence with the principles of federalism. In fact, appointment of the Senate by the state governments is in no way controversial for the founders. Only one member of the convention made a motion for the Senate to be directly elected but that motion quickly lost attention.³⁵ Interestingly, Madison doesn't even feel the need, "to dilate on the appointment of

³³ McClellan, *Liberty, Order, and Justice*, 45; also see Locke, *Second Treatise of Government*.

³⁴ Bailyn, *The Debate on the Constitution*, Pt. 1, 262.

³⁵ Mark R. Levin, *The Liberty Amendments* (New York: Threshold Editions, 2013), 39.

Senators by state legislatures.”³⁶ It seems only fitting that the chamber reserved to the states should draw its agency from the state government itself. They all recognized the utility of allowing the state governments to appoint Senators.

Our founding documents consistently appropriate the Senate to the individual state governments. Many Anti-Federalist and those who did not support consolidation in general legitimately feared the elimination of state governments and the effective destruction of federalism.³⁷ However, *Federalist* 9 says,

The proposed Constitution, so far from implying an abolition of the State Governments, makes them constituent parts of the national sovereignty by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.³⁸

As said above, the centralized, consolidated state was meant to be avoided. Statehood was seen as a blockade against centralization due to the share in sovereign power.

Federalist 45 explains that the Senate owes its existence to the states and should feel a sense of dependency to the states.³⁹ The Senate’s constituency is the many state governments. The attachment of the Senate to the state legislatures appears to make the individual states essential parts of the national government in the same way that the House makes the populace an essential part of the national government. The members of the Senate are extensions of the state legislatures. Madison points out that this extension gives the state governments agency that secures the authority of the states and creates a convenient link between the two systems.⁴⁰

³⁶ Hamilton et. al., *The Federalist*, 320.

³⁷ Ralph Ketcham, *The Anti-Federalist Papers* (New York: Signet Classic, 2003), 271.

³⁸ Hamilton et. al., *The Federalist*, 41.

³⁹ *Ibid.*, 240.

⁴⁰ *Ibid.*, 240.

The extension and agency granted to the Senate effectively divides the authority of the national legislature in such a way that satisfies the requirements of federalism. The fulfilment of federal requirements and cited agency given to the Senate begins to break up arguments provided by the progressives in favor of the Seventeenth amendment. William Jennings Bryan's argument that the Senate was appointed due to a knowledge problem can begin to be refuted by the federal understanding of the Senate. The founders' writings have shown that the Senate was explicitly intended to be the chamber of the states in order to preserve the desired federal structure.

However, supporters of the Seventeenth amendment might not be satisfied with the benefits of federalism provided by the Senate if appointed by state governments. In fact, we could argue that the very benefits of federalism are unworthy to progressives because it impedes the centralized state's efficiency. I said above that federalism is fitting for a multiplicity of interests, removes requirements for bureaucracy and autocracy, thwarts the capabilities of a centralized faction, and allows states to be laboratories of democracy. These perceived benefits may not be exactly what the progressives wanted in ratifying the Seventeenth. We know from earlier that they wanted a unitarian government, stripped of private interest that was uniform and swift. Interestingly, it seems that the progressive motives behind the Seventeenth were intended to make government more representative of the people and to be more effective in its governance. Perhaps they should have looked to the power of federalism and local government like our founders did to make a truly representative government.

Nonetheless, the agency and convenient link of the national and state governments provided by the Senate was eliminated when the Seventeenth amendment was ratified. Although the equal suffrage was maintained, the agency from which the Senate derived its authority has changed. No longer does the Senate answer to the individual states as constituents. Therefore, the

chamber of the legislature that was described by Madison as federal, is now on the consolidated plan due to its derived agency from the people in their individual capacity.⁴¹ Based on the evidence provided in the introduction, we can already see the withering away of certain benefits of federalism. Mill believed that federalism would quash the need of a central bureaucracy. The burgeoning national bureaucracy referenced in the introduction may very well be a side effect of the blow to federalism caused by the Seventeenth.

Contrary to William Jennings Bryan's explanation for why the Senate was appointed, the Senate was not constructed due to a perceived knowledge problem of the populace. The Senate was intentionally constructed to preserve and promote federalism. No matter how well informed our populace becomes, it will never replace the benefits of the federal structure of government. The dogma of federalism is undeniably important in the original construction of the Senate not the volume of information citizens have access to. However, both federalism and the separation of powers direct the construction of the Senate. So, how does the Senate's construction fulfill the dogma of the separation of powers?

The Senate and Separation of Powers

The Senate is not limited to a role that only satisfies the dogma of federalism. The Senate, when appointed by the individual state legislatures, also plays an important role in the doctrine of the separation of powers. In fact, it was previously mentioned that the separation of powers is interwoven with federalism. Where there is a federal structure, there is simultaneously a separation of power. The separations and checks of power imbedded in the Senate's construction

⁴¹ Bailyn, *The Debate on the Constitution*, Pt. 2, 662.

are both vertical (between state and national government) and horizontal (between the House and other branches of the national government). These checks and separations rely on the federal nature of the Senate because of the agency derived from the individual states.

First, it would be helpful to examine the vertical separations of power that are dependent on the agency derived from the individual state governments. A vertical separation of power would be one that is a product of federalism. These checks and separations are a product of the division of authority caused by the state's role in governance. The most apparent of these checks are those between the House and the Senate. It has already been shown that each chamber has a unique constituency. How do the different constituencies affect the legislative process?

The legislative process can only be understood by examining the relationship between the constituencies of each chamber and the manner of appointment. We have already examined the constituency of the Senate in the previous section. There is no need to further examine its federal nature. The House, on the other hand, is the chamber of the populace. It is responsive to the wills of the people at large. In maintaining the spirit of a republican government Madison says, "The government in general should have a common interest with the people; so it is particularly essential, that the branch of it under consideration should have an immediate dependence on, and intimate sympathy with, the people."⁴² The relationship between the representative and the individual district would resemble that of the people to their individual directly elected members of their state governments. National representatives, much like the state representatives, will represent their individual district's interest. A government that completely neglected the will of the people would hardly be a Union of "the people."

⁴² Hamilton et. al., *The Federalist*, 272-276.

This representation is the most democratic feature of the national government because it is the most responsive to the people at large. However, there are some drawbacks to the very democratic and responsive House of Representatives. In fact, Madison cites four specific overarching shortcomings of the House that the Senate is intended to check and correct. He mentions the, “Misfortune...that those who administer (republican government) may forget their obligations to their constituents.”⁴³ Then, he points out the tendency of single, numerous assemblies to, “yield to the impulses of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.”⁴⁴ Furthermore, in very close relation to the first defect, representatives of brief appointment have a natural tendency to pass legislation that is beneficial to their private interest. Madison says that these “blunders” of legislation are a product of the representatives’ heads as opposed to their more principled hearts.⁴⁵ The final defect is caused by both the brevity of the term of office and the constituency. Madison says, “Every new election in the states, is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence, and every prospect of success.”⁴⁶

The Senate, due to its different constituency and manner of appointment, is intended to correct and check the four inconveniences of the House. First, since the Senate derives its agency from a different source than the House, “schemes of usurpation or perfidy” in the legislature are harder to undertake because both houses have someone different to please.⁴⁷ It is unlikely that

⁴³ Ibid., 321.

⁴⁴ Ibid., 322.

⁴⁵ Ibid., 322.

⁴⁶ Ibid., 323.

⁴⁷ Ibid., 321.

both the people at large and the individual state governments would be pleased with the same usurpation of power. So, where the House may individually betray the populace, the Senate and state governments responsible for appoint thereof, would act as a salutary check on the House. Only in the unlikely instance of a sinister combination of perfidy between the two would the two chambers not exercise a check on each other that preserved good republican governance. This is a vertical check because it demonstrates the state governments' ability to check the populace House. Without the two unique constituencies, the likelihood of sinister combinations of deceit increase because there is only one constituency to betray. Currently, due to the Seventeenth, both the House and the Senate answer to the populace making perfidy more likely.

The second correction provided by the Senate is, like the first, a product of its agency. The House is subject to impulses, passions, and factious intemperance by nature of being a popularly elected legislature.⁴⁸ However, due to the smaller number, greater requirements, agency, and firmness of office, the Senate can cool the heated actions of the House.⁴⁹ Although the Senate is not free from the threat of faction, it is unlikely that they will face the same kind of violent passions to be expected from the electorate of the House. Gladly, this firmness, which extends from the many state governments, will thwart the power of faction coming from the House. If the violent passion comes from the Senate, it is once again unlikely that a sinister combination of perfidy will be made that will satisfy both constituencies. If the constituency of the Senate is changed to the populace, then it becomes subject to the same impulses, passions and intemperate factions the House is subject to. Once again, this check is vertical because the

⁴⁸ Ibid., 322.

⁴⁹ Ibid., 322.

state checks the power of the national characteristic of the House. Without this check both the house and the Senate are subject to the passions and intemperance of the same constituency.

The third correction will be very similar to the second. Madison says that popularly elected representatives are more likely to “proceed from the head” and not from the heart.⁵⁰ This means that they are going to act with prudence toward that which is most beneficial to them. Acting from the heart would imply acting from principle and not strictly self-interest. This is simply the nature of elected representatives. In fact, David Mayhew reaffirms this tendency Madison cites years later. Mayhew believes that the prime motivation for any representative is to win reelection.⁵¹ Obviously this will not be all representatives, but in general, this is true. They engage in numerous self-preserving actions like position taking and anonymous voting to preserve their image. Those who don’t are few, short lived, or from districts that are secure. It is simply that nature of man and representative government that representatives, once elected, act from the head. If this were not the case, millions of campaign dollars would be saved and fewer representatives would miss votes for fundraising.

The tendency of the popular chamber to “proceed from the heads” can only be checked by the Senate’s firmness. The Senate earns firmness from the state governments who appoint them because they are twice removed from the passions of the populace. The passions of the populace are best seen in full direct democracy. It is not a question our founders wanted to avoid this type of governance and perhaps only one political theorist endorses this type of rule.⁵² Republicanism removes governance from the passions of the populace by electing

⁵⁰ Ibid., 322

⁵¹ David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

⁵² Paul Le Blanch; see discussion on Karl Marx

representatives.⁵³ This once removed representative is thought to be more deliberative than the populace that elected him. Our founders agreed that representatives would help calm the fire of the populace. The Senate is full of representatives that have been appointed by those other elected state government representatives. This means that they have now effectively been removed twice from the passions of the populace but still earn their agency indirectly from the people. This double removal liberates the representatives appointed to the Senate from the populace. They are more able to express principle and deliberate without the fear of immediate punishment from the fiery populace. In essence, they are able to “act from the heart” without fear of immediate retaliation. It is still ultimately in their best interest to please the state government but the state government is still less passionate and quick to punish than the populace.

Some may find this disturbing because we think that the ability to recall a representative by the people secures accountability. However, remember that the House has horizontal checking ability on the Senate. The people’s chamber can easily thwart the Senate if the people particularly do not like an action of the Senate. They can also punish their immediate state government. After all, they are no different than any other representative and it would be in a representative’s best interest to please their constituents whether they be the people or the state legislatures.

The tendency to act in self-interest for a representative can only be thwarted by the firmness of the Senate. Even if both representatives and Senators act purely out of self-interest, it will once again be unlikely that those interests will align. As said in *Federalist 51*, “Ambition must be made to counter act ambition.”⁵⁴ Keeping consistent with the above corrections of

⁵³ McClellan, Liberty, Order, and Justice, 362.

⁵⁴ Hamilton et. al., *The Federalist*, 268.

power, it will continue to become more likely that those ambitions, interest, and acts of deception will align if the constituencies of each chamber are not unique. This vertical check is once again a product of the state governments' ability to check the national government.

The fourth and final defect of the House that is intended to be corrected by the Senate is the instability of a short term ever-changing chamber of representatives. This defect is different from the above three because it is not exclusively a product of agency. This means that it will provide more of a horizontal check of power but agency matters when we unpack the intentions of the check.

The House, as mentioned, changes frequently at the hands of the populace. We know from above that the Senate is more firm than the House due to its agency. However, the Senate is also more firm because its members hold office longer. If members of a legislature, designed to represent the nation not only domestically but also in the international community, are removed and replaced too frequently, there will be no consistent attitude, message, or outcome.⁵⁵ Our founders understood that an unstable legislature would hinder the nation's ability to prosper. Madison claims that this fact, "is verified in private life and becomes more just, as well as more important, in national transactions."⁵⁶ We know that individual prosperity is hard to achieve when movement is too frequent or when passions change too often. Would the same not be true for our government? How could a long term plan for stability, growth, or defense be maintained when we completely dispose of our representatives every few election cycles?

⁵⁵ Hamilton et. al., *The Federalist*, 324.

⁵⁶ *Ibid.*, 323.

Nonetheless, why do we really need stability in the legislature? Madison provides a few answers. First, he mentions national character.⁵⁷ This answer is two-part. The first part is obviously reflective of the longer term held by Senators. When examining the follies of an ever-changing legislature, Madison writes:

In the first place it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once by all prudent people as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him; but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his.⁵⁸

Madison firmly believes that not only will other nations not know or respect the national character of the United States, but they will also capitalize on the weakness provided by the instability of an ever-changing national legislature. After all, the instability of the loose confederacy is why they are even revisiting the structure of the national government. The Senate, holding longer terms, will stabilize the ever-changing, intemperate House. The Senate provides a horizontal check of power to the House.

However, as I mentioned above, when we unpack the duties of the Senate, we will also uncover some vertical checks of power inherent in the horizontal ones. Once again, the Federalist notes the ability of the Senate to reflect the national character. John Jay writes that the good of the whole nation can only be promoted by advancing the good of each part and each member of the union. Every individual senator represents the general will and character of their home state as a whole. They are impartial to no specific interest but represent the state's aggregate interest as a whole. Naturally, when we combined each general will and general character of each of the

⁵⁷ Ibid., 325.

⁵⁸ Ibid., 325.

member states in the Senate, we would reflect the general will and character of the whole nation. The Senate effectively creates the national character. The House is much different. Each member represents the interest of the district they come from. The multiplicity of interest in the U.S. prevents the House from concurring on a general will. Due to the proportionate representation, low population states and interest groups will not be properly accounted for in the House. The equal suffrage and agency in the Senate allow it to reflect the national character and national will.

The national character is not all Madison is worried about due to the frequent reordering of the House. He also notes the danger of constant changes in law. He believes that law requires an amount of permanence to benefit the citizen. He says, “if they be repealed or revised before they are promulgate, or undergo such incessant changes that no man who knows what the law is to-day can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known and less fixed.”⁵⁹ The stability of the Senate is intended to check the capriciousness of legislation coming from the House. This check is primarily horizontal but if we consider the seniority required from a senator, we might be able to make a case for a vertical check of power.

There remain three particular follies of the unstable House. Madison first notes:

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising and the moneyed few, over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any manner affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences.⁶⁰

⁵⁹ Ibid., 324.

⁶⁰ Ibid., 324.

Sadly, when the quantity of new, ever-changing legislation is left unchecked by a stable government, it disproportionately harms those who lack the funds and knowledge to either avoid or absorb the cost of the legislation. In the banking world this is known as “death by 1,000 cuts.” The Senate’s firmness is intended to prevent these quick increases of legislation in complexity and quantity.

Madison then notes the ability of unstable government to thwart the risk taken by farmers, manufactures, and merchants.⁶¹ When the government is not stable, cultivation and establishment of property and goods is impractical. Who in their right mind would invest time and money into anything if the government might take it away or lose it the next election cycle? The Senate’s firmness fosters a stable environment for economic investment while the House, when left alone, might create too much risk for investors.

Finally, Madison fears that the unstable national legislature, when left unchecked, will cause an environment of distrust, disappointment, and betrayal.⁶² The ever-changing House would produce such a large quantity of law and such an ever-changing order that no one would respect it. He finds this to be the most deplorable effect of a single, populace led legislature.⁶³ The Senate, once again, will provide a level of stability that will prevent the disenchantment of its citizens. This check provided by the Senate and the previous two, primarily represent horizontal checks on the House. However, a case can be made for the agency derived from the state governments due to the required seniority and interest of Senators.

⁶¹ Ibid., 324

⁶² Ibid., 324.

⁶³ Ibid., 324.

If we further examine the horizontal checks of power, we could provide more evidence to prove that the Senate was intended to act with regard to the national character. We can simply look at those powers granted and not granted to the Senate. The state's chamber confirms appointments to the Supreme Court, has a special role in making treaties, and lacks the ability to originate bills that raise revenue.⁶⁴ These duties and checks provide more horizontal checks that are specifically granted to the Senate due to their constituency. The founders believed that the national character and firmness of the Senate makes it the more viable chamber to both confirm justices and make treaties.⁶⁵ The Senate also protects the rights of state governments because they would only confirm justices that will protect the rights of the state governments. The Senate cannot draft its own bills to increase revenue because they are too removed from the people. If the Senate unfavorably raised taxes alone, it would take too long for the populace to recall them. The House is given more respect in generating revenue because they are closer to the purses that the money will be coming out of. We could spend more time on this issue but the discussion would become redundant. Perhaps this is why Madison found it unnecessary to discuss appointment of Senators.

It is undeniable that our founders constructed the Senate according to the principle of the separation of powers. The Senate checks the power of the capricious populace and national government in a vertical fashion and checks the power of the other branches horizontally. Once again, the arguments of William Jennings Bryan prove to be inaccurate. The Senate was specifically designed to satisfy the dogmas of federalism and the separation of powers. What of the other two arguments? Was the Senate corrupt? Is it more corruptible? Did our founders think

⁶⁴ See Article 1 and Article 4 of the Constitution

⁶⁵ Hamilton et. al., *The Federalist*, 333-354.

about the potential corruptibility of the Senate? What about the fact that states were not sending Senators to Congress?

Corruption of the Senate and the Founders

Perhaps the most appealing argument against an appointed Senate is the accusation that it is somehow more corruptible than the other institutions of government due the appointment process. I mentioned above that the concern was that, “Whenever a senatorial election occurred, railroad barons, oilmen and monopolists descended on the state capitol and spread their cash like butter across the lawmakers’ outstretched palms.”⁶⁶ I question the merit of this argument for two reasons. First, the claim of corruption in the appointment process is slightly egregious. Although there were some identifiable cases of corruption, the data would not support further democratization of the appointment process. Then, the possibility of corruption of the Senate was examined in the *Federalist*. The fear of the development of a quasi-aristocratic state was a legitimate fear of many of the Anti-Federalist and is noteworthy.⁶⁷ However, this fear is a product of a lack of attention paid to the dogma upon which the Senate was constructed.

Jack Kenny notes that the cases of corruption were few and heavily publicized.⁶⁸ These cases provided a convenient excuse for the campaign to ratify the Seventeenth. There will be serious issues in examining the history and legality of corruption and bribery in the appointment process due to the tendency of unpopular nominations to be labeled as corruption and due to the inability to track back door deals. However, history would seem to protect the ability of the state governments to appoint Senators with limited corruption. In fact, the first reported case of

⁶⁶ Kenny, "The Seventeenth", 36.

⁶⁷ Hamilton et. al., *The Federalist*, 330.

⁶⁸ Kenny, "The Seventeenth", 36-37.

bribery was not until 1872, over 80 years of Senate appointments appear to be just. To add to the lack of credibility of the argument, historian C.H. Hobeke says, “From then until the ratification of the Seventeenth Amendment — a period when the independence of state legislators was losing ground to the popular primary — the number of allegations of corrupt elections rose to fifteen.”⁶⁹ It seems that history would support the claim that since elections of the Senate have become more democratic with injection of democratic measures such as nominating primaries or simply the outright grant of general election in the state, they have become more corrupt. This data should refute the idea that these elections should become more democratic to avoid corruption. I would continue to argue that since ratification of the Seventeenth we are susceptible to even more potential of corruption. Due to the power of campaign finance, it seems the barons, oilmen, and monopolist are simply spreading their wealth across the hands of pork making Senators seeking election or reelection.

In general, the above argument is weak. The data is hard to track but the data we have seems to favor an appointed Senate. However, if we assume the worst and believe that we simply missed numerous cases of corruption and back door Senate appointments, is that bad? Does an appointed Senate that gained its seats seemingly unjustly provide enough of a reason to ratify the Seventeenth? Our founders would most likely disagree.

Our founders were not particularly fearful of the aggrandizement of power and wealth, particularly in the Senate, by those who are wealthy and well-born for two main reasons. First, there is no way to insure the preference of the wealthy and well-born in a free society. The only way to insure the security of wealth and power to those who either have a greater landed interest,

⁶⁹ Ibid., 36-37.

mercantile interest, or monied interest would be to restrict suffrage based on wealth or property.⁷⁰ This restriction of suffrage is not to be expected because no state or national governing authority has been given the power to eliminate the insurance of a republican form of government nor grant titles of nobility.⁷¹

Our founders also believed the usurpation of power by the Senate would be very unlikely due to the inability of the Senate to act alone.⁷² The Senate's action and agency is dependent on two other government institutions. First and foremost, they are dependent on the individual state governments. They derive all agency and maintain all allegiance to the state government who appointed them. Corruption of the Senate would not only require that the Senate corrupt itself, but the Senate would also have to infect the state legislatures.⁷³ In order to corrupt both, not only would the Senate have to deceive the state legislatures, but the state legislatures would have to deceive the people. This multi-level deception seems very unlikely to the founders. However, one could imagine a case in which both the state legislature and Senate could be corrupted.

Even if the above scenario were to come to fruition, the House and executive branch still provides horizontal checks of power on the Senate and state governments. The founders emphasized that the Senate cannot act alone. It is a given that it cannot operate without the state governments but it also cannot function without the House and President. Each job delegated to the Senate required participation from either the House or President. The Senate cannot legislate alone. It requires the concurrence of both the House and President. The Senate cannot generate bills of revenue nor can it appoint justices to the Supreme Court. Even the Senate's role in treaty

⁷⁰ Hamilton et. al., *The Federalist*, 314.

⁷¹ See Article 1 and 4 of the Constitution

⁷² Bailyn, *The Debate on the Constitution*, Pt. 2, 662.

⁷³ Hamilton et. al., *The Federalist*, 330.

making is limited by the House and President. The very purpose of an upper house in any government is to provide a salutary check of power on the other branches of government. Usurpation historically comes not from upper houses of legislations but from the more popular branches. Madison notes that the upper house of Britain, which is hereditary at this point, constantly suffers from the encroachment of both the popular branch and the monarch.⁷⁴

Overall, this argument is weak. There is very little historical evidence and even less practical reason to fear the corruption of an appointed Senate. The argument itself is built on a sort of fallacy. The belief is that this democratically elected state legislature is corruptible and will appoint cronies to the Senate. So, in order to insure incorruptibility we must inject more democracy into the process. However, did not the people already elect one supposedly corruptible legislature? Should we expect anything different from the populace in electing the Senate?

I do not believe the motives of the Seventeenth were directed at eliminating corruption. The refutation of Senate corruption not only in history but also in theory could imply a much different motive in ratifying the Seventeenth. The claim of corruption could have been a convenient excuse for the push to elect Senators at large. The more fundamental motives of the progressives are to create a more central, consolidated democratic state. It is widely known that progressives such as Woodrow Wilson saw the separation of powers and dogma of federalism as barriers to effective government. It seems that the desire for Seventeenth amendment was more fundamentally motivated by the desire to eliminate the original dogmatic principles of federalism and the separation of powers in our republic in order to replace them with a more democratic

⁷⁴ Ibid., 331.

central nation-state. However, supporters of the Seventeenth still have one legitimate concern with the appointment of Senators. What happens when we do not appoint any?

No Senators, No National Government

As I said above, the most legitimate argument for the Seventeenth amendment provided by the progressives and widely accepted by the citizenry was that state legislatures were not even appointing Senators. The state governments caused 71 deadlocks from 1885 to 1912 that resulted in seventeen Senate seats going unfilled for an entire legislative session or more.⁷⁵ The state governments were impeding the operation and efficacy of the national government because of their negligence. However, the ability to not send Senators is a fundamental construct of the federal system.

When I described federalism, I mentioned the shared authority necessary to a federal structure. The state governments should be fundamental parts of the greater national government while retaining sovereignty. The many states are essential parts but not mere agents of the national government. As essential independent parts of the national government, the states have a right to abstain from participation in the national government.⁷⁶ Although they might have some civic duty to appoint members of the Senate, they also can check the power of the national government by abstaining from appointment.

Many founders feared that the ability to abstain from appointing Senators would destroy the national government. In *Federalist 59*, Madison recognizes this concern but discredits its merit.⁷⁷ The concern is not completely irrational. The individual states can very well not send

⁷⁵ Kenny, "The Seventeenth", 37.

⁷⁶ Hamilton et. al., *The Federalist*, 307.

⁷⁷ Ibid., 307.

any Senators. If enough states choose to not send Senators, then the states would be able to effectively destroy the national government. However, it is completely contrary to the interest of the state to not maintain their chamber of the national legislature. The only effective method of preservation for the state governments would be to participate in the national government.⁷⁸ Only participation in Congress will prevent the House from usurping power from the states.

So, it is the individual states' right to not appoint Senators. In a sense, it can be a form of civil disobedience for the individual state governments. However, they risk usurpations when they do not send representatives. This argument might still not be satisfying to those calling for the Seventeenth amendment on the grounds that Senate seats are being left vacant. In my conclusion I will propose a better amendment that satisfies both the wishes of those concerned about the vacancies and that preserves the dogma of federalism. Although, it is important to note that the ability to not appoint Senators provides an effective vertical check on the national government if necessary. Madison calls this inconvenience an "absolute safeguard" that is necessary to the preservation of federalism.⁷⁹

The Contributions of Aristotle

It is clear that our founders were well versed in the history of Greek democracies.⁸⁰ However, it is equally visible that they seldom reference the great Greek philosophers who can be credited with the founding of political science, Plato and Aristotle. There are few references to either theorist in the founding era documents. It seems that the only piece of either philosopher cited in the *Federalist* is Plato's *Republic*.⁸¹ John Adams briefly mentions the *Politics* in his

⁷⁸ Ibid., 307.

⁷⁹ Ibid., 320.

⁸⁰ Ibid., 225,329.

⁸¹ Ibid., 262.

defense of the Constitution but overall Aristotle is absent from the conversation.⁸² There are many potential reasons that Aristotle might have been left out of our founders' conversations including the rise of Machiavellian political thought in the 16th century and the lack of primary documents that the founders had access to.⁸³

However, Aristotle's quest for the best possible regime and his understanding of the common advantage may be the missing theoretical link in the formation of the United States' bicameral legislature. The very founding of political science can be attributed to Aristotle. His importance to this conversation is undeniable because the goal of political philosophy is to search for the best regime. Who better to begin with than the founder of this science? After all, the quest for the best practical regime was what our founders set out to do in that hot summer of 1787. We have already discussed the founder's justification for an appointed upper house. So, what can Aristotle add to the theoretical understanding of the Senate?

Despite the lack of direct citation and unexamined reasons for exclusion in conversation, we can draw many connections between the political theory of Aristotle and the form of government crafted by our founders. It seems apparent that the founders were at least introduced to the ideas expressed by Plato and Aristotle. Ralph Ketcham immediately connects the founders' disdain of capricious majoritarian democracies to the teachings of Aristotle in his introduction to the *Anti-Federalist Papers*.⁸⁴ The strongest connection between the political theory of the American founding and that of Aristotle would be their fundamental view of human nature and how that nature affects governance.

⁸² see *The Revolutionary Writings of John Adams*. (Liberty Fund, 2000.)

⁸³ Aristotle, *The Politics* (Chicago: The University of Chicago Press, 1984), 1-24; Carnes Lord traces the history of the use of Aristotle in Western political science.

⁸⁴ Ketcham, *The Anti-Federalist Papers*, introduction, xv.

Aristotle believes that man, by nature, is a political being. He says that man is dependent on the city because he is imperfect and in need of community to survive.⁸⁵ In the *Politics*, he writes, “One who is incapable of participating or who is in need of nothing through being self-sufficient is no part of a city, and so is either a beast or a god.”⁸⁶ The man without the city would be a beast because he is not civilized enough to live in ordered society and does well surviving as a wild animal without the city. He would be a god because he requires no law or support from others. Without the city, he is a beast because he is unregulated, he would be a god if he required no regulation.

In *Federalist* 51, Madison writes, “If men were angels, no government would be necessary. If angels governed men, neither external nor internal controls on government would be necessary.”⁸⁷ This quote implies that men need some law and that they are in fact not gods due to their need for law. The connection to Aristotle is easily seen in this instance. In both quotes we see humans depicted as imperfect and political. The imperfection stems from man’s inability to fully regulate himself and our political nature stems from the need for community. If these two truths are denied, then it must be the case that humans are either self-regulating gods or savage animals.

Just before Madison makes the above quote, he mentions that government is the greatest reflection on human nature.⁸⁸ If we agree with that statement, then we should be able to draw many connections between the political theory of Aristotle and that of our founders since their views of human nature are so similar. In fact, in examining Aristotle’s political theory through a

⁸⁵ Aristotle, *The Politics*, 37-38.

⁸⁶Ibid., 37.

⁸⁷Hamilton et. al., *The Federalist*, 269.

⁸⁸ Ibid., 269.

lens constructed by his view of human nature, we may find deeper theoretical reasons to support an appointed Senate.

The founders created what they called a more perfect union and, according to *Federalist 51*, that union would necessarily be a reflection of their understanding of human nature. So, what would the perfect union look like to Aristotle that also reflected his similar views of human nature and how is his best regime related to the Union created by the founders? In order to answer that question, we have to walk through Aristotle's understanding of the three best regimes and the practical deviations of each.

According to Aristotle, there are three correct regimes.⁸⁹ The correct regimes are those that rule with a view to the common advantage.⁹⁰ This common advantage is not simply the common good but it is more of an impartial, seemingly unbiased rule. Of the possible regimes, kingship, aristocracy, and the polity are the correct regimes.⁹¹ The deviations from these regimes give governing advantages to individuals or groups. Unlike the correct regimes, the deviations create bias and lack a view of the common gain. The common gain isn't necessarily what the majority of society gains but it is more of a quest for what is best for society. These deviations include tyranny, oligarchy, and democracy.⁹²

It is very important to highlight the difference of common advantage. Today, we ascribe the common good to the responsibility of government. This could be attributed to classic liberal thinkers like Rousseau. However, Aristotle's common advantage compliments the American Republic much better and it is sharply different from Rousseau's common good. Rousseau's

⁸⁹ Aristotle, *The Politics*, 119-120.

⁹⁰ Ibid., 95.

⁹¹ Ibid., 119.

⁹² Ibid., 119

rule for the common good is one that is impartial to any private interest. He says that the general will is the common good but the general will includes no private interest.⁹³ Aristotle's common advantage doesn't reject private interest. The common advantage only implies that no individual group or person would have a ruling advantage.⁹⁴ This distinction is very important for the evaluation of the best regime. The more respect given to the common advantage, the better the regime is. Our founders did not explicitly state this idea of the common advantage, but its implications are inherent in the dogmas of the Constitution. The main goal of federalism and the separation of power is to break up the power in such a way that no one class, group, faction, interest group, or state has too much power. Federalism and the separation of powers spawn from a quest for the common, unbiased advantage.

With the common advantage understood, the kingship, for Aristotle, is the best regime.⁹⁵ To be clear, this king should be focused on the common advantage and is not necessarily a tyrant or fascist. Kings are either selected by birth or merit. Aristotle emphasizes that the intention of a correct kingship is noble. Rule in a kingship is simple, quick, and uniform. The king possesses heroic virtue and the citizens are compliant to his rule. The king would be godlike among his citizens.⁹⁶ Aristotle believes that the rule of a noble king enables the most amount of flourishing because private matters such as education and craft are not impeded by public office. This does not mean that citizens are overly individualistic. It means that the participation in political life is limited. Aristotle saw political ambition as an impending force that crushed human flourishing.⁹⁷

⁹³ Jean-Jacques Rousseau, *The Basic Political Writings* (Indianapolis: Hackett, 2011), 198-199.

⁹⁴ Aristotle, *The Politics*, 95.

⁹⁵ *Ibid.*, 107, 116.

⁹⁶ *Ibid.*, 108, 116.

⁹⁷ *Ibid.*, 203.

This regime is the most ideal because the permanent rule of the king liberates man from the desires of power and the impartial king protects the common advantage.

However, this kind of noble rule is not practical. Given what Aristotle revealed about human nature thus far, kings of heroic virtue and a people impartial to the desires of power are at least few if not non-existent. In fact, one might be able to assume that a person of godlike virtue would not even be a part of the city.⁹⁸ Why would one of such great self-regulation even be a part of the city? Could someone with that great of virtue even be considered a human? Despite his faith in a noble king, Aristotle mentions that desire and spiritedness corrupt even the best of rulers.⁹⁹ Aristotle further discredits noble kingship slightly due to its size. He says, “What is many is more incorruptible.”¹⁰⁰ So, naturally what is few or one must be more corruptible. Although the kingship would allow the most flourishing, it is simply unrealizable.

Aristotle’s second best regime is the aristocracy.¹⁰¹ His understanding of the aristocracy is not much different from his understanding of the kingship. Much like the previously examined form of kingship, the aristocracy is chosen by merit. Its ends are noble and impartial while focusing on the common advantage. The rule of an aristocracy is still fairly quick and uniform while allowing the people to focus on their lives without the interference of political gain. The aristocracy is firm and not susceptible to frequent change. The benefits of stability were enumerated above when discussing the benefits of longer terms in the Senate.

Much like the kingship, the aristocracy is practically unrealizable. Although there is more than the single king to be corrupted, it is unlikely that a group of noble rulers could be found.

⁹⁸ Ibid., 108.

⁹⁹ Ibid., 114.

¹⁰⁰ Ibid., 111.

¹⁰¹ Ibid., 116.

Even if such a group did gain power, Aristotle mentions in book 5 that all aristocracies have a tendency to aggrandize.¹⁰² They tend to become more exclusive in attempts to preserve power. Much like Plato's ideal regime, Aristotle's idealistic utopian visions of kingship and aristocracy are not realizable. However, it would seem that the aristocracy is more practical due to the potential ability of ruling class members to check each other's desires. The kingship or aristocracy simply enables a lifestyle that allows individual growth particularly in philosophy and craft because less people are participating in the political life allowing them to focus on those choiceworthy acts. Our founders may have appreciated the implications of a noble kingship and aristocracy, but they retained much more doubt in noble rule than Aristotle did. Nonetheless, these regimes are nearly fictitious.

Before we examine the third correct regime, it is important to talk about the deviations of the kingship and aristocracy. The deviations are more common than the correct forms. When modern democratic people think of kings and aristocrats we are probably thinking of their deviations. These deviations inspired many of the checks and separations of power in our republic. In fact, our founders consistently cite these deviations of kingship and aristocracy. For modern thinkers, a king or small group of people ruling can only be despotism due to the simple fact that power is unitary. For Aristotle, there was at least some hope in noble rule that made him hang on to the unrealizable kingship and aristocracy.

In examining the deviations of the correct regimes, I believe we can gain an understanding of the nature of government that our founders shared with the philosopher. As stated above, each deviation of the correct regimes is not focused on the common advantage.

¹⁰² Ibid., 161.

Rather, the deviated ruler or group of rulers is focused on its own advantages. Again, the noble kingship or aristocracy is either non-existent or seldom realized. This would imply that most regimes do not govern with the common advantage but instead they rule in self-interest. A king not focused on the common advantage is a tyrant. He retains the efficiency and power, but rules oppressively while enriching himself. An aristocracy not focused on the common advantage is an oligarchy.¹⁰³ Once again, it maintains the benefits of aristocratic rule like speed and permanence but aggrandizes and acts out of self-interest. These deviations are driven unchecked by the private political goals of the office holders. Both deviations are more common and litter history with examples.

These historical examples of deviation are those regimes that it appears the American founders had an understanding of. It should be no surprise that both the founders and Aristotle are able to draw the same conclusions from studying the regimes. Again, as Madison says, these regimes reflect human nature and Aristotle would most likely agree. It appears the deviating, biased regimes are a product of human nature.

If we accept that claim, then at this point we can draw two conclusions about human nature and the nature of rule that both the founders and Aristotle would in some way support. First, it would have to be the case that people, when given the power to govern, act out of private interest more often than they act in accordance with the common advantage. This has to be the case for Aristotle because he admits the noble kingship and aristocracy are not very practical due to the requirements for noble rule.¹⁰⁴ The founders would most definitely support the claim that people rule out of private or self-interest. If not, then Madison would have no reason to write

¹⁰³Ibid., 120.

¹⁰⁴Ibid., 114.

Federalist 51 where he explains the ability of the separation of powers to thwart this very tendency of human nature. In fact, the doctrine of the separation of powers rests on the notion that we are power hungry, self-interested beings and that the culmination of that power is sure to corrupt.¹⁰⁵ The very construction of our government rests on the idea that we are more often than not power hungry, self-interested, and too often irrational and need to thwart the ability to act on those attributes.

The second conclusion we can draw is that power is of a corrupting nature. The main reason it is corruptible is because of our natural will to act in private interest. Both deviating regimes are corrupted due to the want to either preserve power or preserve wealth.¹⁰⁶ The tyrant wants the power and control. They may even want the plunder of rule. The oligarchy wants to maintain or grow their wealth and status. If this conclusion of the nature of rule were not true, then history would be littered with noble rulers and regimes not failed tyrannies. Our founders would have to agree. If they did not then they would not have attempted to combat the aggrandizement of power so strongly with federalism and the separation of powers.

The above conclusions shape the examination of the two remaining regimes. Aristotle begins book 4 of the *Politics* by saying that if we are to seek the best regime, then we should seek the best possible regime not simply the best ideal.¹⁰⁷ This may be a critique of his teacher Plato. While Plato's regime, the noble kingship, and aristocracy may be the best ideal regimes, Aristotle finds them impractical. Aristotle's quest seeks to find the best possible and attainable regime for all. This is where we particularly see the departure of noble rule and the distinction of the common advantage. However, in order to examine the best practical regime, we have to

¹⁰⁵ Hamilton et. al., *The Federalist*, 258.

¹⁰⁶ Aristotle, *The Politics*, 161, 168.

¹⁰⁷ Ibid., 119.

reexamine the oligarchy alongside the democracy. Only then can we understand the theory of polity and potentially find theoretical reason for a bicameral legislature with an appointed Senate.

Despite the previous six regime list laid out by Aristotle, in book 4 he mentions that there are actually five sorts of practical governing organization.¹⁰⁸ Of the five, we have already explained the characteristics and flaws of the monarchy (as kingship and tyranny), the aristocracy, and oligarchy. Leaving out the polity for now, we can lump the remaining four regimes into two categories. Aristotle labels these two categories as either the rule of the few or the rule of the many.¹⁰⁹ Rule of the few includes the aristocracy and oligarchy while rule of the many is the democracy. He doesn't speak much of the monarchy at this point in the examination, but it would technically be rule of the one or few. We could spend much more time examining the five practical regimes, but it would not particularly aid the understanding of the relevant theory.

Aristotle finds it important to identify the few and the majority before fully examining the rule of the few and the rule of the many. He notes that almost always the rich are the few and the poor are the many.¹¹⁰ This has been the composition of almost every nation from ancient Greek democracies to the United States' one percent. In fact, this composition of society is Karl Marx's main concern.¹¹¹ He finds it wrong that so few own so much compared to the many. Regardless of the normative worth, this is how society has historically been composed.

¹⁰⁸ Ibid., 120-129.

¹⁰⁹ Ibid., 121.

¹¹⁰ Ibid., 122-126.

¹¹¹ Paul Le Blanc

Naturally, for Aristotle an oligarchy exists, “When the wealthy and better born have authority and are few.”¹¹² The oligarchy is different from the aristocracy because the aristocracy requires at least some virtue in its selection of rulers. These regimes may be selected in a democratic fashion but only those with the proper wealth or status vote. The important attribute to note is the wealth alongside quantity. Aristotle mentions that a regime with a majority rich and few poor that gives all ruling power to the few would have trouble being called an oligarchy. Likewise if the majority were rich and gave no power to the poor, then there would be no democracy.¹¹³

The most fatal flaw and defining characteristic of the rule of the few has already been mentioned. Aristotle notes that the few, even with the virtue of the aristocracy, have what he calls “oligarchic character.”¹¹⁴ The notables of these regimes continually make power and wealth more exclusive. He says that in Sparta, which he previously praises as a notable aristocracy, “Properties are always coming into the hands of fewer persons.”¹¹⁵ It is also apparent that the notables of the oligarchy are freer to do as they please. Factions develop in aristocracies because the few have the power, wealth, and the freedom while the poor majority have no rights and only resent.¹¹⁶ In no way is an aggrandized few a rule of the common advantage. In fact, aggrandizement means to take more than one’s share unjustly. This rule is a deviation of the correct rule because the advantage is given to the private interest of the few. This deviation is why our Founders created a lower house directly elected by the people that could place a check

¹¹² Aristotle, *The Politics*, 122.

¹¹³ Ibid., 122.

¹¹⁴ Ibid., 167.

¹¹⁵ Ibid., 161.

¹¹⁶ Ibid., 160.

on aggrandizement and favor to the wealthy and guaranteed a republican form of state government to all of its people.

The rule of the many has reigned supreme in the 20th century. In fact, according to Francis Fukuyama, the liberal democracy has triumphed so much that no other form of government can be realized.¹¹⁷ Democracy in the modern era is seen as a right. Denial of the right to democracy is definite tyranny for most of the modern world. The very reason the Seventeenth amendment was so widely accepted was because direct election of U.S. Senators sounds more democratic. However, the rule of the many suffers from the same abuses of power that the rule of the few does.

Aristotle believes that the defining principle of a democracy is freedom. In this case, He uses freedom simply to demonstrate an equal participation of all in the rule of the city.¹¹⁸ He does not use freedom in this case to show excessive amounts of liberty. He simply used freedom to claim that everyone can participate in political life. The citizens of this city are only free in so far as the poor, wealthy, and well-born all participate in governance with no advantage to any particular group. It is important to note that Aristotle is not referring to mob rule when he labels a city as democratic. After all, Plato had already denied the utility of majoritarian democratic rule so it does not necessarily benefit him to again deny it. Aristotle identifies a multitude of different democracies all varying in origin of authority, composition of elected officials, and participation required by citizens.¹¹⁹ There are, however, two flaws with this type of democratic rule.

¹¹⁷ see: Francis Fukuyama, *The End of History and the Last Man*. (1992)

¹¹⁸ Aristotle, *The Politics*, 122.

¹¹⁹ *Ibid.*, 125-126.

The first flaw of democratic rule has to deal with Aristotle's disdain for citizens' involvement in politics. As said above, the best regime for Aristotle is the one in which the least amount of citizens are held back by the burden of political activity. Aristotle references a city that is primarily inhabited by farmers to demonstrate this flaw.¹²⁰ He mentions that the farmers have no time for political life because they need to tend their crops or livestock. Democracy simply requires too much out of its citizens to be an effective form of rule. Modern democratic rule in the U.S. has run into this very problem. Less than half of all eligible voters even participate in most elections.¹²¹ Regardless of the cause of low voter participation in the U.S., democracy requires massive amounts of participation in order for it to work.

The second major flaw has to deal with the typical composition of a regime. According to Aristotle, there are almost always a few wealthy and a majority poor in a city.¹²² Modern nation states are composed no different. Regardless of this fact's normative worth, this composition of society is undeniable. It is the natural tendency of the majority poor in a democracy to attempt to legislate wealth from the few rich. In fact, most tyrannies in a democracy arise from election of a popular leader who has gained the trust of the majority by perusing an agenda attacking the rich.¹²³ Karl Marx praised this type of rule. His doctrine rests on the overthrow of the bourgeois and uncontested rule of the many poor.¹²⁴ The Marx democratic rule could be endorsed by many progressives due to their want for a centralized democratic state. In book 3, Aristotle says that this type of redistribution of wealth is unjust.¹²⁵ For Aristotle, the redistribution of wealth is no different than the aggrandizement of wealth and plunder of rule. It is a flaw of democratic rule

¹²⁰ Ibid., 125.

¹²¹ Paul Le Blanc.

¹²² Aristotle, *The Politics*, 124.

¹²³ Ibid., 156.

¹²⁴ Paul Le Blanc.

¹²⁵ Aristotle, *The Politics*, 100.

that one's property, livelihood, or even life could be taken by a majority vote or self-interested representative. We have already mentioned the shortcomings of this type of role when describing the checking ability of the Senate.

This type of rule is also a violation of the common advantage. In the rule of the majority, the single tyrant of the monarchy is replaced with the majority. The majority is now given the advantage in governance. Mostly all western political thinkers have qualms with democracy on a large scale. Even Rousseau, who praises unbiased common will, denies the effectiveness of democracy.¹²⁶ As we have already noted, our founders were no different. In fact, loyalist Byles Mather is credited with saying, "Which is better - to be ruled by one tyrant three thousand miles away or by three thousand tyrants one mile away?"¹²⁷ Our founders understood the shortcomings of democratic rule and attempted to avoid the dangers thereof. This begins to shed light on the necessity of a quasi-aristocratic upper house.

Aristotle has introduced his readers to two main types of rule. The rule of the many and the rule of the few. We have already explained that by nature humans are political and require the city due to their imperfection. Due to our self-preserving nature, any culmination of power is sure to corrupt. However, the rule of the many and the rule of the few adds an interesting characteristic to the nature of rule. Aristotle adds a socio-economic factor to the nature of rule that very few people talk about. It appears to be almost class warfare inherent in our human nature. If the few wealthy have the power, then they will govern to keep their wealth and power for themselves. If the poor majority has the power, then they will elect the wealth and power

¹²⁶ Jean-Jacques Rousseau, *The Basic Political Writings*, 199.

¹²⁷ As legend has it, Mather said this during the revolution see: <http://www.revolutionarycharacters.org/mather-byles/>

from the minority.¹²⁸ Both are equally reprehensible but it seems that we have left this socio-economic power struggle out of the conversation.

It is unclear why we do not talk about this socio-economic phenomena but Friedrich Nietzsche seems be one of the only other thinkers to highlight the very class power struggle that Aristotle reveals. This class struggle adds to the complications of democratic rule. Nietzsche identifies what he calls a type of slave morality.¹²⁹ He believes that morality itself is constructed by the poor out of *ressentiment*, meaning a sense of hostility shown toward one who you believe has caused you frustration. Essentially, one in this state blames either another person or group of people for their situation. Nietzsche believes that the poor have constructed morality in opposition to the rich. The poor see the rich as evil. The rich are greedy and steal from the poor. The poor hang on to this constructed morality making them virtuous yet materially poor.¹³⁰

Although I do not agree with Nietzsche fully on the construction of morality, the idea of *ressentiment* is important to our evaluation of democratic rule. Aristotle's examples of tyrants gaining the trust of the poor reflect an environment of *ressentiment*.¹³¹ The populous elects the tyrant with the intention that he will tear down the rich. Aristotle cites numerous ancient examples and there are many modern examples of the very same thing. Regardless of whether or not *ressentiment* has constructed morality, it appears clear that *ressentiment* has led to the fall of democracies throughout history by a usurpation of power by the many poor. I believe our founders would have for the most part agreed. They interestingly use the word jealousy in their

¹²⁸ Aristotle, *The Politics*, 155-158.

¹²⁹ Friedrich Nietzsche, *On The Genealogy of Morals* (New York: Random House, 1967), 36-37.

¹³⁰ Ibid., 36-39.

¹³¹ Aristotle, *The Politics*, 156.

writings when describing the actions taken by legislators or actors in government implying predicted attitudes of resentment.¹³²

At this point it appears that the common advantage cannot be found. The kingship and aristocracy require noble leaders that are almost non-existent. The oligarchy (rule of the few) and democracy (rule of the many) give one ruling class more power than another. So, how are we to craft a regime that doesn't require unrealizable nobility and that doesn't give ruling advantage to any class? Aristotle believes the only true answer to this question is the polity.¹³³

The polity is a sort of mixture between the democracy, oligarchy, and aristocracy.¹³⁴ It is a combined rule of the wealthy and the poor with no advantage to either. It is not the many headed rule that Homer warns us of, nor is it an unjust exclusive few preserving their own private interest.¹³⁵ In individual democracies and oligarchies, both suffer from revolutions because the ruling group usurps power. The combination of the two is intended to counteract the ambition of each ruling class. This type of rule satisfies Madison's call for a form of government where ambition is counteracted with ambition. The polity is the best regime not because it eliminates all private interest but, because it simply gives no advantage to any private interest because interest are allowed to openly compete with no advantage and each interest is able to thwart the other. So, as long as the regime is not deviated from, rule for the common advantage can be expected.

The polity is one that balances the elective power of the democracy with the assessment required by an oligarchy or aristocracy. A good polity is one that can be spoken of as both an

¹³² Alexander Hamilton et. al., *The Federalist*, 39, 307.

¹³³ Aristotle, *The Politics*, 131.

¹³⁴ Ibid., 131.

¹³⁵ Ibid., 126.

oligarchy and a democracy but at the same time neither.¹³⁶ There can be many different forms of election and representation, but the polity is the mean regime that reveals both extremes of the democracy and oligarchy. Aristotle writes that the better the mixture, the longer the polity will last.¹³⁷ It is important to note that Aristotle mentions that all regimes fall short of being perfect and that some regimes will work better than others depending on the people and location.¹³⁸ However, the middling sort of mixed polity seems to be the most universal and most practical in supporting the common advantage.

The only issue we could raise with the polity is its requirements for participation. Since it is democratic in nature, some will have to pursue political ambition. However, in the polity, especially those governed by law, the quest for despotic power can be thwarted early by either election or law.¹³⁹ The virtue of the aristocratic society, if a regime can maintain it, could provide another block for usurpations of power.

Aristotle has concluded that the polity is the best practical regime for two major reasons. The first being that it is at least realizable. Unlike the kingship and aristocracy, the necessary actors for the polity can be found. The rich few with private motives can be found in almost any modern society. The many poor with private motives can also be found in almost every society. The second reason that the polity is the best is because of its respect to the common advantage. The polity exercises the common advantage best not because no private interest has a role in governance, but because both the many and the poor are denied advantage. Neither ruling group

¹³⁶ Ibid., 132.

¹³⁷ Ibid., 137.

¹³⁸ Ibid., 129.

¹³⁹ Ibid., 138.

has the authority to usurp power from the other. So, how does this relate to the United States federal republic?

If the defining characteristic of the polity is the inability for one ruling group to usurp power, then it is undeniable that we can compare the polity to the government designed by our founders. First of all, *Federalist 9* and *10*, explicitly highlight the new republic's ability to inhibit despotic factions and usurpations of power.¹⁴⁰ *Federalist 10* specifically highlights the ability of both majority and minority factions to rise to power in a democratic government and the ability of the new republic to thwart the power of both. Although Aristotle never saw a federal republic nor did he conceive of the polity in a city with virtually no aristocracy, the underlying principle of the polity can also be found in the federal republic. Again the common advantage gives no person or group ruling advantage. The dogmatic principle of the separation of powers fulfills the requirements of ruling for the common advantage. Each interest and power can effectively check the other. In the polity, the major check is easily seen between the oligarchy and democracy or for better understanding, the few rich and the many poor. The previous sections already examined the separation of powers in the federal republic. These separations fulfill the requirements of the rule for the common advantage. Our founders were at least following a similar thought pattern to Aristotle in a quest for what could be labeled as rule for the common advantage.

What is most interesting is that despite our founders' likely exposure to the idea of the common good, it seems they designed a republic that attempted to rule for the common advantage instead. Surprisingly, despite the anti-Aristotelian culture of the enlightenment, our

¹⁴⁰ Alexander Hamilton et. al., *The Federalist*, 37-49.

founders created a polity that not only reflected an Aristotelian understanding of the nature of political life, but they also created a regime that almost perfectly satisfies the requirements for the perfect regime Aristotle reflects upon.

However, there is a slight hole in this argument. The new United States federal republic was not composed in such a way that fits Aristotle's polity perfectly. Alexis de Tocqueville highlights an inconsistency of American society that would hurt comparison to Aristotle. While examining the American republic, Tocqueville points out that the U.S. lacks an aristocracy.¹⁴¹ There is no historical lineage that rules nor is there any hierarchy that provides structure for society. Interestingly enough, he mentions that there is also no proletariat.¹⁴² He mentions that all citizens have at least some possessions and recognize the fundamental right to property. Tocqueville's evaluation of American society satisfies Aristotle's principle requirements for democratic government. However, it does not satisfy the requirements for an oligarchy.

If the American society lacks this natural societal oligarchy, then we will have trouble referring to the regime as both an oligarchy and democracy. All we can do is claim that the federal system and the dogma of the separation of powers satisfies the key requirements for rule of the common advantage. So, can we truly compare the federal republic with Aristotle's polity without the oligarchy? I believe the answer lies in the dogmatic principle of federalism. However, we are not prepared to make that leap yet. Before we make that connection, we have to examine John C. Calhoun's *Disquisition on Government*. Calhoun's unique evaluation of American political life potentially provides the missing theoretical link between Aristotle's polity and federalism.

¹⁴¹Alexis De. Tocqueville, *Democracy in America* (New York: HarperCollins, 2000), 531-531.

¹⁴² Ibid., 238.

Calhoun and the Concurrent Majority

John C. Calhoun was a strong South Carolina patriot and an exceptional statesman who was born in 1782 and died in 1850. Some call him “the last of the founders” due to his worldview and passion for the federal republic.¹⁴³ In a time of potential disunion, Calhoun reflected on American political theory in a way that can only be rivaled in understanding by the founders themselves. His conflicts with Andrew Jackson and the threatening civil war inspired Calhoun to write the *Disquisition* to demonstrate hope and potential unity in order to avoid the impending conflict.¹⁴⁴ If Calhoun is to provide the missing link that connects Aristotle’s polity to the United States federal republic then it should first be established that Calhoun shares in the basic understanding of human nature and governance that Aristotle and our founders hold.

Calhoun is very similar to our founders and Aristotle. He traces the very need for government back to our state as fallible and incomplete human beings.¹⁴⁵ He believes that man is a social being but his participation in government requires that government must too be regulated. Calhoun can be more closely aligned with Aristotle due to his reflections on the importance of civil society. As mentioned above, Aristotle thinks that political life inhibits one’s flourishing. Calhoun would most likely agree. Calhoun claims that civil society itself is more valuable and important than the government.¹⁴⁶ He believes that civil society is intended to cultivate the man while government is naturally intended to cultivate a society that encourages the cultivation of man. Aristotle would most likely agree. If not, he would not have spent so much time in the *Politics* exploring how the best regime should relate to the best society.¹⁴⁷

¹⁴³ John C. Calhoun, *A Disquisition of Government* (South Bend: St. Augustine’s Press), forward, xvi.

¹⁴⁴ *Ibid.*, forward, xv.

¹⁴⁵ *Ibid.*, 1-6.

¹⁴⁶ *Ibid.*, 4.

¹⁴⁷ see *The Politics* bk. 6.

Calhoun also discredits the merit of overly democratic regimes much like both the founders and Aristotle.¹⁴⁸ Further connections can be seen when we unpack the political theory of Calhoun.

In order to fully understand Calhoun's political theory, we must examine why he believes humans are social beings. He says, "Man is created for the social state, and is accordingly so formed as to feel what affects others, as well as what affects himself."¹⁴⁹ So, man is naturally a social being because he is so disposed to community life. If man did not have such dispositions, then he would not be fit for life in the community. However, despite man's possession of sympathy, his own self-interested feelings dominate his will. Naturally, one's direct individual affections are more powerful than sympathy or social feelings. In some cases sympathy will dominate self-interest but most of the time self-interested feelings prevail. This is not necessarily a flaw of human character but it will obviously create tension between individuals.

The tension between competing self-interest is the very reason we need government according to Calhoun.¹⁵⁰ In a sense, Calhoun, like Aristotle, says that government's main purpose should be to secure the common advantage. He says:

And hence, the tendency to a universal state of conflict, between individual and individual; accompanied by the connected passions of suspicion, jealousy, anger and revenge,—followed by insolence, fraud and cruelty;—and, if not prevented by some controlling power, ending in a state of universal discord and confusion, destructive of the social state and the ends for which it is ordained. This controlling power...is government.¹⁵¹

Calhoun recognizes the necessity and utility of government.¹⁵² However, like the founders, he recognizes the tendency of government to abuse its powers. Like the founders, he

¹⁴⁸ John C. Calhoun, *A Disquisition of Government*, 18.

¹⁴⁹ *Ibid.*, 2.

¹⁵⁰ *Ibid.*, 3.

¹⁵¹ *Ibid.*, 3.

¹⁵² *Ibid.*, 5.

mentions the countless examples in history of governments that usurp power.¹⁵³ Calhoun believes that these usurpations are primarily caused by our very nature as imperfect, self-interested beings. Calhoun's understanding of the nature of government is no different than Aristotle's and our founders'. Government is corruptible and has a tendency to aggrandize wealth and power simply because we are humans. Calhoun also proposes the same solution that Aristotle and the founders call for. Aristotle calls openly for the competition of interest of the wealthy few and the many poor with neither having the advantage. The founders construct a government designed specifically to impede interest with interest. It should be no surprise that Calhoun says, "Power can only be resisted by power, and tendency by tendency."¹⁵⁴ Once again the only way the common advantage can be preserved is by allowing the multiplicity of interest and forces to openly compete with no favor shown to either.

However, we already know we cannot describe the United States federal republic as oligarchic. We can easily point to its democratic features. Suffrage is granted to citizens regardless of wealth or status and every state has to provide a republican form of government. If we cannot properly identify the oligarchy, then how can we insure the capriciousness of the democracy is checked in the American system? If we cannot insure the democracy is checked, then how can we claim it rules for the common advantage?

I believe that Calhoun has the answer and I believe it exposes a limit to Aristotle's political theory. Aristotle never envisioned a free society quite like the United States. There are no titles of nobility and there is no overwhelmingly poor and large proletariat class. Unlike all regimes and cities Aristotle was exposed to, no person, who was a citizen, was born in the United

¹⁵³ Ibid.

¹⁵⁴ Ibid., 9.

States as an aristocrat. There is no doubt that some were born more materially well-off than others but those born well off had no more or less rights in the political community than those born with disadvantages.

However, this does not mean that there are no minority and majority clashes. Aristotle, by nature of his environment, was only able to see the distinction between the rich few and many poor. What Calhoun and the founders are able to see are potential clashes between interest groups not bound by a class society. The founders' examination of the multiplicity of interest is limited. In the *Federalist*, they reference the multiplicity of interest either when describing how each interest can be thwarted by another or how the unique federal republic constructed refutes the Anti-Federalist claim that the union will be too vast and include too many separate interests groups. However, the conclusion of their examination is slightly vague when compared to Calhoun and Aristotle's overarching conclusions drawn on the nature of rule. The examination of the polity provides objective truth claims about the nature of rule when the democratic interest and the oligarchic interest are given equal political power.

Calhoun's examination of democratic rule in a free society does what the founders did not do. He provides objective truth claims about the nature of rule in a democratic regime with a multiplicity of interest. These claims will resemble the claims of Aristotle. They will also include the majority and minority interest much like the claims of Aristotle. More importantly, Calhoun's examination will demonstrate why the oligarchy is not fundamental to the rule for the common advantage.

As previously mentioned, Calhoun believes we are self-interested social beings. Government is necessary because of conflicts between interests. He mentions that we would have few if any conflicts in a homogeneous society but as we already know, the United States is

anything but homogeneous.¹⁵⁵ Calhoun also emphasizes that our self-interested nature corrupts political power when it is left unchecked. Much like Aristotle, he notes that our interests tend to cause an aggrandizement of power.¹⁵⁶

Calhoun proposes that the remedy for the tendency of power to be aggrandized and abused lies in the ability of a regime to adequately represent the diversified interest of the community.¹⁵⁷ Only then can each individual interest combat the ambition of the other interests. This is exactly what our founders said but what does this process actually look like and is it that simple? Calhoun says:

It necessarily results, that right of suffrage, by placing the control of the government in the community must, from the same constitution of our nature which makes government necessary to preserve society, lead to conflict among its different interests,—each striving to obtain possession of its powers, as the means of protecting itself against the others;—or of advancing its respective interests, regardless of the interests of others. For this purpose, a struggle will take place between the various interests to obtain a majority, in order to control the government. If no one interest be strong enough, of itself, to obtain it, a combination will be formed between those whose interests are most alike;—each conceding something to the others, until a sufficient number is obtained to make a majority.¹⁵⁸

What Calhoun explains that our founders did not is the struggle for the majority even among a diverse electorate. It is not simply a grand struggle of interest groups. Ultimately, in a democratic system a majority or plurality will be found. In a democratic government the numerical majority or plurality will have the power. So naturally, there will always be a struggle for the numerical majority. Once the struggle is over, there will effectively be a majority and a minority with the majority in control. However, for Calhoun, the minority rights should also be

¹⁵⁵ Ibid., 11.

¹⁵⁶ Ibid., 12.

¹⁵⁷ Ibid., 18-19.

¹⁵⁸ Ibid., 12.

represented and accounted for.¹⁵⁹ Effective and legitimate government, in a community of diversified interest, demands the respect of the united whole not simply the majority.

Aristotle would essentially agree with Calhoun's evaluation of democratic government. It is ultimately the majority versus minority and the numerical majority will dominate. Both would agree that this type of rule is unjust because it completely neglects the interest of the minority. However, for Aristotle, the divide between the majority and minority is strictly a socio-economic one. For Calhoun, there is no strict socio-economic divide. His majority and minority are simply determined by consolidated interest of a community.¹⁶⁰ Farmers, merchants, landed folk, and the monied few would consolidate into individual groups. Whichever has the most amount of people is the numerical majority and in control. The limit to Aristotle's argument is that he only accounts for the wealth and quantity of a class of people when examining the polity. His polity requires the oligarchy and the many poor. Calhoun's the founders' polity does not require the oligarchy, rather the majority and minority are determined by interests or the consolidation thereof.

With no oligarchy to check the majority, Calhoun still believes the majority can be checked by what he calls "stronger interest."¹⁶¹ Simply, these stronger interests are those who are yelling the loudest but might not be the majority or they are a consolidation of minority interest that are still not the majority. For Aristotle, the check is one of socio-economic status. For Calhoun, this check is now a matter of organization and representation of the minority interest or as Calhoun calls it, an organism.¹⁶² In, order to properly represent the minority, Calhoun requires

¹⁵⁹ Ibid., 18-21.

¹⁶⁰ Ibid., 21.

¹⁶¹ Ibid., 20.

¹⁶² Ibid., 19.

a constitutional or concurrent majority in addition to the numerical majority. The requirement of a constitutional or concurrent majority creates a two organism system of representation. The first organism is one that only regards number. This is the numerical majority's organism and should reflect the will of the numerical majority. The concurrent majority is intended to represent those stronger minority interests of the community. It accounts for both quantity and strength of interest creating what reflects an aggregate interest of the community.¹⁶³ The aggregate interest neither neglects nor favors any single interest.

Only when we combine the two organisms can we really represent and reflect the desires of the entire community free of advantage to either party. The concurrent majority functions no different than the oligarchy does in Aristotle's polity. It is to be the check on the numerical majority in order to satisfy the needs of unbiased rule for the common advantage. Calhoun believes that the difference and distinction of the concurrent majority has been overlooked and I would strongly agree.¹⁶⁴

Calhoun emphasizes that the numerical majority is not the people nor does it represent the collective interest of the whole community. Instead he claims that the numerical majority is simply a portion of the people and it represents only that portion.¹⁶⁵ In an unrestricted democracy, only that portion is represented in governance no matter how little they care about the interest of the minority party. Calhoun notes that constitutional government implies limits, particularly limits to democratic rule. By constitutionally granting and protecting an organism for

¹⁶³ Ibid., 21.

¹⁶⁴ Ibid., 53.

¹⁶⁵ Ibid., 23.

the representation of minority interest in a community, we effectively limit capricious democratic rule.

What is important to both the polity and the concurrent majority when ruling for the common advantage, is the assurance that no individual party or interest group will be able to legislate prosperity for one group while sacrificing the prosperity of others. What Calhoun does is identify the mechanism through which rule for the common advantage can be achieved in a free society. In free society, the few well-born wealthy and the many poor are replaced by the majority interest and the aggregate interest. Much like the few wealthy and the many poor, the majority interest will always attempt to legislate from the aggregate interest and the aggregate will return the favor. The balance of Aristotle's polity can be seen in the American federal republic if we recognize the vital role of the concurrent majority. Calhoun provides the missing link between Aristotle and our founders. In fact, H. Lee Cheek Jr. directly calls Calhoun's articulation of the concurrent majority an "Aristotelian mean" that installs restraint on the operation of government.¹⁶⁶ What does this have to do with the Seventeenth amendment?

For Calhoun and the founders, the Senate represents the concurrent majority. Remember that the concurrent majority represents the aggregate interest of the entire community. The Senate, as examined in the previous section on the separation of powers, was intended to represent the national character. The two appointed Senators represent the aggregate character of each state they are appointed from. Combined, these Senators represent the aggregate character of the nation. The Senate is the concurrent majority because it represents the aggregate interest of the national community.

¹⁶⁶ Ibid., xx.

We know from the examination of our founders' documents that the only reason the Senate represents the aggregate interest of the nation is due to its agency. If the Senate is directly elected, not only do we lose the sense of national character provided by the Senate, but we also lose the concurrent majority required by rule for the common advantage. If the Senate is directly elected, it simply becomes an agent of the majority interest much like the House. The House member of a district represents the numerical majority in their respective district. Each interest represented in the district battles for the majority either through concessions and alignments or simply by volume. Then, that representative will reflect that majority interest. The same battle for the majority interest occurs every time a senator is elected. The people of the state, with their self-interested priorities in mind, cast their votes. The majority wins either by simply being the numerical majority in the state or by loosely aligning with certain interests. Either way, someone's interests are not properly represented.

Without the concurrent checking power of the Senate, the numerical majority controls both the outcome in the House and the Senate. Without concurrent checking power, the common advantage is not adhered to. Instead, the numerical majority interest is given advantage. Calhoun paints a pessimistic image of the nature of governance when a numerical majority is left unchecked. He says, "The numerical, unmixed with the concurrent majority, necessarily forms, in all cases, absolute government...But absolute governments, of all forms, exclude all other means of resistance to their authority."¹⁶⁷ When left unchecked by the concurrent majority, the numerical majority becomes an absolute force that, due to human nature, will impose its interest on the community. By ratifying the Seventeenth amendment and eliminating the concurrent

¹⁶⁷ Ibid., 27.

majority in the national government, we have exposed ourselves to potential tyranny or the unchecked numerical majority.

Conclusion

The managerial national government of the United States influences your daily life from the food you eat to the interest rate on your bank account. According to recent polling, only 19% of people trust their national government. Greater than half of all people either think the government does not care what they think or that they have no say in the actions of the national government.¹⁶⁸ Perhaps this is an untended consequence of the Seventeenth amendment and the destruction of the concurrent majority. Calhoun mentioned that the numerical majority does not represent the populace. It only represents part of the community. With the numerical majority left unchecked in the national legislature, it should be no surprise that that the portion of society not represented by the numerical majority would feel distrust and underrepresented.

The intentions of the Seventeenth were to make the republic a more responsive and democratic system that did not cater to the interest of certain groups. What the Seventeenth did was not create a more responsive system that did not cater to the interest of certain groups. Instead, it exposed the national government to the unchecked interest of the numerical majority in the name of democracy. It has distorted the balance of power required by federalism and removed numerous vertical checks of power. It has removed the minority check of power required by rule of the common advantage and replaced it with a popular chamber of legislation that caters to the interest of the majority. The Seventeenth amendment ignores the intentions and

¹⁶⁸ "Trust in Government." Gallup.com, (2016).

political theory of Aristotle, Calhoun, and our founders while blindly accepting the follies of the capricious, self-interested numerical majority.

How can we restore the balance of power required by constitutional dogma and the rule for the common advantage? There have been two relatively recent requested prescriptions for repeal of the Seventeenth amendment. One is more realistic than the other. Mark Levin, author of *The Liberty Amendments*, calls for a 50 state convention amendment approach. I endorse this method of repeal for one main reason. It is unlikely that Congressmen will ever legislate power away from themselves. Very few Senators would even be so noble of statesmen to strip away some of their individual powers. Even if they were, it would be political suicide to initiate a seemingly anti-democratic initiative in Congress. Your electorate would most likely accuse you of attempting to take their right to vote away. One other organization sees this method as dangerous and unlikely. They fear the thought of a state convention and believe that finding the 34 states necessary to call the convention would be problematic.

Regardless of how the amendment is repealed, we could include a provision to address the one legitimate concern of the progressives who supported the Seventeenth. The only legitimate concern of progressives was that vacancies were becoming more frequent and prolonged in the Senate. The simplest solution would be to provide a method of selection of Senators if an appointment had not been made in a reasonable amount of time. My suggestion would be that the governor could appoint the vacant seat's senator with a simple majority approval in the state legislature after a reasonable amount of time has passed. The state still would retain its proper agency in selecting its senator.

If the supporters of the Seventeenth amendment wanted a more representative and less corruptible regime, they should not have exposed the United States to the potential tyranny of the

numerical majority. Instead, they should have continued the work of John C. Calhoun by enticing a rebirth of the principles of federalism and the separation of powers as well as encouraging an understanding of the concurrent majority. As Madison says, we did not fight for an elected despotism, but it seems that an elected despotism is what we might have with the Seventeenth amendment.

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