

FEDERALIST 63

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To the Anti-Federalists, the Senate's six-year term and smaller number seemed too aristocratic. But to Publius, the selection of senators by state legislatures was a built-in protection for state interests. As a footnote to this argument, in making senatorial elections popular, the Seventeenth Amendment in 1913 changed not just the Senate, but the entire architecture of the Founders' Constitution.

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THE SENATE CONTINUED

A *fifth* desideratum, illustrating the utility of a senate, is the want of a due sense of national character. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned, but the national councils will not possess that sensibility to the opinion of the world which is perhaps not less necessary in order to merit than it is to obtain its respect and confidence. 5

An attention to the judgment of other nations is important to every government for two reasons: the one is that independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind? 10 15

James Madison, "No. 63: The Senate Continued," in Clinton Rossiter, ed., *The Federalist Papers* (New York: Mentor, 1999), 380–88.

Yet however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible degree of the praise and blame of public measures may be the portion of each individual; or in an assembly
5 so durably invested with public trust that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their deliberations on the iniquitous measures of that State by arguments drawn from the light in which such measures would be
10 viewed by foreign nations, or even by the sister States; whilst it can scarcely be doubted that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring.

I add, as a *sixth* defect, the want, in some important cases, of a due responsibility
15 in the government to the people, arising from that frequency of elections which in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be acknowledged, when explained, to be as undeniable as it is important.

Responsibility, in order to be reasonable, must be limited to objects within
20 the power of the responsible party, and in order to be effectual, must relate to operations of that power, of which a ready and proper judgment can be formed by the constituents. The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of
25 well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general
30 welfare may essentially depend, ought not to be answerable for the final result any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the *share* of influence which their annual assemblies may respectively have on events
35 resulting from the mixed transactions of several years. It is sufficiently difficult, at any rate, to preserve a personal responsibility in the members of a *numerous* body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects.

Thus far I have considered the circumstances which point out the necessity 5
of a well-constructed Senate only as they relate to the representatives of the
people. To a people as little blinded by prejudice or corrupted by flattery as
those whom I address, I shall not scruple to add that such an institution may
be sometimes necessary as a defense to the people against their own temporary
errors and delusions. As the cool and deliberate sense of the community 10
ought, in all governments, and actually will, in all free governments, ultimately
prevail over the views of its rulers; so there are particular moments in public
affairs when the people, stimulated by some irregular passion, or some illicit
advantage, or misled by the artful misrepresentations of interested men, may
call for measures which they themselves will afterwards be the most ready to 15
lament and condemn. In these critical moments, how salutary will be the
interference of some temperate and respectable body of citizens, in order to
check the misguided career and to suspend the blow meditated by the people
against themselves, until reason, justice, and truth can regain their authority
over the public mind? What bitter anguish would not the people of Athens 20
have often escaped if their government had contained so provident a safeguard
against the tyranny of their own passions? Popular liberty might then have
escaped the indelible reproach of decreeing to the same citizens the hemlock
on one day and statues on the next.

It may be suggested that a people spread over an extensive region cannot, 25
like the crowded inhabitants of a small district, be subject to the infection of
violent passions or to the danger of combining in pursuit of unjust measures.
I am far from denying that this is a distinction of peculiar importance. I have,
on the contrary, endeavored in a former paper to show that it is one of the
principal recommendations of a confederated republic. At the same time, 30
this advantage ought not to be considered as superseding the use of auxiliary
precautions. It may even be remarked that the same extended situation which
will exempt the people of America from some of the dangers incident to lesser
republics will expose them to the inconveniency of remaining for a longer time
under the influence of those misrepresentations which the combined industry 35
of interested men may succeed in distributing among them.

It adds no small weight to all these considerations to recollect that history
informs us of no long-lived republic which had not a senate. Sparta, Rome,

and Carthage are, in fact, the only states to whom that character can be applied. In each of the two first there was a senate for life. The constitution of the senate in the last is less known. Circumstantial evidence makes it probable that it was not different in this particular from the two others.

5 It is at least certain that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the imitation as they are repugnant to the genius of America, are, notwithstanding, when compared with the fugitive

10 and turbulent existence of other ancient republics, very instructive proofs of the necessity of some institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern; and which render extreme circumspection necessary, in reasoning from the one case to the other. But

15 after allowing due weight to this consideration it may still be maintained that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves. There are others

20 peculiar to the former which require the control of such an institution. The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men than where the concurrence of separate and dissimilar bodies is required

25 in every public act.

The difference most relied on between the American and other republics consists in the principle of representation, which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this

30 difference, in reasonings contained in former papers, will have shown that I am disposed neither to deny its existence nor to undervalue its importance. I feel the less restraint, therefore, in observing that the position concerning the ignorance of the ancient governments on the subject of representation is by no means precisely true in the latitude commonly given to it. Without entering

35 into a disquisition which here would be misplaced, I will refer to a few known facts in support of what I advance.

In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and *representing* the people in their *executive* capacity.

Prior to the reform of Solon, Athens was governed by nine Archons, annually *elected by the people at large*. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that period we find an assembly, first of four, and afterwards of six hundred members, annually *elected by the people*; and *partially* representing them in their *legislative* capacity, since they were not only associated with the people in the function of making laws, but had the exclusive right of originating legislative propositions to the people. The senate of Carthage, also, whatever might be its power or the duration of its appointment, appears to have been elective by the suffrages of the people. Similar instances might be traced in most, if not all, the popular governments of antiquity. 5 10

Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in number, but annually *elected by the whole body of the people*, and considered as the *representatives* of the people, almost in their *plenipotentiary* capacity. The Cosmi of Crete were also annually *elected by the people*, and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body the right of suffrage was communicated to a part only of the people. 15

From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments lies *in the total exclusion of the people in their collective capacity*, from any share in the *latter*, and not in the *total exclusion of the representatives of the people* from the administration of the *former*. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful not to separate it from the other advantage, of an extensive territory. For it cannot be believed that any form of representative government could have succeeded within the narrow limits occupied by the democracies of Greece. 20 25 30

In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the Constitution will probably content himself with repeating that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous preeminence in the government and finally transform it into a tyrannical aristocracy. 35

To this general answer the general reply ought to be sufficient, that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that

there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, is apparently most to be apprehended by the United States. But a more particular reply may be given.

5 Before such a revolution can be affected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures, must then corrupt the House of Representatives, and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures it cannot prosecute the attempt because the periodical change of
10 members would otherwise regenerate the whole body. Without exerting the means of corruption with equal success on the House of Representatives, the opposition of that co-equal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves a succession of new representatives would speedily restore all things to their pristine order. Is
15 there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition through all these obstructions?

If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of Maryland furnishes the most apposite example.
20 The Senate of that State is elected, as the federal Senate will be, indirectly by the people, and for a term less by one year only than the federal Senate. It is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of its appointment, and at the same time is not under the control of any such rotation as is provided for the federal Senate. There are
25 some other lesser distinctions which would expose the former to colorable objections that do not lie against the latter. If the federal Senate, therefore, really contained the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the Senate of Maryland, but no such symptoms have appeared. On the
30 contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal Constitution have been gradually extinguished by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivaled by that of any
35 State in the Union.

But if anything could silence the jealousies on this subject, it ought to be the British example. The Senate there, instead of being elected for a term of six years, and of being unconfined to particular families or fortunes, is an hereditary assembly of opulent nobles. The House of Representatives, instead

of being elected for two years, and by the whole body of the people, is elected for seven years, and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to be seen in full display the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British history informs us that this hereditary assembly has not been able to defend itself against the continual encroachments of the House of Representatives, and that it no sooner lost the support of the monarch than it was actually crushed by the weight of the popular branch. 5

As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life, continually gained on its authority and finally drew all power into their own hands. The Tribunes of Rome who were the representatives of the people prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact is the more remarkable as unanimity was required in every act of the Tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage, whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex had, at the commencement of the second Punic War, lost almost the whole of its original portion. 10 15 20

Besides the conclusive evidence resulting from this assemblage of facts that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body, we are warranted in believing that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people nothing will be able to maintain even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves. 25 30