

CLASS NOTES

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Constitution - Form of Government

Republic was "cure" for faction.

Federalist No. 10 - two major differences between a republic and a democracy.

First, the delegation of the government...to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

One effect of this delegation was to:

to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.

Today's politicians often focus on the temporary consideration - next election! Won't deal with national debt, etc.

Hope was that the national legislative body would often make decisions that were "more consonant to the public good than if pronounced by the people themselves, convened for the purpose." Fed. 10

However, another possible effect was:

"men of factious tempers, of local prejudices, or of sinister design, || by intrigue, by corruption. Or by other means, ...obtain the suffrages, and then betray the interest of the people?"

In other words, how to you protect yourself from crooked people lying about their campaign promises just to get your vote and then doing something else. Concern: groups/factions forming within the legislative body.

To solve, have to have two think about two things:

1. size of representative body and
2. size of district being represented.

As to size of the representative body:

The "number of representatives must be raised to a certain number – in order to guard against the cabals of a few." Fed. 10. – a group of rep's within a larger group who come together to achieve something in secret – in other words, what we might called the smoke-filled back room kind of politics.

Have to have enough representatives to make it hard to put together a political conspiracy that could overtake the whole.

But can't get the number too big because you have to "guard against the confusion of a multitude." In other words, get to a point that no agreement can be reached.

So a delicate balance.

As to size of district:: District represented must be large enough but not too small.

A larger district they said makes it "more difficult for unworthy candidates to practise with success the visious arts by which elections are too often carried."

But if the districts are too large you "render the representative too little acquainted with all their local circumstances and lesser interests? Representative couldn't appreciate the needs of your district.

But if the district represented is reduced too large, then the representative is too attached to just local issues and doesn't care enough about the larger national issues.

These considerations led to number in US Senate begin fixed and smaller and House number not fixed but grows and is larger.

BUT it also relates to the idea of the difference between the national government and the state and local governments.

Federalist Paper No. 10 –

The federal constitution forms a happy combination in this respect: the great and aggregate interests being referred to the national, the local and particular to the State legislatures."

Two issues here:

1. federalism

2, limited powers of federal government

As to federalism:

Statement is a recognition (now forgotten) that the states are a sovereign body politics, they are a constituent part of the national government – not just the puppet of the national government. I am constituent of federal government (originally only through US House) but state was also a constituent of the federal government (through state legislature electing US Senators – since changed by amendment to popular election)

States not some kind of laboratory of democracy. First, we're not a democracy. Second, state isn't some kind of subsidiary or subdivision of the federal government.

State's starting to speak up. But if US Senate was still elected by state legislature, Arizona senators would be more attuned to immigration and every Senator more attuned to cost of mandates on ObamaCare. Now, I want to stop right here and correct myself. In a sense we have a national government but we need to start referring to that group in Washington as the "federal government." Words are important and we need to start re-implanting in the minds of our people this notion of federalism and stop people who say "national government" and say, "You mean the federal government." This idea of federalism needs to be restored!

As said, a second thing going on in that statement we read - limited government:

Federal government's powers supposed to be limited to national kind of interests/issues like:

1. military defense,
 - 2, the issuance of currency that could be used across the states,
 3. interstate commerce to allow the free flow of commerce among the various state,
- and
4. a judicial system BUT a limited judicial system limited to solving a limited number of
- disputes such as
- x those between the states, providing a more "neutral" forum for these
- "family fights" and

x a neutral forum for suits between citizens of different states so you

didn't have the home town judge tending to be prejudices for the home

own party, and

x suits involving federal questions such as the application or meaning of

federal statute or the US Constitution.

The government in Washington was to be a government of limited power, preserving to the states their own sovereign prerogatives over things more local in nature – local crimes, marriage and divorce, adoption, intra-state commerce, their own justice system or courts.

Checks and balances to keep federal government within it's bounds:

Executive Branch – to execute laws, not make policies; President's role in policy was really to be expressed through veto power.

Legislative Branch – was to make the laws/policies. Had power to keep Executive in check through "advise and consent" power on his executive office appointments and judicial appointments.

Judicial Branch – kept check on legislature by keeping laws within the constitution.

Legislative branch was to be kept in check by having two bodies – house and senate with different numbers and constituencies (Senate – states; House – people)

Senate had longer term to keep in check a House that might get carried away with popular opinion (senate kept close to people through elections every two years) – time might prove that the "populace" was wrong and House was being short sighted.