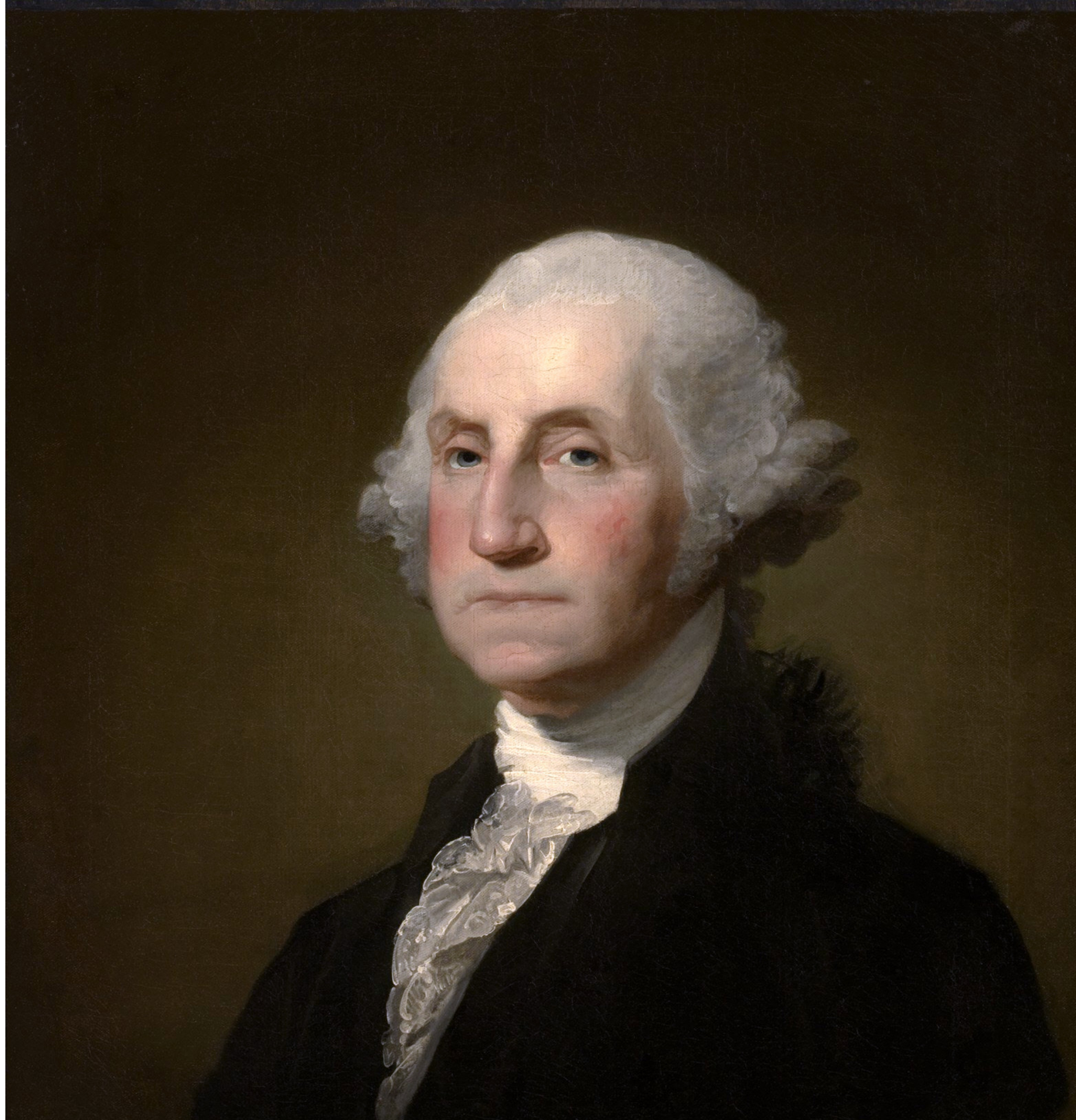
Prelims *Political Practice* · Michaelmas Term Lecture 3

The U.S.A. and the Separation of Powers

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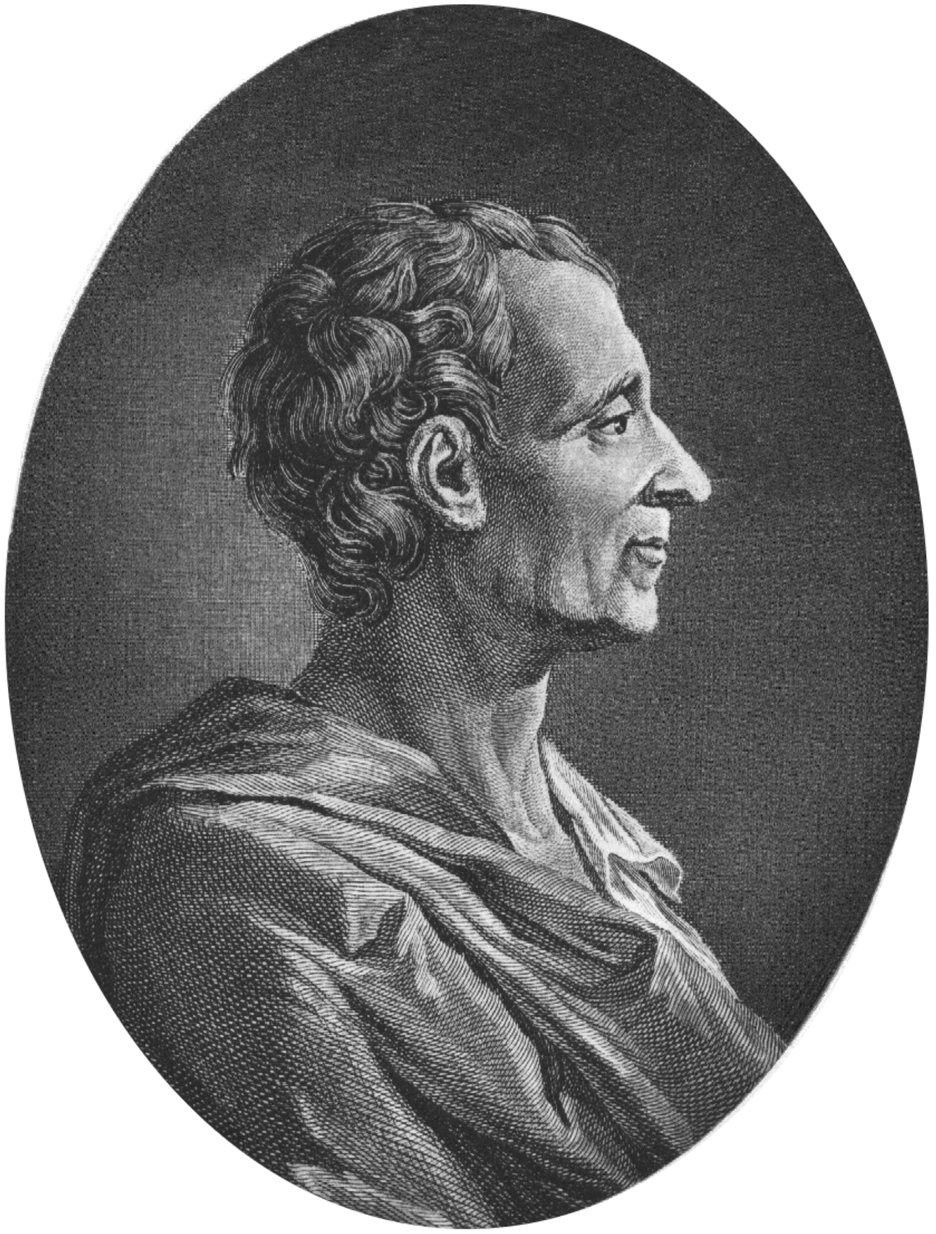
Presidentialism
(a brief definition)

- popularly elected chief exec
- fixed terms for executive and legislature
- not subject to mutual confidence
- president names and directs the cabinet



Is the United States a Presidential system?

popularly elected chief exec	*yes* *(indirectly elected)*
fixed terms for executive and legislature	*yes* *4 years/6 years/2 years*
not subject to mutual confidence	*yes*
president names and directs the cabinet	*yes* *(but …)*



DE L'ESPRIT
Robt. DES Fearon
LOIX

OU DU RAPPORT QUE LES LOIX DOIVENT AVOIR AVEC LA CONSTITUTION DE CHAQUE GOUVERNEMENT, LES MOEURS, LE CLIMAT, LA RELIGION, LE COMMERCE, &c.

à quoi l'Auteur a ajouté

Des recherches nouvelles sur les Loix Romaines touchant les Succeſſions, ſur les Loix Françoiſes, & ſur les Loix Féodales.

TOME PREMIER.

EX RECTO DECUS

A GENEVE,
Chez BARRILLOT & FILS.

Montesquieu and the Spirit of the Laws

Basic Separation of Powers

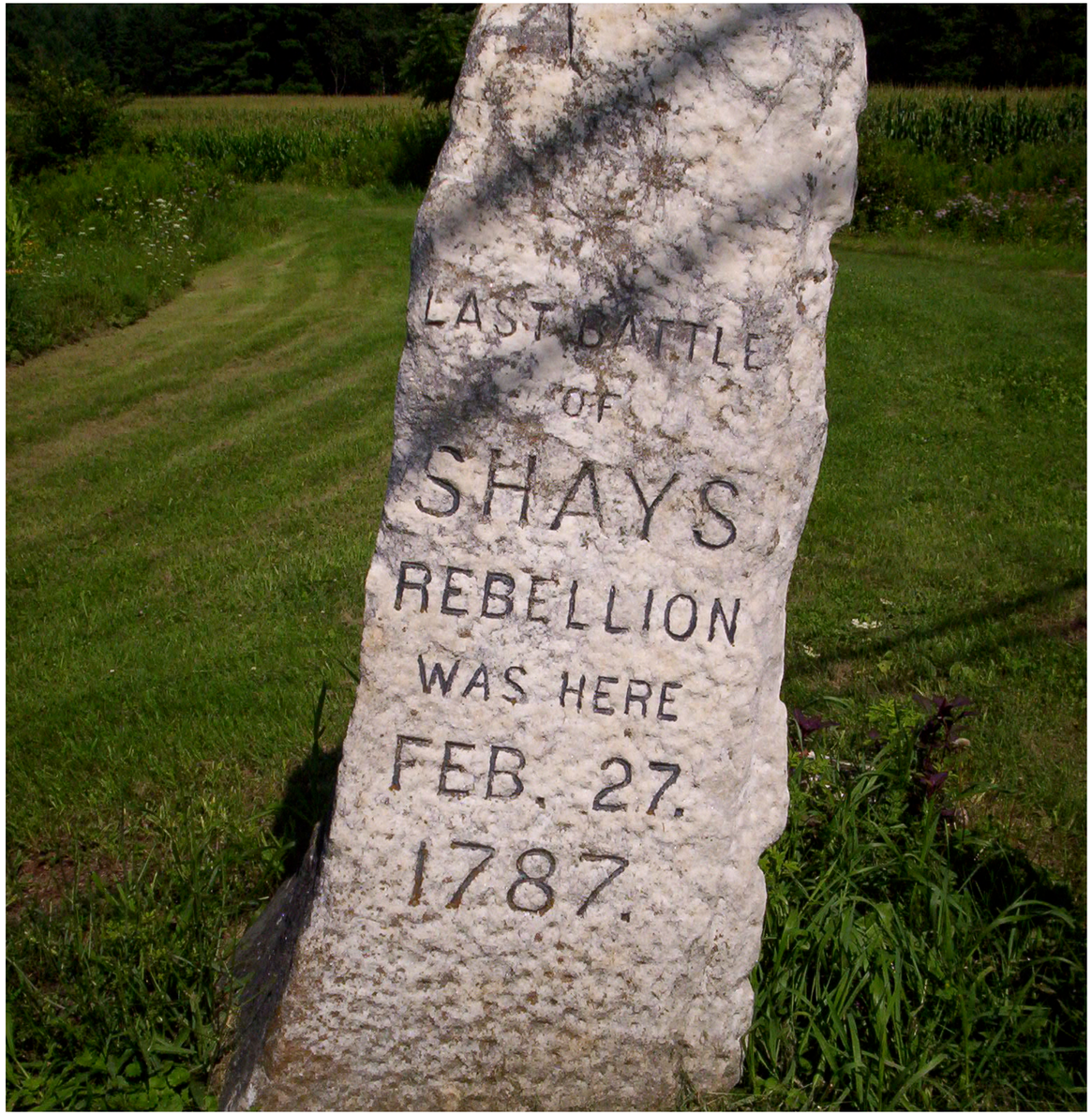
legislature	*law-making*
executive	*law-executing and law-enforcing*
judiciary	*law-interpreting and law-applying*

Separation of Powers in US Government

legislature	*Congress*
executive	*President & executive branch*
judiciary	*Federal Judiciary incl. Supreme Court*

Circumstances of the Constitution's writing

- weak government under the Articles of Confederation
- fear of "tyranny"
- financial crisis
- rebellion



Article I: Congress

- "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."
- Two chambers:
  - House by *population* with *2* year terms
  - Approx 1 Representative per 700000 people (2010)
  - Senate by *states* with *6* year terms
  - 2 Senators per state

Chamber majorities and small state bias



	Senators	Representatives
26 smallest states	52/100	77/435
10 largest states	20/100	223/435

Article II: the President

- "The executive Power shall be vested in a President of the United States of America."
- (from Article I: legislators can't hold executive office)
- chosen by an Electoral College of 538 (435+100+3)
- since early C19th, Electoral College has itself been elected
- states still have constitutional power to appoint Electors rather than elect them

Presidential powers

President vs Congress



Presidential powers I

As listed in Article II

- “The executive Power shall be vested in a President of the United States of America.”
- "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”
- “shall be Commander in Chief of the Army and Navy of the United States”
- “may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices”
- “Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.”

Presidential powers 2

As listed in Article II

- “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States”
- “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”
- “from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient”

CONGRESSIONAL GOVERNMENT

A STUDY IN AMERICAN POLITICS

BY

WOODROW WILSON



BOSTON AND NEW YORK
HOUGHTON MIFFLIN COMPANY
The Riverside Press Cambridge



"Congressional Government"

Article III: Federal Courts

- "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."
- much is up to Congress to decide
- no explicit power of constitutional judicial review

Sharing powers

Reality of separation



Reality of shared powers

- Richard Neustadt: "Separated institutions sharing power"
  - ⋆ *(also: "Presidential Power is the Power to* Persuade*")*
- President: *legislative* veto (2/3 override)
- Senate: approves *executive* (and judicial) appointments
- Judiciary: designed by Congress (subject to Presidential veto)

Separation and the Modern American State

- Vastly larger executive branch (> 4 million)
- President/Congress relationship crucial
- Congressional *authorization* and *appropriation* as key to the executive branch
- Potential judicial veto over key policy, eg:
  - Patient Protection and Affordable Care Act (2010)
  - *NFIB* v. *Sibelius* (2012), *King* v. *Burwell* (2015)

Presidency of shared power

(Congressional appropriations)



Separation and Rising Partisanship: The Civil Rights Act 1964

	Democrats	Republicans	Total
Senate	46:21	27:6	73:27
House	153:91	138:34	289:126

Separation and Rising Partisanship: Medicare (Social Security Amendments, 1965)

	Democrats	Republicans	Total
Senate	57:7	13:17	70:24
House	237:48	70:68	307:116

Separation and Rising Partisanship: The Patient Protection & Affordable Care Act 2010

	Democrats	Republicans	Total
Senate	58:0 (+ 2 Ind)	0:39 (1 absent)	60:39
House	219:34	0:178	219:212

The US as a Presidential System

Fragility and risks



Conclusions…

- the US as a Presidential system
- separation of powers
  ➔ ➔ ➔ ➔ ➔ ➔ ➔ ➔
  separated institutions sharing powers
- requires extensive cooperation to avoid catastrophe
- qv 25th Amendment procedures

