

The Senate

Introduction

During the Confederation period most of the states had bicameral legislatures. Only Pennsylvania and Georgia had single-house assemblies. The Confederation Congress was also unicameral in which each state had only one vote despite the discrepancies in size, population and wealth among the states. The shortcomings of these few unicameral legislatures were so apparent that there was virtually no debate in the Constitutional Convention over the establishment of a bicameral Congress. There was, however, considerable debate over representation in each house.

Early in the Convention it was agreed that the House of Representatives should be apportioned among the states on the basis of population. Large-state delegates wanted the representation in the Senate based upon the same principle, but small-state delegates wanted the states to be equally represented in the Senate. Eventually a compromise determined that the Senate would in fact be composed of two Senators from every state while the House of Representatives would be apportioned by population. In both houses of Congress, voting would be by individual—not by states.

During the debate over ratification, Antifederalists from the large states attacked the equality of the states in the Senate as oppressive to their populations. If Delaware, with less than ten percent of Virginia's population, had the same representation as the Old Dominion, how could anyone imagine that Virginians were properly represented?

Antifederalists also denounced the aristocratic nature of the Senate. Senators were to be elected by their state legislatures for six-year terms. Neither mandatory rotation in office nor recall was provided for by the Constitution. Thus, once Senators got in office, it was feared they might be reelected perpetually, serving for life.

The combination of the Senate and President in appointments and treaty-making was denounced as a violation of the principle of separation of powers. How could the Senate be expected to convict impeached officeholders after confirming their appointments? Who would be held responsible for unwise treaties? The shared responsibility of the Senate and Presidency meant, in essence, that there would be no responsibility for malfeasance in office. A privy council, Antifederalists argued, would more adequately serve as advisor to the President.

Antifederalists also decried the office of the Vice President of the United States who would act as president of the Senate with the power to cast the deciding vote when the Senate deadlocked. Not only did this placement violate the separation of powers principle, but it gave one state an extra vote in the Senate. The Senate, Antifederalists argued, should elect its own presiding officer from among its members.

Federalists justified the equality of the states in the Senate on the basis of expediency. Without this concession to the small states, agreement in the Constitutional Convention would have been unobtainable. Furthermore, the different constituency of the Senate, coupled with the six-year term with one-third of the Senators being elected every two years, promised greater stability for Congress.

The Senate's role in advising the President on appointments and treaties was justified in several ways. The Senate, with its six-year term, it was suggested, would be the repository of much wisdom and experience, both of which should be made available to the President. A privy council would be expensive, would add another layer onto the government, and would not necessarily be an improvement on the Senate as a means of advising the President.

To counter the charge of the Senate's aristocratic nature, Federalists pointed out that the Senate could do nothing by itself. In passing legislation, the Senate needed the agreement of the House of Representatives. In treaty-making and appointments, the Senate acted in conjunction with, and most probably in response to, the actions of the President. If Senators violated their trust, they would not be reelected by their state legislatures.

Sources

Antifederalists

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Cincinnatus (Arthur Lee) IV: To James Wilson, Esquire, *New York Journal*,
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Luther Martin: Speech in the Maryland House of Delegates, 29 November 1787
Cato (George Clinton?) VI, *New York Journal*, 13 December 1787
Luther Martin: Genuine Information II, Baltimore *Maryland Gazette*, 1 January 1788
Luther Martin: Genuine Information IV, Baltimore *Maryland Gazette*,
8 January 1788
Hampden, *Pittsburgh Gazette*, 16 February 1788
Brutus (Melancton Smith?) XVI, *New York Journal*, 10 April 1788

Federalists

- An American Citizen (Tench Coxe) II: On the Federal Government, Philadelphia
Independent Gazetteer, 28 September 1787
Remarker, Boston *Independent Chronicle*, 17 January 1788
Marcus (James Iredell) I, *Norfolk and Portsmouth Journal*, 20 February 1788
Publius (James Madison?): The Federalist 62, New York *Independent Journal*,
27 February 1788
Publius (John Jay): The Federalist 64, *New York Packet*, 7 March 1788
Publius (Alexander Hamilton): The Federalist 75, New York *Independent Journal*,
26 March 1788
Publius (Alexander Hamilton): The Federalist 76, *New York Packet*, 1 April 1788

Roles in the Script—12 (L—large role; M—medium role; S—small role)

Moderator (L)

Antifederalist Panelists

- Brutus (M)
- Cato (S)
- Cincinnatus (M)
- Federal Farmer (S)
- Hampden (S)
- Luther Martin (L)
- An Old Whig (S)

Federalist Panelists

- An American Citizen (M)
- Marcus (M)
- Publius (L)
- Remarker (S)

Script

Moderator: Good Evening. We are joined tonight by some of the nation's most distinguished political thinkers who have been involved in what has become a national debate over the Constitution. I would like to offer a warm welcome to all our distinguished guests on this panel.

All Panelists: Good evening, Hello, It's a pleasure to be here, etc.

Moderator: We hope that our conversation tonight is both thought provoking as well as engaging. We have chosen to focus our attention on the provisions in the Constitution relating to the upper house of the legislature, the Senate. Well, gentlemen, where should we begin?

Cincinnatus: [I would like to pose several questions to my Federalist friends.] Is a body so vested with means to soften & seduce—so armed with power to screen or to condemn—so fortified against suspicion and enquiry—so largely trusted with legislative powers—so independent of and removed from the people—so tempted to abuse and extend these powers—is this a body which freemen ought ever to create, or which freemen can ever endure?

Moderator: Whoa there! Slow down, Cincinnatus!

An American Citizen: [Well, well, well. Let's look at some of these claims.] First [the Senate is] not . . . hereditary, their collective knowledge, wisdom and virtue . . . have none of the peculiar follies and vices of those men, who possess power merely because their fathers held it before them.

Brutus: [Well, to that end] a rotation in the senate, would also in my opinion be of great use.

An American Citizen: [Senators] will be educated (under equal advantages and with equal prospects) among and on a footing with the other sons of a free people.

Brutus: [Senators] will possess very little of the feelings of the middling class of people.

An American Citizen: As their sons are not to succeed them, they will not be induced to aim at an increase or perpetuity of their powers, at the expence of the liberties of the people.

Brutus: I hope it is evident from reason and authority, that in . . . the senate there is much cunning and little wisdom; that we have much to fear from it, and little to hope, and then it must necessarily produce a baneful aristocracy, by which the democratic rights of the people will be overwhelmed.

An American Citizen: Senators are . . . to be elected by the legislatures of the states.

Cincinnatus: [Exactly.] It is removed from the people, being chosen by the legislatures.

Moderator: OK, let's catch our breath for a minute. There is a lot to digest in that exchange. Perhaps we should go in a different direction for a bit. I've heard that Federalists argue the Senate will provide a more stable government. Is this true?

Publius: The necessity of a senate is <obvious when you consider>⁶ the propensity of <larger>⁷

assemblies, to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders, into intemperate and pernicious <actions>.⁸

Moderator: But, as you describe it, this sounds suspiciously like an elitist institution. We seem to be back to the point Cincinnatus made at the outset.

Brutus: [Yes. Members of the Senate will be] very <likely>⁹ to feel themselves independent; To form and pursue interests separate from those who appointed them. And this is more likely to be the case with the senate, as they will for the most part of the time be absent from the state they represent.

Moderator: But, I think the point Publius is making is that stability is an important consideration in governance.

Publius: [Absolutely.] The internal effects of a <fluctuating>¹⁰ policy are still more calamitous. . . . It will be of little avail to the people that the laws are made by men of their own choice . . . if they be repealed or revised before they are <put in force>¹¹ or undergo such incessant changes that no man who knows what the law is to day can guess what it will be tomorrow.

An American Citizen: The senate though more independent of the people as to the free exercise of their judgement and abilities, than the house of representatives, by the longer term of their office. . . . They may restrain the <abundance>¹² of errors of the house of representatives.

Luther Martin: Sir, for six years the senators are rendered totally and absolutely independent of their States, of whom they ought to be the representatives, without any bond or tie between them . . . and their States cannot recall them, nor exercise any controul over them.

Moderator: These six-year terms do seem to be perilously close to being an aristocracy.

Remarker: The properties of an aristocracy, we take to be these,—1st, It is independent; 2d, Permanent; 3d, Uncontroulable, and 4th, Not responsible. It derives its existance from an inherent right of succession, that does not come within the prescription of the people.

Moderator: But, what about six years?

Remarker: This . . . an idea, thrown out on purpose to excite the jealousy of the people, and could proceed only from a heart . . . deeply tinged with depravity. . . . Unhappily, fear is a contracting principle, and suspicion a poisoning quality.

Luther Martin: [As you notice, Remarker has not addressed your question. Listen.] a senator, especially from the States remote from the seat of empire, will accept of an appointment which must estrange him for six years from his State. . . . If he has a family, he will take his family with him to the place where the government shall be fixed, that will become his home, and there is every reason to expect that his future views and prospects will centre in the favours and <benefits>¹³ . . . of the general government.

Remarker: [Senators] derive their origin from the people; their power is limited by the people, and they are responsible to the people. It is easy to convince any honest mind, that the Senate is by no means a-kin to a body of nobles.

Moderator: Forgive me Remarker, but you seem to be stuck in denial mode. The question before us is whether the six-year term for Senators is aristocratical.

Remarker: The manner of inheriting [property] . . . in this country, would not admit the amassing of wealth among any number of citizens, to a degree bordering upon aristocracy. Estates are not here entailed, and the dispersion of the fathers among his children, creates such a fluctuation of property, as will not give room for a permanent superiority in fortune.

Moderator: Stop! Can anyone address the Antifederalist charges here?

Publius: All that need be remarked is that [the Senate] . . . ought moreover to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

Moderator: And specifically, why?

Publius: It is not possible that an assembly of men called for . . . a short time . . . to a study of the laws, the affairs and . . . interests of their country, should . . . escape a variety of important errors in the exercise of their legislative trust.

Moderator: So, in other words, they need more time to think about the complexities of the whole nation especially the complexities of dealing with other nations?

Publius: It may be affirmed . . . that no small share of the present embarrassments of America is to be charged on the blunders of our governments. . . . What indeed are all the repealing, explaining and amending laws, which fill and disgrace our <mountain of>¹⁴ codes, but so many monuments of deficient wisdom.

Moderator: So, in short . . . ?

Publius: . . . No government any more than an individual will long be respected, without being truly respectable, nor be truly respectable without possessing [an] order and stability.

Brutus: [Granted] it seems fit they should possess more stability, and so continue a longer period than that branch who represent the <people directly>.¹⁵ [Their] business . . . requires that they should have experience, and therefore that they should remain some time in office to acquire it.— But still it is of equal importance that they should not be so long in office as to be likely to forget the hand that formed them, or be insensible of their interests.

Moderator: So what is an alternative?

Brutus: I conceive it would be wise . . . that a senator should not be eligible after he had served for the period assigned by the constitution for a certain number of years; perhaps three would be sufficient.

Moderator: And what's the benefit of this rotation of office?

Brutus: It would give opportunity to bring forward a greater number of men to serve their country, and would return those, who had served, to their state, and afford them the advantage of becoming better acquainted with the condition and politics of their constituents.

Moderator: Do you other suggestions you have in regards to modifying the Senate?

Brutus: It . . . appears to me proper, that the [state] legislatures should retain the right . . . of recalling their [Senators]. It seems [obvious] that when a person authorises another to do a piece of business for him, he should retain the power to displace him, when he does not conduct according to his pleasure. This power in the state legislatures, under confederation, has not been exercised to the injury of the government, nor do I see any danger of its being so exercised under the new system. It may operate much to the public benefit.

Moderator: And, is that all?

Brutus: [No.] I would shorten the term of their service to four years. Six years is a long period for a man to be absent from his home, it would have a tendency to wean him from his constituents.

Moderator: Let's change course a bit. The powers given to the Senate in the Constitution have been the source of debate. As Antifederalists consider the Senate in this vein, what are your concerns?

Cincinnatus: [All I need to do is remind our audience what the great Montesquieu said.] When the legislative and executive powers are united in the same person, or in the same corps, there can be no liberty. Because, it may be feared, that the same monarch or senate will make tyrannical laws, that, they may execute them tyrannically.

Hampden: 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.

Moderator: So it's the blending of powers that concerns you?

Cincinnatus: [Yes.] These powers should be forever separate. . . . But the frame of the proposed constitution, should have had that separation religiously in view. . . . This was not the <purpose>¹⁶ of its framers, but, that on the contrary there is a studied mixture of them in the senate.

Moderator: So I take it you have plenty of problems with the Senate's role in making treaties especially since they are declared to be the supreme law of the land?

Hampden: This power of making treaties, the House of Representatives, which hath the best chance of possessing virtue and public confidence is entirely excluded.

An Old Whig: Treaties [should be] made by the same authority which makes the laws.

Moderator: So I take it, you too would like the House of Representatives involved in the treaty-making process?

An Old Whig: [I will go you one better. Certainly] the approbation of the legislature ought to be had, before a treaty should have the force of a law. [But here is what I would ask.] Are treaties to be sent to all the different state legislatures for their approbation? By no means. No treaty ought . . . to alter the law of the land, without the consent of the continental legislatures.

Moderator: And, I assume you believe this because you believe state legislatures will best represent the interests of the people?

An Old Whig: [Absolutely!]

Publius: [You can't be serious.] The fluctuating and . . . the <multifaceted>¹⁷ composition of that body, forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character, decision, secrecy and dispatch; are incompatible with the genius of a body so variable and so numerous.

Cato: [It's pretty simple, Publius.] Treaties < impact the entire nation>¹⁸ . . . engagements may be made to raise an army, and you may be transported to Europe, to fight the wars of ambitious princes; money may be contracted for, and you must pay it; and a thousand other obligations may be entered into; all which will become the supreme law of the land, and you are bound by it.

Marcus: The power of making treaties is so important, that it would have been highly dangerous to vest it in the Executive alone, and would have been the subject of much greater clamour. From the nature of the thing, it could not be vested in the popular Representative. It must therefore have been provided for, with the Senate's concurrence.

Moderator: So, in you opinion, it is good to share this power.

Publius: Whoever has maturely weighed the circumstances, which must concur . . . [that] in the formation of treaties . . . the joint possession of the power . . . by the president and senate would afford a greater prospect of security, than the separate possession of it by either of them.

Moderator: Another blended power that Antifederalists have criticized is the power to confirm appointments.

Federal Farmer: The president can appoint no officer, civil or military, who shall not be agreeable to the senate.

Moderator: And the problem with this would be?

Cincinnatus: [I would look at it this way.] Their advice and consent being necessary to the appointment of all the great officers of state, both at home and abroad, will enable them to win over any opponents to their measures in the house of representatives and give them the influence which, we see, accompanies this power in England.

Moderator: And this influence is a problem because?

Cincinnatus: [This sharing of power could] <cause>¹⁹ constant contentions . . . [and] clog the execution of government to a mischievous, and sometimes to a disgraceful degree, and if they should unhappily <unite in a common selfish agenda>²⁰ [tyranny would result].

Moderator: In other words, a lack of accountability is the problem.

Cincinnatus: [Yes. Accountability] is one of the great securities of good, and restraints on bad governments.

Publius: [I think Cincinnatus is missing the point.] In every exercise of the power of appointing to offices . . . we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly.

Moderator: So Publius, for you, the shared responsibility ensures a fuller disclosure of the persons being nominated.

Publius: [Precisely.] It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an <effective>²¹ source of stability in the administration.

Luther Martin: [No. No. No.]

Moderator: Let me guess. Mr. Martin, you would predict the opposite will occur?

Luther Martin: [Yes.] If [a Senator] places his future prospects in the favours and emoluments of the general government, he will become the dependant and creature of the President . . . he will favour the wishes of the President, and concur in his measures.

Publius: Not only that it will be impracticable to the Executive to corrupt or seduce a majority of its members, but that the necessity of its co-operation, in the business of appointments, will be a considerable and <beneficial>²² restraint upon the conduct of that magistrate.

Fabius: Tho' small, let it be remembered, [Senators are] created by the sovereignties of the . . . states; that is, by . . . the people of each state [who] shall judge to be most worthy, and who . . . will be . . . attentive to . . . the interest and honour of their state.

Cincinnatus: One thing at least is certain, that by making this branch of the legislature participant in the executive, you not only prevent the legislature from being a check upon the executive, but you inevitably prevent its being checked or controuled by the other branch.

Moderator: So if I could summarize this disagreement, for Antifederalists, the blending and sharing power is no way to have checks and balances in any system of government since there is not enough separation of powers. For Federalists, the blending and sharing of powers is in fact a very effective way to check the powers of another branch of government since they have to work together and in doing so they can keep tabs on each other.

All Panelists: Yes. Well said. Exactly. Precisely, etc.

Moderator: It looks like we are rapidly coming to the end of our allotted time. I would like to ask each side to present a closing statement. Let's start with the Antifederalists.

Brutus: [Senators] are to be elected by the legislatures of the States and not by the people, and each State is to be represented by an equal number. [Senators] are to serve for six years. [This] is in my judgment too long.

Luther Martin: Senators when elected are made independent of the State they represent. They are . . . to pay themselves out of the General Treasury, and are not paid by the State, nor can [they] be recalled for any misconduct or sacrifice of the Interest of their State that they make before the expiration of that period.

Cato: The mode in which they are appointed and their duration, will lead to the establishment of an aristocracy; that the senate and president are improperly connected, both as to appointments, and the making of treaties, which are to become the supreme law of the land.

Federal Farmer: The executive is, in fact, the president and senate in all transactions of any importance; the president is connected with, or tied to the senate; he may always act with the senate, never can effectually counteract its views.

Brutus: This body will possess a strange mixture of legislative [and] executive [powers], which in my opinion will . . . clash with each other.

Moderator: And now the Federalists.

Remarker: My fellow-citizens, for a moment call to mind the origin, the mode of existence, and the power of the Senate in this Constitution. Their very being is derived from the people, their power is limited, and after all, they are obliged to render an account to the people for their conduct. . . . If . . . there were any qualifications of wealth required, there would be . . . an aristocracy.

An American Citizen: As the Senators are still to be elected by the legislatures of the states, there can be no doubt of equal safety and propriety in their future appointment. . . . They can hold no other office civil or military under the United States.

Publius: The . . . advantage . . . of giving to the state governments such <a stake>²³ in the formation of the federal government, as must secure the authority of the <states>,²⁴ and may form a convenient link between the <national and local governments>.²⁵

Marcus: Considering that in every popular government the danger of faction is often very serious and alarming, if such a danger could not be checked in its instant operation by some other power more independent of the immediate passions of the people, and capable therefore of thinking with more coolness, the government might be destroyed by a momentary impulse of passion. . . . The institution of the Senate seems well calculated to answer this <beneficial>²⁶ purpose.

Publius: It was wise, therefore, in the convention to provide . . . sufficient time to become perfectly

acquainted with our national concerns. . . . The duration [of their terms] . . . is such as will give them an opportunity of greatly extending their political information, and of rendering their accumulating experience more and more beneficial to their country.

Moderator: And with that we need to end tonight's discussion. I trust you have found it to be helpful. Again, I would like to thank our panelists for spending this time with us.

All Panelists: Thank you for inviting me. It's a pleasure to be here, etc.

Moderator: I know many of you have very busy schedules these days as you are involved in writing opinion pieces for various newspapers. I hope we can meet again soon. Good night and good luck.

Endnotes

¹ suffrage

² shew

³ instrument

⁴ residuary

⁵ be obtained from

⁶ is not less indicated by the

⁷ numerous

⁸ resolutions

⁹ apt

¹⁰ a mutable

¹¹ promulgated

¹² profusion

¹³ emoluments

¹⁴ voluminous

¹⁵ democracy

¹⁶ object

¹⁷ multitudinous

¹⁸ you may defalcate part of the empire

¹⁹ must be productive of

²⁰ harmonize in the same objects of ambition

²¹ efficacious

²² salutary

²³ an agency

²⁴ former

²⁵ two systems

²⁶ salutary

Pedagogical Materials

T-Chart for Notes—The Senate

Instructions: As students listen to the scripted debate, they should take notes using the T-Chart below. Notes should summarize the key ideas from both Federalist and Antifederalist speakers. You may also want to assess the strength of each argument using a numerical ranking system. This chart can also be used when using the discussion questions below.

<u>Federalist Arguments</u>	<u>Antifederalist Arguments</u>

Discussion Questions—The Senate

1. In your estimation, are Antifederalists overstating their case that the Senate was aristocratic?
2. In your estimation, are Federalists overstating the value of the Senate providing stability in governance?
3. Do you find the arguments for states deserving equal status in the Senate convincing? Are some arguments more convincing than others?
4. To what extent does the blending of powers between the Senate and the Executive create a stable system of government?
5. In your opinion, is the blending of powers between separate branches ever appropriate?

Extension Activities

1. Create a Political Cartoon. Students can create political cartoons from the following passages from the script that illustrate two individuals and their different points of view:

On page 4, Brutus and An American Citizen have very different views about the aristocratic nature of the Senate.

On page 7, Luther Martin and Remarker have very different views on the accountability of Senators.

On page 10, Publius and Luther Martin have different views on the blending of powers between the Executive and the Senate.

2. Create a Graphic novel. Instead of creating traditional book reports or writing summaries, get "graphic" by creating a comic book adaptation of an important section of the script. Characters in the story could include Luther Martin, Brutus, Publius, and Marcus.

3. Converting speeches into poetry. Students could take lines from the script and convert them into various types of poems. For example a limerick from Brutus view of terms of Senators might be:

Long terms of these Senators is elitist
These shall detach and ne'r ever meet us
Go from six years to four
It's enough to restore
A balance and destroy the monarchial foetus