PLATO'S REPUBLIC

FORMING A STATE

Now here is a further point. Is each one of them to bring the product of his work into a common stock? Should our one farmer, for example, provide food enough for four people and spend the whole of his working time in producing corn, so as to share with the rest; or should he take no notice of them and spend only a quarter of his time on growing just enough corn for himself, and divide the other three-quarters between building his house, weaving his clothes, and making his shoes, so as to save the trouble of sharing with others and attend himself to all his own concerns?

The first plan might be easier, replied Adeimantus.

That may very well be so, said I; for, as you spoke, it occurred to me, for one thing, that no two people are born exactly alike. There are innate differences which fit them for different occupations.

I agree.

And will a man do better working at many trades, or keeping to only one?

Keeping to one.

..... So the conclusion is that more things will be produced and the work be more easily and better done, when every man is set free from all other occupations to do, at the right time, the one thing for which he is naturally fitted.

That is certainly true.

We shall need more than four citizens, then, to supply all those necessaries we mentioned. You see, Adeimantus, if the farmer is to have a good plow and spade and other tools, he will not make them himself. No more will the builder and the weaver and shoemaker make all the many implements they need. So quite a number of carpenters and smiths and other craftsmen must be enlisted. Our miniature state is beginning to grow.

(In a similar view, other occupations are added to the society.)

MORE OCCUPATIONS LEAD TO OTHER NEEDS

Then we must once more enlarge our community. The healthy one will not be big enough now; it must be swollen up with a whole multitude of callings not ministered to any bare necessity: hunters and fisherman, for instance; artists in sculpture, painting, and music; poets with their attendant train of professional reciters, actors, dancers, producers; and makers of all sorts of household gear, including everything for women's adornment. .....

The country, too, which was large enough to support the original inhabitants, will not be too small. If we are to have enough pasture and plow land, we shall have to cut off a slice of our neighbors' territory; and if they too are not content with necessaries, but give themselves up to getting unlimited wealth, they will want a slice of ours.

That is inevitable, Socrates.

So the next thing will be, Glaucon, that we shall be at war.

We need not say yet whether war does good or harm, but only that we have discovered its origin in desires which are the most fruitful source of evils both to individuals and to states.

Quite true.

This will mean a considerable addition to our community-a whole army, to go out to battle with any invader, in defense of all this property and of the citizens we have been describing.

Why so? Can't they defend themselves?

Not if the principle was right, which we all accepted in framing our society. You remember we agreed that no one man can practice many trades or arts satisfactorily.

True.

Well, is not the conduct of war an art, quite as important as shoemaking?

Yes.

But we would not allow our shoemaker to try to be also a farmer or weaver or builder, because we want our shoes well made. We gave each man one trade, for which he was naturally fitted; he would do good work, if he confined himself to do that all his life, never letting the right moment slip by. Now in no form of work is efficiency so important as in war; and fighting is not so easy a business that a man can follow another trade, such as farming and shoemaking, and also be an efficient soldier. .....

These guardians of our state, then, inasmuch as their work is the most important of all, will need the most complete freedom from other occupations.....

CHOOSING GUARDIANS

So the kind of men we choose from among the Guardians will be those who, when we look at the whole course of their lives, are found to be full of zeal to do whatever they believe is for the good of the commonwealth and never willing to act against its interest.

Yes, they will be the men we want.

We must watch them, I think, at every age and see whether they are capable of preserving this conviction that they must do what is best for the community, never forgetting it or allowing themselves to be either forced or bewitched into throwing it over.

People may be argued out of a belief, may forget, over time, a truth, or may be bewitched by the allure of pleasure or by fright in a panic situation. From childhood they will be given tasks to see if they can be beguiled out of their duty; only those whose memory holds firm will be kept.

We must also subject them to ordeals of toil and pain and watch for the same qualities there. And we must observe them when exposed to the test of yet a third kind of bewitchment. .....

.....Whenever we find one who has come unscathed through every test in childhood, youth, and manhood, we shall set him as a Ruler to watch over the commonwealth;.....

These, then, may properly be called Guardians in the fullest sense, who will ensure that neither foes without shall have the power, nor friends within the wish, to do harm. Those young men whom up to now we have been speaking of as Guardians, will be better described as Auxiliaries, who will enforce the decisions of the Rulers.

(.....Plato discusses education of the Guardians again and urges every precaution be taken to prevent abuse of the citizens.....)

Then besides that education, it is only common sense to say that the dwellings and other belongings provided for them must be such as will neither make them less perfect Guardians nor encourage them to maltreat their fellow citizens.

True.

With that end in view, let us consider how they should live and be housed. First, none of them must possess any private property beyond the barest necessaries. Next, no one is to have any dwellings or store-house that is not open for all to enter at will. Their food, in the quantities required by men of temperance and courage who are in training for war, they will receive from the other citizens as the wages of their guardianship, fixed so that there shall be just enough for the year with nothing over; and they will have meals in common and all live together like soldiers in a camp. Gold and silver, we shall tell them, they will not need, having the divine counterparts of those metals always in their souls as a God-given possession, whose purity it is not lawful to sully by the acquisition of that mortal dross, current among mankind, which has been the occasion of so many unholy deeds. They alone of all the

citizens are forbidden to touch and handle silver or gold, or to come under the same roof with them, or wear them as ornaments, or drink from vessels made of them. This manner of life will be their salvation and make them saviours of the commonwealth. If ever they should come to possess land of their own and houses and money, they will give up their guardianship for the management of their farms and households and become tyrants at enmity with their fellow citizens instead of allies.

(Socrates is asked how he can meet the guardian's objectives to such a lifestyle.)

We shall find one, I think, by keeping to the line we have followed so far. We shall say that, though it would not be surprising if even these people were perfectly happy under such conditions, our aim in founding the commonwealth was not to make any one class specially happy, but to secure the greatest possible happiness for the community as a whole.

Happiness isn't like happiness at a fair; that isn't a civil community idea. We must consider whether are goal is individual guardian maximum happiness or something that develops in the whole commonwealth by each class of people becoming perfect masters each of their own craft.

(Plato concludes that each class represents an element found in the souls of individuals and the just man or state has each element doing what it was designed to do.)

And it will be the business of reason to rule with wisdom and forethought on behalf of the entire soul; while the spirited element ought to act as its subordinate and ally. The two will be brought into accord, as we said earlier, by that combination of mental and bodily training which will tune up one string of the instrument and relax the other, nourishing the reasoning part of the study of noble literature and allaying the other's wildness by harmony and rhythm. When both have been thus nurtured and trained to know their own true functions, they must be set in command over the appetites, which form the greater part of each man's soul and are by nature insatiably covetous.

And so we call and individual brave in virtue of this spirited part of his nature, when, in spite of pain or pleasure, it holds fast to the injunctions of reason about what he ought or ought not to be afraid of.

True.

And wise in virtue of that small part which rules and issues these injunctions, possessing as it does the knowledge of what is good for each of the three elements and for all of them in common.

The just man does not allow the several elements in his soul to usurp one another's functions; he is indeed one who sets his house in order, by self-mastery and discipline coming to be at peace with himself, and bringing into tune those three parts, like the terms in the proportion of a musical scale, the highest and lowest notes and the mean between them, with all the intermediate intervals. Only when he has linked these parts together in well-tempered harmony and has made himself one man instead of many, will he be ready to go about whatever he may have to do, whether it be making money or satisfying bodily wants, or business transactions, or the affairs of state.

FAMILY

(Plato discusses women and determines that they are equal to men other than for some physical tasks. So far, then, in regulating the position of women, we may claim to have come safely through with one hazardous proposal, that male and female Guardians shall have all occupations in common.)

.....a law which follows from that principle and all that has gone before, namely that, of these Guardians, no one man and one woman are to set up house together privately: wives are to be held in common by all; so too are children, and no parent is to know his own child, nor any child his parent.

(Plato describes the mechanics of his plan, including selective breeding. All children born at certain months will be the common children of those who bred nine months earlier. He then addresses the advantage this offers.)

Does not the worst evil for a state arise from anything that tends to rend it asunder and destroy its unity, while nothing does it more good than whatever tends to bind it together and make it one?

That is true.

And are not citizens bound together by sharing in the same pleasures and pains, all feeling glad or grieved on the same occasions of gain or loss; whereas the bond is broken when such feelings are no longer universal, but any event of local or personal concern fills some joy and others with distress?

Certainly.

And this disunion comes about when the words 'mine' and 'not mine,' 'another's and 'not another's' are not applied to the same things throughout the community. The best ordered state will be the one in which the largest number of persons use these terms in the same sense, and which accordingly most nearly resembles a single person.

Moreover, this agrees with the principle that they were not to have houses or lands or any property of their own, but to receive sustenance from the other citizens, as wages for their guardianship, and to consume it in common. Only so will they keep their true character; and are present proposals will do still more to make them genuine Guardians. They will not rend the community asunder by each applying that word 'mine' to different things and dragging off whatever he can get for himself into a private home, -where he will have his separate family, forming a center of exclusive joys and sorrows. Rather they will all, so far as may be, feel together and aim at the same ends, because they are convinced that all their interests are identical.

Quite so.

again, if a man's person is his only private possession, lawsuits and prosecutions will all but vanish, and they will be free of those quarrels that arise from ownership of property and from having family ties.

THE ALLEGORY OF THE CAVE

The progress of the mind from the lowest state of unenlightenment to knowledge of the Good is now illustrated by the famous parable comparing the world of appearance to an underground Cave. In Empedocles religious poem the powers which conduct the soul to its incarnation say, 'We have come under this cavern's roof.' The image was probably taken from mysteries held in caves or dark chambers representing the underworld, through which the candidates for initiation were lead to the revelation of sacred objects in a blaze of light. The idea that the body is a prison-house, to which the soul is condemned for past misdeeds, is attributed by Plato to the Orphics.

One moral of the allegory is drawn from the distress caused by a too sudden passage from darkness to light. The earlier warning against plunging untrained minds into the discussion of moral problems (498 A, p. 206), as the Sophists and Socrates himself had done, is reinforced by the picture of the dazed prisoner dragged out into the sunlight. Plato's ten years' course of pure mathematics is t habituate the

intellect to abstract reasoning before mortal ideas are called in question (537 E, ff., p. 259).

Next, said I, here is a parable to illustrate the degrees in which our nature may be enlightened or unenlightened. Imagine the condition of men living in a sort of cavernous chamber underground, with an entrance open to the light and a long passage all down the cave. Here they have been from childhood, chained by the leg and also by the neck, so that they cannot move and can see only what is in front of them, because the chains will not let them turn their heads. At some distance higher up is the light of a fire burning behind them; and between the prisoners and the fire is a track with a parapet built along it, like the screen at a puppet-show, which hides the performers while they show their puppets over the top

I see, said he.

Now behind this parapet imagine persons carrying along various artificial objects, including figures of men and animals in wood or stone or other materials, which project above the parapet. Naturally, some of these persons will be talking, others silent.

It is a strange picture, he said, and a strange sort of prisoners.

Like ourselves, I replied; for in the first place prisoners so confined would have seen nothing of themselves or of one another, except the shadows thrown by the fire-light on the wall of the Cave facing them, would they?

Not if all their lives they had been prevented from moving their heads.

And they would have seen as little of the objects carried past.

Of course.

Now, if they could talk to one another, would they not suppose that their words referred only to those passing shadows which they saw?

Necessarily.

And suppose their prison had an echo from the wall facing them? When one of the people crossing behind them spoke, they could only suppose that the sound came from the shadow passing before their eyes.

No doubt.

In every way, then, such prisoners would recognize as reality nothing but the shadows of those artificial objects.

Inevitably.

Now consider what would happen if their release from the chains and healing of their unwisdom should come about in this way. Suppose one of them set free and forced suddenly to stand up, turn his head, and walk with eyes lifted to the light; all these movements would be painful, and he would be too dazzled to make out the objects whose shadows he had been used to see. What do you think he would say, if someone told him that what he had formally seen was meaningless illusion, but now, being somewhat nearer to reality and turned towards more real objects, he was getting a truer view? Suppose further that he were shown the various objects being carried by and were made to say, in reply to questions, what each of them was. Would he not be perplexed and believe the objects now shown him to be not so real as was he formerly saw.

Yes, not nearly so real.

He would not need, then, to grow accustomed before he could see things in that upper world. At first it would be easiest to make out shadows, and then the images of men and things reflected in water, and later on the things themselves.

Last of all, he would be able to look at the sun and contemplate its nature, ...

Then if he called to mind his fellow prisoners and what passed for wisdom in his former dwelling-place, he would surely think himself happy in the change and be sorry for them. They may have had a practice of honoring and commending one another, with prizes for the man who had the keenest eye for the passing shadows and the best memory for the order in which they followed or accompanied one another, so that he could make a good guess as to which was going to come next.

Would our released prisoner be likely to covet those prizes or to envy the men exalted to honor and power in the Cave? Would he not feel like Homer's Achilles, that he would far sooner 'be on earth as a hired servant in the house of the landless man' or endure anything rather than go back to his old beliefs and live in the old way?

Yes, he would prefer any fate to such a life.

Now imagine what would happen if he went down again to take his former seat in the Cave. Coming suddenly out of the sunlight, his eyes would be filled with darkness. He might be required once more to deliver his opinion on those shadows, in competition with the prisoners who had never been released, while his eyesight was still dim and unsteady; and it might take some time to become used to the darkness. They would laugh at him and say that he had gone up only to come back with his sight ruined; it was worth no one's while even to attempt the ascent. If they could lay hands on the man who was trying to set them free and lead them up, they would kill him.

Yes, they would.

Every feature in this parable, my dear Glaucon, is meant to fit our earlier analysis. The prison dwelling corresponds to the region revealed to us through the sense of sight, and the fire-light within it to the power of the Sun. The ascent to see the things in the upper world you may take as standing for the upward journey of the soul into the region of the intelligible; then you will be in possession of what I surmise, since that is what you wish to be told. Heaven knows whether it is true; but this, at any rate, is how it appears to me. In the world of knowledge, the last thing to be perceived and only with great difficulty is the essential Form of Goodness. Once it is perceived, the conclusion must follow that, for all things, this is the cause of whatever is right and good; in the visible world it gives birth to light and to the lord of light, while it itself sovereign in the intelligible world and the parent of intelligence and truth. Without having had a vision of this Form no one can act with wisdom, either in his own life or in matters of state.

STUDY QUESTIONS:

1. What reasons does he give for forming political states? With this, what does he imply about human nature?
2. Why are armies needed? Would he support a universal draft or not? Why?
3. How democratic is his system? How does he justify this? Do you agree?
4. How are guardians treated and why? What problems today suggest his ideas are useful?
5. How does he view equality and freedom?
6. Plato's system suggests elite rule; how does the Allegory of the Cave support this?
7. Write a brief statement that you think would be one he would write regarding the merits/problems of a democracy.

The Social Contract, 1762

Jean Jacques Rousseau was one of the most influential of the eighteenth-century philosophers. Although he disagreed with some of Locke's ideas, his writings generally supported Locke.

I assume, for the sake of argument, that mankind at some time reached a point when the disadvantages of remaining in a state of nature outweighed the advantages. Under these conditions, the original state of nature could no longer endure. The human race would have perished if it had not changed its way.

Men, being human, cannot develop new powers. But they can unite and control the powers they already have. Men in the state of nature could get together, pooling their strength in a way that would permit them to meet any challenge. They had to learn to work together under central direction.

A real concentration of human powers could be brought about only by an agreement among individual men. But each individual man relies on his own strength and his own freedom of action to protect and preserve himself. How can he limit his strength and his freedom of action without injuring himself?

Some form of association must be found which can rally the whole community for the protection of the person and property of each of its citizens in such a way that each man, because he is a voluntary member of the association, still obeys his own will and hence remains as free as he was before. That is the basic problem solved by the social contract.

The essence of the social contract can be stated simply: Each individual surrenders all his rights to the community. Since each man surrenders his rights without reservation, all are equal. And because all are equal, it is to everyone's interest to make life pleasant for his fellows.

Since all rights have been surrendered to the community without reservation, no one has any claim against the group. If any rights were left to individuals, then each man would try to extend those rights he had reserved for himself. This situation would mean that a state of nature still existed. All rights must be surrendered; none may be reserved.

The heart of the idea of the social contract may be stated simply: Each of us places his person and authority under the supreme direction of the general will; and the group receives each individual as an indivisible part of the whole.

In order that the social contract may not be a mere empty formula, everyone must understand that any individual who refuses to obey the general will must be forced by his fellows to do so. This is a way of saying that it may be necessary to force a man to be free; freedom in this case being obedience to the will of all.

FOR THOUGHT:

On which groups in French society would the ideas of Locke and Rousseau have the most influence? Why?

Jean Jacques Rousseau, **The Social Contract,** as quoted in Edwin Fenton, **32 Problems in World History** (Chicago: Scott, Foresman and Company, 1964), pp. 126-128, copyright © 1964 by Scott, Foresman and Company. Reprinted by permission.

▶Should an individual surrender all of his rights to a community, or should he keep some rights?

I

ALEXIS DE TOCQUEVILLE

From *Democracy in America*

In May of 1831, a fancily-dressed, young French aristocrat arrived in the United States to begin his "scientific" study of a new social and political phenomenon, American democracy. After nine months of traveling across the new nation, interviewing numerous Americans from all walks of life, Alexis de Tocqueville returned to France to write Democracy in America, *the single best source with which to begin our exploration of American government and politics. Tocqueville saw the United States as a unique nation. From the start, Americans were all equal. Some were richer and others were poorer, but all who were not indentured or enslaved had an equal opportunity from the start. This clearly was not the case in any other nineteenth-century nation. To the young visitor, this idea of equality was America's identifying mark, a most cherished, if elusive, national virtue.*

AFTER THE BIRTH of a human being his early years are obscurely spent in the toils or pleasures of childhood. As he grows up the world receives him, when his manhood begins, and he enters into contact with his fellows. He is then studied for the first time, and it is imagined that the germ of the vices and the virtues of his maturer years is then formed.

This, if I am not mistaken, is a great error. We must begin higher up; we must watch the infant in his mother's arms; we must see the first images which the external world casts upon the dark mirror of his mind; the first occurrences which he witnesses; we must hear the first words which awaken the sleeping powers of thought, and stand by his earliest efforts, if we would understand the prejudices, the habits, and the passions which will rule his life. The entire man is, so to speak, to be seen in the cradle of the child.

The growth of nations presents something analogous to this: they all bear some marks of their origin; and the circumstances which accompanied their birth and contributed to their rise affect the whole term of their being.

If we were able to go back to the elements of states, and to examine the oldest monuments of their history, I doubt not that we should discover in them the primal cause of the prejudices, the habits, the ruling passions,

and, in short, of all that constitutes what is called the national character: we should there find the explanation of certain customs which now seem at variance with the prevailing manners; of such laws as conflict with established principles; and of such incoherent opinions as are here and there to be met with in society, like those fragments of broken chains which we sometimes see hanging from the vault of an edifice, and supporting nothing. This might explain the destinies of certain nations which seem borne on by an unknown force to ends of which they themselves are ignorant. But hitherto facts have been wanting to researches of this kind: the spirit of inquiry has only come upon communities in their latter days; and when they at length contemplated their origin, time had already obscured it, or ignorance and pride adorned it with truth-concealing fables.

America is the only country in which it has been possible to witness the natural and tranquil growth of society, and where the influence exercised on the future condition of states by their origin is clearly distinguishable. . . .

America, consequently, exhibits in the broad light of day the phenomena which the ignorance or rudeness of earlier ages conceals from our researches. Near enough to the time when the states of America were founded, to be accurately acquainted with their elements, and sufficiently removed from that period to judge of some of their results, the men of our own day seem destined to see further than their predecessors into the series of human events. Providence has given us a torch which our forefathers did not possess, and has allowed us to discern fundamental causes in the history of the world which the obscurity of the past concealed from them.

If we carefully examine the social and political state of America, after having studied its history, we shall remain perfectly convinced that not an opinion, not a custom, not a law, I may even say not an event, is upon record which the origin of that people will not explain. The readers of this book will find the germ of all that is to follow in the present chapter, and the key to almost the whole work.

The emigrants who came at different periods to occupy the territory now covered by the American Union, differed from each other in many respects; their aim was not the same, and they governed themselves on different principles.

These men had, however, certain features in common, and they were all placed in an analogous situation. The tie of language is perhaps the strongest and the most durable that can unite mankind. All the emigrants spoke the same tongue; they were all offsets from the same people. Born

in a country which had been agitated for centuries by the struggles of faction, and in which all parties had been obliged in their turn to place themselves under the protection of the laws, their political education had been perfected in this rude school, and they were more conversant with the notions of right, and the principles of true freedom, than the greater part of their European contemporaries. At the period of the first emigrations, the parish system, that fruitful germ of free institutions, was deeply rooted in the habits of the English; and with it the doctrine of the sovereignty of the people. . . .

Another remark, to which we shall hereafter have occasion to recur, is applicable not only to the English, but to . . . all the Europeans who successively established themselves in the New World. All these European colonies contained the elements, if not the development, of a complete democracy. Two causes led to this result. It may safely be advanced that on leaving the mother country the emigrants had in general no notion of superiority one over another. The happy and the powerful do not go into exile, and there are no surer guaranties of equality among men than poverty and misfortune. It happened, however, on several occasions, that persons of rank were driven to America by political and religious quarrels. Laws were made to establish a gradation of ranks; but it was soon found that the soil of America was opposed to a territorial aristocracy. To bring that refractory land into cultivation, the constant and interested exertions of the owner himself were necessary; and when the ground was prepared, its produce was found to be insufficient to enrich a master and a farmer at the same time. The land was then naturally broken up into small portions, which the proprietor cultivated for himself. Land is the basis of an aristocracy, which clings to the soil that supports it; for it is not by privileges alone, nor by birth, but by landed property handed down from generation to generation, that an aristocracy is constituted. A nation may present immense fortunes and extreme wretchedness; but unless those fortunes are territorial there is no true aristocracy, but simply the class of the rich and that of the poor. . . .

In virtue of the law of partible inheritance, the death of every proprietor brings about a kind of revolution in the property; not only do his possessions change hands, but their very nature is altered; since they are parcelled into shares, which become smaller and smaller at each division. This is the direct and, as it were, the physical effect of the law. It follows, then, that in countries where equality of inheritance is established by law, property, and especially landed property, must have a tendency to perpetual diminuation. . . .

. . . But the law of equal division exercises its influence not merely

upon the property itself, but it affects the minds of the heirs, and brings their passions into play. These indirect consequences tend powerfully to the destruction of large fortunes, and especially of large domains. . . .

Great landed estates which have once been divided never come together again; for the small proprietor draws from his land a better revenue, in proportion, than the large owner does from his; and of course he sells it at a higher rate. The calculations of gain, therefore, which decide the rich man to sell his domain, will still more powerfully influence him against buying small estates to unite them into a large one.

What is called family-pride is often founded upon an illusion of self-love. A man wishes to perpetuate and immortalize himself, as it were, in his great-grandchildren. Where the *esprit de famille* ceases to act, individual selfishness comes into play. When the idea of family becomes vague, indeterminate, and uncertain, a man thinks of his present convenience; he provides for the establishment of his succeeding generation, and no more.

Either a man gives up the idea of perpetuating his family, or at any rate, he seeks to accomplish it by other means than that of a landed estate. . . .

I do not mean that there is any deficiency of wealthy individuals in the United States; I know of no country, indeed, where the love of money has taken stronger hold on the affections of men, and where a profounder contempt is expressed for the theory of the permanent equality of property. But wealth circulates with inconceivable rapidity, and experience shows that it is rare to find two succeeding generations in the full enjoyment of it. . . .

. . . The social condition of the Americans is eminently democratic; this was its character at the foundation of the Colonies, and it is still more strongly marked at the present day. . . .

America, then, exhibits in her social state an extraordinary phenomenon. Men are there seen on a greater equality in point of fortune and intellect, or, in other words, more equal in their strength, than in any other country of the world, or in any age of which history has preserved the remembrance.

The political consequences of such a social condition as this are easily deducible.

It is impossible to believe that equality will not eventually find its way into the political world as it does everywhere else. To conceive of men remaining for ever unequal upon a single point, yet equal on all others, is impossible; they must come in the end to be equal upon all. . . .

2

JAMES BRYCE

From *The American Commonwealth*

The Englishman James Bryce visited the United States in the 1880s, during the so-called Gilded Age. His topic in this excerpt is equality in America. Equality can be measured in several different ways, he says, by money, knowledge, position, and status. The first three measures of equality point up the obvious differences among the American people. But wealthy or poor, educated or not, highly-positioned or lowly, Bryce concludes, Americans regard one another as fundamentally equal as human beings. A fellow citizen may be more famous or more accomplished or more successful, "but it is not a reason for . . . treating him as if he were porcelain and yourself only earthenware." Is Bryce on target one hundred years later? What has happened to the idea of equality in America in the post-porcelain, post-earthenware age?

THE UNITED STATES are deemed all the world over to be preeminently the land of equality. This was the first feature which struck Europeans when they began, after the peace of 1815 had left them time to look beyond the Atlantic, to feel curious about the phenomena of a new society. This was the great theme of Tocqueville's description, and the starting point of his speculations; this has been the most constant boast of the Americans themselves, who have believed their liberty more complete than that of any other people, because equality has been more fully blended with it. Yet some philosophers say that equality is impossible, and others, who express themselves more precisely, insist that distinctions of rank are so inevitable, that however you try to expunge them, they are sure to reappear. Before we discuss this question, let us see in what senses the word is used.

First there is legal equality, including both what one may call passive or private equality, i.e. the equal possession of civil private rights by all inhabitants, and active or public equality, the equal possession by all of rights to a share in the government, such as the electoral franchise and eligibility to public office. Both kinds of political equality exist in America, in the amplest measure, and may be dismissed from the present discussion.

Next there is the equality of material conditions, that is, of wealth,

2

The Constitutional Framework

A constitution can be thought of as the means by which a political community resolves the various collective action problems surveyed in the previous chapter. A constitution creates a nation's governing institutions and rules prescribing a political process these institutions must follow to reach and enforce collective agreements. A constitution may be an informal understanding based on years of accumulated laws and precedents, as with Great Britain's "unwritten" constitution, or, as with the United States, it can be a highly formal, legal statement of rights and responsibilities.

Other communities had on occasion convened a group of leaders to write or rewrite the rules governing the political process, but most scholars agree that the Constitutional Convention of 1787 was unique. Never before had a group assembled with the sole purpose of formulating a proposal for a new national government to be placed before the citizenry for ratification.

In designing the new Constitution, America's leaders were profoundly influenced by ideas fashionable in the Age of Reason. Isaac Newton had recently formulated laws of mechanics, Adam Smith had described the law-like properties of the marketplace under capitalism, and prominent political theorists—most important, John Locke and Montesquieu—were publishing essays on constitutional design, essays that read in some places as if the Framers had hired them as consultants. But the Constitution is not a simple product of sweet reason. Rather, every provision reflects the competition and ultimately compromise among political interests that were vying for advantage in the new institutions and rules. As a consequence, many of the Constitution's provisions have no theoretical rationale; they are simply the hammered out products of compromise. The following essays display the competition of ideas and interests that resulted in the Constitution.

2-1

James Madison Explains the Constitution to Thomas Jefferson

Shortly after the Constitutional Convention adjourned and as both sides were gearing up for the ratification campaign, James Madison wrote Thomas Jefferson, America's ambassador in Paris, to report on the Convention's work. Madison and Jefferson, both Virginians, were friends and allies who corresponded frequently, sometimes in code in case their letters were intercepted by political adversaries. The topics and arguments Madison covers in their private correspondence offer insight into the issues that most interested and occupied the "father of the Constitution." In the following excerpt from his correspondence with Jefferson, Madison expresses his concern that the new national government lacked a veto over state laws.

YOU WILL HEREWITH receive the result of the Convention, which continued its session till the 17th of September. I take the liberty of making some observations on the subject, which will help to make up a letter, if they should answer no other purpose.

It appeared to be the sincere and unanimous wish of the Convention to cherish and preserve the Union of the States. No proposition was made, no suggestion was thrown out, in favor of a partition of the Empire into two or more Confederacies.

It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of Sovereign States. A voluntary observance of the federal law by all the members could never be hoped for. A compulsive one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent and guilty, the necessity of a military force, both obnoxious and dangerous, and, in general, a scene resembling much more a civil war than the administration of a regular Government.

Excerpted from a letter to Thomas Jefferson dated October 24, 1787. The volume editors have added footnotes, editorial interpolations in brackets, headings to indicate the divisions of Madison's commentary, and italics to emphasize key points.

Hence was embraced the alternative of a Government which, instead of operating on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation.

This ground-work being laid, the great objects which presented themselves were: 1. To unite a proper energy in the Executive, and a proper stability in the Legislative departments, with the essential characters of Republican Government. 2. To draw a line of demarkation which would give to the General Government every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them. 3. To provide for the different interests of different parts of the Union. 4. To adjust the clashing pretensions of the large and small States. Each of these objects was pregnant with difficulties. The whole of them together formed a task more difficult than can be well conceived by those who were not concerned in the execution of it. Adding to these considerations the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.

Designing the Presidency and Senate

Presidential Selection

The first of these objects, as respects the Executive, was peculiarly embarrassing. On the question whether it should consist of a single person or a plurality of co-ordinate members, on the mode of appointment, on the duration in office, on the degree of power, on the re-eligibility, tedious and reiterated discussions took place. The plurality of co-ordinate members had finally but few advocates. Governor [of Virginia] Randolph was at the head of them. The modes of appointment proposed were various: as by the people at large, by electors chosen by the people, by the Executives of the States, by the Congress; some preferring a joint ballot of the two Houses; some, a separate concurrent ballot, allowing to each a negative on the other house; some, a nomination of several candidates by one House, out of whom a choice should be made by the other. Several other modifications were started. The expedient at length adopted seemed to give pretty general satisfaction to the members. As to the duration in office, a few would have preferred a tenure during good behaviour; a considerable number

would have done so in case an easy and effectual removal by impeachment could be settled.

Pros and Cons of Presidential Term Limits

It was much agitated whether a long term, seven years for example, with a subsequent and perpetual ineligibility, or a short term, with a capacity to be re-elected, should be fixed. In favor of the first opinion were urged the danger of a gradual degeneracy of re-elections from time to time, into first a life and then hereditary tenure, and the favorable effect of an incapacity to be reappointed on the independent exercise of the Executive authority. On the other side it was contended that the prospect of necessary degradation would discourage the most dignified characters from aspiring to the office; *would take away the principal motive to the faithful discharge of its duties—the hope of being rewarded with a reappointment;*[1] would stimulate ambition to violent efforts for holding over the Constitutional term; and instead of producing an independent administration and a firmer defense of the constitutional rights of the department, would render the officer more indifferent to the importance of a place which he would soon be obliged to quit forever, and more ready to yield to the encroachments of the Legislature, of which he might again be a member.

The President's Appointment and Veto Authority

The questions concerning the degree of power turned chiefly on the appointment to offices, and the controul on the Legislature. An absolute appointment to all offices, to some offices, to no offices, formed the scale of opinions on the first point. On the second, some contended for an absolute negative, as the only possible mean of reducing to practice the theory of a free Government, which forbids a mixture of the Legislative and Executive powers. Others would be content with a revisionary power, to be overruled by three-fourths of both Houses. It was warmly urged that the judiciary department should be associated in the revision. The idea of some was, that a separate revision should be given to the two departments; that if either objected, two-thirds, if both, three-fourths, should be necessary to overrule.

1. Madison is employing precisely the same reasoning that many political scientists now use to argue against term limits for members of Congress and state legislatures. Jefferson responded to Madison with two complaints about the Constitution—the first and better known of which being the absence of a bill of rights, and the second being the absence of a term limit on the presidency. With the passage of the Twenty-second Amendment in 1951 limiting a president's tenure to two terms, the Constitution finally conformed to Jefferson's preferences.

Designing the Senate

In forming the Senate, the great anchor of the government, the questions, as they come within the first object, turned mostly on the mode of appointment, and the duration of it. The different modes proposed were: 1. By the House of Representatives. 2. By the Executive. 3. By electors chosen by the people for the purpose. 4. By the State Legislatures. On the point of duration, the propositions descended from good behaviour to four years, through the intermediate terms of nine, seven, six, and five years. The election of the other branch was first determined to be triennial, and afterwards reduced to biennial.

Distributing Power between the States and the National Goverment

The second object, the due partition of power between the General and local Governments, was perhaps, of all, the most nice and difficult. A few contended for an entire abolition of the States; some, for indefinite power of Legislation in the Congress, with a negative on the laws of the States; some, for such a power without a negative; some, for a limited power of legislation, with such a negative; the majority, finally, for a limited power without the negative. The question with regard to the negative underwent repeated discussions, and was finally rejected by a bare majority. As I formerly intimated to you my opinion in favor of this ingredient, I will take this occasion of explaining myself on the subject. Such a check on the States appears to me necessary—1. To prevent encroachments on the

General authority. 2. To prevent instability and injustice in the legislation of the States.[2]

National Veto to Resolve Interbranch Conflict and Protect the Nation's Collective Good

1. Without such a check in the whole over the parts, our system involves the evil of imperia in imperio. *If a complete supremacy somewhere is not necessary in every society, a controuling power at least is so, by which the general authority may be defended against encroachments of the subordinate authorities, and by which the latter may be restrained from encroachments on each other.* If the supremacy of the British Parliament is not necessary, as has been contended, for the harmony of that Empire, it is evident, I think, that without the royal negative, or some equivalent controul, the unity of the system would be destroyed.[3] The want of some such provision seems to have been mortal to the antient confederacies, and to be the disease of the modern. Of the Lycian confederacy little is known. That of the Amphictyons is well known to have been rendered of little use whilst it lasted, and, in the end, to have been destroyed by the predominance of the local over the federal authority. The same observation may be made, on the authority of Polybius, with regard to the Achaean League. The Helvetic System scarcely amounts to a confederacy, and is distinguished by too many peculiarities to be a ground of comparison.

The case of the United Netherlands is in point. The authority of a Statdholder, the influence of a standing Army, the common interest in the conquered possessions, the pressure of surrounding danger, the guarantee of foreign powers, are not sufficient to secure the authority and interest of the generality against the anti-federal tendency of the provincial sovereignties.

2. At this point, Madison shifts from explaining and justifying the Constitution to complaining that it does not include provision for a national veto over state laws. While the present state of federalism in America generally allows the national government supremacy over the states without this rule, one must remember that the balance of power greatly favored the states until the Civil War.

3. Always a political scientist, Madison recapitulates briefly a comparative analysis of confederations he had circulated to Virginia's fellow delegates to the upcoming Philadelphia convention.

The German Empire is another example. A Hereditary chief, with vast independent resources of wealth and power, a federal Diet, with ample parchment authority, a regular Judiciary establishment, the influence of the neighbourhood of great and formidable nations, have been found unable either to maintain the subordination of the members, or to prevent their mutual contests and encroachments. Still more to the purpose is our own experience, both during the war and since the peace. Encroachments of the States on the general authority, sacrifices of national to local interests, interferences of the measures of different States, form a great part of the history of our political system.

It may be said that the new Constitution is founded on different principles, and will have a different operation. I admit the difference to be material. It presents the aspect rather of a feudal system of republics, if such a phrase may be used, than of a Confederacy of independent States. And what has been the progress and event of the feudal Constitutions? In all of them a continual struggle between the head and the inferior members, until a final victory has been gained, in some instances by one, in others, by the other of them. In one respect, indeed, there is a remarkable variance between the two cases. In the feudal system, the sovereign, though limited, was independent; and having no particular sympathy of interests with the great Barons, his ambition had as full play as theirs in the mutual projects of usurpation. In the American Constitution, the general authority will be derived entirely from the subordinate authorities. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual capacity. The former will be accountable to their constituents at moderate, the latter at short periods. The President also derives his appointment from the States, and is periodically accountable to them. . . .

We find the representatives of Counties and Corporations in the Legislatures of the States much more disposed to sacrifice the aggregate interest, and even authority, to the local views of their constituents, than the latter to the former. I mean not by these remarks to insinuate that an esprit de corps will not exist in the National Government, or that opportunities may not occur of extending its jurisdiction in some points. I mean only that the danger of encroachments is much greater from the other side, and that the impossibility of dividing powers of legislation in such a manner as to be free from different constructions by different interests, or even from ambiguity

in the judgement of the impartial, requires some such expedient as I contend for.[4] Many illustrations might be given of this impossibility. How long has it taken to fix, and how imperfectly is yet fixed, the legislative power of corporations, though that power is subordinate in the most compleat manner? The line of distinction between the power of regulating trade and that of drawing revenue from it, which was once considered the barrier of our liberties, was found, on fair discussion, to be absolutely undefinable. No distinction seems to be more obvious than that between spiritual and temporal matters. Yet, wherever they have been made objects of Legislation, they have clashed and contended with each other, till one or the other has gained the supremacy. Even the boundaries between the Executive, Legislative, and judiciary powers, though in general so strongly marked in themselves, consist, in many instances, of mere shades of difference.

It may be said that the Judicial authority, under our new system, will keep the States within their proper limits, and supply the place of a negative on their laws. The answer is, that it is more convenient to prevent the passage of a law than to declare it void after it is passed; that this will be particularly the case where the law aggrieves individuals, who may be unable to support an appeal against a State to the Supreme Judiciary; that a State which would violate the Legislative rights of the Union would not be very ready to obey a Judicial decree in support of them; and that a recurrence to force, which, in the event of disobedience, would be necessary, is an evil which the new Constitution meant to exclude as far as possible.

National Veto to Prevent State Tyranny

2. *A Constitutional negative on the laws of the States seems equally necessary to secure individuals against encroachments on their rights.* The mutability of the laws of the States is found to be a serious evil. The injustice of them has been so frequent and so flagrant as to alarm the most stedfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the public mind for a general reform, than

4. Madison is referring to his repeated efforts to give the national government a veto over the states. Not only, as he says above, will the states be more inclined "to sacrifice the aggregate interest" of the nation; he also implies that differences of view on policy are normal, requiring that one side be given the final authority to decide the matter.

those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects. A reform, therefore, which does not make provision for private rights, must be materially defective. The restraints against paper emissions and violations of contracts are not sufficient. Supposing them to be effectual as far as they go, they are short of the mark. Injustice may be effected by such an infinitude of legislative expedients, that where the disposition exists, it can only be controuled by some provision which reaches all cases whatsoever. The partial provision made supposes the disposition which will evade it.

It may be asked how private rights will be more secure under the Guardianship of the General Government than under the State Governments, since they are both founded on the republican principle which refers the ultimate decision to the will of the majority, and are distinguished rather by the extent within which they will operate, than by any material difference in their structure.[5] A full discussion of this question would, if I mistake not, unfold the true principles of Republican Government, and prove, in contradiction to the concurrent opinions of the theoretical writers, that this form of Government, in order to effect its purposes, must operate not within a small but an extensive sphere. I will state some of the ideas which have occurred to me on this subject.

Why State Majorities Are More Dangerous Than National Majorities

Those who contend for a simple democracy, or a pure republic, actuated by the sense of the majority, and operating within narrow limits, assume or suppose a case which is altogether fictitious. They found their reasoning on the idea that the people composing the Society enjoy not only an equality of political rights, but that they have all precisely the same interests and the same feelings in every respect. Were this in reality the case, their reasoning would be conclusive. The interest of the majority would be that of the minority also; the decisions could only turn on mere opinion concerning the good of the whole, of which the major voice would be the safest criterion;

5. Here Madison launches into an argument that he had made several times during floor debates at the Convention and would reappear inside the month in the famous *Federalist* no. 10.

and within a small sphere, this voice could be most easily collected, and the public affairs most accurately managed.

Society's Pluralism

We know, however, that no society ever did, or can, consist of so homogeneous a mass of Citizens. In the Savage state, indeed, an approach is made towards it, but in that state little or no Government is necessary. In all civilized societies, distinctions are various and unavoidable. A distinction of property results from that very protection which a free Government gives to unequal faculties of acquiring it. There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest. These classes may again be subdivided according to the different productions of different situations and soils, and according to the different branches of commerce and of manufactures. In addition to these natural distinctions, artificial ones will be founded on accidental differences in political, religious, or other opinions, or an attachment to the persons of leading individuals. However erroneous or ridiculous these grounds of dissention and faction may appear to the enlightened Statesman or the benevolent philosopher, the bulk of mankind, who are neither Statesmen nor philosophers, will continue to view them in a different light.

Majorities as Self-Interested Rulers

It remains, then, to be enquired, whether a majority having any common interest, or feeling any common passion, will find sufficient motives to restrain them from oppressing the minority. An individual is never allowed to be a judge, or even a witness, in his own cause. If two individuals are under to bias of interest or enmity against a third, the rights of the latter could never be safely referred to the majority of the three. Will two thousand individuals be less apt to oppress one thousand, or two hundred thousand one hundred thousand?

Three motives only can restrain in such cases: 1. A prudent regard to private or partial good, as essentially involved in the general and permanent good of the whole. This ought, no doubt, to be sufficient of itself. Experience, however, shews that it has little effect on individuals, and perhaps still less on a collection of individuals, and least of all on a majority with the public authority in their hands. If the former are ready to forget that honesty is the best policy, the last do more. They often proceed on the converse of the maxim, that whatever is politic is honest. 2. Respect for character. This motive is not found sufficient to restrain individuals from injustice, and loses its efficacy in proportion to the number which is to divide the pain or the blame. Besides, as it has reference to public opinion, which is that of the majority, the standard is fixed by those whose conduct is to be measured by it. 3. Religion. The inefficacy of this restraint on individuals is well known. The conduct of every popular assembly, acting on oath, the strongest of religious ties, shews that individuals join without remorse in acts against which their consciences would revolt, if proposed to them, separately, in their closets. When, indeed, Religion is kindled into enthusiasm, its force, like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of Religion, and whilst it lasts will hardly be seen with pleasure at the helm. Even in its coolest state, it has been much oftener a motive to oppression that a restraint from it.

Why Majorities Will Be Weaker in the National Government Than within the States

If, then, there must be different interests and parties in society, and a majority, when united by a common interest or passion, cannot be restrained from oppressing the minority, what remedy can be found in a republican Government, where the majority must ultimately decide, but that of giving such an extent to its sphere, that no common interest or passion will be likely to unite a majority of the whole number in an unjust pursuit? In a large society, the people are broken into so many interests and parties, that a common sentiment is less likely to be felt, and the requisite concert less likely to be formed, by a majority of the whole. The same security seems requisite for the civil as for the religious rights of individuals. If the same sect form a majority, and have the power, other sects will be sure to be depressed. *Divide et impera,* the reprobated axiom of tyranny is, under certain qualifications, the only policy by which a republic can be administered on just principles.[6]

6. The Latin phrase translates to "divide and conquer," which was a well-known strategy often employed by kings and dictators to defeat those who would overthrow their regime. By empowering those majorities that will be riddled by society's pluralism, Madison is "dividing" the power of the ruler and thereby placing the principle in defense of democracy.

It must be observed, however, that this doctrine can only hold within a sphere of a mean extent. As in too small a sphere oppressive combinations may be too easily formed against the weaker party, so in too extensive a one a defensive concert may be rendered too difficult against the oppression of those entrusted with the administration. The great desideratum in Government is so to modify the sovereignty as that it may be sufficiently neutral between different parts of the society to control one part from invading the rights of another, and at the same time sufficiently controlled itself from setting up an interest adverse to that of the entire society. In absolute monarchies, the prince may be tolerably neutral towards different classes of his subjects, but may sacrifice the happiness of all to his personal ambition or avarice. In small republics, the sovereign will is controlled from such a sacrifice of the entire society, but is not sufficiently neutral towards the parts composing it. In the extended Republic of the United States, the General Government would hold a pretty even balance between the parties of particular States, and be at the same time sufficiently restrained, by its dependence on the community, from betraying its general interests.

Begging pardon for this immoderate digression, I return to the third object above mentioned, the adjustments of the different interests of different parts of the continent.[7] Some contended for an unlimited power over trade, including exports as well as imports, and over slave as well as other imports; some, for such a power, provided the concurrence of two-thirds of both Houses were required; some, for such a qualification of the power, with an exemption of exports and slaves; others, for an exemption of exports only. The result is seen in the Constitution. South Carolina and Georgia were inflexible on the point of the Slaves.

The Large–Small State Disagreement that Led to the Great Compromise

The remaining object created more embarrassment, and a greater alarm for the issue of the Convention, than all the rest put together. The little States

7. Here Madison briefly reports the different interests that led to the political dealings reported in William Riker's essay below. Without laying out the details—for he knows that Jefferson, a keen politician, will figure out what happened at the Convention—he notes tersely, "The result can be seen in the Constitution."

insisted on retaining their equality in both branches, unless a compleat abolition of the State Governments should take place; and made an equality in the Senate a *sine qua non*. The large States, on the other hand, urged that as the new Government was to be drawn principally from the people immediately, and was to operate directly on them, not on the States; and, consequently, as the States would lose that importance which is now proportioned to the importance of their voluntary compliance with the requisitions of Congress, it was necessary that the representation in both Houses should be in proportion to their size. It ended in the compromise which you will see, but very much to the dissatisfaction of several members from the large States.

1.2

Ratification

Charles L. Mee, Jr.

Most people believe that the debates over the Constitution ended with the Constitutional Convention in 1787. In fact, those debates were just the beginning of the formation of a government. The new Constitution would be a meaningless exercise in semantics unless nine of the thirteen states ratified it—and, given the sharpness of the debates in the Constitutional Convention, ratification was not going to be easy. Was this a government of the people or of the states? What authority did the Constitution have? Who would have power under the new system, and who would ensure that these persons or groups exercised their power wisely? These and other questions remained to be resolved before the American people, who had paid a high price for their freedom, would agree to obey this new document.

Many imagine the creation of the Constitution to have been a very logical process, with rational men carefully considering the precepts that would govern the nation for centuries to come. Thanks to Charles Mee's vivid portrayal of the ratification process, however, we are able to see that the formation of our government was as much a matter of sometimes vicious hardball politics as it was of high-flown political philosophy. The battles that took place in various states tell us a great deal about the economic and sociological differences among regions and hint at the difficulties that would occur in applying the new constitutional mandates. We also see that the power of the new central government frightened people more than did the power of the states. The result was the first ten amendments, or the Bill of Rights—limitations on the new government that were necessary to secure ratification.

For years the state of Connecticut put "The Constitution State" on its license plates. Who can justifiably claim that they were finally responsible for the document's adoption? Furthermore, did this ratification process help rally the nation around the new Constitution, or did it help magnify the differences among people? And when some legal theorists argue that we must follow "the intent of the founders" in interpreting the Constitution, is this intent possible to determine?

"Ratification" by Charles L. Mee. From GENIUS OF THE PEOPLE by Charles L. Mee. Copyright © 1987 by Charles L. Mee. Used by permission of the Wallace Literary Agency, Inc.

SAM ADAMS One of the leaders in the ratification fight in Massachusetts.

JOHN HANCOCK An influential figure in the Massachusetts ratification debate.

PATRICK HENRY Antifederalist leader in Virginia.

JAMES MADISON, ALEXANDER HAMILTON, JOHN JAY Co-authors of *The Federalist;* led the fight for ratification.

EDMUND RANDOLPH One of the leaders in the ratification fight in Virginia.

ROBERT WHITEHILL Antifederalist leader in Pennsylvania.

JAMES WILSON One of the principal proponents of the Constitution.

The initial reaction to the constitution was one of surprise, even shock. It was one thing to write a constitution, and quite another to have it accepted. When the constitution was first broadcast across the country, it seems fair to say, the majority of the people were completely against it. "The greatness of the powers given" to this new government, declared the renowned Revolutionary hero Richard Henry Lee of Virginia, "and the multitude of places to be created, produce a coalition of monarchy men, military men, aristocrats and drones, whose noise, impudence, and zeal exceed all belief." To say, said Lee, "as many do, that a bad government must be established, for fear of anarchy, is really saying, that we must kill ourselves, for fear of dying."

Here was a central government far too strong, with a president sure to grow to royal proportions, a senate already constituted with the lineaments of aristocracy, and a house of representatives that was, as Colonel [George] Mason said, "not the substance, but the shadow only of representation," or as Lee declared, "a mere shred, or rag of representation." There was no bill of rights in this constitution; there was an unlimited power for the central government to levy taxes. What, many of the veterans of the American Revolution wondered, had they fought the war for?

Before the opposition could quite gather its forces, however, the plan was slipped dexterously past Congress. Madison, William Samuel Johnson of Connecticut, Rufus King, Nathaniel Gorham, Langdon and Gilman of New Hampshire, were all in New York to help push it through Congress and on to the special ratifying conventions that the plan called for. Only eight days after the new constitution was presented to Congress, a vote was called. Of those who were present to vote, nearly a third had been delegates to the Constitutional Convention, and the momentum they gave to its passage through Congress was irresistible. Richard Henry Lee objected to this unseemly haste, which seemed to smack of stampeding the Congress before its members had had a chance to digest the proposal.

The resolution that sent the constitution along to the state legislatures, calling on the states to summon special ratifying conventions, opened with the words "Resolved unanimously." This was a nasty piece of trickery, said Lee, giving the impression that the Congress had some sort of unanimously positive feeling for the new plan; there was nothing unanimous about Congress's reaction to the constitution except their agreement to pass it on to the states.

What was possibly even a nastier piece of trickery was that the defenders of the constitution had taken to calling themselves federalists. In truth, "federalists" were people who believed in the federal form of government provided by the Articles of Confederation. Partisans of the constitution, who believed in a strong national government, ought honestly to have called themselves nationalists. But the designation federalist had a long and familiar tradition, and Americans loved it; so the pro-constitution forces absconded with the word, insisting that they meant they favored a strong and efficient federal government; and the true federalists were reduced to calling themselves antifederalists.

Jefferson, in Paris, was showered with copies of the constitution by Madison, Washington, Franklin, and others of his friends and colleagues. Elbridge Gerry managed to rush the first copy to him, with a few prejudicing remarks about it. Jefferson looked over the plan dispassionately and concluded that its lack of a bill of rights was a deep fault. He hoped, Jefferson wrote to Madison, with the sensibility of an Olympian, that "the first 9 conventions may receive, and the last 4 reject [the constitution]. The former will secure it finally, while the latter will oblige them to offer a declaration of rights in order to complete the union. We shall thus have all its good, and cure its principal defects."

Those who had spent the summer in the caldron of Philadelphia were not as detached as Jefferson. Even before the text of the constitution had reached the Congress in New York, Franklin had appeared before the Pennsylvania state legislature, and prodded one of his colleagues to read the document aloud to the Assembly.

The Assembly, as it happened, was in its closing days, getting ready to adjourn and to have its members stand for a new election. The framers of the constitution wanted the Assembly, before it adjourned, to set up elections to a ratifying convention. One of the framers proposed a motion to that effect.

Robert Whitehill, a backcountry man, whose farm lay out beyond the Susquehanna River near Harrisburg, rose on the floor of the Assembly. Whitehill had been one of the authors of the Pennsylvania constitution of 1776, which had provided for a one-house legislature, annual elections, and election of the president of the Supreme Executive Council by the legislature—a model democratic system, now about to be buried under the new federal constitution. Whitehill opposed the motion, charging its defenders with a lack of candor in trying to jam the constitution through before the people had had a chance to become acquainted with it.

But the friends of the framers held a majority in the Pennsylvania Assembly, and they insisted, by a margin of forty-three to nineteen, on bringing the issue of ratification to a vote on the floor that very afternoon. Then, just after taking that vote, they adjourned until four o'clock.

During the recess, Whitehill and the gathering band of opponents of the constitution, most of them western Pennsylvanians, supporters of the old radical Pennsylvania constitution of '76, agreed on a strategy to stop the framers. The Assembly consisted of sixty-nine members; a quorum of forty-six was required for the Assembly to conduct business. Whitehill's antifederalists, by staying away from the afternoon session, could keep a quorum from appearing in the Assembly hall and so force an adjournment.

When the Assembly resumed that afternoon, a roll call showed only forty-four members present, and so the following morning, the Assembly dispatched the sergeant at arms to round up missing members. The sergeant at arms returned soon enough with the news that the missing members refused to attend the session. The Assembly adjourned, with the partisans of the constitution angered by Whitehill's ruse.

The next day the Assembly gathered for yet another session. Again a quorum was missing. Again the sergeant at arms was sent out to gather up the missing members. By this time, the resolution of the Congress in New York (which called for state legislatures to summon ratifying conventions) had arrived in Philadelphia, and the sergeant at arms went out with this resolution authoritatively in hand. He was backed up by a group of the framers' supporters, who went along with him, raising a ruckus as they careened from tavern to tavern, stirring up partisans on both sides.

Eventually, the little self-appointed posse came upon two of Whitehill's men ensconced in their lodgings. The resolution of Congress was read to the recalcitrant members. Still the members refused to budge. And so the unofficial posse swarmed into the rooms, took hold of the two Assembly members, and dragged them, protesting, back through the streets of Philadelphia and into the Assembly hall. There a large group of local artisans, always dependably hostile to country men, and especially to westerners, crowded around—shouting and mocking the out-of-towners, following them into the Assembly hall, jamming the doors, and blocking any chance of escape. The two westerners were unceremoniously shoved forward, their clothes torn, their faces, it was said, "white with rage." One of the westerners, keeping his mind clearly focused on the Whitehill strategy, offered to pay a fine for his absence, but the crowd laughed him down. And when he turned to make his escape, the crowd shouted out, "Stop him!"—and he was turned back into the room. With their quorum assembled, the Pennsylvania legislature duly voted—with only two votes against the motion—to set the first Tuesday in November as election day for delegates to the Pennsylvania ratifying convention.

The strong-arm tactics of the federalists aroused terrific passion, and although the federalists controlled most of the newspapers, the editor of Philadelphia's *Independent Gazetteer* took up the cudgels against the federalists and published a series of attacks written under the byline Centinel. According to Centinel, Pennsylvanians had "the peculiar felicity of living under the most perfect system of local government in the world"—now about to be replaced by "the supremacy of the lordly and profligate few." These few were attempting to stampede the people into accepting their new scheme by saying there was "no alternative between adoption and absolute ruin." This, said Centinel, was "the argument of tyrants." These conniving aristocrats tried to dignify their cause by dressing it up with the presence of Washington and Franklin. "I would be far from insinuating that the two illustrious personages alluded to, have not the welfare of their country at heart; but that the unsuspecting goodness and zeal of the one has been imposed upon, in a subject of which he must be necessarily inexperienced . . . and that the weakness and indecision attendant on old age has been practiced on in the other."

Centinel was joined by some others in criticizing the constitution—most notably by one of the very framers, Colonel George Mason, who published his list of objections in the *Pennsylvania Packet.* The story circulated widely that Mason had declared that he would sooner cut off his right hand than put his signature to the constitution.

This defection, among other goads, brought James Wilson out of his study and into the garden on the south side of the State House to address a public meeting. Public speaking was not Wilson's strong suit. His manner, his "lordly carriage," was so naturally offensive to most people that one federalist newspaper writer labored to explain that Wilson *had* to hold his head as he did in order to keep his spectacles from falling off his nose. But he spoke with his customary close reasoning, and his audience evidently listened closely.

The greatest, and most commonly heard, charge against the constitution, said Wilson, was that it lacked a bill of rights. But in the constitution, every right that was not specifically granted to the central government was reserved to the states. To have drawn up a list of particular rights would only have duplicated what was already in the state constitutions. Strictly speaking, Wilson's arguments were true: All rights not specifically given the federal government were reserved to the states and the citizens. But Wilson's opponents knew that reasoning of this sort was too abstract for comfort.

As for the omission of a provision for trial by jury in civil cases, said Wilson, the usages of the various states so differed as to make a uniform law impossible. As for the issue of a standing army, the power of direct taxation, and other matters, Wilson explained the reasoning of the Constitutional Convention in each case. His speech was superb; it only lacked an attempt to deal with the central complaint of the antifederalists—that the new constitution set a federal government above a state government that was, in Pennsylvania's case at least, more democratic. He tried to get around that difficult issue simply by tarring his opponents. "It is the nature of man," said Wilson, "to pursue his own interests in preference to the public good." And so he was not surprised that so many men opposed this new constitution, since it threatened to eliminate lucrative state offices which they currently held and otherwise affected their "schemes of wealth and consequence."

For their part, the antifederalists struck back at Wilson with the locally familiar charge that he "has always been strongly tainted with the spirit of *high aristocracy;* he has never been known to join in a truly popular measure, and his talents have ever been devoted to the patrician interest."

And to that a federalist writer replied with a recipe for an "Antifederal Essay." The correct ingredients were these: "*Well-born,* nine times—*Aristocracy,* eighteen times— . . . *Negro slavery,* once mentioned—*Trial by Jury,* seven times—*Great Men,* six times repeated—MR. WILSON, forty times—and lastly, GEORGE MASON'S *Right Hand in a Cutting-Box,* nineteen times—put them all together, and dish them up at pleasure."

If the antifederalists tended toward exaggeration and violence in their diatribes, the federalists tended toward condescension and contempt in theirs. But since Philadelphia was a cosmopolitan, commercial port city—and so a federalist one—the defenders of the constitution had the clearest advantage in mob action. Roving

bands of supporters of the new constitution roamed the streets, banging on doors and lobbing rocks through windows. They did little real damage, though they tried to spread as much fear as they could. When the antifederalists demanded the arrest of the disorderly gang that attacked one lodging place of their fellows, the city administration—a federalist lot—failed to find any of the unruly mob.

When at last elections were held for the ratifying convention, the antifederalists had managed to elect some colorful old country politicians to represent their cause—among them two native Irishmen, John Smilie, a former house carpenter; and William Findley, a weaver. Findley, a big fellow with shaggy hair and a genial, disrespectful manner, affected his own form of patrician dress. He had a fondness in particular for white beaver hats. He and his colleagues were wily politicians of long experience, deeply dedicated to frontier liberties and individualism, men far better able to cajole a crowd than James Wilson was; but their talents did not count for much. The federalists had outpolled the antifederalists in the election by a margin of two to one; and when the convention gathered on November 21, the federalists had forty-six delegates to the antifederalists' twenty-three. Men of both sides would grapple heroically with each other in debate; but when it came to voting, they would split exactly along federalist/antifederalist lines.

Unable to affect the outcome by persuasion, Whitehill resorted to parliamentary maneuvers—trying to get the convention to rearrange itself as a committee of the whole, a ruse calculated to delay the convention, to give the antifederalists time to rally opposition to the constitution. But Whitehill's motion—like all the other maneuvers of the antifederalists—was brought quickly to a vote, and voted down by a margin of two to one. Gradually, in one vote after another, the antifederalists were brought around grudgingly to the final vote—whether or not to ratify the constitution as a whole—and the state of Pennsylvania declared itself in favor of the constitution, forty-six to twenty-three.

The vote placed the crucial state of Pennsylvania in the column of supporters of the constitution—but at an enormous price. Having won by virtue of sheer power—and even of brute force—the federalists did much to damage their own cause across the country. If these were to be their consistent tactics, they might well anticipate defeat. A couple of weeks after the Pennsylvania ratifying convention, at a bonfire celebration of the new constitution, a gang of antifederalists came out of the dark armed with clubs and attacked James Wilson. Wilson fought back and was knocked to the ground, and he might have been done in had not an old soldier who was present thrown himself on top of Wilson to shield the convention's staunchest defender of popular suffrage from the blows of the people.

Yet if ratification in Pennsylvania was a bitter experience, several other states came along without any great battle. Indeed, the little states fell into line with surprising ease. After all the trouble they had caused at the Constitutional Convention, they proved now the most eager to put themselves under the protection of this strong new government. Delaware, with the support of John Dickinson and George Read, had actually preceded Pennsylvania in approving the constitution—thus, in the words of one of the Pennsylvania antifederalists, having "reaped the honor of having first surrendered the liberties of the people"—by a unanimous thirty to zero

vote of its delegates to the ratifying convention. New Jersey's ratifying convention debated for a full week before voting unanimously in favor of the constitution—with [William] Paterson leading the way. In Maryland, the elections to the ratifying convention gave such a large margin to the federalists that they did not even bother debating. They simply sat back, listened to Luther Martin and his colleagues rail at them for four days, and then called for a vote. The vote went sixty-three to eleven in favor of the constitution. Georgia voted unanimously in favor. Connecticut came along with somewhat more thoughtfulness and ambivalence, voting in favor of ratification by 128 to forty.

Even so, as these federalist victories piled up, several key states of the Union—Massachusetts, Virginia, and New York—all of them crucial to the success of the new plan, had yet to be heard from. And each, in its way, was to prove very difficult. To assist the federalist cause in the resistant political atmosphere of New York, a series of essays commenced to appear in the newspapers, signed with the pen name Publius, that argued in favor of adopting the new constitution—essays that would come to be known collectively as *The Federalist*. It had been Hamilton's idea to turn out these essays, with which he hoped to overwhelm the New York opposition. And overwhelm the opposition he did, publishing eighty-five essays in all, one every two or three days, for a period of six months, essays that considered the proposed constitution from every angle of dispute, answered its opponents' objections, and explained the principles on which the constitution rested.

To help him write some of the essays in this rhetorical tour de force, Hamilton recruited Madison—who had, of course, been at the convention every day that summer, and knew the plan inside out—and John Jay, who had not been in Philadelphia, but was a learned lawyer (who would become the first chief justice of the Supreme Court), and a man who shared Hamilton's admiration for the established order, for aristocracy if not monarchy.

The Federalist is, perhaps, not the best of all possible guides to just what the constitution is and is meant to be, since it was intended—to be altogether candid—as the text for a sales campaign. Moreover, it was written by one man (Hamilton) who was so opposed to the basic ideas of the constitution that he did not attend most of the sessions of the convention, who spoke rarely in the convention, and when he did speak, spoke most eloquently on behalf of aristocracy; by another (Jay) who was not at the convention at all and whose Anglophilia would have predisposed him to a far more aristocratic scheme than the one the conventioneers finally framed; and by a third (Madison) who had a view of a necessarily unfettered supremacy of the national government that had not been accepted by the other delegates. Under the circumstances, it cannot be surprising that *The Federalist* promotes a conception of the constitution that is, among other things, more aristocratic than the consensus of those who actually wrote the document.

Hamilton opened the series with an outline of the whole project, promising that the series would cover the necessity of the Union, the deficiencies of the Confederation, the need for an energetic government, and the ways in which the proposed constitution corresponded to republican principles. Jay followed with four essays on the need for a union to cope with foreign dangers and sectional disputes—arguing, among other things, that the breadth of interests in the new government

would be so great as to inhibit men's natural proclivities to go to war; that, in this sense as well as in others, the extended republic would actually give rise to public virtue.

The essays took up issues of the military, of the separation of powers, of the house and senate, of the means of election, of the presidency, and of the judiciary—all of them issues that had been debated in the convention in detail. Several of Madison's essays constituted a neatened-up version of the notes on ancient and modern confederacies that he had used throughout the convention debates. One of Madison's most famous essays, *Federalist* Number 10, spoke of the way in which factions are formed—along economic lines—which he had gone into at some length during the convention: of how the poor need to be protected from the rich as well as the rich from the poor, and how all the citizens need to be protected from the depredations of whatever factions are formed.

Nothing in *The Federalist* would have been unfamiliar to a delegate to the Constitutional Convention (except the absence of sharply conflicting views). Here were the arguments—and the references to history, to renowned political philosophers, to the examples of England and Germany and ancient Greece and Rome, to more recent and common American experience—that had been heard in Philadelphia, here expressed in classically balanced and elegant language, with perfectly honed phrases, and pruned into a coherent, if not entirely representative, vision.

The Federalist was not without its critics. The antifederalists were particularly incensed that Publius alleged that they wanted several separate confederacies, which was simply not true. And one friendly observer, even as he praised *The Federalist,* said he could not understand why Publius had taken such pains to argue what seemed so evident, that a strong, efficient government was better "than the States disunited into distinct, independent governments, or separate confederacies." But General Washington pronounced himself pleased with the essays, saying he thought no other public presentation of the arguments in favor of the constitution was "so well calculated . . . to produce conviction on an unbiased mind." And Jefferson thought *The Federalist* was "the best commentary on the principles of government which ever was written."

The essays were reprinted in newspapers and magazines around the country, though not very widely reprinted: Twenty-two publications printed at least one of the essays, but only six journals printed six or more of them. Although they received wide circulation in book form, what was crucial about the writings of Publius was not that they were a great popular success but that they circulated among those men who were taking part in ratifying conventions across the country, and gave partisans of the constitution the best arguments they could use in favor of the new plan.

Such arguments were essential—and proved crucial—in the state of Massachusetts, whose ratifying convention of 350 members gathered on January 8, 1788, in Boston's Brattle Church, with a narrow but distinct majority opposed to the constitution.

The Massachusetts convention had among its delegates some of the famous old figures of the Revolution, including the radical democrat Sam Adams, and John

Hancock, who was enormously popular and enormously powerful. Because Hancock was so sensitive to the ways the political breezes were blowing, he was able to side with the rich Boston merchants and with Daniel Shays at the same time.* (Hancock stayed away from the early sessions, claiming that his gout was too severely painful to let him leave home—holding back on purpose, his critics said, waiting until the outcome of the convention was certain so that he would be sure to be on the winning side.)

Unlike Pennsylvania, the ratifying convention that was assembled in Boston was not stacked with federalists; among the members of the convention were not only a fair sampling of farmers from the western parts of Massachusetts but even twenty-nine men who had fought with Shays.

"Sir," said the plainspeaking Samuel Thompson to the chairman of the convention, "gentlemen have said a great deal about the history of old times" in proving the superiority of this new constitution over the old democratic ways of New England. "I confess, I am not acquainted with such history—but I am, sir, acquainted with the history of my own country." And from that acquaintance, said Thompson, "I suspect my own heart, and I shall suspect our rulers." Too much power was granted to the distant new government, and without adequate restraints built in. He wondered at the great rush to push this constitution through to acceptance. "There are some parts of this constitution which I cannot digest: and, sir, shall we swallow a large bone for the sake of a little meat? Some say swallow the whole now, and pick out the bone afterwards. But I say, let us pick off the meat, and throw the bone away."

Massachusetts was a state full of enthusiasts for the tradition of the democratic town meeting and deeply suspicious of any republican idea of the delegation of authority to elected representatives. And opponents of the constitution filled the newspapers with attacks on "the hideous daemon of aristocracy . . . the NOBLE order of Cincinnatus, holders of public securities, bankers and lawyers, who were for having the people gulp down the gilded pill blindfolded."

The idea that a single central government, said another of the delegates, could efficiently and justly rule in every small town of such a vast continent was absurd. "You might as well attempt to rule Hell by prayer."

That the new plan called for senators to be elected for terms of six years was outrageous in the eyes of men who believed annual elections to be the most basic requirement of democracy. The senate was an aristocratical bunch, said one delegate, and the house was nothing but an "assistant aristocratical branch."

"Had I a voice like Jove," thundered Samuel Nason, a saddler and storekeeper from Maine,† "I would proclaim it throughout the world—and had I an arm like Jove I would hurl from the world those villains that would attempt to establish in our country a standing army! I wish, sir, that gentlemen of Boston would bring to

* In 1786 and 1787, Shays led a revolt of fifteen hundred farmers in western Massachusetts to protest farm foreclosures. Shays's Rebellion stirred fears of domestic unrest and demonstrated the weakness of the new central government, which could not come up with funds to fight the rebels.

† Maine was part of Massachusetts until it became a separate state in 1820.

their minds the fatal evening of the 5th of March, 1770, when by standing troops they lost five of their fellow-townsmen."

"These lawyers," said Amos Singletary, a self-taught farmer from Worcester County who had sat in the state legislature for years, "and men of learning, and moneyed men that talk so finely, and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves. They expect to be the managers of the Constitution, and get all the power and all the money into their own hands. And then they will swallow up us little fellows."

This remark by Singletary drew forth at last a reply from another fellow farmer, Jonathan Smith, a Berkshireman. "Mr. President," said Smith, "I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say a few words to my brother ploughjoggers in this house. I have lived in a part of the country where I have known the worth of good government, by the want of it. There was a black cloud that rose in the east last winter [Smith did not need to mention Shays by name], and spread over the west."

At this, another delegate rose and challenged Smith to say what he meant by the east.

"I mean, sir, the county of Bristol," said Smith. "The cloud rose there and burst upon us, and produced a dreadful effect. It brought on a state of anarchy that led to tyranny. I say, it brought anarchy. People that used to live peaceably, and were before good neighbors, got distracted, and took up arms against government."

Here another delegate rose angrily and asked what this had to do with the constitution. Sam Adams intervened, and asked that the house let the gentleman "go on in his own way."

". . . People, I say, took up arms, and then, if you went to speak to them, you had the musket of death presented to your breast. They would rob you of your property, threaten to burn your houses; oblige you to be on your guard night and day; alarms spread from town to town; families were broke up; the tender mother would cry, O, my son is among them! . . . Then we should hear of an action, and the poor prisoners were set in the front, to be killed by their own friends. . . . Our distress was so great that we should have been glad to snatch at anything that looked like a government."

When Smith saw this new constitution, "I found that it was a cure for these disorders . . . I got a copy of it and read it over and over. I had been a member of the convention to form our own state constitution, and had learnt something of the checks and balances of power, and I found them all here. I did not go to any lawyer to ask his opinion—we have no lawyer in our town, and we do well enough without. I formed my own opinion, and was pleased with this constitution. My honorable old daddy there [gesturing to Amos Singletary] won't think that I expect to be a congressman and swallow up the liberties of the people. I never had any post, nor do I want one. But I don't think the worse of the constitution because lawyers and men of learning and monied men are fond of it."

While the debates went along in this way, freer than the debates had been in Pennsylvania, and more down-to-earth, the federalists worked behind the scenes to do all they could, short of the strong-arm tactics their colleagues had used in

Pennsylvania, to influence the outcome. They were not having an easy time of it. Madison, who kept his eye on the progress of the constitution through each of the state ratifying conventions, wrote to Washington that the news from Massachusetts "begins to be very ominous."

The most crucial piece of politicking the federalists labored to bring off was to recruit John Hancock to their side, and they finally succeeded at this with the aid of Sam Adams. At first Adams had been opposed to the constitution. "I stumble at the threshold," he wrote to Richard Henry Lee. "I meet with a national government instead of a federal union of sovereign states." Adams was helped across the threshold by a shrewd plan for compromise. The constitution had been presented to Massachusetts, as to the other states, in a take-it-or-leave-it fashion. The states were not to be allowed to set any conditions to their acceptance of the constitution; they must ratify it exactly as it stood, or turn it down. But as it began to appear that the antifederalists might defeat the constitution altogether, a group of federalists got together with Adams and came up with what they called a Conciliatory Proposition—a plan to mollify the anxieties of the antifederalists, and of Adams and others. Their notion was that the constitution ought to be ratified, but with a number of "suggestions" for amendments attached to it. The suggestions would not be demands or conditions; they would simply be Massachusetts' first order of business for the new government to take up.

The Massachusetts men came up with a list of nine amendments, a list of fairly mundane concerns, including a limitation on the federal power of taxation, a limitation on federal power to govern elections, and a prohibition against Congress establishing a "company of merchants with exclusive advantages of commerce." The items were not matters of great political principle; they were not a bill of rights. They were reflections of local concerns. But they were, also, a precedent: an insistence that Massachusetts would not accept a take-it-or-leave-it demand on the constitution. Massachusetts would simply go ahead and begin the process of amending the constitution. Thus, Adams and his colleagues not only broke the resistance of the Massachusetts convention to the constitution, they also provided an example for the states that would come after Massachusetts to present similar lists of suggestions. It was this example that led quickly to the Bill of Rights (which was ratified by the requisite number of states by December 5, 1791).

The group had Theophilus Parsons, a prominent Boston attorney, draw up a speech to present the Conciliatory Proposition to the convention, and then a little delegation of them called on John Hancock at his commodious home on Beacon Hill. They found Hancock languishing, his legs propped up and wrapped in flannel. The delegation told Hancock that the convention had reached the moment of decision, and that he could turn it in favor of the constitution. They told him, too, that according to the gossip, if he did join their cause he could expect their support for the next gubernatorial election in Massachusetts. Even more, they told him that it looked as though Virginia might not ratify the constitution. And if Virginia did not ratify, then Hancock would be the "only fair candidate for President" of the new United States. With that, Hancock's gout began to improve. He was carried like a hero into the convention, his legs still wrapped in flannel, and he delivered

Theophilus Parsons's speech as though he had written it himself. The effect was wonderful. The convention was transformed.

To be sure, some of the antifederalists pointed out that a list of suggestions for amendments would have no binding effect. Such a set of proposals might make the men of Massachusetts feel better, but the objectionable system would remain exactly as it was. The hopes of the antifederalists would be defeated, and there would be no chance in the future to revive them.

Yet, after a few days of debate, minds began gradually to change. The question turned, in effect, on whether the process for amending the constitution seemed fair and workable, or, at least, better than the process for amending the Articles; if it did, then there seemed much less reason to oppose the constitution. Finally, a young antifederalist lawyer from Andover named William Symmes announced his change of position. He felt in his own mind, he said, that what he was doing was right. He knew that his constituents did not agree with him, but he hoped they would forgive him for what he was about to do. (As it turned out, his constituents never did see things Symmes's way; in fact, when he got back home, his neighbors made life so unpleasant for him that he had to move out of Andover.) With Symmes's change of mind, others followed.

Adams almost lost the momentum the federalists had acquired when he proposed a series of amendments to guarantee freedom of the press and the rights of conscience, to prohibit standing armies and unreasonable search and seizure. The effect of Adams's proposals was to throw the convention into a panic: If Adams thought such guarantees were necessary, then perhaps the new government did threaten to deprive the citizens of the states of their basic rights. And so Adams withdrew his motion.

In the end, when the final vote was called, the constitution was approved by a slim margin of 19 votes, 187 to 168. But then a most remarkable thing occurred. In place of the bitterness that had marked the conclusion of the Pennsylvania ratifying convention, a good deal of warm feeling was expressed in Brattle Church. Abraham White of Bristol County declared that he had opposed the constitution with all his will; but now, since a majority had decided in its favor, he would return home and work to persuade his constituents to live happily under it. Where the Pennsylvania convention had left bitterness in its wake, the Massachusetts convention left a sense—and a model for others to follow—of an agreement reached by those unique guarantors of legitimacy, the free exercise of speech and the ballot.

By June 2, when the Virginia delegates assembled at last in Richmond for their ratifying convention, eight states had voted in favor of the constitution. Only one more was needed, and it appeared that the Virginia vote could well be that one. But the Virginia delegates felt their vote was more important than simply the clinching one: Whether it was strictly true or not, the Virginians believed that there would be no Union at all without their own state, which had taken the lead in so much of the history of America, not to mention the constitution itself.

To be sure, the Virginians assembled a ratifying convention of some of the most illustrious men in the Union. Among the defenders of the constitution were

Madison; George Wythe (who had had to leave the Philadelphia convention to attend to his sick wife); John Marshall (who would be chief justice of the Supreme Court, and was at the moment an intense young man of thirty-three); George Nicholas (a famous orator at the time, a rotund man whom a local caricaturist immortalized as a plum pudding with little legs); Judge Edmund Pendleton (chosen as the presiding officer of the convention, a commanding man whose presence was made even more riveting by the fact that he got about on crutches because he had injured a hip, and so rose to speak with elaborate, slow dignity). To the annoyance of Richard Henry Lee, his cousin Light Horse Harry Lee was to be found among the federalists too. And of course, the presence of General Washington, though he himself stayed carefully aloof at Mount Vernon, was felt in the hall on the side of the federalists.

Among the antifederalists were Colonel Mason (dressed most severely in black silk), James Monroe (at the moment an obscure young man of thirty), Benjamin Harrison (the father of President William Henry Harrison), John Tyler (the father of another president), and Richard Henry Lee. In the back of the hall were fourteen gun-toting delegates from frontier Kentucky (a territory still in the possession of Virginia).

The antifederalist forces were led by that extraordinary speechmaker Patrick Henry. Tall and stoop-shouldered, the practiced old orator could get so wound up in the heat of debate that he would take to twirling his ill-fitting brown wig around on his head as he laid about him with rhetorical flourishes. No one was his equal for sheer thespian dazzle. He had, it was said, the powers of Shakespeare and Garrick* combined—or as Madison complained, Henry could demolish, merely with a pause or a shake of the head, an hour's worth of carefully constructed debate before he had even begun to speak. In Virginia, the antifederalists were called Henryites.

By contrast, Madison was his usual retiring self. So small he could barely be seen by the spectators, so soft-spoken he could often not be heard, he fell ill finally, in the midst of these exhausting debates, as he had in Philadelphia. It is a wonder that he was able, after all these interminable months of struggle for his cherished plan, to revive; but he did bounce back after several days, and took up the debate again—and even showed some sly sense of theatrics of his own. When he rose to speak, he would hold his hat in his hand (his painstakingly prepared notes were concealed inside his hat) and speak modestly, as though some little thought had just occurred to him—which he would then convey with his customary precise logic.

Patrick Henry opened the debate in Virginia by inquiring what right had the men who wrote the constitution to begin with the words *We the people?* "My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorized them to speak the language of *We the people,* instead of, *We the states?* States are the characteristics and the soul of a confederation. If the states be

* David Garrick was an eighteenth-century English actor.

not the agents of this compact, it must be one great consolidated national government, of the people of all the states. . . . The people gave them no power to use their name. . . . You must, therefore, forgive the solicitation of one unworthy member, to know what danger could have arisen under the present confederation, and what are the causes of this proposal to change our government."

Men spoke of dreadful unrest and dangers in the future, but had there been a single instance of such unrest in Virginia? To Henry and his followers, the Madisonian cure far exceeded the disease. If some difficulties had arisen among the states, then the powers of Congress to regulate trade needed to be strengthened, and the state governments needed to be given new vigor; but surely there was no need to surrender vast powers of taxation to a central government, to organize a court system that would cause the state courts to be swallowed up by the federal courts, to establish a standing army, to create a chief executive who would enslave America, to destroy the states, which were the bastions of liberty.

The constitution, said Henry, was as "radical" a document as the resolution "which separated us from Great Britain. . . . The rights of conscience, trial by jury, liberty of the press, all your communities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change. . . . Is this tame relinquishment of rights worthy of freemen? . . . It is said that eight states have adopted this plan. I declare that if twelve states and a half had adopted it, I would with manly firmness, and in spite of an erring world, reject it. . . . Liberty, greatest of all earthly blessings—give us that precious jewel, and you may take everything else! But I am fearful I have lived long enough to become an old fashioned fellow.

"Whither," asked Henry, "is the spirit of America gone? Whither is the genius of America fled? . . . We drew the spirit of liberty from our British ancestors. But now, Sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. . . . There can be no checks, no real balances, in this government. What can avail your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances?"

(Here, it was said—such was the power of Henry to conjure—a delegate "involuntarily felt his wrists to assure himself that the fetters were not already pressing his flesh.")

The Henryites did well in the debates; their arguments were moving and impressive as they returned again and again to the theme that liberty and democracy would, under this new constitution, be sacrificed to the juggernaut of nationalism and expansive imperialism. Whether they spoke of taxation or courts or the powers of the presidency, their theme was always the same: The government of Virginia was small, responsive, free, and good; and there was no need to sacrifice it to a vision of a powerful nationalism. "Look at the use which has been made in all parts of the world of that human thing called power. Look at the predominant threat of dominion which has invariably and uniformly prompted rulers to abuse their power. . . . I conjure you to remember . . . that when you give power, you know not what you give. . . . The experience of the world teaches me the jeopardy of giving enormous power."

Yet from the very beginning, the Henryites were undermined by a position that Edmund Randolph took in the debate. Randolph had switched his position again since the convention. No longer opposed to the Madisonians, he favored the constitution now—and the precise way in which he expressed his approval was particularly damaging to the Henryites. He had, he said, from the very first, liked the constitution drawn up by the Philadelphia convention, providing it could be improved, by the adoption of certain amendments, before it was ratified. It seemed to him that it was essential to make these amendments before the constitution was ratified. Now, however, he had come to realize that this procedure would cause dangerous delay in adopting a new form of government, that the delay would be such that the very survival of the Union would be jeopardized. That, said Randolph, was out of the question. He would rather, he said (in a rhetorical threat that was becoming altogether common), "assent to the lopping of [his right arm] before I assent to the dissolution of the union." Now Massachusetts had come up with a different means of proceeding—to propose amendments to be adopted at a later date—and Randolph liked this idea. It was a way of leaving the constitution open to improvement by way of a perfectly acceptable voting procedure. If one trusted the way the constitution was to be thus subject to the collective will of the people, there was nothing left to oppose. Given the choice between insisting on "previous amendments"—those insisted upon before the states agreed to ratify—and risking the fate of the Union, or settling for the Massachusetts example of "subsequent amendments"—those made in the future, after all the states had ratified—Randolph did not hesitate in taking the Massachusetts example.

Thus, Randolph set the terms of the debate: Delegates were given the choice not so much whether or not they would accept the constitution, but whether or not they would insist on previous amendments or settle for subsequent amendments. The antifederalists were forced to argue for previous amendments; the federalists opted for subsequent amendments—and as the debate wore on from day to day, the antifederalists came more and more to seem like mere obstructionists, who would not trust the democratic process of the future. And so it was the vacillating Randolph who, perhaps more than anyone else, finally tipped the balance toward ratification.

It can hardly be surprising that the Henryites were furious with Randolph. Henry himself turned to Randolph at one point in the debate and said: "That honorable member will not accuse me of want of candor when I cast in my mind what he has given to the public"—this in reference to a letter Randolph had written some time before to the Virginia legislature to explain why he had not signed the constitution—"and compare it to what has happened since." What was Henry about to do? Under the code of honor that held sway in the eighteenth century, he could not accuse Randolph of dishonesty, of having been bribed, of having been offered high office in the new government in trade for his support—at least not directly. "It seems to me very strange and unaccountable that that which was the object of his execration, should now receive his encomiums. Something extraordinary must have operated so great a change in his opinions."

Randolph had no doubt what Henry meant, and he rose with his temper flaring. "I disdain his aspersions," said Randolph to the convention, "and his insinuations.

His asperity is warranted by no principle of parliamentary decency, nor compatible with the least shadow of friendship: and if our friendship must fall—let it fall, like Lucifer, never to rise again." Such words could not pass without consequences. That night Henry's second called on Randolph to arrange the particulars of a duel. But friends of the two men stepped in, mollified tempers, and the matter was settled, as it was said, "without a resort to the field."

Through all this, as the two sides counted and re-counted their delegate strength—and estimated that a change of four or five votes, or three votes, or eight votes, would decide the outcome—Madison rehearsed his familiar arguments: about the weakness of confederacies as seen in ancient examples, about the need for direct taxation in place of the old system of requisitions, about the need to treat with foreign nations as a united country.

And Henry spoke of how few votes had decided the issue in Massachusetts, how great was the opposition to the constitution in Pennsylvania, how uncertain the outcome might be in New York. Enormous numbers of people opposed this constitution; there was no reason to have it rushed through to adoption, without amendments, in the face of such clear and substantial opposition.

"He tells you," Henry said of Madison, "of important blessings which he imagines will result to us and mankind in general, from the adoption of this system. I see the awful immensity of the dangers with which it is pregnant. I see it. I feel it." As Henry went on speaking, conjuring up forebodings of the future, of the powerful government they were about to set above themselves, of the dangers to liberty and self-government that they had fought so hard to secure in the war of the revolution, of the momentousness of the decision about to be made in such haste, storm clouds gathered over the convention hall. Darkness fell, and, at last, a storm broke with terrific thunder and lightning—as though the heavens confirmed Henry's worst forebodings—and the convention had to adjourn for the day.

It was the next day that a final vote was called. To turn the vote in their favor, the federalists accepted every suggestion the Henryites put forth for subsequent amendments. The list that Henry and Mason and their colleagues prepared contained a full bill of rights and twenty other amendments calculated to trim the power of the new national government, to preserve the states, to diminish the powers of the executive and of the Congress and of the judiciary, and to preserve local rule against the tendencies of empire. The objections of the localists were, in large measure, answered.

The vote went in favor of the constitution, by a margin of eighty-nine to seventy-nine—a close vote, but a decisive victory for the federalists. The Virginians imagined that they had been the ninth, and therefore clinching, state to ratify. They found, in fact, when news arrived a few days later, that New Hampshire had beaten them to it by several days. Virginia was the tenth state to ratify.

Under the circumstances, reluctant New York had little choice but to join the Union. Hamilton had maneuvered to hold the vote in New York until after news of the Virginia vote arrived. Thus, faced with union or ostracism, New York chose union. That, far more than the arguments of *The Federalist,* decided the issue for New Yorkers, as it had, in some degree, for many of those who finally went along with the momentum of the new plan. New York was the eleventh state to ratify.

North Carolina did not come along until November of 1789. Rhode Island, the thirteenth state, acquiesced to the inevitable, finally, in 1790, by a stubborn vote of thirty-four to thirty-two, and the United States were joined together in a common rule of law. . . .

Discussion Questions

1. Would it have been possible to ratify the Constitution without the heavy-handed political fighting described in this article?
2. Do you think that such intense debate would ensue today over the ratification of a controversial amendment to the Constitution?
3. Were the states-rights opponents of the Constitution correct to fear that the national government would swallow up their favorite form of government?
4. Compare the complaints in the Declaration of Independence to the final form of the Bill of Rights and determine why they are so similar. Do we have as much to fear from the national government as the colonists did from the King of Great Britain?

Introduction to *Federalist #51*

In *Federalist #51*, Madison states simply and elegantly the general problem of creating and maintaining a just government: "...you must first enable the government to control the governed; and in the next place oblige it to control itself." Government is always a balance between power and liberty. The specific question Madison addresses in *Federalist #51* is How will the proposed Constitution protect our liberty from the abuse of those who hold power? In *Federalist #10*, he concentrated on the problem of factions taking over the government and ruling for their own benefit ignoring or violating the rights of other citizens. The Constitution protects against the problem of faction by separating carefully defined powers among the three branches of government. A faction may manage to dominate one state but not all the states, one branch of government but not all three branches of government simultaneously.

In this essay, Madison continues the general lines of this discussion, adding that a system of checks and balances is necessary to further prevent one branch of the government from becoming a tyrannical force. Each branch is to be as independent from the other two as is practical, and each is to possess the ability and the motivation to prevent the others from taking over total control of the government. At the end of this essay he returns to the problem of factions, declaring that a large republic with many diverse groups is less susceptible to the problems of factions. The United States under the proposed Constitution would be such a republic, combining the benefits of diversity with the protection of separate branches as well as checks and balances.

The principle of separation of powers was widely accepted in 1787. Establishing a satisfactory balance of power among those branches and maintaining the independence of each while requiring them to work together constituted the real problem. As colonies, the Americans had experienced overbearing executives in the form of colonial governors who sometimes ruled arbitrarily, overturned the decisions of representative assemblies, thwarted the will of the governed and subverted the powers of government for their own benefit. When the states became free to establish their own governments, many chose the opposite arrangement of power: weak executives with strong legislative bodies. Indeed this was the arrangement of power withing the national government under the Articles of Confederation. The lack of a strong executive caused government to be ineffectual. Weak and dependent judicial branches were not protected from political pressures. For example, judges salaries were sometimes withheld or adjusted in order to pressure them to rule in favor of the legislative majority. As Edmund Randolph said during the Philadelphia Convention, "Our chief danger arises from the democratic parts of our constitutions. It is a maxim which I hold incontrovertible, that the powers of government exercised by the people swallows up the other branches." Although Madison does not address it as such, many modern commentators consider the checks and balances established in the Constitution as being inspired by the anti-majoritarian, anti-democratic sentiment shared by most of the men who wrote the Constitution.

Although the combination of separation of powers and checks and balances seems to have served us well over the subsequent history of the country, it has also produced significant problems. The independent decisions of the Supreme Court have sometimes run counter to the will of the people. This was the case with the Court's rulings against the progressive legislation of the 1920s and the early New Deal legislation in the 1930s. It is the case today in such controversial areas as prayer in school and reproductive rights. In the modern era of government divided between two political parties as well as separated into three branches, important problems such as the Social Security crises, environmental deterioration, or health care may go unresolved.

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The Federalist No. 51

(The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments)

February 8, 1788.

Define these terms before you read the essay:

legislative	judicial	executive	the Philadelphia Convention	liberty
private sector	check (verb)	republican	unitary government	faction
majority	minority	sects	federal republic	factious

In The Federalist #49-50 Madison argued that no external control--neither the people as a whole nor a specially appointed council of censors--would be adequate to prevent the abuse of power by those in government. In this essay, he describes how the internal framework of the Constitution would act to diminish the opportunities of those in government to overstep their legitimate authority.

* * * * * * * * * * * * * * *

Original

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

Modern

To what device shall we finally turn to maintain in practice the necessary separation of powers among the branches of government which the Constitution has established in theory? The answer is that because all of these exterior controls (see Introduction above) are found to be inadequate, the problem must be solved by arranging the interior of the government so that each branch will control the others through their mutual relations. Without taking the time now to fully discuss this important idea, I will attempt a few general observations. These may clarify the issue as well as allow us more correctly to judge the principles and structure of the new government proposed at the Philadelphia Convention.

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In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. We see this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made

It is generally agreed that a separation of powers among the branches of government is essential for the preservation of liberty. In order to base the exercise of separate powers on a solid foundation, it is clear that each branch should be able to act on its own. Consequently, each branch should be constructed so that it will have as little involvement as possible in selecting the representatives of the other branches. Were we strictly to abide by this principle, it would be necessary for the President, members of Congress, and the judges and justices of the judicial branch to be chosen by the people, who are the source of governmental power. Furthermore, the election process of each should be completely separated from the other two. Perhaps this would be less difficult than it sounds, although some difficulties and some additional expense would occur. Some deviations, therefore, from the strict principle of separate elections must be allowed. In the organization of the judicial branch, in particular, a strictly separate selection process would not be practical or necessary. Firstly, we must choose a method of selecting the members of this branch so that those who possess specific and special qualifications will most likely be found. Secondly, members of the judicial branch will quickly become very independent of those who selected them because they are appointed for life and can only be impeached for serious offenses.

It is equally evident that members of each branch of government should depend as little as possible for their pay on members of the other branches. Were the President or the judges dependant on Congress for their pay, their independence in any other way would not be likely.

But the best safeguard against the concentration of power in one branch is to give the members of each branch the constitutional means to stop the other branches from taking over its powers. The means of defense must in this

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commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? 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. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that

case, as in all others, be equal to the danger of the attack. Ambition must be made to counteract ambition. The self-interest of the person holding the office must be connected with the constitutional rights of that office. It may be a comment on human nature that such precautions should be necessary to control the abuse of government. But what is government itself but the greatest of all reflections on human nature. If men were angels, no government would be necessary. If angels were to govern men, no external nor internal controls on government would be necessary. In creating a government which is to be administered by men who will govern over other men, the great difficulty is this: you must first enable the government to control the governed and then oblige it to control itself. The vote of the people is the primary check on the powers of government, but experience has taught us that extra precautions are necessary.

This policy of making up for the absence of better motives by pitting interest against interest, can be seen throughout the whole system of human affairs, in the private sector as well as in government. We see it especially in the distribution of power within a command structure where the constant goal is to divide and arrange the many offices in such a way that each may be a check on the other. So that the self-interest of every individual will become a guardian of the rights of the public. These wise and practical inventions cannot be less important for the supreme powers of a nation.

But it is not possible to give to each branch an equal power of self-defense. In a republican government, the legislature necessarily predominates. The solution to this problem is to divide Congress into two parts. Then it is necessary to make the method of election and the power to act of these two parts as different as they possibly may be considering that the two parts have common functions and that they both derive their powers from the people. It may

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ould be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard

even be necessary to take further precautions to guard against one part of the government taking over another part. As the strength of the Congress requires that it must be divided, the weakness of the executive (the Presidency) may require, on the other hand, that it be fortified. The power to veto the legislature appears at first sight to be the natural defense with which the President should be armed. But perhaps it would not be altogether safe nor, by itself, sufficient. On ordinary occasions Presidents may not use the veto as forcefully as they should. In unusual circumstances, it may be used excessively and in ways that violate the public's trust. Perhaps this defect in the power of the veto can be corrected by creating a connection between the Presidency and the weaker half of Congress. By doing this, Congress may be led to support the Constitutional rights of the executive branch while still supporting and defending its own rights.

If the assumptions I have made are justified, and I believe they are, and if they are used to judge the State constitutions as well as the federal Constitution, we will see that the States meet this test far less well than does the new federal government.

There are, moreover, two aspects of the federal system we should look at which will show that proposed government in a favorable light.

First, in a unitary government all the power surrendered by the people is given to a single, central government. Abuse of authority is prevented by dividing the powers of government into different branches. On the other hand, in the compound republic of America the power surrendered by the people is first divided between the States and the federal (central) government, and then subdivided into separate and distinct branches. Hence the rights of the people are doubly protected. The different governments will control

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one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued

each other, at the same time that each will be controlled by itself.

Second, it is very important in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will not be safe. There are only two ways of preventing this evil: One is by creating a power in society independent of the majority. The other way is by creating a society with so many different classes of citizens that it would become improbable and impractical for a majority faction to exist. The first method of protecting the minority exists in all governments where power and authority is either hereditary (as in a monarchy) or self-appointed (as in a dictatorship). At best, this is flimsy security. A power not elected by the people may just as likely support the unjust views of the majority as the rightful views of the minority, or may turn against both. The second method of protecting minority rights can be seen in the federal republic of the United States. While all power and authority will come from the people, society itself will be divided into so many different parts, interests and classes of citizens, that the rights of the individual or of the minority will be in little danger from a majority. In a free society, civil rights must be as safe as religious rights. The safety of civil rights will be secured by the multiplicity of interests, the safety of religious rights by the multiplicity of sects. How secure civil or religious rights will be depends on the number of interests or the number of sects, and this number, we can assume, will depend on the size of the territory and the population of the country. Taking these arguments into account, a federal system must appeal to all sincere and thoughtful friends of a republican government. If the territory is divided into smaller republics, the formation of oppressive majorities will be made easier and the rights of

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until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradnally induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE.

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every class of citizens will be endangered. Consequently the power of some independent authority, the only other security, must be proportionately increased. Justice is the goal of government. It is the goal of civil society. Justice has been and always will be pursued until it is obtained or until freedom has been lost in the process. Anarchy surely reigns under a government in which a majority faction may unite and oppress the minority, as much as it does where there is no government and where the weaker individual is not safe against the violence of the stronger. Where anarchy exists, even the stronger individuals will be insecure and motivated to submit to a government which will protect the weaker members as well as the themselves. So, also, will the more powerful factions or parties be gradually motivated to call for a government which will protect all parties, the weaker as well as the more powerful. Undoubtedly, if the State of Rhode Island were separated from the rest of the country and left to itself, the repeated oppressions of factious majorities would cause rights to become so insecure that these same factions would call on an unelected and independent force to restore order. In the larger republic of the United States with its great variety of interests, parties and sects, an interest common to a majority of the citizens would rarely be found except a general interest in justice and the common good. Since there will be little need to protect minority rights against the ill-will of a majority, there won't be an excuse to empower an authority which is independent of the will of the majority of the people. Contrary to criticisms which have been made, it is equally certain and important that the larger the country, the more capable it will be of self-government. Admittedly a country may be so large that self-government will be impractical. But happily for the republican cause, a very large self-governing country is practical if we adopt a wise modification and mixture of governments with divided powers.

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Guided Reading Questions--Questions to answer from the text as you read

1. Why will judicial branch officials (judges and justices) remain independent even though they are appointed by the executive and approved by the legislature?

2. If Congress could raise or lower the President's salary, it would be difficult for him to remain independent. Why?

3. What two groups must government control?

4. For what purpose is power distributed in governments, or in any organization?

5. How will the powers of the legislative branch be balanced against those of the weaker, executive branch?

6. What features of the new Constitution doubly protect the rights of the people?

7. By what two methods can the rights of the minority be protected against the unjust actions of the majority?

8. Why would rights not be secure if an unelected official were in charge of protecting minority interests against threats from a majority faction?

9. According to Madison, why are rights less safe in a small republic than in a large one?

10. When the rights of the minority are not protected, what eventually happens to the government?

11. What special features of the country and of the proposed government will protect the U.S.?

Research and Discussion Questions

1. How does our system of separated powers compare to a parliamentary system? Which system is more efficient? Which is more representative of the people it serves?

2. Madison says, "But what is government itself but the greatest reflection on human nature." Judging from the Federalist #51 and from the structure of the government created by the Constitution of 1787, what is Madison's view of human nature?

3. In Federalist #51, Madison expresses a view of human nature common in the late 18th century. How does that view compare to our modern view?

4. To many thinkers of the Enlightenment, human nature was perfectable. Institutions, like governments, should be constructed to improve the people they served. Did the Constitution of 1787 establish such a government?

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2
The Federalist, No. 15

Alexander Hamilton

Despite the deference given the Constitution today, it did not command instant respect in 1787. The fight for ratification was bitter between the Federalists (those who supported the Constitution) and the Anti-Federalists (who feared that the new national government would become too powerful).

The Federalist *papers, originally written as a series of newspaper editorials intended to persuade New York to ratify the Constitution, remains the most valuable exposition of the political theory underlying the Constitution. In* The Federalist, *No. 15, reprinted below, Alexander Hamilton (writing under the pseudonym Publius) is at his best arguing for the necessity of a stronger central government than that established under the Articles of Confederation. He points out the practical impossibility of engaging in concerted action when each of the thirteen states retains virtual sovereignty, and the need for a strong central government to hold the new country together politically and economically.*

Such well-known patriots as Patrick Henry—"Give me liberty or give me death!"—opposed the new Constitution. The proposed national government was stronger than its predecessor, but this was precisely the problem for the Anti-Federalists. A stronger national government could act in a more concerted manner in matters of foreign affairs and interstate commerce, but it also held the power to oppress the very people who gave it sovereignty.

In the course of the preceding papers I have endeavored, my fellow-citizens, to place before you in a clear and convincing light the importance of Union to your political safety and happiness. * * * [T]he point next in order to be examined is the "insufficiency of the present Confederation to the preservation of the Union." * * * There are material imperfections in our national system and * * * something is necessary to be done to rescue us from impending anarchy. The facts that support this opinion are no longer objects of speculation. They have forced themselves upon the sensibility of the people at large, and have at length extorted . . . a reluctant confession of the reality of those defects in the scheme of our federal government which have been long pointed out and regretted by the intelligent friends of the Union.

We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation

which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. * * * Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government. * * * Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us. . . . Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending is reduced within the narrowest limits, and this still more from an opinion of insecurity than from a scarcity of money. * * *

This is the melancholy situation to which we have been brought by those very maxims and counsels which would now deter us from adopting the proposed Constitution; and which, not content with having conducted us to the brink of a precipice, seem resolved to plunge us into the abyss that awaits us below. Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquility, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity.

* * * While [opponents of the Constitution] admit that the government of the United States is destitute of energy, they contend against conferring upon it those powers which are requisite to supply that energy. * * * This renders a full display of the principal defects of the Confederation necessary in order to show that the evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building, which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric.

The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION FOR STATES OR GOVERNMENTS, in their CORPORATE OR COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of whom they consist. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money; but they have no authority to raise either by regulations extending to the individual citizens of America. The consequence of this is that though in theory

their resolutions concerning those objects are laws constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option. * * *

There is nothing absurd or impracticable in the idea of a league or alliance between independent nations for certain defined purposes precisely stated in a treaty regulating all the details of time, place, circumstance, and quantity, leaving nothing to future discretion, and depending for its execution on the good faith of the parties. * * *

If the particular States in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance offensive and defensive; and would place us in a situation to be alternate friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

But if we are unwilling to be placed in this perilous situation; if we still will adhere to the design of a national government, or, which is the same thing, of a superintending power under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the Union to the persons of the citizens—the only proper objects of government.

Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms. The first kind can evidently apply only to men; the last kind must of necessity be employed against bodies politic, or communities, or States. * * * In an association where the general authority is confined to the collective bodies of the communities that compose it, every breach of the laws must involve a state of war; and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it.

There was a time when we were told that breaches by the States of the regulations of the federal authority were not to be expected; that a sense of common interest would preside over the conduct of the respec-

tive members, and would beget a full compliance with all the constitutional requisitions of the Union. This language, at the present day, would appear as wild as a great part of what we now hear from the same quarter will be thought, when we shall have received further lessons from that best oracle of wisdom, experience. It at all times betrayed an ignorance of the true springs by which human conduct is actuated, and belied the original inducements to the establishment of civil power. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice without constraint. * * *

In addition to all this * * * it happens that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate or inferior orbs by the operation of which there will be a perpetual effort in each to fly off from the common center. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect that the persons intrusted with the administration of the affairs of the particular members of a confederacy will at all times be ready with perfect good humor and an unbiased regard to the public weal to execute the resolutions or decrees of the general authority. * * *

If, therefore, the measures of the Confederacy cannot be executed without the intervention of the particular administrations, there will be little prospect of their being executed at all. * * * [Each state will evaluate every federal measure in light of its own interests] and in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state, which is essential to a right judgment, and with that strong predilection in favor of local objects, which can hardly fail to mislead the decision. The same process must be repeated in every member of which the body is constituted; and the execution of the plans, framed by the councils of the whole, will always fluctuate on the discretion of the ill-informed and prejudiced opinion of every part. * * *

In our case the concurrence of thirteen distinct sovereign wills is requisite under the Confederation to the complete execution of every important measure that proceeds from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; and the delinquencies of the States have step by step matured themselves to an extreme, which has, at length, arrested all the wheels of the national government and brought them to an awful stand. Congress at this time scarcely possess the means of keeping up the forms of administration, till the States can have time to agree upon a more substantial substitute for the present shadow of a federal government. * * * Each State yielding to the persuasive voice of immediate interest or

convenience has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads and to crush us beneath its ruins.

PUBLIUS

DISCUSSION QUESTION

Do you think the national government is sufficiently held in check as Hamilton argues, or is the exercise of its authority so vast as to give credence to Anti-Federalist fears? In other words, would the Framers be dismayed or pleased with the scope of government powers today?

9

RICHARD HOFSTADTER

From *The American Political Tradition*

Richard Hofstadter, one of the nation's leading historians, explores the real thoughts and motivations behind the men whom all schoolchildren have been taught to revere as Founding Fathers. Hofstadter's classic work points out the ambivalence of those who wrote the Constitution: they viewed human beings as selfish and untrustworthy, yet they strongly believed in the importance of self-government. The founders' ambivalence toward democracy led them to design the political system the United States still lives with today, one in which each interest (or branch or layer of government or economic class or region . . .) would be checked and balanced by competing interests. Hofstadter goes on to interpret what the near-sacred idea of liberty meant to the founders. Liberty was not really related to democracy, he contends, but rather ensured the freedom to attain and enjoy private property. To make this idea clearer, test the author's thesis against the current political debate over health care, welfare, or tax reform.

. . . THE MEN who drew up the Constitution in Philadelphia during the summer of 1787 had a vivid Calvinistic sense of human evil and damnation and believed with Hobbes that men are selfish and contentious. They were men of affairs, merchants, lawyers, planter-businessmen, speculators, investors. Having seen human nature on display in the marketplace, the courtroom, the legislative chamber, and in every secret path and alleyway where wealth and power are courted, they felt they knew it in all its frailty. To them a human being was an atom of self-interest. They did not believe in man, but they did believe in the power of a good political constitution to control him.

This may be an abstract notion to ascribe to practical men, but it follows the language that the Fathers themselves used. General Knox, for example, wrote in disgust to Washington after the Shays Rebellion that Americans were, after all, "men—actual men possessing all the turbulent passions belonging to that animal." Throughout the secret discussions at the Constitutional Convention it was clear that this distrust of man was first and foremost a distrust of the common man and democratic rule. . . .

And yet there was another side to the picture. The Fathers were

intellectual heirs of seventeenth-century English republicanism with its opposition to arbitrary rule and faith in popular sovereignty. If they feared the advance of democracy, they also had misgivings about turning to the extreme right. Having recently experienced a bitter revolutionary struggle with an external power beyond their control, they were in no mood to follow Hobbes to his conclusion that any kind of government must be accepted in order to avert the anarchy and terror of a state of nature. . . .

Unwilling to turn their backs on republicanism, the Fathers also wished to avoid violating the prejudices of the people. "Notwithstanding the oppression and injustice experienced among us from democracy," said George Mason, "the genius of the people is in favor of it, and the genius of the people must be consulted." Mason admitted "that we had been too democratic," but feared that "we should incautiously run into the opposite extreme." James Madison, who has quite rightfully been called the philosopher of the Constitution, told the delegates: "It seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them." James Wilson, the outstanding jurist of the age, later appointed to the Supreme Court by Washington, said again and again that the ultimate power of government must of necessity reside in the people. This the Fathers commonly accepted, for if government did not proceed from the people, from what other source could it legitimately come? To adopt any other premise not only would be inconsistent with everything they had said against British rule in the past but would open the gates to an extreme concentration of power in the future. . . .

If the masses were turbulent and unregenerate, and yet if government must be founded upon their suffrage and consent, what could a Constitution-maker do? One thing that the Fathers did not propose to do, because they thought it impossible, was to change the nature of man to conform with a more ideal system. They were inordinately confident that they knew what man always had been and what he always would be. The eighteenth-century mind had great faith in universals. . . .

. . . It was too much to expect that vice could be checked by virtue; the Fathers relied instead upon checking vice with vice. Madison once objected during the Convention that Gouverneur Morris was "forever inculcating the utter political depravity of men and the necessity of opposing one vice and interest to another vice and interest." And yet Madison himself in the *Federalist* number 51 later set forth an excellent statement of the same thesis:

> Ambition must be made to counteract ambition. . . . It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no 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.

. . . If, in a state that lacked constitutional balance, one class or one interest gained control, they believed, it would surely plunder all other interests. The Fathers, of course, were especially fearful that the poor would plunder the rich, but most of them would probably have admitted that the rich, unrestrained, would also plunder the poor. . . .

In practical form, therefore, the quest of the Fathers reduced primarily to a search for constitutional devices that would force various interests to check and control one another. Among those who favored the federal Constitution three such devices were distinguished.

The first of these was the advantage of a federated government in maintaining order against popular uprisings or majority rule. In a single state a faction might arise and take complete control by force; but if the states were bound in a federation, the central government could step in and prevent it. . . .

The second advantage of good constitutional government resided in the mechanism of representation itself. In a small direct democracy the unstable passions of the people would dominate lawmaking; but a representative government, as Madison said, would "refine and enlarge the public views by passing them through the medium of a chosen body of citizens." . . .

The third advantage of the government . . . [was that] each element should be given its own house of the legislature, and over both houses there should be set a capable, strong, and impartial executive armed with the veto power. This split assembly would contain within itself an organic check and would be capable of self-control under the governance of the executive. The whole system was to be capped by an independent judiciary. The inevitable tendency of the rich and the poor to plunder each other would be kept in hand. . . .

It is ironical that the Constitution, which Americans venerate so deeply, is based upon a political theory that at one crucial point stands in direct antithesis to the mainstream of American democratic faith. Modern American folklore assumes that democracy and liberty are all but identical, and when democratic writers take the trouble to make the distinction,

they usually assume that democracy is necessary to liberty. But the Founding Fathers thought that the liberty with which they were most concerned was menaced by democracy. In their minds liberty was linked not to democracy but to property.

What did the Fathers mean by liberty? What did Jay mean when he spoke of "the charms of liberty"? Or Madison when he declared that to destroy liberty in order to destroy factions would be a remedy worse than the disease? Certainly the men who met at Philadelphia were not interested in extending liberty to those classes in America, the Negro slaves and the indentured servants, who were most in need of it, for slavery was recognized in the organic structure of the Constitution and indentured servitude was no concern of the Convention. Nor was the regard of the delegates for civil liberties any too tender. It was the opponents of the Constitution who were most active in demanding such vital liberties as freedom of religion, freedom of speech and press, jury trial, due process, and protection from "unreasonable searches and seizures." These guarantees had to be incorporated in the first ten amendments because the Convention neglected to put them in the original document. Turning to economic issues, it was not freedom of trade in the modern sense that the Fathers were striving for. Although they did not believe in impeding trade unnecessarily, they felt that failure to regulate it was one of the central weaknesses of the Articles of Confederation, and they stood closer to the mercantilists than to Adam Smith. Again, liberty to them did not mean free access to the nation's unappropriated wealth. At least fourteen of them were land speculators. They did not believe in the right of the squatter to occupy unused land, but rather in the right of the absentee owner or speculator to preempt it.

The liberties that the constitutionalists hoped to gain were chiefly negative. They wanted freedom from fiscal uncertainty and irregularities in the currency, from trade wars among the states, from economic discrimination by more powerful foreign governments, from attacks on the creditor class or on property, from popular insurrection. They aimed to create a government that would act as an honest broker among a variety of propertied interests, giving them all protection from their common enemies and preventing any one of them from becoming too powerful. The Convention was a fraternity of types of absentee ownership. All property should be permitted to have its proportionate voice in government. Individual property interests might have to be sacrificed at times, but only for the community of propertied interests. Freedom for property would result in liberty for men—perhaps not for all men, but at least for all worthy men. Because men have different faculties and abilities, the Fathers believed, they acquire different amounts of property. To protect property is only to protect men in the exercise of their natural faculties. Among the many liberties, therefore, freedom to hold and dispose [of] property is paramount. Democracy, unchecked rule by the masses, is sure to bring arbitrary redistribution of property, destroying the very essence of liberty. . . .

A cardinal tenet in the faith of the men who made the Constitution was the belief that democracy can never be more than a transitional stage in government, that it always evolves into either a tyranny (the rule of the rich demagogue who has patronized the mob) or an aristocracy (the original leaders of the democratic elements). . . .

What encouraged the Fathers about their own era, however, was the broad dispersion of landed property. The small land-owning farmers had been troublesome in recent years, but there was a general conviction that under a properly made Constitution a *modus vivendi* could be worked out with them. The possession of moderate plots of property presumably gave them a sufficient stake in society to be safe and responsible citizens under the restraints of balanced government. Influence in government would be proportionate to property: merchants and great landholders would be dominant, but small property-owners would have an independent and far from negligible voice. It was "politic as well as just," said Madison, "that the interests and rights of every class should be duly represented and understood in the public councils," and John Adams declared that there could be "no free government without a democratical branch in the constitution." . . .

. . . At the very beginning contemporary opponents of the Constitution foresaw an apocalyptic destruction of local government and popular institutions, while conservative Europeans of the old regime thought the young American Republic was a dangerous leftist experiment. Modern critical scholarship, which reached a high point in Charles A. Beard's *An Economic Interpretation of the Constitution of the United States*, started a new turn in the debate. The antagonism, long latent, between the philosophy of the Constitution and the philosophy of American democracy again came into the open. Professor Beard's work appeared in 1913 at the peak of the Progressive era, when the muckraking fever was still high; some readers tended to conclude from his findings that the Fathers were selfish reactionaries who do not deserve their high place in American esteem. Still more recently, other writers, inverting this logic, have used Beard's facts to praise the Fathers for their opposition to "democracy" and as an argument for returning again to the idea of a "republic."

In fact, the Fathers' image of themselves as moderate republicans

standing between political extremes was quite accurate. They were impelled by class motives more than pietistic writers like to admit, but they were also controlled, as Professor Beard himself has recently emphasized, by a statesmanlike sense of moderation and a scrupulously republican philosophy. Any attempt, however, to tear their ideas out of the eighteenth-century context is sure to make them seem starkly reactionary. Consider, for example, the favorite maxim of John Jay: "The people who own the country ought to govern it." To the Fathers this was simply a swift axiomatic statement of the stake-in-society theory of political rights, a moderate conservative position under eighteenth-century conditions of property distribution in America. Under modern property relations this maxim demands a drastic restriction of the base of political power. A large portion of the modern middle class—and it is the strength of this class upon which balanced government depends—is propertyless; and the urban proletariat, which the Fathers so greatly feared, is almost one half the population. Further, the separation of ownership from control that has come with the corporation deprives Jay's maxim of twentieth-century meaning even for many propertied people. The six hundred thousand stockholders of the American Telephone & Telegraph Company not only do not acquire political power by virtue of their stock-ownership, but they do not even acquire economic power: they cannot control their own company.

From a humanistic standpoint there is a serious dilemma in the philosophy of the Fathers, which derives from their conception of man. They thought man was a creature of rapacious self-interest, and yet they wanted him to be free—free, in essence, to contend, to engage in an umpired strife, to use property to get property. They accepted the mercantile image of life as an eternal battleground, and assumed the Hobbesian war of each against all; they did not propose to put an end to this war, but merely to stabilize it and make it less murderous. They had no hope and they offered none for any ultimate organic change in the way men conduct themselves. The result was that while they thought self-interest the most dangerous and unbrookable quality of man, they necessarily underwrote it in trying to control it. . . .

solidation of the States. The essential characteristic of the first is said to be the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction, taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown, in the course of this investigation, that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government.

The definition of a *confederate republic* seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority, are mere matters of discretion. So long as the separate organisation of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.

In the Lycian confederacy, which consisted of twenty-three CITIES or republics, the largest were entitled to *three* votes in the COMMON COUNCIL, those of the middle class to *two*, and the smallest to *one*. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most delicate species of interference in their internal administration; for if there be anything that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says: "Were I to give a model of an excellent Confederate Republic, it would be that of Lycia." Thus we perceive that the distinctions insisted upon were not within the contemplation of this enlightened civilian; and we shall be led to conclude that they are the novel refinements of an erroneous theory. PUBLIUS

Number 10

[MADISON]

AMONG THE numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favourite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we

labour have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment of different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilised nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a ques-

tion to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the *causes* of faction cannot be removed, and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long laboured, and be recommended to the esteem and adoption of mankind.

By what means is this object obtainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronised this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalised and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, 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.

The effect of the first difference is, on the one hand, 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. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established character.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. 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.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union increase this security? Does it, in fine, consist in the greater obstacles opposed

to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

PUBLIUS

Number 11

[HAMILTON]

THE IMPORTANCE of the Union, in a commercial light, is one of those points about which there is least room to entertain a difference of opinion, and which has, in fact, commanded the most general assent of men who have any acquaintance with the subject. This applies as well to our intercourse with foreign countries as with each other.

There are appearances to authorise a supposition that the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe. They seem to be apprehensive of our too great interference in that carrying trade which is the support of their navigation and the foundation of their naval strength. Those of them which have colonies in America look forward to what this country is capable of becoming, with painful solicitude. They foresee the dangers that may threaten their American dominions from the neighbourhood of States which have all the dispositions, and would possess all the means, requisite to the creation of a powerful marine. Impressions of this kind will naturally indicate the policy of fostering divisions among us, and of depriving us, as far as possible, of an ACTIVE COMMERCE in our own bottoms. This would answer the threefold purpose of preventing our interference in their navigation, of monopolising the profits of our trade, and of clipping the wings by which we might soar to a dangerous greatness. Did not prudence forbid the detail, it would not be difficult to trace, by facts, the workings of this policy to the cabinets of ministers.

If we continue united, we may counteract a policy so unfriendly to our prosperity in a variety of ways. By prohibitory regulations, extending, at the same time, throughout the States, we may oblige foreign countries to bid against each other, for the privileges of our markets. This assertion will not appear chimerical to those who are able to appreciate the importance of the markets of three millions of people—increasing in rapid progression, for the most part exclusively addicted to agriculture, and likely from local circumstances to remain so—to any manufacturing nation; and the immense difference there would be to the trade and navigation of such a nation, between a direct communication in its own ships, and an indirect conveyance of its products and returns, to and from America, in the ships of another country. Suppose, for instance, we had a government in America, capable of excluding Great Britain (with whom we have at present no treaty of commerce) from all our ports; what would be the probable operation of this step upon her politics? Would it not enable us to negotiate, with the fairest prospect of success, for commercial privileges of the most valuable and extensive kind, in the dominions of that kingdom? When these questions have been asked, upon other occasions, they have received a plausible, but not a solid or satisfactory answer. It has been said that prohibitions on our part would produce no change in the system of Britain, because she could prosecute her trade with us through the medium of the Dutch, who would be her immediate customers and paymasters for those articles which were wanted for the supply of our markets. But would not her navigation be materially injured by the loss of the important advantage of being her own carrier in that trade? Would not the principal part of its profits be intercepted by the Dutch, as a compensation for their agency and risk? Would not the mere circumstance of freight occasion

The Debate: An Economic Interpretation of the Constitution

One of the longest-running debates over the Constitution focuses on the motivation of the founders in drafting the document. Was the motivation ideological, based on beliefs of self-governance, the nature of a social contract, and the role of representation? Or was the motivation purely economic, based on a perceived need to preserve economic interests that were threatened under the system of governance of the Articles of Confederation? And if the motivation was economic, what economic interests divided the Anti-Federalists from the Federalists in their opposition to or support for the Constitution?

One of the earliest and most controversial efforts to answer the question was written by Charles Beard in 1913. Beard argued that those who favored the Constitution and played the primary role in its drafting were motivated by the need to better protect their substantial "personality" interests—money, public securities, manufactures, and trade and shipping (or commerce)—in contrast to its opponents, who were primarily small farmers (with small real estate holdings) and debtor interests. Not only was its motivation less than democratic, Beard argued, but the Constitution was ratified by only one-sixth of the male population because voting was limited to property owners.

Robert Brown takes strong opposition to Beard's thesis. His criticism focuses mainly on Beard's use of historical data and its interpretation, leaving the door open for other interpretations of the motivations behind the Constitution as well as the base of public support for the document.

4
From *An Economic Interpretation of the Constitution of the United States*

Charles A. Beard

The requirements for an economic interpretation of the formation and adoption of the Constitution may be stated in a hypothetical proposition which, although it cannot be verified absolutely from ascertainable data, will at once illustrate the problem and furnish a guide to research and generalization.

It will be admitted without controversy that the Constitution was the

reation of a certain number of men, and it was opposed by a certain umber of men. Now, if it were possible to have an economic biography f all those connected with its framing and adoption,—perhaps about 60,000 men altogether,—the materials for scientific analysis and classi- cation would be available. Such an economic biography would include list of the real and personal property owned by all of these men and heir families: lands and houses, with incumbrances, money at interest, aves, capital invested in shipping and manufacturing, and in state and ontinental securities.

Suppose it could be shown from the classification of the men who upported and opposed the Constitution that there was no line of prop- ty division at all; that is, that men owning substantially the same mounts of the same kinds of property were equally divided on the atter of adoption or rejection—it would then become apparent that the onstitution had no ascertainable relation to economic groups or classes, ut was the product of some abstract causes remote from the chief busi- ess of life—gaining a livelihood.

Suppose, on the other hand, that substantially all of the merchants, oney lenders, security holders, manufacturers, shippers, capitalists, d financiers and their professional associates are to be found on one de in support of the Constitution and that substantially all or the major ortion of the opposition came from the non-slaveholding farmers and e debtors—would it not be pretty conclusively demonstrated that our ndamental law was not the product of an abstraction known as "the hole people," but of a group of economic interests which must have pected beneficial results from its adoption? Obviously all the facts here sired cannot be discovered, but the data presented in the following apters bear out the latter hypothesis, and thus a reasonable presump- n in favor of the theory is created.

* * *

The purpose of such an inquiry is not, of course, to show that the nstitution was made for the personal benefit of the members of the nvention. Far from it. Neither is it of any moment to discover how ny hundred thousand dollars accrued to them as a result of the foun- tion of the new government. The only point here considered is: Did y represent distinct groups whose economic interests they understood d felt in concrete, definite form through their own personal experience h identical property rights, or were they working merely under the dance of abstract principles of political science?

* * *

In an examination of the structure of American society in 1787, we first encounter four groups whose economic status had a definite legal expression: the slaves, the indented servants, the mass of men who could not qualify for voting under the property tests imposed by the state constitutions and laws, and women, disfranchised and subjected to the discriminations of the common law. These groups were, therefore, not represented in the Convention which drafted the Constitution, except under the theory that representation has no relation to voting.

How extensive the disfranchisement really was cannot be determined. In some states, for instance, Pennsylvania and Georgia, propertyless mechanics in the towns could vote; but in other states the freehold qualifications certainly excluded a great number of the adult males.

In no state, apparently, had the working-class developed a consciousness of a separate interest or an organization that commanded the attention of the politicians of the time. In turning over the hundreds of pages of writings left by eighteenth-century thinkers one cannot help being impressed with the fact that the existence and special problems of a working-class, then already sufficiently numerous to form a considerable portion of society, were outside the realm of politics, except in so far as the future power of the proletariat was foreseen and feared.

When the question of the suffrage was before the Convention, Madison warned his colleagues against the coming industrial masses: "Viewing the subject in its merits alone, the freeholders of the Country would be the safest depositories of Republican liberty. In future times a great majority of the people will not only be without landed [property], but any other sort of property. These will either combine under the influence of their common situation; in which case, the rights of property and the public liberty will not be secure in their hands, or, which is more probable, they will become the tools of opulence and ambition; in which case there will be equal danger on another side."

* * *

It is apparent that a majority of the states placed direct property qualifications on the voters, and the other states eliminated practically all who were not taxpayers. Special safeguards for property were secured in the qualifications imposed on members of the legislatures in New Hampshire, Massachusetts, New York, New Jersey, Maryland, North Carolina, South Carolina, and Georgia. Further safeguards were added by the qualifications imposed in the case of senators in New Hampshire, Massachusetts, New Jersey, New York, Maryland, North Carolina, and South Carolina.

While these qualifications operated to exclude a large portion of the adult males from participating in elections, the wide distribution of real

property created an extensive electorate and in most rural regions gave the legislatures a broad popular basis. Far from rendering to personal property that defence which was necessary to the full realization of its rights, these qualifications for electors admitted to the suffrage its most dangerous antagonists: the small farmers and many of the debtors who were the most active in all attempts to depreciate personalty [private property] by legislation. Madison with his usual acumen saw the inadequacy of such defence and pointed out in the Convention that the really serious assaults on property (having in mind of course, personalty) had come from the "freeholders."

Nevertheless, in the election of delegates to the Convention, the representatives of personalty in the legislatures were able by the sheer weight of their combined intelligence and economic power to secure delegates from the urban centres or allied with their interests. Happily for them, all the legislatures which they had to convince had not been elected on the issue of choosing delegates to a national Convention, and did not come from a populace stirred up on that question. The call for the Convention went forth on February 21, 1787, from Congress, and within a few months all the legislatures, except that of Rhode Island, had responded. Thus the heated popular discussion usually incident to such a momentous political undertaking was largely avoided, and an orderly and temperate procedure in the selection of delegates was rendered possible.

* * *

A survey of the economic interests of the members of the Convention presents certain conclusions:

A majority of the members were lawyers by profession.

Most of the members came from towns, on or near the coast, that is, from the regions in which personalty was largely concentrated.

Not one member represented in his immediate personal economic interests the small farming or mechanic classes.

The overwhelming majority of members, at least five-sixths, were immediately, directly, and personally interested in the outcome of their labors at Philadelphia, and were to a greater or less extent economic beneficiaries from the adoption of the Constitution.

1. Public security interests were extensively represented in the Convention. Of the fifty-five members who attended no less than forty appear on the Records of the Treasury Department for sums varying from a few dollars up to more than one hundred thousand dollars. [A list of their names follows.]

It is interesting to note that, with the exception of New York, and possibly Delaware, each state had one or more prominent representatives in the Convention who held more than a negligible amount of securities, and who could therefore speak with feeling and authority on the question of providing in the new Constitution for the full discharge of the public debt: [list of names]

2. Personalty invested in lands for speculation was represented by at least fourteen members: [list of names]

3. Personalty in the form of money loaned at interest was represented by at least twenty-four members: [list of names]

4. Personalty in mercantile, manufacturing, and shipping lines was represented by at least eleven members: [list of names]

5. Personalty in slaves was represented by at least fifteen members: [list of names]

It cannot be said, therefore, that the members of the Convention were "disinterested." On the contrary, we are forced to accept the profoundly significant conclusion that they knew through their personal experiences in economic affairs the precise results which the new government that they were setting up was designed to attain. As a group of doctrinaires, like the Frankfort assembly of 1848, they would have failed miserably; but as practical men they were able to build the new government upon the only foundations which could be stable: fundamental economic interests.

* * *

Conclusions

At the close of this long and arid survey—partaking of the nature of catalogue—it seems worth while to bring together the important conclusions for political science which the data presented appear to warrant.

[1.] The movement for the Constitution of the United States was originated and carried through principally by four groups of personalty interests which had been adversely affected under the Articles of Confederation: money, public securities, manufactures, and trade and shipping.

[2.] The first firm steps toward the formation of the Constitution were taken by a small and active group of men immediately interested through their personal possessions in the outcome of their labors.

[3.] No popular vote was taken directly or indirectly on the proposition to call the Convention which drafted the Constitution.

[4.] A large propertyless mass was, under the prevailing suffrage qualifications, excluded at the outset from participation (through representatives) in the work of framing the Constitution.

[5.] The members of the Philadelphia Convention which drafted the Constitution were, with a few exceptions, immediately, directly, and personally interested in, and derived economic advantages from, the establishment of the new system.

[6.] The Constitution was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities.

[7.] The major portion of the members of the Convention are on record

as recognizing the claim of property to a special and defensive position in the Constitution.

[8.] In the ratification of the Constitution, about three-fourths of the adult males failed to vote on the question, having abstained from the elections at which delegates to the state conventions were chosen, either on account of their indifference or their disfranchisement by property qualifications.

[9.] The Constitution was ratified by a vote of probably not more than one-sixth of the adult males.

[10.] It is questionable whether a majority of the voters participating in the elections for the state conventions in New York, Massachusetts, New Hampshire, Virginia, and South Carolina, actually approved the ratification of the Constitution.

[11.] The leaders who supported the Constitution in the ratifying conventions represented the same economic groups as the members of the Philadelphia Convention; and in a large number of instances they were also directly and personally interested in the outcome of their efforts.

[12.] In the ratification, it became manifest that the line of cleavage for and against the Constitution was between substantial personalty interests on the one hand and the small farming and debtor interests on the other.

[13.] The Constitution was not created by "the whole people" as the jurists have said; neither was it created by "the states" as Southern nullifiers long contended; but it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope.

5

From *Charles Beard and the Constitution: A Critical Analysis of "An Economic Interpretation of the Constitution"*

ROBERT E. BROWN

Conclusions

At the end of Chapter XI Beard summarized his findings in fourteen paragraphs under the heading of "Conclusions" (pp. 324–25). Actually, these fourteen conclusions merely add up to the two halves of the Beard thesis. One half, that the Constitution originated with and was carried through by personalty interests—money, public securities, manufactures, and commerce—is to be found in paragraphs two, three, six,

seven, eight, twelve, thirteen, and fourteen. The other half—that the Constitution was put over undemocratically in an undemocratic society—is expressed in paragraphs four, five, nine, ten, eleven, and fourteen. The lumping of these conclusions under two general headings makes it easier for the reader to see the broad outlines of the Beard thesis.

* * *

If historical method means the gathering of data from primary sources, the critical evaluation of the evidence thus gathered, and the drawing of conclusions consistent with this evidence, then we must conclude that Beard has done great violation to such method in this book. He admitted that the evidence had not been collected which, given the proper use of historical method, should have precluded the writing of the book. Yet he nevertheless proceeded on the assumption that a valid interpretation could be built on secondary writings whose authors had likewise failed to collect the evidence. If we accept Beard's own maxim, "no evidence, no history," and his own admission that the data had never been collected, the answer to whether he used historical method properly is self-evident.

* * *

Finally, the conclusions which he drew were not justified even by the kind of evidence which he used. If we accepted his evidence strictly at face value, it would still not add up to the fact that the Constitution was put over undemocratically in an undemocratic society by personalty. The citing of property qualifications does not prove that a mass of men were disfranchised. And if we accept his figures on property holdings, either we do not know what most of the delegates had in realty and personalty, or we know that realty outnumbered personalty three to one (eighteen to six). Simply showing that a man held public securities is not sufficient to prove that he acted only in terms of his public securities. If we ignore Beard's own generalizations and accept only his evidence, we would have to conclude that most of the property in the country in 1787 was real estate, that real property was widely distributed in rural areas, which included most of the country, and that even the men who were directly concerned with the Constitution, and especially Washington, were large holders of realty.

Perhaps we can never be completely objective in history, but certainly we can be more objective than Beard was in this book. Naturally the historian must always be aware of the biases, the subjectivity, the pitfalls that confront him, but this does not mean that he should not make an effort to overcome these obstacles. Whether Beard had his thesis before he had his evidence, as some have said, is a question that each reader must answer for himself. Certain it is that the evidence does not justify the thesis.

So instead of the Beard interpretation that the Constitution was put

over undemocratically in an undemocratic society by personal property, the following fourteen paragraphs are offered as a possible interpretation of the Constitution and as suggestions for future research on that document.

1. The movement for the Constitution was originated and carried through by men who had long been important in both economic and political affairs in their respective states. Some of them owned personalty, more of them owned realty, and if their property was adversely affected by conditions under the Articles of Confederation, so also was the property of the bulk of the people in the country, middle-class farmers as well as town artisans.

2. The movement for the Constitution, like most important movements, was undoubtedly started by a small group of men. They were probably interested personally in the outcome of their labors, but the benefits which they expected were not confined to personal property or, for that matter, strictly to things economic. And if their own interests would be enhanced by a new government, similar interests of other men, whether agricultural or commercial, would also be enhanced.

3. Naturally there was no popular vote on the calling of the convention which drafted the Constitution. Election of delegates by state legislatures was the constitutional method under the Articles of Confederation, and had been the method long established in this country. Delegates to the Albany Congress, the Stamp Act Congress, the First Continental Congress, the Second Continental Congress, and subsequent congresses under the Articles were all elected by state legislatures, not by the people. Even the Articles of Confederation had been sanctioned by state legislatures, not by popular vote. This is not to say that the Constitutional Convention should not have been elected directly by the people, but only that such a procedure would have been unusual at the time. Some of the opponents of the Constitution later stressed, without avail, the fact that the Convention had not been directly elected. But at the time the Convention met, the people in general seemed to be about as much concerned over the fact that they had not elected the delegates as the people of this country are now concerned over the fact that they do not elect our delegates to the United Nations.

4. Present evidence seems to indicate that there were no "propertyless masses" who were excluded from the suffrage at the time. Most men were middle-class farmers who owned realty and were qualified voters, and, as the men in the Convention said, mechanics had always voted in the cities. Until credible evidence proves otherwise, we can assume that state legislatures were fairly representative at the time. We cannot condone the fact that a few men were probably disfranchised by prevailing property qualifications, but it makes a great deal of difference to an interpretation of the Constitution whether the disfranchised comprised ninety-five per cent of the adult men or only five per cent. Figures which give percentages of voters in terms of the entire population are misleading, since less than twenty per cent of the people were adult men. And finally, the voting qualifications favored realty, not personalty.

5. If the members of the Convention were directly interested in the outcome of their work and expected to derive benefits from the establishment of the new system, so also did most of the people of the country. We have many statements to the effect that the people in general expected substantial benefits from the labors of the Convention.

6. The Constitution was not just an economic document, although economic factors were undoubtedly important. Since most of the people were middle-class and had private property, practically everybody was interested in the protection of property. A constitution which did not protect property would have been rejected without any question, for the American people had fought the Revolution for the preservation of life, liberty, and property. Many people believed that the Constitution did not go far enough to protect property, and they wrote these views into the amendments to the Constitution. But property was not the only concern of those who wrote and ratified the Constitution, and we would be doing a grave injustice to the political sagacity of the Founding Fathers if we assumed that property or personal gain was their only motive.

7. Naturally the delegates recognized that the protection of property was important under government, but they also recognized that personal rights were equally important. In fact, persons and property were usually bracketed together as the chief objects of government protection.

8. If three-fourths of the adult males failed to vote on the election of delegates to ratifying conventions, this fact signified indifference, not disfranchisement. We must not confuse those who could *not* vote with those who *could* vote but failed to exercise their right. Many men at the time bewailed the fact that only a small portion of the voters ever exercised their prerogative. But this in itself should stand as evidence that the conflict over the Constitution was not very bitter, for if these people had felt strongly one way or the other, more of them would have voted.

Even if we deny the evidence which I have presented and insist that American society was undemocratic in 1787, we must still accept the fact that the men who wrote the Constitution believed that they were writing it for a democratic society. They did not hide behind an iron curtain of secrecy and devise the kind of conservative government that they wanted without regard to the views and interests of "the people." More than anything else, they were aware that "the people" would have to ratify what they proposed, and that therefore any government which would be acceptable to the people must of necessity incorporate much of what was customary at the time. The men at Philadelphia were practical politicians, not political theorists. They recognized the multitude of different ideas and interests that had to be reconciled and compromised before a constitution would be acceptable. They were far too practical,

and represented far too many clashing interests themselves, to fashion a government weighted in favor of personalty or to believe that the people would adopt such a government.

9. If the Constitution was ratified by a vote of only one-sixth of the adult men, that again demonstrates indifference and not disfranchisement. Of the one-fourth of the adult males who voted, nearly two-thirds favored the Constitution. Present evidence does not permit us to say what the popular vote was except as it was measured by the votes of the ratifying conventions.

10. Until we know what the popular vote was, we cannot say that it is questionable whether a majority of the voters in several states favored the Constitution. Too many delegates were sent uninstructed. Neither can we count the towns which did not send delegates on the side of those opposed to the Constitution. Both items would signify indifference rather than sharp conflict over ratification.

11. The ratifying conventions were elected for the specific purpose of adopting or rejecting the Constitution. The people in general had anywhere from several weeks to several months to decide the question. If they did not like the new government, or if they did not know whether they liked it, they could have voted *no* and there would have been no Constitution. Naturally the leaders in the ratifying conventions represented the same interests as the members of the Constitutional Convention—mainly realty and some personalty. But they also represented their constituents in these same interests, especially realty.

12. If the conflict over ratification had been between substantial personalty interests on the one hand and small farmers and debtors on the other, there would not have been a constitution. The small farmers comprised such an overwhelming percentage of the voters that they could have rejected the new government without any trouble. Farmers and debtors are not synonymous terms and should not be confused as such. A town-by-town or county-by-county record of the vote would show clearly how the farmers voted.

13. The Constitution was created about as much by the whole people as any government could be which embraced a large area and depended on representation rather than on direct participation. It was also created in part by the states, for as the *Records* show, there was strong state sentiment at the time which had to be appeased by compromise. And it was created by compromising a whole host of interests throughout the country, without which compromises it could never have been adopted.

If the intellectual historians are correct, we cannot explain the Constitution without considering the psychological factors also. Men are motivated by what they believe as well as by what they have. Sometimes their actions can be explained on the basis of what they hope to have or hope that their children will have. Madison understood this fact when he said that the universal hope of acquiring property tended to dispose

people to look favorably upon property. It is even possible that some men support a given economic system when they themselves have nothing to gain by it. So we would want to know what the people in 1787 thought of their class status. Did workers and small farmers believe that they were lower-class, or did they, as many workers do now, consider themselves middle-class? Were the common people trying to eliminate the Washingtons, Adamses, Hamiltons, and Pinckneys, or were they trying to join them?

As did Beard's conclusions, these suggestions really add up to two major propositions: the Constitution was adopted in a society which was fundamentally democratic, not undemocratic; and it was adopted by a people who were primarily middle-class property owners, especially farmers who owned realty, not just by the owners of personalty. At present these points seem to be justified by the evidence, but if better evidence in the future disproves or modifies them, we must accept that evidence and change our interpretation accordingly.

After this critical analysis, we should at least not begin future research on this period of American history with the illusion that the Beard thesis of the Constitution is valid. If historians insist on accepting the Beard thesis in spite of this analysis, however, they must do so with the full knowledge that their acceptance is founded on "an act of faith," not an analysis of historical method, and that they are indulging in a "noble dream," not history.

Discussion Question

Judging from these readings, do you think the Framers were governed by self-interest or a commitment to principle, or some combination, when they drafted the Constitution? Explain your answer.

The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is more likely to taint a particular county or district than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans ought to be our zeal in cherishing the spirit and supporting the character of federalists. ■

1.2 *Federalist* No. 47 (1787)

James Madison

Outline

I. The charge that the Constitution violates the separation of powers principle is based on a misinterpretation of the separation of powers.
   A. The Constitution is consistent with Montesquieu's view of the separation of powers.
      1. Montesquieu's view based on the British Constitution.
      2. Discussion of Montesquieu's theory.
   B. The Constitution is consistent with the implementation of the separation of powers in the constitutions of the several states.

. . . One of the principal objections inculcated by the more respectable adversaries to the Constitution is its supposed violation of the political maxim that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. 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.

Were the federal Constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to everyone that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point.

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depositary of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote.

From these facts, by which Montesquieu was guided, it may clearly be inferred that in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no *partial agency* in, or no *control* over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also

the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor*." Some of these reasons are more fully explained in other passages; but briefly stated as they are here they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several States we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other *as the nature of a free government will admit; or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity*." Her constitution accordingly mixes these departments in several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments, The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department.

The constitution of Massachusetts has observed a sufficient though less pointed caution in expressing this fundamental article of liberty. It declares "that the legislative department shall never exercise the executive and judicial powers, or

either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very Constitution to which it is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified negative on the legislative body, and the Senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department, again, are appointable by the executive department, and removable by the same authority on the address of the two legislative branches. Lastly, a number of the officers of government are annually appointed by the legislative department. As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the Constitution have, in this last point at least, violated the rule established by themselves. . . . *[Publius next reviews other state constitutions.]*

In citing these cases, in which the legislative, executive, and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of the several State governments. I am fully aware that among the many excellent principles which they exemplify they carry strong marks of the haste, and still stronger of the inexperience, under which they were framed. It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper. What I have wished to evince is that the charge brought against the proposed Constitution of violating the sacred maxim of free government is warranted neither by the real meaning annexed to that maxim by its author, nor by the sense in which it has hitherto been understood in America. This interesting subject will be resumed in the ensuing paper. ■

1.3 *Federalist* No. 48 (1787)

James Madison

Outline

I. The separation of powers requires that the three departments be connected and blended, giving each control over the others.
   A. Encroaching nature of political power.
   B. Inadequacy of "parchment (or paper) barriers."
II. Preeminent danger of legislative power makes it necessary to give the other two branches some control.

4. Why do you think that threats to the supremacy of the federal government have been unsuccessful?

2.1 What the Antifederalists Were For (1981)

Herbert Storing

Far from straying from the principles of the American Revolution, as some of the Federalists accused them of doing, the Anti-Federalists saw themselves as the true defenders of those principles. "I am fearful," said Patrick Henry, "I have lived long enough to become an old fashioned fellow: Perhaps an invincible attachment to the dearest rights of man, may, in these refined enlightened days, be deemed *old fashioned:* If so, I am contented to be so: I say, the time has been, when every pore of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American." The Anti-Federalists argued, as some historians have argued since, that the Articles of Confederation were the constitutional embodiment of the principles on which the Revolution was based:

> Sir, I venerate the spirit with which every thing was done at the trying time in which the Confederation was formed. America had then a sufficiency of this virtue to resolve to resist perhaps the first nation in the universe, even unto bloodshed. What was her aim? Equal liberty and safety. What ideas had she of this equal liberty? Read them in her Articles of Confederation.

The innovators were impatient to change this "most excellent constitution," which was "sent like a blessing from heaven," for a constitution "essentially differing from the principles of the revolution, and from freedom," and thus destructive of the whole basis of the American community. "Instead of repairing the old and venerable fabrick, which sheltered the United States, from the dreadful and cruel storms of a tyrannical British ministry, they built a stately palace after their own fancies. . . ."

The principal characteristic of that "venerable fabrick" was its federalism: the Articles of Confederation established a league of sovereign and independent states whose representatives met in congress to deal with a limited range of common concerns in a system that relied heavily on voluntary cooperation. Federalism means that the states are primary, that they are equal, and that they possess

Herbert Storing, *What The Antifederalists Were For* (Chicago: University of Chicago Press, 1981), pp. 9–14. Reprinted with permission of The University of Chicago Press.

the main weight of political power. The defense of the federal character of the American union was the most prominent article of Anti-Federalist conservative doctrine. While some of the other concerns were intrinsically more fundamental, the question of federalism was central and thus merits fuller discussion here, as it did in that debate.

To begin with an apparently small terminological problem, if the Constitution was opposed because it was anti-federal how did the opponents come to be called Anti-Federalists? They usually denied, in fact, that the name was either apt or just, and seldom used it themselves. They were, they often claimed, the true federalists. Some of them seemed to think that their proper name had been filched, while their backs were turned, as it were, by the pro-Constitution party, which refused to give it back; and versions of this explanation have been repeated by historians. Unquestionably the Federalists saw the advantage of a label that would suggest that those who opposed the Constitution also opposed such a manifestly good thing as federalism. But what has not been sufficiently understood is that the term "federal" had acquired a specific ambiguity that enabled the Federalists not merely to take but to keep the name.

One of the perennial issues under the Articles of Confederation involved the degree to which the general government—or the instrumentality of the federation per se—was to be supported or its capacity to act strengthened. In this context one was "federal" or "anti-federal" according to his willingness or unwillingness to strengthen or support the institutions of the federation. This was James Wilson's meaning when he spoke of the "fœderal disposition and character" of Pennsylvania. It was Patrick Henry's meaning when he said that, in rejecting the Constitution, New Hampshire and Rhode Island "have refused to become federal." It was the meaning of the New York Assembly when in responding coolly to the recommendations of the Annapolis Convention it nevertheless insisted on its "truly federal" disposition. This usage had thoroughly penetrated political discussion in the United States. In the straightforward explanation of Anti-Federalist George Bryan, "The name of Federalists, or Federal men, grew up at New York and in the eastern states, some time before the calling of the Convention, to denominate such as were attached to the general support of the United States, in opposition to those who preferred local and particular advantages. . . ." Later, according to Bryan, "this name was taken possession of by those who were in favor of the new federal government, as they called it, and opposers were called Anti-Federalists." Recognizing the pre-1787 usage, Jackson Turner Main tries, like Bryan, to preserve the spirit of Federalist larceny by suggesting that during the several years before 1787 "the men who wanted a strong national government, who might more properly be called 'nationalists,' began to appropriate the term 'federal' for themselves" and to apply the term "antifederal" to those hostile to the measures of Congress and thus presumably unpatriotic. But there was nothing exceptional or improper in the use of the term "federal" in this way; the shift in meaning was less an "appropriation" than a natural extension of the language, which the Federalists fully exploited.

The point of substance is that the Federalists had a legitimate *claim* to their name and therefore to their name for their opponents. Whether they had a better claim than their opponents cannot be answered on the basis of mere linguistic

usage but only by considering the arguments. When, during the years of the Confederation, one was called a "federal man," his attachment to the principles of federalism was not at issue; that was taken for granted, and the point was that he was a man who (given this federal system) favored strengthening the "federal" or general authority. The ambiguity arose because strengthening the federal *authority* could be carried so far as to undermine the federal *principle;* and that was precisely what the Anti-Federalists claimed their opponents were doing. Thus The Impartial Examiner argued that, despite the "sound of names" on which the advocates of the Constitution "build their fame," it is the opponents who act "on the broader scale of true *fœderal principles*." They desire "a continuance of each distinct sovereignty—and are anxious for such a degree of energy in the general government, as will cement the union in the strongest manner." It was possible (or so the Anti-Federalists believed) to be a federalist in the sense of favoring a strong agency of the federation and, at the same time, to be a federalist in the sense of adhering to the principle of league of independent states. In the name of federalism in the former sense, it was claimed, the proponents of the Constitution had abandoned federalism in the latter (and fundamental) sense.

The Anti-Federalists stood, then, for federalism in opposition to what they called the consolidating tendency and intention of the Constitution—the tendency to establish one complete national government, which would destroy or undermine the states. They feared the implications of language like Washington's reference, in transmitting the Constitution to Congress, to the need for "the consolidation of our Union." They saw ominous intentions in Publius' opinion that "a NATION, without a NATIONAL GOVERNMENT, is, in my view, an awful spectacle." They resented and denied suggestions that "we must forget our local habits and attachments" and "be reduced to one faith and one government." They saw in the new Constitution a government with authority extending "to every case that is of the least importance" and capable of acting (preeminently in the crucial case of taxation) at discretion and independently of any agency but its own. Instead of thus destroying the federal character of the Union, "the leading feature of every amendment" of the Articles of Confederation ought to be, as Yates and Lansing expressed it, "the preservation of the individual states, in their uncontrouled constitutional rights, and . . . in reserving these, a mode might have been devised of granting to the confederacy, the monies arising from a general system of revenue; the power of regulating commerce, and enforcing the observance of foreign treaties, and other necessary matters of less moment."

A few of the Anti-Federalists were not sure, it is true, that consolidation would be so bad, if it were really feasible. James Monroe went so far as to say that "to collect the citizens of America, who have fought and bled together, by whose joint and common efforts they have been raised to the comparatively happy and exalted theatre on which they now stand; to lay aside all those jarring interests and discordant principles, which state legislatures if they do not create, certainly foment and increase, arrange them under one government and make them one people, is an idea not only elevated and sublime, but equally benevolent and humane." And, on the other hand, most of the Federalists agreed or professed to agree that consolidation was undesirable. Fisher Ames, defending the Constitution in Massachusetts, spoke the language of many Federalists when he insisted

that "too much provision cannot be made against a consolidation. The state governments represent the wishes, and feelings, and local interests of the people. They are the safeguard and ornament of the Constitution; they will protract the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights." Indeed, expressions of rather strict federal principles were not uncommon on the Federalist side, although they were often perfunctory or shallow.

Perhaps the most conciliatory Federalist defense of federalism, and not accidentally one of the least satisfactory in principle, was contained in a line of argument put forward by James Wilson and some others to the effect that, just as individuals have to give up some of their natural rights to civil government to secure peaceful enjoyment of civil rights, so states must give up some of theirs to federal government in order to secure peaceful enjoyment of federal liberties. But the analogy of civil liberty and federal liberty concedes the basic Anti-Federal contentions, and Wilson did not consistently adhere to it. As each individual has one vote in civil society, for example, so each state ought, on this analogy, to have one vote in federal society. As the preservation of the rights of individuals is the object of civil society, so the preservation of the rights of states (not individuals) ought to be the object of federal society. But these are Anti-Federal conclusions. Thus, when Agrippa assessed the proposed Constitution from the point of view of the interests of Massachusetts, he did so on *principled* ground, the same ground that properly leads any man to consider the civil society of which he is or may become a member, not exclusively but first and last, from the point of view of his interest in his life, liberty, and property. Wilson, on the other hand, argued for the priority of the general interest of the Union over the particular interests of the states. And this position is not defensible—as Wilson's own argument sufficiently demonstrates—on the basis of the federal liberty–civil liberty analogy.

The more characteristic Federalist position was to deny that the choice lay between confederation and consolidation and to contend that in fact the Constitution provided a new form, partly national and partly federal. This was Publius' argument in *The Federalist*, no. 39. It was Madison's argument in the Virginia ratifying convention. And it was the usual argument of James Wilson himself, who emphasized the strictly limited powers of the general government and the essential part to be played in it by the states. The Anti-Federalists objected that all such arguments foundered on the impossibility of dual sovereignty. "It is a solecism in politics for two coordinate sovereignties to exist together. . . ." A mixture may exist for a time, but it will inevitably tend in one direction or the other, subjecting the country in the meantime to "all the horrors of a divided sovereignty." Luther Martin agreed with Madison that the new Constitution presented a novel mixture of federal and national elements; but he found it "just so much federal in appearance as to give its advocates in some measure, an opportunity of passing it as such upon the unsuspecting multitude, before they had time and opportunity to examine it, and yet so predominantly national as to put it in the power of its movers, whenever the machine shall be set agoing, to strike out every part that has the appearance of being federal, and to render it wholly and entirely a national government."

The first words of the preamble sufficiently declare the anti-federal (in the strict sense) character of the Constitution, Patrick Henry thought; and his objection thundered over the Virginia convention sitting in Richmond:

> [W]hat right had they to say, *We the People?* My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorised them to speak the language of, *We, the People*, instead of *We, the States?* States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.

The clearest minds among the Federalists agreed that states are the soul of a confederacy. That is what is wrong with confederacies: "The fundamental principle of the old Confederation is defective; we must totally eradicate and discard this principle before we can expect an efficient government."

Here lies the main significance of the mode of ratification in the proposed Constitution. The new procedure—ratification by special state conventions rather than by Congress and the state legislatures and provision that the Constitution shall be established on ratification of nine states (as between them), rather than all thirteen states as required under the Articles of Confederation—was not merely illegal; it struck at the heart of the old Confederation. It denied, as Federalists like Hamilton openly admitted, the very basis of legality under the Articles of Confederation. The requirement in the Articles of Confederation for unanimous consent of the states to constitutional changes rested on the assumption that the states are the basic political entities, permanently associated indeed, but associated entirely at the will and in the interest of each of the several states. Even if it were granted that government under the Articles had collapsed (which most Anti-Federalists did not grant), there was no justification for abandoning the principles of state equality and unanimous consent to fundamental constitutional change. As William Paterson had put it in the Philadelphia Convention,

> If we argue the matter on the supposition that no Confederacy at present exists, it cannot be denied that all the States stand on the footing of equal sovereignty. All therefore must concur before any can be bound. . . . If we argue on the fact that a federal compact actually exists, and consult the articles of it we still find an equal Sovereignty to be the basis of it.

Whether in the Articles of Confederation or outside, the essential principle of American union was the equality of the states. As Luther Martin had argued in Philadelphia, "the separation from G. B. placed the 13 States in a state of nature towards each other; [and] they would have remained in that state till this time, but for the confederation. . . ."

The provision for ratifying the Constitution rested, in the main, on the contrary assumption that the American states are not several political wholes, associated together according to their several wills and for the sake of their several interests, but are, and always were from the moment of their separation from the King of England, parts of one whole. Thus constitutional change is the business of the people, not of the state legislatures, though the people act in (or through) their states. As one nation divided into several states, moreover, constitutional

change is to be decided, not by unanimous consent of separate and equal entities, but by the major part of a single whole—an extraordinary majority because of the importance of the question. The Federalists contended that the colonies declared their independence not individually but unitedly, and that they had never been independent of one another. And the implication of this view is that the foundation of government in the United States is the interest of the nation and not the interests of the states. "The Union is essential to our being as a nation. The pillars that prop it are crumbling to powder," said Fisher Ames, staggering through a metaphorical forest. "The Union is the vital sap that nourishes the tree." The Articles of Confederation, in this view, were a defective instrument of a preexisting union. The congressional resolution calling for the Philadelphia Convention had described a means—"for the sole and express purpose of revising the Articles of Confederation"—and an end—to "render the federal constitution adequate to the exigencies of Government & the preservation of the Union." If there was any conflict, the means ought to be sacrificed to the end. The duty of the Philadelphia Convention and the members of the ratifying conventions was to take their bearings, not from the defective means, but from the great end, the preservation and well-being of the Union. ■

enemies, but as uncontrolled by any common superior in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their error. They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone, and that it will not depend merely on the comparative ambition or address of the different governments whether either, or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other. Truth, no less than decency, requires that the event in every case should be supposed to depend on the sentiments and sanction of their common constituents. . . .

Many considerations, besides those suggested on a former occasion, seem to place it beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States. . . .

If . . . the people should in future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due; but even in that case the State governments could have little to apprehend, because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered.

Publius

21

DANIEL ELAZAR

From *American Federalism*

American government has been based on a system of federalism since the Constitution was ratified. Yet, over two centuries, change and flexibility have marked American federalism; the national and state governments have shared power in different ways, to different degrees, with different roles. In the mid-1990s, for example, there is much talk in Washington about moving more governmental programs and policy decisions back to the state level, away from central government edicts. Professor Daniel Elazar offers a classic piece on federalism in which he defends the importance of state governments, even at a time when the national government seemed to dominate. Elazar points to the innovative ideas developed at the state level. He recognizes the states' importance as managers of government programs. Elazar is right on target for today, viewing American federalism as an ever-changing "partnership" between Washington, D.C., and the state capitals.

7
From *The Price of Federalism*

PAUL PETERSON

In this concise overview of American Federalism, Paul Peterson argues that both the early and the more modern systems of shared sovereignty between the national government and the states have had their disadvantages. From the early period of "dual federalism" to the contemporary system of a dominant national government, the battle over national and state government jurisdiction and power has led to bloodshed and war; the denial of political, social, and economic rights; and regional inequalities among the states.

Nevertheless, Peterson argues, federalism has also facilitated capital growth and development, the creation of infrastructures, and social programs that have greatly improved the quality of life for millions of Americans. Once the national government took responsibility for guaranteeing civil rights and civil liberties, the states "became the engines of economic development." Not all states are equally wealthy, but the national government has gradually diminished some of these differences by financing many social and economic programs. One of the more recent battles over the proper form of federal relations involved welfare policy. Most Republicans in Congress wanted to give back to states the power to devise their own programs, whereas most Democrats wanted to retain a larger degree of federal government control. A welfare reform bill that gave states more autonomy and control was passed by Congress and signed into law by President Clinton in August 1996.

The Price of Early Federalism

As a principle of government, federalism has had a dubious history. It remains on the margins of political respectability even today. I was recently invited to give a presentation on metropolitan government before a United Nations conference. When I offered to discuss how the federal principle could be used to help metropolitan areas govern themselves more effectively, my sponsors politely advised me that this topic would be poorly received. The vast majority of UN members had a unified form of government, I was told, and they saw little of value in federalism. We reached a satisfactory compromise. I replaced "federal" with "two-tier form of government."

Thomas Hobbes, the founder of modern political thought, would have blessed the compromise, for he, too, had little room for federalism in his understanding of the best form of government. Hobbes said that people

THE SYSTEM of state-federal relations . . . is not the neat system often pictured in the textbooks. If that neat system of separate governments performing separate functions in something akin to isolation is used as the model of what federalism should be to enable the states to maintain their integrity as political systems, then the states are in great difficulty indeed. If, however, the states have found ways to function as integral political systems—civil societies, if you will—within the somewhat chaotic system of intergovernmental sharing that exists, then they are, as the saying goes, in a different ball game. . . . We have tried to show that the states are indeed in a different ball game and as players in that game are not doing badly at all. Viewed from the perspective of that ball game, the strength and vitality of the states—and the strength and vitality of the American system as a whole—must be assessed by different standards from those commonly used.

In the first place, the states exist. This point is no less significant for its simplicity. The fact that the states survive as going concerns (as distinct from sets of historical boundaries used for the administration of centrally directed programs) after thirty-five years of depression, global war, and then cold war, which have all functioned to reduce the domestic freedom necessary to preserve noncentralized government, is in itself testimony to their vitality as political institutions. . . . Every day, in many ways, the states are actively contributing to the achievement of American goals and to the continuing efforts to define those goals.

Consequently, it is a mistake to think that national adoption of goals shared by an overwhelming majority of the states is simply centralization. To believe that is to deny the operation of the dynamics of history within a federal system. Any assessment of the states' position in the federal union must be made against a background of continuous social change. It is no more reasonable to assume that the states have lost power vis-à-vis the federal government since 1789 because they can no longer maintain established churches than it is to believe that white men are no longer as free as they were in that year because they can no longer own slaves. An apparent loss of freedom in one sphere may be more than made up by gains in another. Massachusetts exercises more power over its economy today than its governors ever hoped to exercise over its churches five generations ago. National values change by popular consensus and *all* governments must adapt themselves to those changes. The success of the states is that they have been able to adapt themselves well.

Part of the states' adaptation has been manifested in their efforts to

improve their institutional capabilities to handle the new tasks they have assumed. In the twentieth century, there has been an extensive and continuing reorganization of state governments leading to increased executive responsibility, greater central budgetary control, and growing expertise of state personnel (whose numbers are also increasing). . . .

There has also been a great and continuing increase in the states' supervision of the functions carried out in their local subdivisions. The states' role in this respect has grown as fast as or faster than that of the federal government and is often exercised more stringently, a possibility enhanced by the constitutionally unitary character of the states. The states' supervision has been increased through the provision of technical aid to their localities, through financial grants, and through control of the power to raise (or authorize the raising of) revenue for all subdivisions.

In all this, though, there remains one major unsolved problem, whose importance cannot be overemphasized: that of the metropolitan areas. By and large, the states have been unwilling or unable to do enough to meet metropolitan problems, particularly governmental ones. Here, too, some states have better records than others but none have been able to deal with metropolitan problems comprehensively and thoroughly. It is becoming increasingly clear that—whatever their successes in the past—the future role of the states will be determined by their ability to come to grips with those problems.

A fourth factor that adds to the strength and vitality of the states is the manner in which state revenues and expenditures have been expanding since the end of World War II. . . .

Still a fifth factor is the continuing role of the states as primary managers of great programs and as important innovators in the governmental realm. Both management and innovation in education, for example, continue to be primary state responsibilities in which outside aid is used to support locally initiated ideas.

Even in areas of apparent state deficiencies, many states pursue innovative policies. Much publicity has been generated in recent years that reflects upon police procedures in certain states; yet effective actions to eliminate the death penalty have been confined to the state level. The states have also been active in developing means for releasing persons accused of crimes on their own recognizance when they cannot afford to post bail, thus reducing the imprisonment of people not yet convicted of criminal activity.

Because the states are political systems able to direct the utilization of the resources sent their way, federal grants have served as a stimulus to the development of state capabilities and, hence, have helped enhance

their strength and vitality. Federal grants have helped the states in a positive way by broadening the programs they can offer their citizens and strengthening state administration of those programs. Conversely, the grants have prevented centralization of those programs and have given the states the ability to maintain their position despite the centralizing tendencies of the times.

For this reason, and because the concerns of American politics are universal ones, there is relatively little basic conflict between the federal government and the states or even between their respective interests. Most of the conflicts connected with federal-state relations are of two kinds: (1) conflicts between interests that use the federal versus state argument as a means to legitimize their demands or (2) low-level conflicts over the best way to handle specific cooperative activities. There are cases, of course, when interests representing real differences are able to align themselves with different levels of government to create serious federal-state conflict. The civil rights question in its southern manifestation is today's example of that kind of situation.

Finally, the noncentralized character of American politics has served to strengthen the states. Noncentralization makes possible intergovernment cooperation without the concomitant weakening of the smaller partners by giving those partners significant ways in which to preserve their integrity. This is because a noncentralized system functions to a great extent through bargaining and negotiation. Since its components are relatively equal in their freedom to act, it can utilize only a few of the hierarchical powers available in centralized systems. In essence, its general government can only use those powers set forth in the fundamental compact between the partners as necessary to the maintenance of the system as a whole. Stated baldly, congressional authorization of new federal programs is frequently no more than a license allowing federal authorities to begin negotiations with the states and localities. . . .

In the last analysis, the states remain viable entities in a federal system that has every tendency toward centralization present in all strong governments. They remain viable because they exist as civil societies with political systems of their own. They maintain that existence because the American political tradition and the Constitution embodying it give the states an important place in the overall fabric of American civil society. The tradition and the Constitution remain viable because neither Capitol Hill nor the fifty state houses have alone been able to serve all the variegated interests on the American scene that compete equally well without working in partnership.

The states remain vital political systems for larger reasons as well as

immediate ones, reasons that are often passed over unnoticed in the public's concern with day-to-day problems of government. These larger reasons are not new; though they have changed in certain details, they remain essentially the same as in the early days of the Union.

The states remain important in a continental nation as reflectors of sectional and regional differences that are enhanced by the growing social and economic complexity of every part of the country, even as the older cultural differences may be diminished by modern communications. They remain important as experimenters and innovators over a wider range of fields than ever before, simply because government at every level in the United States has been expanding. The role of the states as recruiters of political participants and trainers of political leaders has in no way been diminished, particularly since the number of political offices of every kind seems to be increasing at least in proportion to population growth.

In at least two ways, traditional roles of the states have been enhanced by recent trends. They have become even more active promoters and administrators of public services than ever before. In part, this is simply because governments are doing more than they had in the past, but it is also because they provide ways to increase governmental activity while maintaining noncentralized government. By handling important programs at a level that can be reached by many people, the contribute to the maintenance of a traditional interest of democratic politics, namely, the maximization of local control over the political and administrative decision-makers whose actions affect the lives of every citizen in ever-increasing ways.

As the population of the nation increases, the states become increasingly able to manage major governmental activities with the competence and expertise demanded by the metropolitan–technological frontier. At the same time, the federal government becomes further removed from popular pressures simply by virtue of the increased size of the population it must serve. The states may well be on their way to becoming the most "manageable" civil societies in the nation. Their size and scale remain comprehensible to people even as they are enabled to do more things better.

In sum, the virtue of the federal system lies in its ability to develop and maintain mechanisms vital to the perpetuation of the unique combination of governmental strength, political flexibility, and individual liberty, which has been the central concern of American politics. The American people are known to appreciate their political tradition and the Constitution. Most important, they seem to appreciate the partnership, too, in some unreasoned way, and have learned to use all its elements to reasonably satisfy their claims on government.

agreed to have a government over them only because they realized that in a state of nature, that is, when there is no government, life becomes a war of all against all. If no government exists to put malefactors in jail, everyone must become a criminal simply to avoid being a victim. Life becomes "nasty, brutish and short." To avoid the violent state of nature, people need and want rule by a single sovereign. Division of power among multiple sovereigns encourages bickering among them. Conflicts become inevitable, as each sovereign tries to expand its power (if for no other reason than to avoid becoming the prey of competing sovereigns). Government degenerates into anarchy and the world returns to the bitter state of nature from which government originally emerged.

The authors of the *Federalist* papers defended dual sovereignty by turning Hobbes's argument in favor of single sovereignty on its head. While Hobbes said that anything less than a single sovereign would lead to war of all against all, the *Federalist* argued that the best way of preserving liberty was to divide power. If power is concentrated in any one place, it can be used to crush individual liberty. Even in a democracy there can be the tyranny of the majority, the worst kind of tyranny because it is so stifling and complete. A division of power between the national and state governments reduces the possibility that any single majority will be able to control all centers of governmental power. The national government, by defending the country against foreign aggression, prevents external threats to liberty. The state governments, by denying power to any single dictator, reduce threats to liberty from within. As James Madison said in his defense of the Constitution, written on the eve of its ratification,

> The power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. [*The Federalist*, No. 51]

Early federalism was built on the principle of dual sovereignty. The Constitution divided sovereignty between state and nation, each in control of its own sphere. Some even interpreted the Constitution to mean that state legislatures could nullify federal laws. Early federalism also gave both levels of government their own military capacity. Congress was given the power to raise an army and wage war, but states were allowed to maintain their own militia.

The major contribution of early federalism to American liberties took place within a dozen years after the signing of the Constitution. Liberty is never established in a new nation until those in authority have peacefully ceded power to a rival political faction. Those who wrote the Constitution and secured its ratification, known as the Federalists, initially captured control of the main institutions of the national government:

Congress, the presidency, and the Supreme Court. Those opposed to the new constitutional order, the antifederalists, had to content themselves with an opposition role in Congress and control over a number of state governments, most notably Virginia's.

The political issues dividing the two parties were serious. The Federalist party favored a strong central government, a powerful central bank that could facilitate economic and industrial development, and a strong, independent executive branch. Federalists had also become increasingly disturbed by the direction the French Revolution had taken. They were alarmed by the execution of thousands, the confiscation of private property, and the movement of French troops across Europe. They called for the creation of a national army and reestablished close ties with Britain.

The antifederalists, who became known as Democratic-Republicans, favored keeping most governmental power in the hands of state governments. They were opposed to a national bank, a strong presidency, and industrial government. They thought the United States would remain a free country only if it remained a land of independent farmers. They bitterly opposed the creation of a national army for fear it would be used to repress political opposition. Impressed by the French Revolution's commitment to the rights of man, they excused its excesses. The greater danger, they thought, was the reassertion of British power, and they denounced the Federalists for seeming to acquiesce in the seizure of U.S. seamen by the British navy.

The conflict between the two sides intensified after George Washington retired to his home in Mount Vernon. In 1800 Thomas Jefferson, founder of the Democratic-Republican party, waged an all-out campaign to defeat Washington's Federalist successor, John Adams. In retrospect, the central issue of the election was democracy itself. Could an opposition party drive a government out of power? Would political leaders accept their defeat?

So bitter was the feud between the two parties that Representative Matthew Lyon, a Democratic-Republican, spit in the face of a Federalist on the floor of Congress. Outside the Congress, pro-French propagandists relentlessly criticized Adams. To silence the opposition, Congress, controlled by the Federalists, passed the Alien and Sedition Acts. One of the Alien Acts gave President Adams the power to deport any foreigners "concerned in any treasonable or secret machinations against the government." The Sedition Act made it illegal to "write, print, utter, or publish . . . any false, scandalous and malicious writing . . . against . . . the Congress of the United States, or the President."

The targets of the Sedition Acts soon became clear. Newspaper editors supporting the Democratic-Republicans were quickly indicted, and ten were brought to trial and convicted by juries under the influence of Federalist judges. Matthew Lyon was sentenced to a four-month jail

term for claiming, presumably falsely, that President Adams had an "unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." Even George Washington lent his support to this political repression.

Federalism undoubtedly helped the fledgling American democracy survive this first constitutional test. When the Federalists passed the Alien and Sedition Acts, Democratic-Republicans in the Virginia and Kentucky state legislatures passed resolutions nullifying the laws. When it looked as if Jefferson's victory in the election of 1800 might be stripped away by a Federalist-controlled House of Representatives, both sides realized that the Virginia state militia was at least as strong as the remnants of the Continental Army. Lacking the national army they had tried to establish, the Federalists chose not to fight. They acquiesced in their political defeat in part because their opponents had military as well as political power, and because they themselves could retreat to their own regional base of power, the state and local governments of New England and the mid-Atlantic states.

Jefferson claimed his victory was a revolution every bit as comprehensive as the one fought in 1776. The Alien and Sedition Acts were discarded, nullified not by a state legislature but by the results of a national election. President Adams returned to private life without suffering imprisonment or exile. Many years later, he and Jefferson reconciled their differences and developed through correspondence a close friendship. They died on the same day, the fiftieth anniversary of the Declaration of Independence. To both, federalism and liberty seemed closely intertwined.

The price to be paid for early federalism became more evident with the passage of time. To achieve the blessings of liberty, early federalism divided sovereign power. When Virginia and Kentucky nullified the Alien and Sedition Acts, they preserved liberties only by threatening national unity. With the election of Jefferson, the issue was temporarily rendered moot, but the doctrine remained available for use when southerners once again felt threatened by encroaching national power.

The doctrine of nullification was revived in 1830 by John C. Calhoun, sometime senator from South Carolina, who objected to high tariffs that protected northern industry at the expense of southern cotton producers. When Congress raised the tariff, South Carolina's legislature threatened to declare the law null and void. Calhoun, then serving as Andrew Jackson's vice-president, argued that liberties could be trampled by national majorities unless states could nullify tyrannical acts. Andrew Jackson, though elected on a state's rights ticket, remained committed to national supremacy. At the annual Democratic banquet honoring the memory of Thomas Jefferson, Calhoun supporters sought to trap Jackson into endorsing the doctrine. But Jackson, aware of the scheme, raised his glass in a dramatic toast to "Our federal union: it must be preserved!" Not to

be outdone, Calhoun replied in kind: "The union, next to our liberty, most dear!"

A compromise was found to the overt issue, the tariff, but it was not so easy to resolve the underlying issue of slavery. In the infamous Dred Scott decision, the Supreme Court interpreted federalism to mean that boundaries could not be placed on the movements of masters and slaves. Northern territories could not free slaves that came within their boundaries; to do so deprived masters of their Fifth Amendment right not to be deprived of their property without due process of law. The decision spurred northern states to elect Abraham Lincoln president, which convinced southern whites that their liberties, most dear, were more important than federal union.

To Lincoln, as to Jackson, the union was to be preserved at all costs. Secession meant war. War meant the loss of 1 million lives, the destruction of the southern economy, the emancipation of African Americans from slavery, the demise of the doctrine of nullification, and the end to early federalism. Early federalism, with its doctrine of dual sovereignty, may have initially helped to preserve liberty, but it did so at a terrible price. As Hobbes feared, the price of dual sovereignty was war.

Since the termination of the Civil War, Americans have concluded that they can no longer trust their liberties to federalism. Sovereignty must be concentrated in the hands of the national government. Quite apart from the dangers of civil war, the powers of state and local governments have been used too often by a tyrannical majority to trample the rights of religious, racial, and political minorities. The courts now seem a more reliable institutional shelter for the nation's liberties.

But if federalism is no longer necessary or even conducive to the preservation of liberty, then what is its purpose? Is it merely a relic of an outdated past? Are the majority of the members of the United Nations correct in objecting to the very use of the word?

The Rise of Modern Federalism

The answers to these questions have been gradually articulated in the 130 years following the end of the Civil War. Although the states lost their sovereignty, they remained integral to the workings of American government. Modern federalism no longer meant dual sovereignty and shared military capacity. Modern federalism instead meant only that each level of government had its own independently elected political leaders and its own separate taxing and spending capacity. Equipped with these tools of quasi-sovereignty, each level of government could take all but the most violent of steps to defend its turf.

Although sovereignty and military capacity now rested firmly in the hands of the national government, modern federalism became more complex rather than less so. Power was no longer simply divided between

the nation and its states. Cities, counties, towns, school districts, special districts, and a host of additional governmental entities, each with its own elected leaders and taxing authority, assumed new burdens and responsibilities.

Just as the blessings bestowed by early federalism were evident from its inception, so the advantages of modern federalism were clear from the onset. If states and localities were no longer the guarantors of liberty, they became the engines of economic development. By giving state and local governments the autonomy to act independently, the federal system facilitated the rapid growth of an industrial economy that eventually surpassed its European competitors. Canals and railroads were constructed, highways and sewage systems built, schools opened, parks designed, and public safety protected by cities and villages eager to make their locality a boomtown.

The price to be paid for modern federalism did not become evident until government attempted to grapple with the adverse side effects of a burgeoning capitalist economy. Out of a respect for federalism's constitutional status and political durability, social reformers first worked with and through existing components of the federal system, concentrating much of their reform effort on state and local governments. Only gradually did it become clear that state and local governments, for all their ability to work with business leaders to enhance community prosperity, had difficulty meeting the needs of the poor and the needy.

It was ultimately up to the courts to find ways of keeping the price of modern federalism within bounds. Although dual sovereignty no longer meant nullification and secession, much remained to be determined about the respective areas of responsibility of the national and state governments. At first the courts retained remnants of the doctrine of dual sovereignty in order to protect processes of industrialization from governmental intrusion. But with the advent of the New Deal, the constitutional power of the national government expanded so dramatically that the doctrine of dual sovereignty virtually lost all meaning. Court interpretations of the constitutional clauses on commerce and spending have proved to be the most significant.

According to dual sovereignty theory, article 1 of the Constitution gives Congress the power to regulate commerce "among the states," but the regulation of intrastate commerce was to be left to the states. So, for example, in 1895 the Supreme Court said that Congress could not break up a sugar monopoly that had a nationwide impact on the price of sugar, because the monopoly refined its sugar within the state of Pennsylvania. The mere fact that the sugar was to be sold nationwide was only "incidental" to its production. As late as 1935, the Supreme Court, in a 6 to 3 decision, said that Congress could not regulate the sale of poultry because the regulation took effect after the chickens arrived within the state of Illinois, not while they were in transit.

Known as the "sick chicken" case, this decision was one of a series in which the Supreme Court declared unconstitutional legislation passed in the early days of President Franklin Roosevelt's efforts to establish his New Deal programs. Seven of the "nine old men" on the Court had been appointed by Roosevelt's conservative Republican predecessors. By declaring many New Deal programs in violation of the commerce clause, the Supreme Court seemed to be substituting its political views for those of elected officials. In a case denying the federal government the right to protect workers trying to organize a union in the coal industry, the Republican views of the Court seemed to lie just barely below the surface of a technical discussion of the commerce clause. Justice George Sutherland declared, "The relation of employer and employee is a local relation . . . over which the federal government has no legislative control."

The Roosevelt Democrats were furious at decisions that seemed to deny the country's elected officials the right to govern. Not since Dred Scott* had judicial review been in such disrepute. Roosevelt decided to "pack the court" by adding six new judges over and above the nine already on the Court. Although Roosevelt's court-packing scheme did not survive the political uproar on Capitol Hill, its effect on the Supreme Court was noticeable. In the midst of the court-packing debate, Justices Charles Hughes and Owen Roberts, who had agreed with Sutherland's opinion in the coal case, changed their mind and voted to uphold the Wagner Act, a new law designed to facilitate the formation of unions. In his opinion, Hughes did not explicitly overturn the coal miner decision (for which he had voted), but he did say: "When industries organize themselves on a national scale, . . . how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter?" Relations between employers and their workers, once said to be local, suddenly became part of interstate commerce.

The change of heart by Hughes and Roberts has been called "the switch in time that saved nine." The New Deal majority that emerged on the court was soon augmented by judges appointed by Roosevelt. Since the New Deal, the definition of interstate commerce has continued to expand. In 1942 a farmer raising twenty-three acres of wheat, all of which might be fed to his own livestock, was said to be in violation of the crop quotas imposed by the Agricultural Adjustment Act of 1938. Since he was feeding his cows himself, he was not buying grain on the open market, thereby depressing the worldwide price of grain. With such a definition of interstate commerce, nothing was local.

The expansion of the meaning of the commerce clause is a well-known part of American political history. The importance to federalism of court interpretations of the "spending clause" is less well known. The consti-

[* In *Dred Scott v. Sanford* (1857), the Court declared the anti-slavery provision of the Missouri Compromise of 1820 to be unconstitutional.]

tutional clause in question says that Congress has the power to collect taxes to "provide for the . . . general welfare." But how about Congress's power to collect taxes for the welfare of specific individuals or groups?

The question first arose in a 1923 case, when a childless woman said she could not be asked to pay taxes in order to finance federal grants to states for programs that helped pregnant women. Since she received no benefit from the program, she sued for return of the taxes she had paid to cover its costs. In a decision that has never been reversed, the Supreme Court said that she had suffered no measurable injury and therefore had no right to sue the government. Her taxes were being used for a wide variety of purposes. The amount being spent for this program was too small to be significant. The court's decision to leave spending issues to Congress was restated a decade later when the social security program was also challenged on the grounds that monies were being directed to the elderly, not for the general welfare. Said Justice Benjamin N. Cardozo for a court majority: "The conception of the spending power . . . [must find a point somewhere] between particular and general. . . . There is a middle ground . . . in which discretion is large. The discretion, however, is not confided to the Court. The discretion belongs to Congress, unless the choice is clearly wrong."

The courts have ever since refused to review Congress's power to spend money. They have also conceded to Congress the right to attach any regulations to any aid Congress provides. In 1987 Congress provided a grant to state governments for the maintenance of their highways, but conditioned 5 percent of the funds on state willingness to raise the drinking age from eighteen to twenty-one. The connection between the appropriation and the regulation was based on the assumption that youths under the age of twenty-one are more likely to drive after drinking than those over twenty-one. Presumably, building more roads would only encourage more inebriated young people to drive on them. Despite the fact that the connection between the appropriation and the regulation was problematic, the Supreme Court ruled that Congress could attach any reasonable conditions to its grants to the states. State sovereignty was not violated, because any state could choose not to accept the money.

In short, the courts have virtually given up the doctrine of judicial review when it comes to matters on which Congress can spend money. As a consequence, most national efforts to influence state governments come in the form of federal grants. Federal aid can also be used to influence local governments, such as counties, cities, towns, villages, and school districts. These local governments, from a constitutional point of view, are mere creatures of the state of which they are part. They have no independent sovereignty.

The Contemporary Price of Federalism

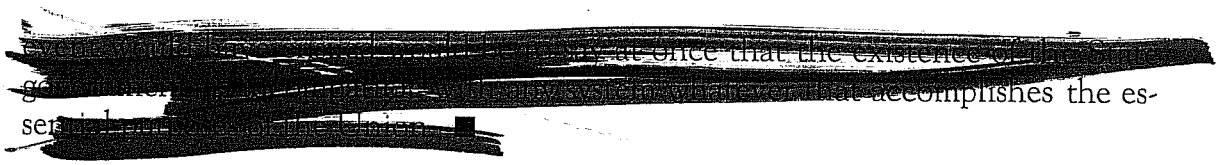
If constitutional doctrine has evolved to the point that dual sovereign theory has been put to rest, this does not mean that federalism has come to an end. Although ultimate sovereignty resides with the national government, state and local governments still have certain characteristics and capabilities that make them constituent components of a federal system. * * * Two characteristics of federalism are fundamental. First, citizens elect officials of their choice for each level of government. Unless the authority of each level of government rests in the people, it will become the agent of the other. Second, each level of government raises money through taxation from the citizens residing in the area for which it is responsible. It is hard to see how a system could be regarded as federal unless each level of government can levy taxes on its residents. Unless each level of government can raise its own fiscal resources, it cannot act independently.

Although the constitutional authority of the national government has steadily expanded, state and local governments remain of great practical significance. Almost half of all government spending for domestic (as distinct from foreign and military) purposes is paid for out of taxes raised by state and local governments.

The sharing of control over domestic policy among levels of government has many benefits, but federalism still exacts its price. It can lead to great regional inequalities. Also, the need for establishing cooperative relationships among governments can contribute to great inefficiency in the administration of government programs.

Discussion Questions

1. What is the constitutional basis for federalism?
2. How has the relationship between state governments and the national government changed since the early years of the republic?
3. Does a federal system serve our needs today? Does the federal government have too much power relative to the states? What would be the advantages and disadvantages of a reduced federal presence in state matters?



American Politics Today

No area of American politics has undergone as much change in the past few years as has the relationship between the national government and the states. After decades of talk about the "New Federalism," the combination of a Republican-controlled Congress, a sympathetic Supreme Court, and a president willing to compromise allowed for a significant shift of power from Washington to the state capitals. In this selection, the journalist Garry Wills surveys the realities of American federalism at the turn of the new century.

Questions

1. How has the distribution of power between Washington and the states changed in recent years? What implications do these changes have for the shape of American public policy?
2. How would the Federalists and Antifederalists (see selections 2.1 through 2.3) evaluate the trends in American federalism described in this selection?

2.4 The War Between the States . . . and Washington (1998)

Garry Wills

Some people play favorites with the Bill of Rights. The favorite amendment of gangsters is the fifth (no self-incrimination), of liberals the first (free speech), of drug dealers the fourth (no unauthorized search), of gun fondlers the second (to bear arms). Now, many people have a new favorite, the long-neglected 10th (powers not specifically assigned to Washington are reserved to the states). As recently as 1985, when the Supreme Court reversed one of its rare decisions based on the amendment (*Garcia* canceling *Usery*), the 10th was being called a dead letter. Certainly few people tried to "take the 10th" the way gangsters and fellow travelers "took the fifth."

Garry Wills, "The War Between the States . . . and Washington," *The New York Times,* July 5, 1998, VI: 26–30. Copyright © 1998 by the New York Times. Reprinted with permission.

But now the amendment has many takers. The Supreme Court used it in 1992, 1995 and 1997 and shows an eagerness to extend that run. Bob Dole, in his last year in the Senate, began carrying the words of the amendment around with him for instant recitation. Newt Gingrich's insurgents relied on it in 1994 to preach devolution of power from the Federal to the state level. Even President Clinton gives states the title Louis Brandeis thought up for them, "laboratories of democracy." Gov. Tommy Thompson of Wisconsin thinks it is high time for the amendment to be resurrected. He claims he has been a voice for the 10th crying in the wilderness for many years.

The change is not just a matter of theory. States and localities are manifesting a new energy, almost a frenzy, in starting, altering or killing programs. In education alone, they have pioneered charter schools, vouchers for private schools, the canceling of affirmative action in colleges, the retrenchment of bilingualism, new rules for immigrant children, different approaches to truancy and various approaches to teaching religion in public schools or allowing religious groups to gather on public grounds.

In crime, states have reintroduced capital punishment and passed "three strikes" laws. They have experimented with "truth in sentencing" (no parole), mandatory sentencing, alternative sentencing and victims' compensation.

In politics, they have promoted term limits, tax caps, mandatory spending percentages, public campaign financing, the control of union dues and extensions of the ballot initiative.

On sexual morality, the states have enacted or reversed bills on gay rights, repealed sodomy laws, supported unmarried partners' benefits and proposed or opposed marriage between homosexuals.

On welfare, the states have tried different forms of job training and placement, compulsory work, public employment or compensated private employment and various forms of benefits for mothers on welfare (including child care and health insurance).

On the environment, they have regulated business, formed new protected areas and successfully defied Federal regulations (for example, on the disposal of nuclear waste in *New York v. United States* in 1992).

On health, they have considered regulations on assisted suicide, H.M.O.'s, late-term abortions and insurance affecting AIDS patients.

On guns, they have passed bills to protect concealed weapons or to impose local restrictions. They have defeated Federal restrictions on guns near schools (*Lopez*, 1995) and the attempt to use local sheriffs to implement the Brady Bill (*Printz*, 1997).

On a whole range of such issues, the states have been out ahead of Federal programs, reversing a long-term trend. In the Progressive era, regulation of corporations was sought at the national level. In the Bull Moose movement, and during Woodrow Wilson's first term, intellectuals aspired to policy roles in Washington. With the New Deal, their drift toward the center became a stampede. From that point on, an overlapping series of crises (Depression, world war, cold war) led to central mobilization and control of resources. But now, with the end of this half-century of crisis, people with new ideas and a passion for public policy are turning away from Washington and attacking social issues at the state and local levels.

This shift raises deep questions about the virtues of direct democracy, the merits of federalism and the possibility of isolating states from the national society.

California, as usual, has blundered furthest outward. Ronald Reagan went forth from California to shrink the Federal Government and essentially failed. Howard Jarvis stayed home in California and succeeded. His Proposition 13 capped property taxes and thereby (his critics allege) wrecked the state's public education system. The state's punitive measures against immigrants and their children have been checked by the courts, have backfired against their sponsors (including Gov. Pete Wilson) and have unsettled candidates dependent on Hispanic or Asian voters. Draconian term limits (six years for Assembly members) were supposed to curtail careerism, the power of special interests, cronyism and the lobbyists' sway—but have increased all four.

Peter Schrag, in his sobering new book, "Paradise Lost," describes what occurred at the first great turnovers of office, six years after term limits passed in 1990: "By general agreement, the 1995–'96 term-limits-crunch session of the California Legislature was probably the most mean-spirited and unproductive in memory, a unique combination of instability, bad behavior, political frenzy and legislative paralysis. In the two years between 1995 and 1997, California had five Assembly Speakers, two different Republican Assembly leaders, two Republican Senate leaders and eight special legislative elections, not counting runoffs, among them three recalls."

It is probably unfair to judge any movement by its effect in California. Some local programs have shown initial promise—school vouchers in Ohio, charter schools in Arizona, inventive policing in New York, job training in Michigan, public campaign financing in Maine. Much of the activity has been stimulated or guided by a new generation of Republican governors, whose careers depend on making the programs work. The emphasis on localism is partly a byproduct of the fact that three-quarters of the American people now live under Republican governors.

The foremost champion of local control among the governors is Tommy Thompson, a short, chunky man from Elroy, Wis. (population 1,500), who has a Cagney strut and very modest amounts of modesty. "We started it," he says. "I was the front-runner because I started looking at the Federal laws and figuring how I'd go to Washington and get waivers." Such waivers are special dispensations from Federal regulations. "I'm the only governor who still has waivers in existence, in the area of welfare, from Presidents Reagan, Bush and Clinton. I think I've got 75 outstanding waivers, which changed Federal law in over 200 instances in the area of welfare."

Welfare is not the only policy on which Thompson has been an innovator. In education, he fought truancy with "Learnfare" and set up choice schools, charter schools, "prep tech" and apprenticing and high-school courses for college credit. He talks of a "broad menu" of options for students. He clearly does not think that local government has to mean minimal government.

In fact, his administration (begun in 1986) has been a kind of mini-New Deal for proliferating programs, acronyms and slogans—P.F.R. (Parental and Family Responsibility), S.S.F. (Self-Sufficiency First), W.E.J.T. (Work Experience and Job Training Program), Work First, Work Not Welfare, Children First. Many of