

Center *for the Study of the* American Constitution

NO. 10: THE FEDERALIST AND ANTIFEDERALIST DEBATE OVER THE HOUSE OF REPRESENTATIVES

Representation was a key issue that contributed to the eventual break between Great Britain and the American colonies in 1776. During the 1760s and 1770s, Britain's parliamentary system was based on a theory of virtual representation, which held that members of Parliament were not bound by the local or regional interests of their constituents. Rather, members had the prerogative to consider British subjects' interests throughout the realm as they made policy. American colonists vigorously and repeatedly challenged the concept of virtual representation throughout the public debate that led to the American Revolution, and beyond.

The American viewpoint did have some support within Parliament. William Pitt, often viewed as a defender of American colonists' rights, considered virtual representation to be "the most contemptible idea that ever entered into the head of man: it does not deserve a serious refutation." Many Americans concurred with Pitt's assessment that virtual representation was "'the rotten part of the constitution.' It cannot continue a century: if it does not drop, it must be amputated." As Americans debated models of representation during the American Revolution, they helped to refine the parameters of good government, largely through experimentation on the state level.

During the war, all of the American states established republican forms of government. The people chose representatives to attend state legislatures in which the lower houses were often large and always the center of power. However, this form of direct representation was not a feature of the central government created under the Articles of Confederation. While states could and did send between two and seven delegates to Congress, each state had only one vote. Critics of this system noted that more populous states, like Virginia and Massachusetts, were not adequately represented in Congress, while less populous states, like Rhode Island and Delaware, were overrepresented.

Consequently, when delegates met in the Philadelphia Convention in May 1787, it was not surprising that representation was one of the difficult issues. The Virginia Plan proposed a system of representation based on the free white population of the states. While that proposal was not successful, supporters of the Virginia Plan did strike a bargain with delegates advocating for the New Jersey Plan, who wanted greater state sovereignty and insisted on equal representation in Congress. This "Great Compromise" resulted in a constitution with a bicameral Congress composed of a House of Representatives and a Senate. Representation in the House was based proportionally on population, while the states would be represented equally in the Senate. Along with other issues affecting representation, this bargain was fertile ground for debate between Federalists and Antifederalists as the states called their own ratifying conventions.

Small-state Antifederalists opposed proportional representation in the House. They maintained that the states had always been distinct and sovereign political units. As such, the states should be represented equally, as was the case in the Senate. Large-state Antifederalists favored the proportional representation in the House and opposed equal state representation in the Senate. Antifederalists also maintained that the House of Representatives was too small to represent all segments of American society adequately. (The first U.S. House of Representatives would be composed of only 65 members if all 13 states ratified.) Critics highlighted that many of the states' lower houses had more members than the House of Representatives would have under the proposed Constitution. Antifederalists denounced the ratio of representation in the newly proposed Constitution. For instance, in the Virginia

state Convention, Patrick Henry expressed concerns over the words of Article I, Section 2. Since the Constitution stated that “there shall not be more Representatives, than one for every 30,000,” Henry stated that it was possible that one representative per state would be constitutionally acceptable.

Antifederalists also attacked the biennial election of representatives. Under the Articles of Confederation, delegates to Congress had one-year terms, were subject to recall, and could only serve three years within a six-year period. The Constitution had no provisions for recall or rotation in office and was criticized for neglecting to grant treaty-making powers to the House of Representatives, even though treaties would be the law of the land. Although they liked the requirement that money bills had to originate in the lower house, Antifederalists critiqued the Senate’s power to amend money bills. In Parliament, the House of Lords could only accept or reject money bills. Antifederalists belittled the House’s power to impeach government officials, arguing that no convictions and removals from office would take place during trials held in the Senate.

Federalists forcefully countered these criticisms. Under the Articles of Confederation state legislatures determined how delegates to Congress were elected. All but Rhode Island and Connecticut let their state legislatures do the electing. Under the Constitution, men qualified to vote for members of their state assemblies could vote for U.S. representatives. According to Federalists, the House of Representatives would be more democratic than the Confederation Congress.

In challenging Antifederalist qualms about representation, Tench Coxe, writing as “A Friend of Society and Liberty,” noted that proportional representation in the proposed Constitution “accords with reason and the true principles of liberty . . . and is one more great step towards the perfection of *equal liberty* and genuine *republicanism* in America.” Federalists also challenged the belief that the House was too small, pointing out that it would enlarge as the nation’s population increased, and they dismissed Antifederalists’ concerns about two-year terms by arguing their usefulness in creating continuity. Representatives from distant states would find a one-year term difficult on practical grounds alone. Much of their time would be spent in transit or running for office, distracting them from pressing national affairs. Federalists also argued that, although the House of Representatives had no direct involvement in treaty-making, it still had influence through its control over the appropriation of funds. In addition, its impeachment powers gave it considerable authority in all governmental affairs. ■

ANTIFEDERALIST DOCUMENTS

CATO V, *NEW YORK JOURNAL* 22 NOVEMBER 1787

. . . The most general objections to the first article, are that bi-ennial elections for representatives are a departure from the safe democratical principles of annual ones. . . .

. . . it may be remarked that a well digested democracy has this advantage over all others, to wit, that it affords to many the opportunity to be advanced to the supreme command, and the honors they thereby enjoy fills them with a desire of rendering themselves worthy of them; hence this desire becomes part of their education, is matured in manhood, and produces an ardent affection for their country, and it is the opinion of the great Sidney,

and Montesquieu that this is in a great measure produced by annual election of magistrates.

If annual elections were to exist in this government, and learning and information to become more prevalent, you never will want men to execute whatever you could design—Sidney observes *that a well governed state is as fruitful to all good purposes as the seven headed serpent is said to have been in evil; when one head is cut off, many rise up in the place of it.* He remarks further, that *it was also thought, that free cities by frequent elections of magistrates became nurseries of great and able men, every man endeavoring to excel others, that he might be advanced to the honor he had no other title to, than what might arise from his merit, or reputation,* but the framers of this *perfect government*, as it is called, have departed from this democratical principle, and established bi-ennial elections, for the house of representatives, who are to be chosen by the people, and sextennial

for the senate, who are to be chosen by the legislatures of the different states . . .

**HAMPDEN, *PITTSBURGH GAZETTE*
16 FEBRUARY 1788**

. . . in the second clause of the second Article, it is declared that the President, by and with the consent of the Senate, is to make treaties. Here the supreme executive magistrate is officially connected with the highest branch of the legislature; and in Article sixth, clause second, we find that all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding. When we consider the extent of treaties; that in fixing the tariff of trade, the imposts and port duties generally are or may be fixed; and by a large construction, which interested rulers are never at a loss to give to any constitutional power. Treaties may be extended to almost every legislative object of the general government. . . . And from this power of making treaties, the House of Representatives, which hath the best chance of possessing virtue and public confidence is entirely excluded. Indeed, I see nothing to hinder the President and Senate, at a convenient crisis, to declare themselves hereditary and supreme, and the lower house altogether useless, and to abolish what shadow of the state constitutions remain by this power alone; and as the President and Senate have all that influence which arises from the creating and appointing of all offices and officers, who can doubt but at a proper occasion they will succeed in such an attempt?

**GEORGE MASON SPEECH IN THE
VIRGINIA CONVENTION, 4 JUNE 1788**

. . . But why shall we give up to the National Government this [taxing] power, so dangerous in its nature, and for which its members will not have sufficient information? —Is it not well known, that what would be a proper tax in one State would be grievous in another? The Gentleman [George Nicholas] who hath favored us with an eulogium in favor of this system, must, after all the encomiums he has been pleased to bestow upon it, acknowledge, that our Federal Representatives must be unacquainted with the situation of their constituents: Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent: When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax on

that article which will be most productive, and easiest in the collection, without consulting the real circumstances or convenience of a country, with which, in fact, they cannot be sufficiently acquainted. The mode of levying taxes is of the utmost consequence, and yet here it is to be determined by those who have neither knowledge of our situation, nor a common interest with us, nor a fellow feeling for us. . . .

**PATRICK HENRY SPEECH IN THE
VIRGINIA CONVENTION, 5 JUNE 1788**

. . . There are sufficient guards placed against sedition and licentiousness: For when power is given to this Government to suppress these, or, for any other purpose, the language it assumes is clear, express, and unequivocal, but when this Constitution speaks of privileges, there is an ambiguity, Sir, a fatal ambiguity;—an ambiguity which is very astonishing: In the clause under consideration, there is the strangest language that I can conceive. I mean, when it says, that there shall not be more Representatives, than one for every 30,000. Now, Sir, how easy is it to evade this privilege? “The number shall not exceed one for every 30,000.” This may be satisfied by one Representative from each State. Let our numbers be ever so great, this immense continent, may, by this artful expression, be reduced to have but 13 Representatives: I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and unequivocally expressed, that they *should* be entitled to have one for every 30,000? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases, and a State shall send Representatives in this proportion, Congress *may* remand them, because the right of having one for every 30,000 is not clearly expressed. . . .

FEDERALIST DOCUMENTS

**AN AMERICAN CITIZEN III:
ON THE FEDERAL GOVERNMENT,
PHILADELPHIA INDEPENDENT GAZETTEER
29 SEPTEMBER 1787**

. . . The house of representatives is . . . *to elect their speaker from their own number*—They will also appoint *all their other officers*. In great state cases, they will be *the grand inquest of the nation*, for they possess *the sole and uncontrollable power of impeachment*. They are neither *to wait the call nor abide the prorogations and dissolu-*

tions of a perverse or ambitious prince, for they are to meet at least once in every year, and sit on adjournments to be agreed on between themselves and the other servants of the people. . . . They can compel the attendance of their members, that their public duty may not be *evaded* in times of difficulty or danger—The vote of each representative can be always known, as well as the proceedings of the house, *that so the people may be acquainted with the conduct of those in whom they repose so important a trust*. . . . They are not to be restrained from *the firm and plain language*, which becomes the independent representatives of freemen, *for there is to be a perfect liberty of speech*. Without their consent *no monies can be obtained, no armies raised, no navies provided*. They alone can originate bills for drawing forth the revenues of the union, and *they will have a negative upon every legislative act of the other house*—So far, in short, as the sphere of federal jurisdiction extends, they will be controulable *only by the people*, and in contentions with the other branch, so far as they shall be right, *they must ever finally prevail*.

PUBLIUS: THE FEDERALIST 53, NEW YORK INDEPENDENT JOURNAL, 9 FEBRUARY 1788

The second question stated is, whether biennial elections be necessary or useful? The propriety of answering this question in the affirmative will appear from several very obvious considerations.

No man can be a competent legislator who does not add to an upright intention and a sound judgment, a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it. The period of service ought therefore in all such cases to bear some proportion to the extent of practical knowledge, requisite to the due performance of the service. . . .

In a single state the requisite knowledge, relates to the existing laws which are uniform throughout the state, and with which all the citizens are more or less conversant; and to the general affairs of the state . . . are not very diversified, and occupy much of the attention and conversation of every class of people. The great theatre of the United States presents a very different scene. The laws are so far from being uniform, that they vary in eve-

ry state; whilst the public affairs of the union are spread throughout a very extensive region, and are extremely diversified . . . and can with difficulty be correctly learnt in any other place, than in the central councils, to which a knowledge of them will be brought by the representatives of every part of the empire. Yet some knowledge of the affairs, and even of the laws of all the states, ought to be possessed by the members from each of the states. How can foreign trade be properly regulated by uniform laws, without some acquaintance with the commerce: the ports, the usages, and the regulations, of the different states. How can the trade between the different states be duly regulated without some knowledge of their relative situations in these and other points? How can taxes be judiciously imposed, and effectually collected, if they be not accommodated to the different laws and local circumstances relating to these objects in the different states? . . . These are the principal objects of federal legislation, and suggest most forceably, the extensive information which the representatives ought to acquire.

PUBLIUS: THE FEDERALIST 55, NEW YORK INDEPENDENT JOURNAL, 13 FEBRUARY 1788

The number of which this branch of the legislature is to consist at the outset of the government, will be sixty five. Within three years a census is to be taken, when the number may be augmented to one for every thirty thousand inhabitants; and within every successive period of ten years, the census is to be renewed, and augmentations may continue to be made under the above limitation. It will not be thought an extravagant conjecture, that the first census, will, at the rate of one for every thirty thousand raise the number of representatives to at least one hundred. . . .

The true question to be decided then is whether the smallness of the number, as a temporary regulation, be dangerous to the public liberty: Whether sixty five members for a few years, and a hundred or two hundred for a few more, be a safe depositary for a limited and well guarded power of legislating for the United States? . . . I am unable to conceive that the people of America in their present temper, or under any circumstances which can speedily happen, will chuse, and every second year repeat the choice of sixty five or an hundred men, who would be disposed to form and pursue a scheme of tyranny or treachery. I am unable to conceive that the state legislatures which must feel so many motives to watch, and which possess so many means of counteracting the

federal legislature, would fail either to detect or to defeat a conspiracy of the latter against the liberties of their common constituents. I am equally unable to conceive that there are at this time, or can be in any short time, in the United States any sixty five or an hundred men capable of recommending themselves to the choice of the people at large, who would either desire or dare within the short space of two years, to betray the solemn trust committed to them. . . . I must pronounce that the liberties of America can not be unsafe in the number of hands proposed by the federal constitution.

PUBLIUS: THE FEDERALIST 57
NEW YORK PACKET, 19 FEBRUARY 1788

Who are to be the electors of the Fœderal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the correspondent branch of the Legislature of the State.

Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession, is permitted to fetter the judgment or disappoint the inclination of the people.

If we consider the situation of the men on whom the free suffrages of their fellow citizens may confer the representative trust, we shall find it involving every security which can be devised or desired for their fidelity to their constituents. . . .

I will add . . . that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments of which few governments have furnished examples; but without which every government degenerates into tyranny. ■

DISCUSSION QUESTIONS FOR A SOCRATIC SEMINAR

- Are you convinced by the arguments of “An American Citizen” III in regards to the accountability of representatives in the House?
- Both “Cato” V and *The Federalist* 53 reach very different conclusions regarding the two-year term of representatives. Which do you find more persuasive and why?
- Both *The Federalist* 55 and Patrick Henry address the ratio of representation in the House but come to different conclusions. In your view, which is the more reasonable conclusion? Since both are speculating about the future, are both unreasonable?
- “Hampden” argues that the House should be involved in the treaty-making process? What might be the advantages/disadvantages of having the House involved in making treaties?
- Are Mason’s concerns over the power to tax effectively rebutted by the arguments of “An American Citizen” III?



TEACHING TOOLS

I. Is This a Safe House?: Comparing the Arguments of “An American Citizen” III, *The Federalist* 57, George Mason, and “Hampden”

1. Divide the class into groups of 3–5 students.
2. Each group should be given the chart below.

It's a Safe House—The Federalists An American Citizen & The Federalist 57	It's a Dangerous House—The Antifederalists George Mason & Hampden
An American Citizen III	George Mason's Speech
The Federalist 57	Hampden

3. Half of the groups should read “An American Citizen” III and *The Federalist* 57. The other half should read George Mason's speech and “Hampden.” As the groups read their pieces, they should record the writers' arguments on the chart. After they have recorded the arguments, each group should rank each argument based on its persuasiveness. Students can use a 1–5 scale (1 = totally unpersuasive, 5= totally persuasive).
4. After groups have discussed their documents, have them report their findings to the class.
5. To conclude the lesson you can lead a discussion using the following questions:
 - a. Why might accountability of representatives be an issue for Americans as they considered the merits of the Constitution?
 - b. In your opinion, is it possible to be overly concerned about the accountability of elected officials?
 - c. In your opinion, which side in this exercise has the better argument?

II. How Often Do We Vote?: Thinking about Biennial Elections

1. Start the lesson by asking the class the following questions:
 - a. Is there a length of time that is too long between elections?
 - b. Is there a length of time that is too short between elections?

- c. What would you consider an appropriate amount of time between elections?
 - d. Which is the bigger problem, too little or too much time between elections?
 - e. What would be the benefit of an elections called for a specific date versus an election to be held within a certain time period, as in the British Parliamentary system.
2. After a brief discussion of the questions above, divide the class into groups of 3–5 students. Half of the groups should read “Cato” V; the other half should read *The Federalist* 53. As students read their pieces, they should summarize and record their writer’s arguments using the chart below.

The Advantages of Frequent Elections

Cato V (Antifederalist)

The Disadvantages of Frequent Elections

The Federalist 53 (Federalist)

4. After groups have had an opportunity to read and list their writer’s arguments, have a representative from each side of the debate report its findings to the class. (The other half of the class should pay particular attention to the opposition’s points. It will be asked to find and use arguments from its document in rebuttal to the points made by the opposition.)
5. After each side has reported its findings to the class, give each side a chance to evaluate the opposition’s points drawing on its own text in rebuttal.
6. Then have one side lead out with a summary statement. For example:

(The Charge)

The Antifederalist group could start with:

Cato V charges that representatives that are frequently elected have an “ardent affection for the country.”

(The Rebuttal)

The Federalist side might respond:

According to Publius, it takes time for a representative to gain “some knowledge of the affairs, and even of the laws of all the states.”

7. Reverse sequence in the next round, allowing the Federalists to make a summary statement from the text and the Antifederalists to select their rebuttal.

8. To make things interesting, you could have a panel of judges score each round's rebuttals and keep a total to determine the winner. The chart below would be useful for the judges.

The Charge		The Rebuttal	
1.	F/AF		F/AF
2.	F/AF		F/AF
3.	F/AF		F/AF
4.	F/AF		F/AF

9. You can conclude the lesson by leading a discussion using the following questions:
- What does the debate over term lengths in the House of Representatives reveal about Americans' thoughts on the nature of representation?
 - Do these issues still have relevance today?
 - Has evaluating these documents altered your original opinion?

Vocabulary

“Cato” V

1. *ardent*: passionate or enthusiastic
2. *prevalent*: widespread
3. *magistrates*: elected officials
4. *sextennial*: occurring every six years

“Hampden”

1. *hereditary*: inherited and permanent

George Mason Speech

1. *grievous*: serious error; painful
2. *eulogium*: eloquent speech
3. *encomiums*: praises
4. *levying*: imposing or charging

Patrick Henry Speech

1. *ambiguity*: vagueness
2. *unequivocally*: without doubt
3. *remand*: to send back

“An American Citizen” III

1. *inquest*: investigator
2. *abide*: tolerate
3. *prorogations*: to suspend a legislature’s meeting
4. *dissolutions*: to end a legislature’s meeting
5. *perverse*: wicked

6. *compel*: force
7. *evaded*: avoided
8. *repose*: place or put
9. *jurisdiction*: authority
10. *contentions*: disputes or arguments

“Publius”: *The Federalist 53*

1. *biennial*: occurring every two years
2. *compass*: range
3. *requisite*: required or essential
4. *conversent*: familiar or knowledgeable
5. *judiciously*: carefully or cautiously

“Publius”: *The Federalist 55*

1. *augmented*: enlarged or enhanced
2. *conjecture*: speculation
3. *disposed*: willing or likely
4. *constituents*: people voting for/represented by an elected official

“Publius”: *The Federalist 57*

1. *haughty*: proud
2. *obscure*: unknown
3. *unpropitious*: unfavorable
4. *fetter*: bind or tie
5. *suffrages*: votes
6. *fidelity*: faithfulness or loyalty
7. *communion*: sharing