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Introduction

The Constitution that emerged from the Philadelphia Convention in September 1787 has been called a "bundle of compromises," but at the time it struck many Americans as something more ominous. In its opponents' eyes, the proposed Constitution was flawed at best and at worst downright sinister. George Mason, for example, the author of the Virginia Declaration of Rights and one of the most distinguished delegates to the Federal Convention, refused to sign the document because of the unfortunate mistakes he detected in it. "This Government will commence in a moderate Aristocracy," he predicted, and though it was impossible to tell whether "in its Operation" it would produce "a Monarchy, or a corrupt oppressive Aristocracy," it would probably "vibrate some years between the two, and then terminate in the one or the other." Other critics were less charitable. They discerned in the document an "insidious design to deprive us of our liberties." The Constitution, one wrote, was the "most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed."[1] (For all notes in the Introduction, see Endnotes [pp. xxxiii–xxxv].)

The Constitution's friends were not satisfied with the document, either. "No man's ideas were more remote from the plan than [mine] were known to be," Alexander Hamilton announced to the Convention on the day he signed the Constitution. James Madison confided to Thomas Jefferson "that the plan should it be adopted will neither effectually answer its national object nor prevent the local mischiefs which every where excite disgust against the state governments."[2] Its friends, in short,

feared that the Convention's compromises had resulted in a plan of government too weak and incoherent to save American republicanism; its opponents suspected that the Constitution, whether by accident or by design, was a formidable engine that would subvert republicanism in favor of some form of aristocratic domination.

The great accomplishment of *The Federalist* (popularly known as *The Federalist Papers*) was to show that the Constitution was both coherent *and* republican. Suppressing their private doubts and disappointments, Hamilton and Madison, joined by John Jay, undertook the series of essays in order to expound the merits of the new Constitution and to answer the objections to it that had already begun to appear in newspaper columns in New York and across the United States. More than any other speech or writing in defense of the new plan of government, *The Federalist* showed that the Constitution contained an inherent *constitutionalism*, which gave a purpose to the whole document and to each of its parts.[3] To put it differently, *The Federalist* articulated the overall integrity of the Constitution, showing how it fit the requirements of republican government as a whole. Without denying the plan's origin in political give-and-take, *The Federalist* thus interpreted the Federal Convention as having been a forum not for (at least not mostly for) self-interested bargaining, but for public-spirited deliberation. The product of those deliberations was a "fundamental law," sufficiently rational and coherent to be regarded almost as the product of a single wise mind or legislator.[4]

The U.S. Constitution, unlike the laws of many ancient cities, was not of course the work of one wise lawgiver, a point that *The Federalist* emphasizes.[5] Moreover, the Constitution contained compromises, obscurities, imperfections: "I never expect to see a perfect work from imperfect man," the final *Federalist* paper admitted. But the obscurities and imperfections were turned to account as additional reasons why this law needed the elaboration, explanation, and defense of a single commentator, whose commentary soon became accepted as authoritative and so helped to fix the meaning of the Constitution itself. This commentator was "Publius," the pen name chosen by the then-anonymous authors of *The Federalist.*

By drawing out the reasoning latent in the text and completing it with his reasoning, Publius presented the Constitution as an achievement in good government—a plan worthy not only of momentary applause but of the rational and enduring consent of an enlightened public.

In fact, Publius quickly became accepted as the best guide not only to how the framers had understood the Constitution when they wrote it, but also to how the people of the United States had understood the Constitution when they ratified it. Thomas Jefferson described *The Federalist* in 1788 as "the best commentary on the principles of government, which ever was written." In 1825, he recommended it as an authority on the "distinctive principles" of the governments of Virginia and the United States, second in importance only to the Declaration of Independence. Writing then almost forty years after its first publication, Jefferson endorsed *The Federalist* as "an authority to which appeal is habitually made by all, and rarely declined or denied by any as evidence of the general opinion of those who framed, and of those who accepted the Constitution of the United States, on questions as to its genuine meaning." In this case, in fact, he recommended *The Federalist* as a guide to the Constitution without bothering to recommend the Constitution itself![6] Little wonder, then, that the political scientist Clinton Rossiter, writing in 1961, acknowledged *The Federalist* as "the most important work in political science that has ever been written, or is likely ever to be written, in the United States. It is, indeed, the one product of the American mind that is rightly counted among the classics of political theory."

Yoked together then as "Publius," Hamilton and Madison were encouraged not only to downplay their sense of the Constitution's inadequacies, but to review in a new light the Constitution as a whole and to construct the strongest possible argument on its behalf, stretching "the chance of good to be expected from the plan" (Hamilton's words) into an account of the consistent good that would result from it—if only it were properly understood and administered.[7]

The Federalist appeared in New York newspapers beginning on October 27, 1787. Addressed "To the People

of the State of New York"—the popular salutation reflected the fact that the state legislature had decreed universal male suffrage for the election to the state ratifying convention, whereas voting for state offices had property qualifications attached—the first essay joined a debate already in progress. Hamilton had himself published two letters in July and September attacking Governor George Clinton, the leader of the state's Anti-Federalists. Essays by the Anti-Federalist writer "Cato" had begun appearing on September 27, followed by the first of the powerful Anti-Federalist "Brutus" papers on October 18. Probably disappointed with the rather petulant tone of his own letters, and impressed with the seriousness of these new Anti-Federalist sallies, Hamilton resolved to launch a new, extensive series of essays under a pen name and with the help of collaborators.[8]

As a title for the series, *The Federalist* stole a march on its opponents by claiming the good name of federalism for the new Constitution and its supporters. This usage was not novel, for those who earlier in the 1780s had wanted to strengthen the powers of the federal Congress established by the Articles of Confederation had often called themselves "federalists" and their opponents "anti-federalists." Still, the Constitution's opponents—now the defenders of the Articles of Confederation against the much stronger central government proffered in the Constitution—thought themselves entitled to be called "federalists." After all, they were advocates of loose con-federal government, and (as they saw it) the Constitution's supporters were pushing consolidated or centralized government. Hamilton beat them to it, however, and his opponents were left in an awful political limbo: History knows them only as the Anti-Federalists.[9]

He chose "Publius" as the pseudonym, trumping his adversaries' invocation of heroes of the late Roman republic (Brutus and Cato) with a reference to one of the founders and saviors of republican Rome—Publius Valerius Publicola, whose biography was paired with that of Solon in Plutarch's famous *Parallel Lives.* Solon, the democratic lawgiver of Athens, had lived to see his polity overthrown by a tyrant; but the Roman Publius firmly established his republic, which endured and expanded for centuries. Moreover, after making his laws, Solon had left Athens for ten years in order to avoid having to interpret his legislation. By contrast, Publius had remained in Rome in order to serve as consul, to improve (at a critical moment) the city's primitive republican laws, and to impart his own spirit of moderation, justice, and wisdom to the regime.[10] What did this imply for the American Publius? At least this, that he wished to seize a fleeting moment favorable to constitution-making—when the wise and moderate men of the Federal Convention would have their greatest influence—in order to form a just and enduring republic in an extensive land. To accomplish this he had to speak or, rather, write moderately, which meant, *inter alia*, confining his ingenuity to the defense and explanation of the proposed Constitution. By offering himself as their prudent counselor, Publius clearly subordinated himself to the people of New York and, by extension, the United States. But insofar as the people were persuaded by his interpretation of the Constitution and of republicanism, his own authority grew—as did the authority of wise statesmen who in the future would seek to guide their country by following his example.

It was clear from the beginning that Hamilton intended *The Federalist* to match and overmatch the Anti-Federalists' arguments. He promised in *Federalist* No. 1 "a satisfactory answer to all the objections . . . that may seem to have any claim to your attention," and arranged for the papers to be printed and reprinted in the New York City press. At the height of the series, three or four new essays by Publius appeared every week, and each essay would eventually appear in two or three of the city's five newspapers. Small wonder that frustrated readers sometimes complained (stop "cramming us with the voluminous Publius," groaned "twenty-seven subscribers" to the *New York Journal).* Not content with dominating the New York discussion, Hamilton also encouraged republication in out-of-state newspapers. To maintain this pace, he needed collaborators. He enlisted John Jay, who early fell ill; he apparently offered a spot to Gouverneur Morris, who declined; and William Duer submitted three essays, which Hamilton rejected. Hamilton and Jay recruited Madison, who was in New York as a Virginia delegate to Congress, at some point (we

do not know exactly when) and their collaboration lifted *The Federalist* to greatness. It also probably extended the series, which initially may have been slated to comprise twenty or twenty-five papers, not the eighty-five that finally resulted.[11]

We do not know the details of their collaboration. Hamilton (1755–1804) and Madison (1751–1836) had been prominent participants in the debates at the Philadelphia Convention, advocating quite different versions of a stronger and more coherent national government; and they had served together on the Committee of Style, which had prepared the final draft of the Constitution. Jay (1745–1829), the oldest and at that time most distinguished of the group, was a prominent lawyer who had drafted the New York Constitution of 1777 and who had negotiated, alongside Benjamin Franklin and John Adams, the Treaty of 1783 that had officially ended the Revolutionary War. Madison much later famously recalled the haste with which the papers were written, which prevented active collaboration, but he also remembered consulting with Hamilton on some of them.[12] Each writer drew on materials he had prepared for, or during, the Convention, and each worked on topics congenial to him. Hamilton tackled the weaknesses of the Articles of Confederation, especially regarding domestic stability, war powers, taxation, and commercial regulation, and he surveyed the more energetic and high-toned branches of the government—the executive and the judiciary, along with a few aspects of the Senate. Madison expounded his theory of the extended republic, the delicacy of the Convention's task, federalism, republicanism, the general theory of the separation of powers, the House of Representatives, and important features of the Senate. (Called back to Virginia, he ceased to contribute after *Federalist* 63.) Jay stuck to foreign policy in his five essays.[13]

Given their famous falling out a few years later, after which they remained bitter political enemies, Hamilton and Madison might seem unlikely co-authors. Indeed, several scholars in the twentieth century have exercised themselves over the alleged schizophrenia of Publius, straining to identify latent disagreements between the principal co-authors.[14] This approach clearly risked reading back into the 1780s the fierce partisan disputes of the 1790s. Besides, it has actually proved very difficult to determine who wrote several numbers of *The Federalist* (particularly Nos. 55–58 and 62–63) claimed by both Madison and Hamilton. Even more scholarly ink has been spilled on this authorship controversy than on the book's supposed "split personality." External evidence is inconclusive, and internal evidence (drawing on subject matter, arguments, style) has not dispelled the ambiguity.[15] Researchers have resorted to computer analysis of the text in the attempt to settle who wrote what, but they have been hard-pressed to find a distinction they could rely on—sentence length, "marker" words—all the more obvious tests failed to turn up a distinction that made a difference. Finally, a statistical difference was found in the use of utterly trivial words, but this threatened to make the differences between Hamilton and Madison utterly trivial.[16]

So similar, then, were the two men's arguments and writing style in *The Federalist* that their efforts to disguise themselves as Publius must be judged an extraordinary success. They clearly did not regard this as a personal or idiosyncratic work. Indeed, they kept their authorship secret (at least publicly) for many years, and later in their careers, each more or less disclaimed the book as an adequate statement of his own political principles.[17] So there is a very real sense in which Publius *is* the author of *The Federalist,* because each writer strove to write as "Publius," to write to the collective mark being set in the accumulating papers of *The Federalist.* After all, Hamilton, Madison, and Jay were in New York City together from October 1787 to March 1788. And although they did not look over each other's shoulder while composing, it is likely that they did consult with one another on the general direction of the series and the division of labor emerging within it, and they may occasionally have edited one another's copy. They certainly read one another's essays eventually, if only in order to maintain the series' consistent argument and tone.

When Hamilton decided to issue the collected papers in two hardcover volumes (published on March 22 and May 28, 1788), he added a Preface to the first volume

in which he apologized for the "violations of method and repetitions of ideas" involved in the transformation of a newspaper series into a book. He admitted, however, that the "latter defect" had been "intentionally indulged" for rhetorical purposes—that is, in order to more effectively persuade the readers. It was not "anxiety for the literary character of the performance" that compelled the apology, he added, but "respect for public opinion," which would recognize repetition when it saw it. Hamilton intended the series to appeal to both "a critical reader" and the public, then, and the two audiences were compatible because the latter, the public, was respectable, i.e., itself aspiring to if never quite reaching the standards of "a critical reader." Nor, it should be added, did these "critical" or more enlightened readers disdain the cause of the respectable public. Part of the enduring glory of the debate over the Constitution in 1787–1788 was that it showed at what a high level the cause of popular government could be, indeed *had* to be defended, if it was to be something honorable (see *Federalist* No. 39). *The Federalist* represented the high point of this high-level debate, but it served also as a model of candor, civility, and deliberation for future American political disputes. Unlike Solon, the American Publius would never desert his country, but would always be present, in literary form, to counsel it.

Hamilton restated the point in the Preface's concluding sentence: "The great wish is that it may promote the cause of truth and lead to a right judgment of the true interests of the community." *The Federalist* was at once a practical work designed to persuade the community of its interests, and a more theoretical work serving "the cause of truth." The cause of popular or republican government depended on the capacity of "societies of men," and particularly "the people of this country," in the words of *Federalist* No. 1, to establish "good government from reflection and choice." Otherwise the cause of the people would collapse, and they would be "forever destined to depend for their political constitutions on accident and force." But the ability of the people to govern themselves depended on their willingness to allow "reflection" to guide their "choice"—depended, in other words, on their willingness to take seriously the debate

over the Constitution, to abide by the deliberative style of democratic or republican politics that *The Federalist* did so much to establish, and to heed the counsels of *The Federalist* in choosing to ratify, and later to uphold, the Constitution of the United States.

Throughout their labors, the authors of *The Federalist* adhered fairly closely to the outline of the series announced in *Federalist* No. 1. "I propose, in a series of papers, to discuss the following interesting particulars," Publius wrote:

> *The utility of the UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least equally energetic with the one proposed, to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own State constitution*—and lastly, *The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.* (No. 1, p. 30)

This outline was followed, though not without modification. The fourth topic, on the Constitution's conformity to "the true principles of republican government," grew to be a survey of the "particular structure" of the whole government, encompassing Federalist Nos. 47–84. The fifth and sixth topics, "anticipated and exhausted" (p. 520) in the previous section, shrank accordingly to the dimensions of a single paragraph apiece in the concluding paper, *Federalist* No. 85.

As indicated in the beginning agenda, Publius's discussion was organized around two broad subjects, "UNION" and "the proposed Constitution." These subjects in turn corresponded to the two volumes of the collected *Federalist* papers: "UNION" was the subject of the first thirty-six numbers of *The Federalist*, assembled in the first bound volume, and "the merits of this Constitution" absorbed the next forty-nine papers, Nos. 37–85, published in the second. In general outline, then, the argument of the book takes this form:

I. The Union
- Nos. 1–14: Introduction and "*the utility of the UNION to your political prosperity*"
- Nos. 15–22: "*The insufficiency of the present Confederation to preserve that Union*"
- Nos. 23–36: "*The necessity of a government at least equally energetic with the one proposed, to the attainment of this object*"

II. The Merits of this Constitution or "*The conformity of the proposed Constitution to the true principles of republican government*"
- Nos. 37–40: The delicate work of the Convention and the "general form" of the proposed government (i.e., its republicanism and federalism)
- Nos. 41–46: The "quantity" or "general mass of power" invested in the new government and whether this is dangerous to the States
- Nos. 47–84: The "particular structure" of the government and the distribution" of its mass of power
- Nos. 47–51: The separation of powers in general
- Nos. 52–58: The House of Representatives
- Nos. 59–61: The regulation of elections
- Nos. 62–66: The Senate
- Nos. 67–77: The Executive
- Nos. 78–83: The Judiciary
- No. 84: Miscellaneous objections, including the lack of a Bill of Rights
- No. 85: Conclusion, including the Constitution's "*analogy to your own State constitution*" and "*The additional security which its adoption will afford to the preservation of that* [republican] *species of government, to liberty, and to property*"

The two volumes or main divisions of *The Federalist* thus have different themes that dictate different points of view and kinds of argument. The theme of the first volume is the Union, meaning the necessity of maintaining a "firm" and "well-constructed" Union as opposed to allowing its dissolution into separate confederacies of states (e.g., a Southern Confederacy, Northern Confederacy, etc.). Publius announces "that it seems to have been reserved to the people of this country, by their

conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice." But reflective men know that politics cannot ignore the role of "accident and force" in human affairs, and the first volume of *The Federalist* is a long tutorial in the ways in which American republicans should anticipate the threats that will, inevitably, be posed by "accident and force." Publius concentrates his arguments, therefore, on the forceful necessities that require Union. "Among the many objects to which a wise and free people find it necessary to direct their attention," he observes in No. 3 (p. 36), "that of providing for their *safety* seems to be first." He amplifies the thought in No. 8 (pp. 61–62): "Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates." These are not "vague inferences," Publius notes, but "solid conclusions, drawn from the natural and necessary progress of human affairs (p. 63)."

Indeed, "nothing is more certain than the indispensable necessity of government" (No. 2, p. 31), which is made necessary precisely by the problem of safety or self-preservation. Throughout *The Federalist*'s first volume or first part, the Constitution seems to be for the sake of the Union, and the Union seems to be for the sake of safety or self-preservation. Nature is always close to necessity in these papers, and politics close to physics or mathematics in its calculus of the human passions. Publius describes representation, for example, as a "great mechanical power" by which the will of society may be concentrated and "its force directed to any object which the public good requires." The emphasis is on concentrating and projecting society's will, not on refining or shaping it. The problem of politics seems to be how to arrange "the momentum of civil power" so that it acts on individuals, moving their passions in the proper direction (No. 13, pp. 92–93). Similarly, he argues that the national government's powers to levy taxes and to raise and maintain an army ought to exist "without limitation" because it is impossible to foresee the extent and variety of national emergencies or the means necessary to meet them. This reasoning, he insists, is axiomatic,

resting on such "simple" and "universal" truths as that "the *means* ought to be proportioned to the *end*." So though the principles of morals and politics do not have "the same degree of certainty with those of the mathematics," Publius assures his readers that "they have much better claims in this respect" than men usually think (No. 23, p. 149; No. 30, pp. 183–184, 186–187; No. 31, pp. 189–190).

In Nos. 9 and 10, however, Publius shows that the Union, besides being necessary for our survival, is also useful to liberty. But even these famous papers remain in decisive respects within the horizon of the first volume. According to No. 10, the protection of the unequal faculties of men is "the first object of government" (p. 73), though earlier we had been instructed that "*safety*" is the first object of a people's attention. Self-preservation may be first in the sense of being the earliest or most urgent object of government, then, but what is first in time need not remain first in rank. The protection of the unequal faculties of men "from which the rights of property originate" may thus become "the first object of government" once safety has been attended to; government does have higher, though not more urgent, ends than the protection of mere life. Still, in No. 10 these higher ends embrace essentially the rights of property and the protection of the diverse faculties of men that give rise to these rights. In other words, the ends of government or of the Constitution appear more or less confined to the objects of the Union, which he defines as "the common defense of the members," "the preservation of the public peace," "the regulation of commerce with other nations and between the States," and the conduct of foreign policy (No. 23, p. 149).

It is only in *The Federalist*'s second volume, which turns to the merits of the proposed Constitution as such, that Publius begins consistently to look at matters from a higher point of view. Here we learn that the Constitution strives to secure "the common good of the society," "the happiness of the people," and a complex "public good" that incorporates such elements as "a due sense of national character," the cultivation of "the deliberate sense of the community," and even "extensive and arduous enterprises for the public benefit" that will be champi-

oned by future presidents (No. 57, p. 348; No. 62, p. 378; No. 63, p. 380; No. 71, p. 430; No. 72, p. 436). Security against foreign danger, which earlier had been singled out as the first object of a wise and free people's attention, is downgraded to "one of the primitive objects of civil society" (No. 3, p. 36; No. 41, p. 252). From this point of view, the protection of the diverse "faculties of men, from which the rights of property originate" (No. 10, p. 73) appears now as an intermediate goal, somewhere between securing the mere "safety" and the "happiness" of society.

The change in tone is heralded in the concluding paragraph of the first volume: "a further and more critical investigation," Publius promises, "will serve to recommend [the Constitution] still more to every sincere and disinterested advocate for good government." This "more critical and thorough survey of the work of the convention," as he calls it in *Federalist* No. 37, occupies the rest of the book, and is addressed to "the candid and judicious part of the community," those who "add to a sincere zeal for the happiness of their country, a temper favorable to a just estimate of the means of promoting it" (No. 36, p. 220; No. 37, p. 222). Rather than teaching men to heed their passions so that they may gratify their fundamental passion for self-preservation—rather than using necessity as an effective substitute for moderation, in other words—Publius chooses to speak in moderate tones to moderate men. He encourages his readers to listen to moderation's counsel and, bit by bit, to yield to it.

The "sincere and disinterested advocate for good government" will not be satisfied with proofs of the necessity of the plan, because in order for government to be "good" it should be worthy of choice. Accordingly, the question posed in Nos. 37–85 is whether and why the proposed Constitution is choiceworthy. Whereas in the first volume Publius tries to show that the American people have no choice (in any rational sense) but to preserve the Union by adopting the Constitution, in the second he attempts to persuade them not only of the "expediency" but of the "propriety" of ratifying it. The first volume ends by looking forward to the "further and more critical investigation of the system" and then proclaiming, "Happy will

it be for ourselves, and most honorable for human nature, if we have wisdom and virtue enough to set so glorious an example to mankind!" The Union may be necessary for our "political prosperity," but what is "most honorable for human nature" is disclosed by Publius in the case for the Constitution and its principles, not in the case for the Union (No. 1, p. 30; No. 36, p. 220).

In *The Federalist*'s second part, the "spirit of moderation" comes to the fore and with it the freedom to deliberate on the various means or institutions actually proposed in the Constitution. Thus in contrast to the proud confidence in human knowledge displayed in the first part, the second volume begins by questioning, in No. 37, how and what we can know. Human reason needs to reflect on its own limitations if it would grow wise. In politics, this means recognizing not only that "theoretical propriety" must often be sacrificed to "extraneous considerations," but that "theoretical propriety" should not be expected in the first place (No. 37, pp. 221, 226). Prudence or practical wisdom is the god of this lower world, not mathematics. "Nothing can be more fallacious," Publius concludes in No. 55, "than to found our political calculations on arithmetical principles" (p. 339). Nor is human nature simply or mainly "ambitious, vindictive, and rapacious" (No. 6, p. 48). "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust," Publius acknowledges, "so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form" (No. 55, p. 343). Instead of emphasizing the "natural course of things" (No. 8, p. 63) from whose deterministic sway America is not exempt, Publius points to nature as a standard for human choice—and a support for, though by no means a guarantee of, human excellence. His reappraisal of nature is perhaps most telling in his defense of judicial review, where he invokes "the nature and reason of the thing" as a criterion or determination of "truth and propriety," to which human laws and institutions ought to conform (No. 78, p. 467).

Publius's defense of the Constitution culminates, then, in the description of high offices of government whose holders will need wisdom, temperance, respectability, courage, magnanimity, judgment, and other eminent qualities or qualifications in order to do their duty (No. 57, p. 348; No. 63, p. 382; No. 71, pp. 431, 433; No. 76, pp. 454–455). Earlier, in *Federalist* No. 10 (p. 75), Publius had warned that "enlightened statesmen will not always be at the helm." But now he does his best to show that the very design of these offices—their powers, number, duration, and other constitutional characteristics—will help to attract "fit characters" to them, though the kind of character that is fitting will vary with the office. For instance, Publius affirms that the electoral college "affords a moral certainty that the office of President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications." In fact, he speaks of "a constant probability of seeing the station filled by characters pre-eminent for ability and virtue," or "at least respectable" (No. 68, p. 412; No. 71, p. 431; No. 76, p. 454).

The second volume of *The Federalist* is concerned overwhelmingly with the articulation of this structure of offices, beginning with a general account of the separation of powers in Nos. 47–51, followed by the treatment of each power or branch in turn. In Publius's account, the "particular structure" of the government, based on separated powers, is combined with or inserted into its "general form," the republican and federal form (as defined in No. 39). Within the second part as a whole, the discussion moves from the standard of republican government to that of good government, as reflected in the order in which the branches are taken up, from the most to the least popular—the House, the Senate, the presidency, and finally the judiciary or Supreme Court. This ascent is not a rejection but a vindication of popular government, showing how it must be structured if it is to be good government, capable not only of responding to majority will but of securing the rights of individuals and minorities, thus achieving the common good.

That the proposed Constitution needed to be vindicated on the basis of the "true principles of republican

government" implied, however, that there were false principles of republicanism to be contended with, too. One of *The Federalist*'s main tasks, especially in the second volume, is to distinguish between the true and false notions and to refute the latter. This dispute arrays, in effect, the republicanism implicit in the Constitution against the rather different theory inherent in the state constitutions and presumed in the Articles of Confederation. At stake politically was the crucial question: Which account of republicanism was faithful to the principles for which Americans had fought the Revolution? And at the center of this controversy lay the proper relation between republicanism and responsibility.

"Responsibility" is a new word that received its classic definition in the ratification debate and, especially, in the pages of *The Federalist.*[18] Although the term had appeared sporadically in eighteenth-century British politics, it was in America in the 1780s that it achieved its lasting political prominence. "Responsibility" is the noun form of a much older adjective, "responsible," itself related to the verb "respond," meaning to answer; its Latin ancestor is *respondeo,* whose root *(spondeo)* means to promise sacredly or to vow. To be responsible thus means to be answerable to someone else, implying the possibility of punishment; but it also means to be the cause of something, to be equal to a challenge or obligation, to live up to a vow or solemn promise. If republican government is to be responsible, it must be *responsive* to the people and answerable to their will. But if it is to be responsible in the more positive sense, it must go beyond mere responsiveness and be able to serve the people's true interests or their reasonable will, even if this course of conduct is not immediately popular. The tension between these two senses of "responsibility" underlay the debate between Anti-Federalists and Federalists over the ratification of the Constitution.

For the Anti-Federalists, responsibility meant primarily and almost exclusively the first sense of the term: The essence of republican or representative government was that it be responsive to the people. In one of his great speeches denouncing the Constitution in the Virginia ratifying convention, Patrick Henry asked, "For where, Sir, is the responsibility?" "Where is the responsibility,"

he repeated, "that leading principle in the British government?" Under the British Constitution, malfeasance in office had cost the heads of "some of the most saucy geniuses that ever were," but under the new American Constitution "the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves."[19] The problem, as he and many other Anti-Federalists saw it, was that the Constitution, though boasting an elaborate scheme of separation of powers and checks and balances, did not manage to secure the new government against the danger of minority faction—tyranny by one man, or a few men, of enterprise, ambition, and wealth. This goal had been achieved, however precariously, by the British Constitution, which was why it had so much appeal to the Anti-Federalist writers. In fact, the whole question of responsibility in government was for them an extension of the British struggle for ministerial accountability, that is, for ministers who were answerable to Parliament rather than to the King. Ministerial accountability meant that Parliament had a direct say over the *administration* of British government, and thus an additional important check on royal power. A Maryland pundit expressed the point so: "In this new Constitution—a complicated system sets responsibility at defiance, and the Rights of Men . . . are left at the mercy of events." For after all, he declared, representative government is "really only a scene of perpetual rapine and confusion" unless it is "confirmed in its views and conduct by the constant inspection, immediate superintendence, and frequent interference and control of the People themselves on one side, or an hereditary nobility on the other, both of which orders have fixed and permanent views." The mixed regime of England had achieved this salutary self-control, and had been further perfected and "simplified by the introduction and regular formation of the effective administration of responsible ministers."[20]

Indeed, one possibility for securing responsible government was the mixed regime along British lines. Most Anti-Federalists admitted, however, that America did not have the proper materials—most important, a distinct class of wealthy aristocrats—out of which to construct a mixed regime based on well-established social

classes.[21] Besides, even in England, it was increasingly "the sense of the people at large" that formed "the only operative and efficient check upon the conduct of administration."[22] Given these facts, the Anti-Federalists tended to advocate "simple" government, based as far as possible on the people at large. If "the body of the people are virtuous" and property "is pretty equally divided," the Anti-Federalist writer Centinel argued, then "the highest responsibility is to be attained in a simple structure of government." Although they recognized that direct democracy was impossible even for state governments, much less for the national government, the Anti-Federalists preferred representative forms that approximated direct democracy through such expedients as a numerous representation, short terms of office, and frequent rotation in office (term limits, we call it today). The Federal Farmer, one of the Constitution's soberest opponents, expressed this ideal of representation as follows: "a full and equal representation is one that possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled."[23]

While conceding the necessity of some sort of bicameralism and separation of powers in a representative government, most Anti-Federalists regarded these primarily as means of checking the ambitious few—the enemies or manipulators of direct democracy—rather than as means of restricting legislative power as such and consequently energizing executive and judicial power. Few went so far as Centinel, who advocated a unicameral legislature on the Pennsylvania model. But most would have agreed with him that the form of government that "holds those entrusted with power, in the greatest responsibility to their constituents" is "the best calculated for free men." The writer calling himself A Maryland Farmer put it succinctly: Responsibility is "the only test of good government."[24]

The point of the strict separation of powers urged by most Anti-Federalists (and discussed in *Federalist* Nos. 47–50) was therefore to keep government responsible to the people by making the formal or "parchment" barriers between departments as clear and exact as possible. A written Bill of Rights (see *Federalist* No. 84) would serve as an additional safeguard. It would then be the

people's job to police those barriers, e.g., to keep the executive from encroaching on any part of the legislative power. After all, it was the people's government to begin with, and it seemed strictly consonant with republican theory that they should judge what was allowed under it and what not, what was constitutional and what was not.

Quite different is *The Federalist*'s understanding of the nexus between responsibility and republicanism. The American Union is threatening to split up into separate confederacies of states, Publius argues, and each state is itself teetering on the brink of tyranny due to the danger of majority faction. By "majority faction," *The Federalist* means an unjust or tyrannical majority "of citizens," not just of legislators or elected officials. So that the Anti-Federalists' favorite prescription for the ills of republicanism—responsibility to the superior power of the people—is inadequate in principle. What if the people, or a majority of the people, wishes to use its power unjustly? The Anti-Federalists' reduction of responsibility to *responsiveness* leaves them without a good answer to this fundamental question. Civic education might be a traditional solution to this perplexity, and the Anti-Federalists did maintain that the states, through militia service, established churches, bills of rights, and various forms of direct participation in government, provided a republican education to their citizens that a national government could not equal. But Publius's point was that civic education as carried on in the states manifestly had failed or was failing—else why were most of the state governments beset by majority factions?[25]

Of course, the size of the states had something to do with the problem, as Publius argues in the famous No. 10. Neither direct democracy nor a small republic could solve the problem of majority faction, according to *Federalist* No. 10, because neither was large enough to embrace a saving multiplicity of interests. Extend the sphere of republican government to include more, and more various, interests, and it would be less probable that any one of them could form the basis for an enduring and impassioned majority. One could get rid of majority faction by getting rid of majorities, or at least those "united, and actuated, by some common impulse of passion, or of interest," adverse to private rights or

the public good. The difficulty of distinguishing between just majorities, whose opinions must direct the government, and unjust majorities, whose passions and interests must be prevented from directing the government, has long confused students of *The Federalist,* and accounts for many interpretations emphasizing the alleged propensity of American government to deadlock amid social pluralism and separated powers.[26]

But in the context of the book as a whole, the real agenda of *Federalist* No. 10 is to discredit direct democracy as the standard at which popular government ought to aim. Publius states this explicitly: "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" (No. 10, p. 76). Republican government, i.e., representative government, then becomes the best form, not just a diluted or second-best form, of popular government. What is good about republicanism, Publius claims, is two things: representation (the government will be administered by a chosen few) and size (it can cover an extended territory comprising many interests). Wishing to refute direct democracy on the most democratic grounds possible, however, Publius in No. 10 stresses the numbers of interests and sheer extent of territory that are necessary to make republican government work. He does not dwell on the subject of representation, which would (and does, in the second volume) lead to a more candid account of the limitations of direct democracy from the point of view of good government or aristocracy.

Publius lays the groundwork in No. 10 for a new kind of responsibility that means more than reporting back to the people, and for a new kind of republicanism that is more than direct democracy once removed.[27] The *sine qua non* of such responsible republicanism is a properly structured separation of powers, which is (to repeat) the main organizing principle of the second part of *The Federalist.* Separation of powers performs three main functions in Publius's argument.

First, it protects against governmental tyranny, i.e., the ability of one or more branches to encroach upon the other(s) and to breach the overall limits set to the national government by the Constitution. Though "a dependence on the people" is the primary means of keeping government limited, Publius insists that "auxiliary precautions" like bicameralism and separation of powers are also necessary. Paradoxically, the Constitution mixes the powers of the three branches in order to keep them separate. In the famous formula of No. 51, "the interest of the man must be connected with the constitutional rights of the place," Publius argues, so that the officers of each department have a personal motive to exert their constitutional powers on behalf of their department's independence. "Ambition must be made to counteract ambition," Publius advises, meaning that ambition must be taught to vie with ambition in defense of each branch's rights and thus in support of the Constitution as a whole. Necessity or self-interest is thus made to coincide with duty, and statesmanlike habits are grafted onto the native stock of self-assertion.[28]

Experience in the states had shown that it was the legislative branch's encroachments that were most dangerous to the Constitution, precisely because the legislature was the most powerful department in republican governments, even as the executive was naturally the most powerful in monarchical governments. Consequently, *The Federalist* teaches Americans that their jealousy of power ought to be directed particularly against the legislative branch, despite the fact (or rather because of the fact) that the legislature was traditionally regarded as the people's branch. By contrast, the Anti-Federalists understood the separation of powers to cut particularly against the executive, or against energetic government in general, in the name of popular liberty or responsibility. But a central purpose of Publius's analysis is to deprecate the legislature's claim to belong uniquely to the people: The executive and judiciary are representative, too, he insists, because the Constitution as a whole is the people's.

Second, Publius holds that a proper separation of powers allows each branch to perform its peculiar function well. In the discussion of the specific branches, he explains that the Constitution conduces to a deliberative legislature, an energetic executive, and a wise and just judiciary. The Anti-Federalists thought functional excellence desirable, too, but emphasized that the people

must be the judge of constitutional demarcations, hence also of the character and extent of the three powers. By and large they did not think that energy ought to be the leading quality of the executive, nor that deliberative excellence as opposed to responsiveness or fidelity to the people's will should be the mark of the legislature. To the Anti-Federalists, therefore, the new Constitution looked suspiciously like the British government redivivus, only without the effective checks and balances that it had evolved. A lofty legislature and an ambitious executive did not look to them like the government they had fought for.

Here *The Federalist* cautions that although it is *essential* to republican government that it be "derived from the great body of the society," it is *sufficient* that "the persons administering it be appointed, either directly or indirectly, by the people." Otherwise, every popular government "that has been or can be well organized or well executed" would be "degraded from the republican character" (No. 39, p. 237). In other words, representation is not a necessary evil but a positive good, bringing far-reaching benefits to popular government. In particular, the representative principle allows the separation of powers (originally a non-republican principle) to establish its republican *bona fides,* and so blesses the institutions necessary to combine energy and stability with liberty (*Federalist* No. 37, pp. 222–223). Republican government could not be good government without such institutions, and Publius defends them vigorously: a House of Representatives less numerous than the Anti-Federalists wanted; a senate with six-year terms; a President indefinitely eligible for re-election (since changed by the 22nd Amendment); and federal judges with "good behavior" tenure. These robust institutions, each shaped to its function or task, make republican government responsible in a larger, higher sense than the Anti-Federalists had in mind, and encourage the public to judge the government not only by its immediate actions, but by its long-range policies and tendencies.

Finally, *The Federalist* argues that separation of powers prevents or replaces direct recurrence to the people as the means of resolving conflicts among the branches. This is an advantage that needs further explanation. The

people of the United States legislate the Constitution for themselves by ratifying it; but they never subsequently judge or execute it directly.[29] There is no national initiative or referendum to decide whether a law is constitutional, for example. In fact, the people are excluded altogether from the administration of the government; operating the machinery of government is the job of our elected representatives and appointed officeholders (No. 63, p. 382). To be sure, the people have the precious right, under the Constitution, of exercising their sovereign opinion over the whole government through regular elections, and they may amend the Constitution according to the procedures outlined in Article V or new-model it according to their revolutionary right under the natural law (*Federalist* No. 43, p. 275). The political and constitutional soundness of particular laws, executive orders, and court decisions, however, is always decided in the course of conflict and cooperation among the departments.

In this way, the deliberative give-and-take among the branches replaces direct appeals to the people as the means to decide questions of constitutional propriety. This effect of separated powers, Publius explains in No. 49, encourages reverence for the law and veneration of the Constitution: Though public opinion or the consent of the governed is the originating authority of the Constitution, the public learns gradually to measure its opinions by the Constitution. The Constitution itself becomes authoritative for public opinion. The Constitution and the public opinion that reflects it—what Publius calls "the reason for the public"—then become sovereign over the government. In the words of *Federalist* No. 49, "it is the reason, alone, of the public, that ought to control and regulate the government. The passions [of the public] ought to be controlled and regulated by the government" (p. 314).

So the reason of the public controls the government, which in turn regulates the public's passions. Notice that this is not a formula for the direct rule of reason over passion in politics. It calls rather for the reason "of the public" to control the passions through the mediation of the government. The direct rule of reason over passion in politics might be said to dictate the suppression of

rights and freedom in the name of duties or virtues. Publius does not endorse this, but neither does he allow rights to sink to their lowest common denominator, to become expressions of mere self-interest or passion. Instead, he calls for the "reason of the public" to become responsible for the passions of the public: He defends a form of government that will encourage rights to be claimed and exercised responsibly. *The Federalist*'s concern for veneration of the Constitution shows that a purely calculative or self-interested attachment to government is not sufficient to secure republicanism. The Constitution must attract the loyalty, admiration, pride, and even reverence of American citizens if the rule of law is to be firmly grounded—if republicanism is to be responsible.

In the end, then, one needs an opinion of the Constitution's goodness to attract, define, and hold Americans' passions and interests in a decent republican order. This means a politics of public opinion, not just of fractured interests à la *Federalist* No. 10. Majority faction, in other words, cannot finally be defeated except by a healthy majority opinion, the formation of which is Publius's chief educational and political goal. This implies not so much a politics of virtue as of responsibility, which is consistent with men's natural rights understood in light of "the honor of the human race" (No. 11, p. 85) rather than in light of man's dishonorable necessities. *The Federalist* elucidates the kind of politics and constitutionalism that are needed in order to rescue the cause of the American Revolution and to vindicate the Declaration of Independence, which after all proclaimed not only "that all men are created equal" and "are endowed by their Creator" with certain unalienable rights, but that in defense of those sacred rights, good men ought to pledge their "sacred honor."

This pledge goes beyond the requirements of responsibility, of course, but it suggests how responsibility points beyond itself to virtue or statesmanship. Responsibility comes into its own, after all, when some sort of action must be taken: It strives to bring interest and duty together in order to do the right thing, often in disagreeable situations where someone must act with a view to a remote and long-term good (act responsibly, we call

it) or must take charge (take responsibility, as we say today). The Constitution provides platforms for both kinds of responsibility in the offices of the national government, particularly the Senate (see *Federalist* No. 63) and the presidency (No. 70). Responsibility is the only virtue or quasi-virtue that has entered our moral language from the American Founding, and in large measure it is *The Federalist* that has defined and still defines its contemporary meaning. Publius shows us what it means, and what it takes, to live as responsible republicans under a written Constitution. This is *The Federalist*'s lesson in self-government.

—Charles R. Kesler
March 1999

No. 10: The Same Subject Continued (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 every-

where perished, as they continue to be the favorite 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 labor 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 administration.

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 a 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 as speculation as of practice; an attachment to 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 co-operate 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 civilized 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 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 question 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 manufacturers be encouraged, and in what degree, by restrictions on foreign manufacturers? 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 alone this form of government can be rescued from the opprobrium under which it has so long labored and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? 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 coexistent 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 results 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 patronized 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 equalized 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 most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor 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 constituents, and being proportionally greatest 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 center on men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniencies 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 dishonorable 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 this 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

No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments (Madison)

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.

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. Were 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; second, 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 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 it should 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 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 citizen, will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued 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 gradually 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 practicable 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.*

PUBLIUS

No. 84: Certain General and Miscellaneous Objections to the Constitution Considered and Answered (Hamilton)

In the course of the foregoing review of the Constitution, I have taken notice of, and endeavored to answer most of the objections which have appeared against it. There however remain a few which either did not fall naturally under any particular head or were forgotten in their proper places. These shall now be discussed; but as the subject has been drawn into great length, I shall so far consult brevity as to comprise all my observations on these miscellaneous points in a single paper.

The most considerable of these remaining objections is that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked that the constitutions of several of the States are in a similar predicament. I add that New York is of this number. And yet the opposers of the new system, in this State, who profess an unlimited admiration for its constitution, are among the most intemperate partisans of a bill of rights. To justify their zeal in this matter they allege two things: one is

that, though the constitution of New York has no bill of rights prefixed to it, yet it contains, in the body of it, various provisions in favor of particular privileges and rights which, in substance, amount to the same thing; the other is that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights not expressed in it are equally secured.

To the first I answer that the Constitution proposed by the convention contains, as well as the constitution of this State, a number of such provisions.

Independent of those which relate to the structure of the government, we find the following: Article 1, section 3, clause 7—"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law." Section 9, of the same article, clause 2—"The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Clause 3—"No bill of attainder or *ex post facto* law shall be passed." Clause 7—"No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state." Article 3, section 2, clause 3—"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." Section 3, of the same article—"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." And clause 3, of the same section—"The Congress shall have power to declare the punishment of treason; but no attainder of treason shall

work corruption of blood, or forfeiture, except during the life of the person attainted."

It may well be a question whether these are not, upon the whole, of equal importance with any which are to be found in the constitution of this State. The establishment of the writ of *habeas corpus*, the prohibition of *ex post facto* laws, and of TITLES OF NOBILITY, *to which we have no corresponding provision in our Constitution*, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious **Blackstone,*** in reference to the latter, are well worthy of recital: "To bereave a man of life [says he] or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a *more dangerous engine* of arbitrary government." And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the *habeas corpus* act, which in one place he calls "the BULWARK of the British Constitution."†

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the cornerstone of republican government; for so long as they are excluded there can never be serious danger that the government will be any other than that of the people.

To the second, that is, to the pretended establishment of the common and statute law by the Constitution, I answer that they are expressly made subject "to such alterations and provisions as the legislature shall from time to time make concerning the same." They are therefore at any moment liable to repeal by the ordi-

* *Vide* Blackstone's *Commentaries*, Vol. 1, Page 136.
† Idem, Vol. 4, Page 438.

nary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law and to remove doubts which might have been occasioned by the Revolution. This consequently can be considered as no part of a declaration of rights, which under our constitutions must be intended as limitations of the power of the government itself.

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from **King John**. Such were the subsequent confirmations of that charter by subsequent princes. Such was the ***Petition of Right*** assented to by Charles the First in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of Parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions, professedly founded upon the power of the people and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain everything they have no need of particular reservations, "WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this Constitution for the United States of America." Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our State bills of rights and which would sound much better in a treatise of ethics than in a constitution of government.

But a minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns. If, therefore, the loud clamors against the plan of the convention, on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this State. But the truth is that both of them contain all which, in relation to their objects, is reasonably to be desired.

I go further and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution but would even be dangerous. They would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this State; in the next, I contend that whatever has been said about it in that or any other State amounts to nothing. What signifies a declaration that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the

general spirit of the people and of the government.* And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights.

There remains but one other view of this matter to conclude the point. The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights in Great Britain form its Constitution, and conversely the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention; comprehending various precautions for the public security which are not to be found in any of the State constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to in a variety of cases

* To show that there is a power in the Constitution by which the liberty of the press may be affected, recourse has been had to the power of taxation. It is said that duties may be laid upon the publications so high as to amount to a prohibition. I know not by what logic it could be maintained that the declarations in the State constitutions, in favor of the freedom of the press, would be a constitutional impediment to the imposition of duties upon publications by the State legislatures. It cannot certainly be pretended that any degree of duties, however low, would be an abridgment of the liberty of the press. We know that newspapers are taxed in Great Britain, and yet it is notorious that the press nowhere enjoys greater liberty than in that country. And if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion, regulated by public opinion; so that, after all, general declarations respecting the liberty of the press will give it no greater security than it will have without them. The same invasions of it may be effected under the State constitutions which contain those declarations through the means of taxation, as under the proposed Constitution, which has nothing of the kind. It would be quite as significant to declare that government ought to be free, that taxes ought not to be excessive, etc., as that the liberty of the press ought not to be restrained.

in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be said that it does not go far enough though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens if they are to be found in any part of the instrument which establishes the government. And hence it must be apparent that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign from the substance of the thing.

Another objection which has been made, and which, from the frequency of its repetition, it is to be presumed is relied on, is of this nature: "It is improper [say the objectors] to confer such large powers as are proposed upon the national government, because the seat of that government must of necessity be too remote from many of the States to admit of a proper knowledge on the part of the constituent of the conduct of the representative body." This argument, if it proves anything, proves that there ought to be no general government whatever. For the powers which, it seems to be agreed on all hands, ought to be vested in the Union, cannot be safely intrusted to a body which is not under every requisite control. But there are satisfactory reasons to show that the objection is in reality not well founded. There is in most of the arguments which relate to distance a palpable illusion of the imagination. What are the sources of information by which the people in Montgomery County must regulate their judgment of the conduct of their representatives in the State legislature? Of personal observation they can have no benefit. This is confined to the citizens on the spot. They must therefore depend on the information of intelligent men, in whom they confide; and how must these men obtain their information? Evidently from the complexion of public measures, from the public prints, from correspondences with their representatives, and with other persons who reside at the place of their deliberations. This does not apply to Montgomery County only, but to all the counties at any considerable distance from the seat of government.

It is equally evident that the same sources of information would be open to the people in relation to the conduct of their representatives in the general government, and the impediments to a prompt communication which distance may be supposed to create will be overbalanced by the effects of the vigilance of the State governments. The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter may be relied upon, if it were only from the rivalship of power. And we may conclude with the fullest assurance that the people, through that channel, will be better informed of the conduct of their national representatives than they can be by any means they now possess, of that of their State representatives.

It ought also to be remembered that the citizens who inhabit the country at and near the seat of government will, in all questions that affect the general liberty and prosperity, have the same interest with those who are at a distance, and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union.

Among the many extraordinary objections which have appeared against the proposed Constitution, the most extraordinary and the least colorable one is derived from the want of some provision respecting the debts due *to* the United States. This has been represented as a tacit relinquishment of those debts, and as a wicked contrivance to screen public defaulters. The newspapers have teemed with the most inflammatory railings on this head; and yet there is nothing clearer than that the suggestion is entirely void of foundation, and is the offspring of extreme ignorance or extreme dishonesty. In addition to the remarks I have made upon the subject in another

place, I shall only observe that as it is a plain dictate of common sense, so it is also an established doctrine of political law, that *"States neither lose any of their rights, nor are discharged from any of their obligations, by a change in the form of their civil government."**

The last objection of any consequence, which I at present recollect, turns upon the article of expense. If it were even true that the adoption of the proposed government would occasion a considerable increase of expense, it would be an objection that ought to have no weight against the plan.

The great bulk of the citizens of America are with reason convinced that Union is the basis of their political happiness. Men of sense of all parties now with few exceptions agree that it cannot be preserved under the present system, nor without radical alterations; that new and extensive powers ought to be granted to the national head, and that these require a different organization of the federal government—a single body being an unsafe depositary of such ample authorities. In conceding all this, the question of expense must be given up; for it is impossible, with any degree of safety, to narrow the foundation upon which the system is to stand. The two branches of the legislature are, in the first instance, to consist of only sixty-five persons, which is the same number of which Congress, under the existing Confederation, may be composed. It is true that this number is intended to be increased; but this is to keep pace with the increase of the population and resources of the country. It is evident that a less number would, even in the first instance, have been unsafe, and that a continuance of the present number would, in a more advanced stage of population, be a very inadequate representation of the people.

Whence is the dreaded augmentation of expense to spring? One source pointed out is the multiplication of offices under the new government. Let us examine this a little.

It is evident that the principal departments of the administration under the present government are the same

* *Vide* **Rutherforth's Institutes**, Vol. 2, book II, Chapter X, Sections XIV and XV. *Vide* also Grotius, Book II, Chapter IX, Sections VIII and IX.

which will be required under the new. There are now a Secretary of War, a Secretary for Foreign Affairs, a Secretary for Domestic Affairs, a Board of Treasury, consisting of three persons, a treasurer, assistants, clerks, etc. These offices are indispensable under any system and will suffice under the new as well as under the old. As to ambassadors and other ministers and agents in foreign countries, the proposed Constitution can make no other difference than to render their characters, where they reside, more respectable, and their services more useful. As to persons to be employed in the collection of the revenues, it is unquestionably true that these will form a very considerable addition to the number of federal officers; but it will not follow that this will occasion an increase of public expense. It will be in most cases nothing more than an exchange of State officers for national officers. In the collection of all duties, for instance, the persons employed will be wholly of the latter description. The States individually will stand in no need of any for this purpose. What difference can it make in point of expense to pay officers of the customs appointed by the State or those appointed by the United States? There is no good reason to suppose that either the number or the salaries of the latter will be greater than those of the former.

Where then are we to seek for those additional articles of expense which are to swell the account to the enormous size that has been represented to us? The chief item which occurs to me respects the support of the judges of the United States. I do not add the President, because there is now a president of Congress, whose expenses may not be far, if anything, short of those which will be incurred on account of the President of the United States. The support of the judges will clearly be an extra expense, but to what extent will depend on the particular plan which may be adopted in practice in regard to this matter. But it can upon no reasonable plan amount to a sum which will be an object of material consequence.

Let us now see what there is to counterbalance any extra expense that may attend the establishment of the proposed government. The first thing that presents itself is that a great part of the business which now keeps

Congress sitting through the year will be transacted by the President. Even the management of foreign negotiations will naturally devolve upon him, according to general principles concerted with the Senate, and subject to their final concurrence. Hence it is evident that a portion of the year will suffice for the session of both the Senate and the House of Representatives; we may suppose about a fourth for the latter and a third, or perhaps a half, for the former. The extra business of treaties and appointments may give this extra occupation to the Senate. From this circumstance we may infer that, until the House of Representatives shall be increased greatly beyond its present number, there will be a considerable saving of expense from the difference between the constant session of the present and the temporary session of the future Congress.

But there is another circumstance of great importance in the view of economy. The business of the United States has hitherto occupied the State legislatures, as well as Congress. The latter has made requisitions which the former have had to provide for. Hence it has happened that the sessions of the State legislatures have been protracted greatly beyond what was necessary for the execution of the mere local business of the States. More than half their time has been frequently employed in matters which related to the United States. Now the members who compose the legislatures of the several States amount to two thousand and upwards, which number has hitherto performed what under the new system will be done in the first instance by sixty-five persons, and probably at no future period by above a fourth or a fifth of that number. The Congress under the proposed government will do all the business of the United States themselves, without the intervention of the State legislatures, who thenceforth will have only to attend to the affairs of their particular States, and will not have to sit in any proportion as long as they have heretofore done. This difference in the time of the sessions of the State legislatures will be all clear gain, and will alone form an article of saving, which may be regarded as an equivalent for any additional objects of expense that may be occasioned by the adoption of the new system.

The result from these observations is that the sources

of additional expense from the establishment of the proposed Constitution are much fewer than may have been imagined; that they are counterbalanced by considerable objects of saving; and that while it is questionable on which side the scale will preponderate, it is certain that a government less expensive would be incompetent to the purposes of the Union.

PUBLIUS