

Building a new political model: lessons from the Roman Republic

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Abstract: The founding fathers of the new American republic looked to the history of Rome for parallel historical antecedents and political solutions, and found a rich source of inspiration for the new constitutional order they wished to establish. An analysis of publications in the press, proposals advanced by the intelligentsia and texts recording the intense debates that took place at various political conventions reveals the influence of the Roman Republic on the structure of the main organs of federal government. By taking the revered example of Rome as their model, the founders sought to ensure the stability of the new government and forestall the inevitable degeneration of the system. Hence, they established a mixed government defined by the separation of powers and a robust series of checks and balances. The weaknesses detected in the Roman Republic proved equally useful in enabling them to devise improvements to ensure the success of the new *politeia*.

Keywords: Founding Fathers, Rome Republic, checks and balances, mixed government.

Resumen: La Historia de Roma ofreció a los padres fundadores de la nueva república americana, desarrollos históricos que les parecían muy cercanos y soluciones políticas que fueron verdadera fuente de inspiración para el establecimiento del nuevo orden constitucional. El análisis de las publicaciones en prensa, de las propuestas formuladas desde el ambiente intelectual y los escritos que recogen los intensos debates mantenidos en las distintas convenciones políticas permite comprobar el peso de la república romana en la conformación de los principales órganos del gobierno federal. Al tomar Roma como referente de prestigio, se buscaba la estabilidad del nuevo gobierno evitando la inevitable degeneración del sistema mediante la institución de un gobierno mixto definido por la separación de poderes y por un adecuado conjunto de checks and balances. Las

debilidades detectadas en la república romana fueron igualmente útiles para introducir mejoras que garantizaran el éxito de la nueva *politeia*.

Palabras clave: Padres fundadores, República romana, control y equilibrio de poderes, gobierno mixto.

Introduction

The Roman Republic was repeatedly invoked by the colonial intelligentsia as the best form of government that the classical world could offer to the nascent American state. Its main attraction was that it represented the most successful application of mixed government, i.e. one that combined in a single system the three simple forms of government: monarchy (the rule of one), aristocracy (the rule of a few) and democracy (the rule of many) ¹.

It was above all the federalists who espoused this principle, and with the firm intention of applying it², seized every opportunity to advocate it in debate at the Constitutional Convention (1787-1788) and in a good many texts published during the Confederation Period, in particular to define the number and function of the governing bodies of the new federal State and legitimise the need to endow them with distinct and differentiated powers. However, interest in the Roman model predated this founding moment: during the revolutionary period, one of its most ardent proponents, John Adams, the future second president of the United States, declared in 1772 that mixed government was the best form of governance in the world³, and in 1776, the year of independence, he encouraged North Carolina and Virginia to establish mixed governments in their new constitutions⁴. Colonial espousal of this precept has traditionally been explained as being due to the influence exerted on American political circles by Montesquieu, who has been considered the direct source of inspiration for the application of this system to the constitution of the United States, given that his work *The Spirit of the Laws*, published in 1748, was the most highly esteemed contemporary treatise among American

¹ Plb. VI 3.5; 4.6-11.

² Martínez Maza 2013: 177-188.

³ Butterfield 1961: vol. II, 58.

⁴ Adams 1776.

intellectuals⁵. For example, in number 47 of the *Federalist Papers*, a collection of articles arguing the federalist position, James Madison, writing under the pseudonym of *Brutus*, refers to the French philosopher as “The oracle who is always consulted and cited on this subject”⁶.

However, he also questions Montesquieu’s arguments since these were based on principles inspired by the British constitution, which Madison criticises for its lack of a clear and distinct separation of powers⁷. Adams, who devoted several of his works to analysing the possibility of applying this political principle to the design of the new government, does not appear to have considered Montesquieu a fundamental influence either, or at least such is the inference that can be drawn from the scant interest he shows in this philosopher. In his work *A Defence of the Constitutions*, published in January 1787, he only refers to Montesquieu once, in a single passage in letter XXVIII, and then only to quote a fragment of *The Spirit of the Laws* without any commentary or exegesis whatsoever⁸. This disinterest is even more pronounced if contrasted with the attention that Adams devotes to other thinkers, some even prior to Montesquieu, who also advocated mixed government as the ideal formula. Such is the case of James Harrington, whom Adams glosses and comments on in much greater detail in this same work⁹. Harrington achieved acclaim in colonial intellectual circles for his work *The Commonwealth of Oceana*, published in 1656, in which he propounds a utopia ruled by a mixed government with a balance between monarchy, aristocracy and democracy almost a century before Montesquieu¹⁰. Adams also professed his debt to Jonathan Swift, especially for his work *A Discourse of the Contests and Dissensions between the Nobles and the Commons in Athens and Rome*, published in 1701, in which Swift observes that:

“The best legislators of all ages agree in this, that the absolute power, which originally is in the whole body, is a trust too great to be committed to any one man or assembly; and therefore, in their several institutions of government, power in the last resort, was always placed by them in balance, among the one, the few, and the many; and it will be an eternal rule in politics, among every free people, that there is a balance of power to be held by every state within itself”.

⁵ Cohler 1988: 75-80; Lutz 1988: 142-147; Rahe 1992: 233; Carrese 2003: 131-135; Nelson 2004: 155-176.

⁶ *The Federalist Papers* 47.

⁷ *Ibid.*

⁸ Adams 1787: Letter XXVIII Montesquieu; Gummere 1957: 167-182.

⁹ Adams 1787: Letter XXIX Harrington.

¹⁰ Harrington 1656.

He also noted that according to Swift, “the best government is that which consists of three forms, *regno, optimatum, et populi imperio*”¹¹. However, Swift himself, Montesquieu¹² and the American statesman all acknowledged their debt to the primordial source of the mixed model. That source was none other than the Greek historian Polybius, one of the most revered classical authors among intellectuals of the time in Europe and the United States alike, who viewed him as an indisputable authority on political theory.

The founding fathers became acquainted with the Polybian construction indirectly, through reading European thinkers, but they also took pains to read and study his *Histories* directly, in the original language. The *Histories* presented them with the best expression of mixed government¹³, but also warned of the dangers inherent to simple forms of government. Furthermore, the idealised image conveyed by Polybius exerted a decisive influence on the founding fathers’ historical and political perception of Rome as the perfect example of mixed government.

One of the most fervent advocates of the Polybian formula was Adams. In the introduction to his above-mentioned work, *A Defence of the Constitutions of Government of the United States of America*, he acknowledges Polybius’ influence on his thinking, stating: “I wish to assemble together the opinions and reasonings of philosophers, politicians, and historians, who have taken the most extensive views of men and societies, whole characters are deservedly revered, and whose writings were in the contemplation of those who framed the American constitutions. It will not be contested, that all these characters are united in Polybius”.¹⁴

This resurrection of Polybian thought was spurred by the pragmatism that informed the founding fathers’ study of the history of the ancient world, an inquiry that never had a scientific purpose or pursued a historical objective, not even among the most committed classicists, but instead served the political needs of the moment and was limited to reviving or reinterpreting only those models that could be used to legitimise their proposals. This explains their complete lack of interest in analysing either the political context of Polybius’ work or the reality of Roman politics, far removed from his idealised interpretation. Their interest in the Roman political system resided solely in its potential as a means —albeit an imperfect one— to forestall two strongly inter-related outcomes

¹¹ Adams 1787: Letter XXIV Dr. Swift.

¹² Montesquieu 1748: I. 2.

¹³ Gummere 1960: 223-232; Beals 1978: 532-540.

¹⁴ Adams 1787: Letter XXX Polybius.

that were most feared in the colonial political world: tyranny, and the degeneration inherent to simple political systems, because this led inexorably to tyranny.

Polybius and his lessons for the present

The prominence given to the Roman Republic in the design of federal government structures can only be understood in relation to the lessons that the founding fathers drew from the historical evolution of the great States of the classical world. The past offered ideal models of conduct that could be emulated in the new republic, but also negative examples of political organisation, and these latter were as valuable as the former because they allowed the founding fathers to identify past mistakes in order to avoid them in the present.

From Polybius' *Histories*, and especially his sixth book, they concluded that the degeneration which had plagued each of the simple forms of government (monarchy, aristocracy and democracy) was an inevitable process. It represented the natural, cyclical evolution to which every constitution, conceived as a living organism, was subject. Each politeia underwent a stage of growth (αὔξεισις), rise (ἀκμή) and decline (φθίσις) until it became corrupt, and once perverted, it died out: monarchy degenerated into tyranny, aristocracy into oligarchy and democracy into ochlocracy¹⁵. The echo of this Polybius formulation can be detected in Adams' assertion that "the king, the aristocracy, and the people, as soon as ever they felt themselves secure in the possession of their power, would begin to abuse it"¹⁶. Years earlier, during the pre-revolutionary period, Adams had already voiced his opposition to any form of simple government, arguing that it would fail to protect men against the violence of power because of the inexorable degeneration of each of the possible forms: monarchy would drift into despotism, aristocracy into oligarchy and, in the case of democracy, its degeneration into anarchy would lead each individual to seek only his own benefit at the risk of his life, property and reputation¹⁷. His position was shared years later by another founding father, James Wilson, who also disavowed this kind of political formula. According to Wilson, the Pennsylvania delegate, corruption lay at the very heart of these forms of government, for the strength and vigour of a monarchy was also accompanied by the danger that it would not be used for the well-being and prosperity of the State. From an aristocracy, one could expect wisdom derived

¹⁵ Adams 1787: Letter XXX Polybius. Martínez Maza 2019.

¹⁶ Ibid.

¹⁷ Adams 1763; *The Federalist Papers* 47.

from education and experience, but also suspicion and dissent among the nobles and oppression of the lower orders. In a democracy, public virtue and purity were exalted, but on the other hand, its representatives were often negligent and the execution of their measures weak¹⁸.

However, in Polybius, Adams saw a more magnanimous vision than that offered by later philosophers who had also adopted this model of political thought, such as Machiavelli, Rousseau and Beccaria, because the Greek historian painted a more benevolent portrait of the first stage of any simple government and praised the good exercise of power in this initial period¹⁹. Thus, Adams noted that Polybius described the early kings as honest and wise administrators, the early aristocracy as cautious and patriotic in driving out tyranny (a degenerate form of royal rule), and the people, at least in the first generation after the oligarchy had been deposed, as praiseworthy for their *decorum*²⁰.

This unstoppable cyclical sequence, anacyclosis, implied the slide (μεταβολή) from one form of *politeia* to another, and was inevitable because the weakness inherent to all simple forms of government would eventually corrupt them in a never-ending cycle²¹. In line with Polybius, Adams viewed the rotation of forms of governments as a law of nature, whereby these changed, transformed and returned to the starting point, from monarchy to aristocracy, from aristocracy to democracy and then back to monarchy.

It was Adams, above all, who sought to warn the contemporary world of the dangers of this inexorable corruption of all simple forms of government, and bearing in mind how useful Polybius' thought would be for the future political construction of the American State, he quotes him extensively in *A Defence of the Constitutions*. In this work, Adams reminds his readers that a simple government does not necessarily mean rule by one person, but rather:

“a power without a check, whether in one, a few, or many. It might be sufficient to show this tendency in simple democracy alone, for such is the government of one assembly, whether of the people collectively or representatively; but, as the generation and corruption of all kinds of government have a similitude with one another, and proceed from the same qualities in human

¹⁸ Wilson 1790.

¹⁹ Adams 1787: Letter XXXI Polybius.

²⁰ Ibid.

²¹ Plb. VI 9.10; Cic. *rep.* I.28. Martínez Maza 2013: 197-199.

nature, it will throw the more light upon our subject, the more particularly we examine it”²².

In another passage, he uses a metaphor to describe the natural and irremediably cyclical trajectory of simple forms of government (monarchy, aristocracy and democracy) and the negative nature of this evolution:

“...every form of government that is simple, by soon degenerating into that vice that is allied to it, and naturally attends it, must be unstable. For as rust is the natural bane of iron, and worms of wood, by which they are sure to be destroyed, so there is a certain vice implanted by the hand of nature in every simple form of government, and by her ordained to accompany it. The vice of kingly government is monarchy; that of aristocracy, oligarchy; and of democracy, rage and violence; into which all of them, in process of time, must necessarily degenerate”²³.

As can be seen, the influence of Polybius is evident since the Greek historian uses the same simile when he states that “every variety of simple constitution based on a single principle becomes outdated: it soon degenerates into the inferior vicious form which naturally follows it”. By way of comparison, he suggests “rust, for iron, and woodworm and grubs for timbers, which destroy these materials”²⁴.

Through direct study of ancient history, Adams obtained practical examples of anacyclosis, learnt to detect the stage a State was in and predict the next step in its evolution, and ascertained the inexorable nature of political change, the tendency to corruption of each type of simple government and their naturally inherent errors. From a full examination, a further lesson he drew was the impossibility of a simple government free from the threat of tyranny. The colonies had managed to avoid the excesses of a tyrannical government and emancipate themselves from the British motherland through force of arms, but it was also necessary to take political action to prevent the formation of a corrupt state *ab initio* that would degenerate into a despotic authority. It is no coincidence, therefore, that the first criticisms of any kind of simple government and the first reflections on the benefits of mixed government appeared in the intellectual circles

²² Adams 1787: Letter XXXI Polybius.

²³ *Ibid.*

²⁴ Plb. VI.10.

of the pre-revolutionary period when the colonies demanded no taxation without representation.

Thomas Jefferson also leveraged this didactic function of history to warn his contemporaries about tyranny, a consequence of the natural evolution of governments:

“Whereas it appeareth that however certain forms of government are better calculated than others to protect individuals in the free exercise of their natural rights, and are at the same time themselves better guarded against degeneracy, yet experience hath shewn, that even under the best forms, those entrusted with power have, in time, and by slow operations, perverted it into tyranny; and it is believed that the most effectual means of preventing this would be, to illuminate, as far as practicable, the minds of the people at large, and more especially to give them knowledge of those facts, which history exhibiteth, that, possessed thereby of the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes”²⁵.

Indeed, in line with the lessons drawn from anacyclosis, the founding fathers did not regard tyranny as a form of government resulting exclusively from the natural degeneration of one-man rule, but as one that could derive from any form of simple government. This was Madison’s argument in Federalist No. 47: “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny”.

Thus, he thought that even democratic governments ran the same risk of falling into tyranny because of the danger of giving legislative power to the people, who harboured the same vices, follies and weaknesses as a single individual²⁶. In fact, he denounces the shortcomings of Athenian democracy²⁷ and attributes the fall of Athens to having placed government in the hands of the assembly of the demos²⁸ and the predictable outcome of anacyclosis: instability, violence, corruption and injustice resulting from the exclusive intervention of the demos, towards which he expresses deep antipathy:

²⁵ Jefferson 1779.

²⁶ Adams 1776.

²⁷ Adams 1787: Letter XXIV Swift.

²⁸ Adams 1787: Letter XLI Athens.

“An usurping populace is its own dupe, a mere under-worker, and a purchaser in trust for some single tyrants, whose state and power they advance to their own ruin, with as blind an instinct, as those worms that die with weaving magnificent habits for beings of a superior order”²⁹.

Like Adams, other reputed federalists feared that an assembly-based democracy might constitute a mere transition to tyranny³⁰. Such a deduction can only be understood in relation to the Polybian sequence of anacyclosis, because it is only this political principle that explains why Alexander Hamilton, the New York delegate to the Constitutional Convention, ruled out any form of simple government as a viable political option when he warned that: “if we incline too much to democracy, we shall soon shoot into a monarchy”³¹. Along similar lines, the prominent classicist at the convention, Madison, warned of the danger that the republic would become corrupt if the entire legislature was entrusted into the hands of a single group³²: “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 in every public act”. Wilson, a delegate from Pennsylvania, argued that a one-house legislature was doomed to combine all the pernicious qualities of bad government: “It produces general weakness, inactivity, and confusion; and these are intermixed with sudden and violent fits of despotism, injustice, and cruelty”³³.

Rome, the inspiration for a future mixed government

Polybius not only furnished the founding fathers with useful insights into the natural functioning of any politeia and the dangers of anacyclosis, but also proffered an effective alternative form of government as illustrated by two States from the ancient world. Based on Polybius’ idealised image, the founding fathers took Lycurgus’ Sparta and Republican Rome as the classical paradigm of mixed government, and Adams even devoted a chapter to Laconia³⁴ and another to Rome. In the former, on the mixed government instituted by Lycurgus, he praises the Spartan legislator’s ability to bring together the best that each of the simple governments had to offer in their initial stage and to balance them in such a

²⁹ Adams 1787: Letter XXIV Swift.

³⁰ Farrand 1966: June 19, 1787.

³¹ Farrand 1966: June 26, 1787.

³² *The Federalist Papers* 63.

³³ Wilson 1790.

³⁴ Adams 1787: Letter XL Lacedaemon.

manner that none of them could override the others³⁵. However, despite the admiration aroused among 18th century revolutionary movements for Sparta's governmental structure and attributes such as the civic nature of its militia, the simplicity of the Spartan ways of life and its civic virtue, the Spartan model was soon dismissed as a feasible option in the United States. Adams himself recognised the unworkability of this model because its independence and stability had been constructed to the detriment of the happiness of its citizens. The Roman Republic, therefore, was viewed as a more attractive classical model for the new constitutional order³⁶.

It was again Polybius who was responsible for the idealised image of the Roman State that inspired the founding fathers. He claimed that the Roman Republic had succeeded in overcoming the inevitable cycle of anacyclosis by instituting a mixed constitution which respected each of the three fundamental principles of government. The monarchy was represented by an elected executive (the consuls), the aristocracy by the senate and democracy by the various people's assemblies. Adams himself closely paraphrased Polybius when he observed that the three principles that informed the government of the Roman Republic were so balanced that no Roman citizen could claim, without fear of being mistaken, that his government was exclusively aristocratic, democratic or monarchical³⁷: "for when we cast our eyes on the power of the consuls, the government appeared entirely monarchical and kingly; when on that of the senate, aristocratical; and when any one considered the power of the people, it appeared plainly democratical"³⁸.

As a further argument for the need for mixed government, in his chapter on Polybius in *The Defence of Constitutions*, Adams warns of the danger of granting all legislative power to a single assembly in which not only the people but members of the elite participated without distinction. These latter might act unscrupulously in order to destroy all equality and freedom, possibly even with the consent and support of the people themselves³⁹. Madison also warned of the danger that the republic might become corrupt if the entire legislature was entrusted into the hands of a single group⁴⁰.

Such arguments were all the more timely given the debate at the Constitutional Convention in June 1787 over the advisability of endowing the new republic with a

³⁵ Adams 1787: Letter XXXI Polybius.

³⁶ Adams 1787: Letter XL Laecedemon.

³⁷ Plb. VI.11.

³⁸ Adams 1787: Letter XXX Polybius. Martínez Maza 2019.333

³⁹ Ibid.

⁴⁰ *The Federalist Papers* 47.

legislature consisting of only one chamber. It was mainly the anti-federalists who advocated this one-house model, but the idea was also supported by other segments of the population and by states such as Pennsylvania, Georgia and Vermont, which had been endowed with a single-chamber legislature since post-Revolutionary times⁴¹. The addition of a second house in the legislature was not, therefore, well received by all, and it required the deployment of a whole battery of arguments, which were also disseminated through the press, to legitimise its inclusion (especially in those states that already had a one-house legislature) and to demonstrate the benefits it would bring the new republic. Once again, recourse to political organisation in the ancient world was essential to reveal the dangers that beset states without a second legislative chamber, the benefits and prosperity attained by those that did have one and the need to examine the errors of the past in order to endow this second chamber with sufficient safeguards to prevent the weaknesses observed in its classical counterparts.

According to Madison, history showed that only republics with a senate endured, and one of the examples he gave was evidently the Roman senate:

“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... These examples... are... very instructive proofs of the necessity of some institution that will blend stability with liberty... 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 in every public act”⁴².

As noted earlier, the main benefit attributed to the simple institution of a senatorial chamber was that it would prevent power from being concentrated in the hands of a single-chamber legislature, thus forestalling the inevitable process of anacyclosis whereby the republic would descend into tyranny. Nevertheless, some anti-federalists compared the new senatorial chamber to the *decemviri*, who were criticised because

⁴¹ Senning 1937: 75-77; Johnson 1938: 19-44; Gummere 1963; Wood 1992: 227-37; Herrington 1994: 575-602; Banning 1995: 224-225; Kopff 1999.

⁴² *The Federalist Papers* 63.

although they had been appointed to draft and write down the first Roman laws, they eventually arrogating tyrannical power to themselves⁴³. In the federalists' eyes, however, the establishment of a senatorial chamber was legitimate, as it would serve as a body that protected the people from their own failings, especially at those times when, in Madison's words, "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 lament and condemn"⁴⁴. Adams also believed in the advantages of segregating the powerful into a separate chamber, because otherwise, in a single chamber:

"They will have much more power, mixed with the representatives, than separated from them. In the first case, if they unite, they will give the law and govern all; if they differ, they will divide the state, and go to a decision by force. But placing them alone by themselves, the society avails itself of all their abilities and virtues; they become a solid check to the representatives themselves, as well as to the executive power, and you disarm them entirely of the power to do mischief"⁴⁵.

The only remedy was "to throw the rich and the proud into one group, in a separate assembly, and there tie their hands"⁴⁶.

The establishment of a senate was resoundingly opposed by the anti-federalists, not only at the Constitutional Convention but also at the Ratifying Conventions held in each state as an indispensable prerequisite for adoption of the constitution. Criticism focused on the aristocratic nature of the Roman senate. At the Ratifying Convention in Virginia, Patrick Henry argued that the Roman senate had wielded influence over the people's assemblies, such as the tribunes of the plebs and the *comitia tributa*. He also contended that the theoretical powers attributed to the *comitia tributa* were always controlled by the presiding magistrate (the consul), and that the legislation they voted on was always subject to senatorial approval. In short, according to Henry, the example of the Roman

⁴³ Martin Kingsley (Jan 21, 1788), and Joseph Willard (Jan 22, 1788), in Massachusetts Convention: *Debates in the Several State Conventions* 1888; Bederman 2008: 140141; Lintott 1999: 27-39.

⁴⁴ Adams 1787: Letter XXIV Swift; Hamilton (June 24, 1788), in N. York Convention: *Debates in the Several State Conventions* 1888; *The Federalist Papers* 63.

⁴⁵ *Ibid.*

⁴⁶ Adams 1787: Letter XXXI Polybius.

senate foreshadowed undue influence of the ruling classes in the future republican senate⁴⁷.

The classicists' profound understanding of the workings of the Roman political system is evidenced in the federalists' responses to this type of argument. At the New York Convention, for example, Hamilton recalled that the potentially disproportionate influence of the senate had been curbed in the Roman Republic by the existence of checks and balances such as those exercised by the tribunes of the plebs, the guardians of the people's interests, who prevented any interference from the senate in the actions of the *comitia tributa*.

Debate on the number of delegates to the senate was also informed by a classicist-inspired argument. Proponents of a small chamber once again looked to the classical past for evidence in support of their position. In the debate held on 7 June, Madison, who advocated a small senate, argued in favour of this by warning of the dangers of a large chamber: "The use of the Senate is to consist in its proceeding with more coolness, with more system, & with more wisdom, than the popular branch. Enlarge their number and you communicate to them the vices which they are meant to correct".

He also contended that the weaknesses of the tribunes of the plebs were heightened in proportion to an increase in the number of its members: "when the Roman Tribunes were few, they checked the Senate; when multiplied, they divided, were weak, ceased to be that Guard to the people which was expected in their institution". This analogy was criticised, not without some irony, by recalling the time when there were only three or ten members of the tribunes, a useless number as a proposal for representation in the upper chamber: "If the reasoning of (Mr. Madison) was good it would prove that the number of the Senate ought to be reduced below ten, the highest no. of the Tribunitial corps"⁴⁸.

A one-man executive: the Roman experience

Fear of tyranny also explains the founding fathers' misgivings as regards establishing a one-man executive, and indeed the composition of the executive was one of the questions that generated most debate at the Constitutional Convention⁴⁹, as the one-

⁴⁷ Storing 1981: *Essays by Cincinnatus* IV (Nov 22, 1787). Patrick Henry in Virginia Convention (June 22, 1788): *Debates in the Several State Conventions* 1888.

⁴⁸ John Dickinson in Virginia Convention (June 7, 1788): *Debates in the Several State Conventions* 1888.

⁴⁹ Farrand 1966: June 1, 1787.

man model advocated by some compromisers such as Benjamin Franklin and James Wilson recalled the British monarchy from which they had freed themselves following the War of Independence. Consequently, arguments in favour of this model could not draw on the most successful examples from the classical world —the *princeps* of the Roman Empire or the *hegemon* of Greek leagues such as the Achaean— as to do so would also be to legitimise their contemporary counterpart, the British monarchy, and thus portray the rebellious colonies as guilty of the crime of *lèse majesté*.

In the end, the rationale for a presidential executive was that, in theory at least, it provided a means to endow the new State with a form of monarchy, one of the three simple forms of government considered necessary to ensure application of the mixed model deemed ideal⁵⁰. Hence, proponents of a one-man executive focused on highlighting the weaknesses of any executive power which, as in the Roman Republic, was wielded by a collegial body, citing not only the consulship but also the triumvirate and the Spartan diarchy. Such was Madison's stance at the Constitutional Convention during the debate that took place on 16 June. In his speech, he argued for the need to split the legislature into two chambers while at the same time maintaining an executive in the hands of a single person:

“In order to controul the Executive you must unite it. One man will be more responsible than three. Three will contend among themselves till one becomes the master of his colleagues. In the triumvirates of Rome first Cæsar, then Augustus, are witnesses of this truth. The Kings of Sparta, & the Consuls of Rome prove also the factious consequences of dividing the Executive Magistracy. Having already taken up so much time he wd. not he sd. proceed to any of the other points. Those [255] on which he had dwelt, are sufficient of themselves: and on a decision of them, the fate of the others will depend”⁵¹.

Hamilton levelled a similar criticism in Federalist No. 70, noting that many of the Roman Republic's problems stemmed from dissent between the consuls and the military tribunes and claiming that no advantage would be gained from a collegial structure. In this, he was attempting to respond to the anti-federalist critics who believed that a one-man executive contravened the very essence of any republican government.

However, Hamilton also argued for the need to endow this office with specific elements in order to guarantee proper performance of the associated tasks: vigour, unity,

⁵⁰ Farrand 1966: June 1- 2, 1787 (speeches of G. Wythe, J. Dickinson, P. Butler and J. Rutledge).

⁵¹ Farrand 1966: June 1, 1787 (Madison).

a term of office and sufficient powers and economic funds to exercise government. To this end, the figure he cited from Roman Republican politics was surprisingly the *dictator* who, endowed with absolute power, could defend the republic “as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome”. It is paradoxical that the person championing this figure was *Brutus*, the pseudonym Madison used to sign his proposal. His chosen alias was a declaration of intent, recalling not only Caesar’s assassin, but also his distant ancestor who helped expel the Etruscan kings and was one of the heroes of the early Roman Republic.

According to Hamilton-*Brutus*, concentrating power in the hands of a single ruler was considered so advantageous in Rome that the consuls ended up dividing up the tasks of government: “the administration between themselves by lot one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic”.

Towards a perfect mixed government: separation of powers and checks and balances

We have seen that American statesmen feared the latent threat of anacyclosis and that as a means to prevent it, the Roman Republic was proposed as the most perfect model of government the ancient world had to offer.

Two elements of the Roman political order received the most attention: first, the powers granted to each of the branches to help and restrain each other, and second, the implementation of a system of checks and balances, which was considered the best classical antecedent and the inspiration for the mechanism to be established in the new American republic. According to Adams:

“for when any branch of it becomes ambitious, and, swelling beyond its bounds, aims at unwarrantable power, being subject to the controul of the other two, it cannot run into any excess of power or arrogance; but all three must remain in the terms prescribed by the constitution”⁵².

⁵² Adams 1787: Letter XXX Polybius.

Adams had learnt from Polybius that if a balance of power was not established, inescapable anacyclosis would condemn the new nation to constant revolution: “If the executive power, or any considerable part of it, is left in the hands either of an aristocratical or a democratical assembly, it will corrupt the legislature as necessarily as rust corrupts iron, or as arsenic poisons the human body; and when the legislature is corrupted the people are undone”⁵³. Such were the principles considered absolutely essential in the new state: a system that guaranteed the separation of powers, which could only be achieved by balancing the three branches and including a series of checks and balances as an essential prerequisite to safeguard the balance of powers and avoid the degeneration of the system of government.

However, this balance was necessary not only between the powers that comprised the federal government but also between the federal states and the central government, to ensure that none of them could prevail over the others and thus to avoid tyranny, the inexorable fate of any form of simple government in the cyclical sequence of anacyclosis. The most effective mechanism to forestall this danger was to establish the principle of the separation of powers and the balance of powers between central government and the individual states⁵⁴. Adams contended that only the commitment and determination of the federal state governments and the central government alike to defend this balance would ward off the dangers of tyranny⁵⁵.

However, the founding fathers did not blindly import the Roman model without questioning its weaknesses; rather, they analysed them and proposed solutions that would guarantee the stability of the new federal state, free from the deficiencies detected in the Roman Republic. This inherited but improved model would make it possible to avoid past mistakes and identify proposals for governance. One of the main weaknesses of the Roman Republic was the ineffectiveness in practice of the separation of powers and its system of checks and balances:

“The distribution of power was, however, never accurately or judiciously made in that constitution. The executive was never sufficiently separated from the legislative nor had these powers a control upon each other defined with

⁵³ Adams 1787: *praef.*

⁵⁴ Farrand 1966: June 28, 1787.

⁵⁵ Adams 1787: Letter LV Conclusion.

sufficient accuracy. The executive had not power to interpose and decide between the people and the senate”⁵⁶.

In view of these shortcomings, the federalists believed that in order to ensure the success of the proposed model, it would be essential to bolster the system through a comprehensive series of checks and balances⁵⁷. Madison’s statement in this respect later became one of the most famous maxims justifying the system of separation and balances:

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself”⁵⁸.

Thus, each and every one of the powers would be protected from interference by the others and from the potential concentration of power in the hands of one of them.

In short, an analysis of various mixed constitutions in the classical world enabled the founding fathers to propose a political structure free of the evils observed in the past and of the inherent degeneration of governments, by means of a clear separation of the executive, legislative and judicial branches. The Roman Republic represented the most perfect form of government, and the founding fathers aspired not only to ensure that the federal constitution and those of the republic’s component states were equally successful, but also to construct a superior political system by drawing on the lessons offered by history⁵⁹.

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⁵⁶ Adams 1787: Letter XXX Polybius.

⁵⁷ Martínez Maza 2013: 200-203.

⁵⁸ *The Federalist Papers* 51.

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