

UNIT 2**A Constitution of Principles**

45-50-minute classes | 12-16 classes

UNIT PREVIEW

Structure

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Why Teach a Constitution of Principles

“[I]t 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, or whether they are forever destined to depend for their political constitutions on accident and force.” Thus wrote Alexander Hamilton in the opening paragraph of *Federalist 1* in support of the newly proposed United States Constitution. Indeed, it is the Constitution that gives institutional form to the principles of the Declaration of Independence. The Constitution is the vehicle for the American experiment in self-government. Study of the Constitution therefore shows students how and *that* human beings are able to govern themselves in freedom, securing the equal protection of rights and the dignity of each person through reflection, deliberation, and choice. This is a significant thing for students to grasp, for if the Constitution cannot achieve these ends, then force and violence are the only alternatives left to humankind.

What Teachers Should Consider

The idea and presence of a constitution is so ubiquitous to Americans that we forget how it was really the U.S. Constitution that made constitutions so common and expected. With this familiarity comes a lack of consideration of the uniqueness of the U.S. Constitution not only for being the first and oldest written constitution, but especially of the carefully discerned principles on which it rests.

The first of these is the rule of law, a principle that was not new but that was restored from antiquity through the Magna Carta and the English law tradition. The American colonists inherited this legal tradition and practiced it in the colonies for a century and a half in the colonies. Violations of the rule of law were at the heart of the colonists' complaints against the British.

After the Revolution, it was of great significance to construct a government that would preserve the rule of law and create structures and processes that would ward against its violations.

How Teachers Can Learn More

TEXTS

<i>The U.S. Constitution: A Reader</i> , Ed. Hillsdale College Politics Faculty	Chapters 4–6
<i>The Federalist</i> , Alexander Hamilton, James Madison, and John Jay	
<i>The Anti-Federalist</i>	
<i>American Government and Politics</i> , Joseph Bessette and John Pitney	Chapters 2–3

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Introduction to the Constitution
Constitution 101
The Federalist Papers
Civil Rights in American History

Primary Sources Studied in This Unit

The Articles of Confederation
 The U.S. Constitution
The Federalist, Nos. 1, 2, 6, 9, 10, 23, 37, 39, 45, 47, 48, 49, and 51

LESSON PLANS, ASSIGNMENTS, AND FORMATIVE QUIZ

Lesson 1 — The Case for the Constitution

3-4 classes

LESSON OBJECTIVE

Students learn about the Articles of Confederation, the need for a new constitution, the debate for and against the proposed Constitution, and the basic structure and powers of the government that the United States Constitution establishes.

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<i>Introduction to the Constitution</i>	Lectures 4, 5, 6, 7
<i>Constitution 101</i>	Lectures 1 and 3
<i>The Federalist Papers</i>	Lecture 1

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The Articles of Confederation
 The U.S. Constitution
The Federalist, Nos. 1, 2, 37

TERMS AND TOPICS

Articles of Confederation	power
republic	vesting clauses
Federalists	constitutional veneration
Anti-Federalists	

QUESTIONS FOR THE AMERICAN MIND

- How did the Articles of Confederation structure the government? Why did its framers structure it in these ways?
- What were the weaknesses and failures of the Articles of Confederation?
- What was the Anti-Federalists' case against the Constitution?
- Why did the Anti-Federalists prefer smaller, simpler, more local, and more democratic government?
- What was the Federalists' case for the Constitution?

- What was the Federalists’ case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change? What did they mean by “constitutional veneration”?
- What is the relationship between the Declaration of Independence and the Constitution?
- The first stated purpose of the Constitution is “to form a more perfect union.” What two realities are suggested by this language of “more perfect”?
- How did the Constitution structure and arrange the powers of the government?
- What was involved in the act of founding?
- What must every government official take an oath to do?
- To whom are elected officials and the Constitution itself ultimately subject?
- Questions from the U.S. Civics Test:
 - Question 1: What is the form of government of the United States?
 - Question 3: Name one thing the U.S. Constitution does.
 - Question 4: The U.S. Constitution starts with the words “We the People.” What does “We the People” mean?
 - Question 10: Name two important ideas from the Declaration of Independence and the U.S. Constitution.
 - Question 13: What is the rule of law?
 - Question 14: Many documents influenced the U.S. Constitution. Name one.
 - Question 82: What founding document was written in 1787?
 - Question 83: The Federalist Papers supported the passage of the U.S. Constitution. Name one of the writers.
 - Question 84: Why were the Federalist Papers important?
 - Question 88: James Madison is famous for many things. Name one.
 - Question 89: Alexander Hamilton is famous for many things. Name one.

KEYS TO THE LESSON

Students ought to learn the principal reasons the delegates to the Constitutional Convention opted to replace the Articles of Confederation with a new Constitution. The reasons were not the result of high-sounding ideas and flights of fancy but were instead tied to the delegates’ knowledge of history, the problems they had faced under British rule and under the Articles of Confederation, and careful deliberation about how to produce the best government for a free people. This lesson should help students to understand what the Federalists considered to be the virtues of adopting the Constitution and the basic principles around which it was framed.

Teachers might best plan and teach the Case for the Constitution with emphasis on the following approaches:

- Survey with students the various main forms of government from which America is distinct, including pure democracy, monarchy, aristocracy, oligarchy, theocracy, autocracy, socialist, communist, fascist, etc. Drawing on their study of history, students should be asked often

throughout this unit and the course to draw specific distinctions between the American system of a self-governing republic and these other kinds of regimes.

- Review with students the structure of the Articles of Confederation and the issues that emerged under such a structure. The Articles were drafted by Americans wary of a strong central government in light of their experience with the British. They wanted to keep the states as independent as possible. To prevent the national government from becoming too powerful, the second Article asserted the sovereignty of each state except in case when a power is explicitly delegated to the United States Congress. While united on some matters of foreign policy, the Articles would prove to be ineffective as a federal government charter, because they did not provide a strong and unified executive, and they had no power to enforce laws or levy taxes to pay for the expenses of government.
- Proceed to considering the issues that dominated the 1780s, especially the debt cancellation laws by states (a clear example of majority tyranny) and the event that impressed upon George Washington and James Madison the importance of reforming the Articles: Shays' Rebellion.
- Review with students their history knowledge concerning past experiments with democratic government. Democracies and republics had historically been short-lived because of two primary faults. The first was the tyranny of the majority, when the rights of the minority are trampled by the majority. Second was the ineptitude of democratic governments. Such a government was usually inefficient, weak, divided, and susceptible to the passions of the mob. Factions divided the institutions of such a regime. The result was civil war or conquest by an outside nation. The Constitution intended to form a government that would preserve the benefits of republicanism while guarding against its defects.
- Note for students the senses in which the Framers believed they were in the best position to achieve a free, self-governing republic in 1787, as opposed to previous times. The Framers argued that certain experiences and intelligent thinkers had helped mankind learn from past failures and improve the science of politics. This improved science of politics included the principles of the separation of powers, the office of an independent judiciary serving lifetime appointments, representatives selected by the people, and the extended sphere of a nation's geographic size. This did not mean that they believed human nature changed or improved or that people and governments naturally evolve to become better over time. Human nature, as with all natures, was and is unchanging and therefore would always be prone to certain faults in character and intellect. So, too, would governments, as people are those who govern.
- Help students to appreciate the difficulty of what the delegates to the Constitutional Convention were attempting to do. They had to account, above all, for human nature, mitigating its negative tendencies while channeling its neutral and good tendencies toward constructive governance. Simultaneously, the delegates had to account for the myriad interests and situations of the various states. The issue of how the people and the states would be represented was a chief contention, one that resulted in a bicameral legislature with different means of representation. Other results were strong debates and compromises over the question of slavery.
- Introduce students briefly to the origins and purpose of *The Federalist*, including the backgrounds and roles of their principal authors, James Madison and Alexander Hamilton. It is worth noting that each would disagree strongly with one another on future issues, but on the Constitution, they found common ground, a good model for civil dialogue today.
- Ask students about the source and purpose of a government's power. Review how the Declaration of Independence makes it clear that a legitimate government's power—and, in the case of the

United States Constitution, each branch's delegation of powers—comes from the free consent of the sovereign people, and ask students to identify and explain the ways in which the Constitution reflects this understanding. *Federalist* 1 and 2 underscore how regime change in America is based on reflection and choice rather than on force or fraud. It is worth noting that for Publius, Americans are already united by their common experience and the War of Independence. The question of the adoption of the Constitution is whether this people is capable of self-government based on the principles of asserted in the Declaration of Independence.

- Make sure students are mindful of the overall goals toward which the Founders directed every decision: freedom and self-government. In other words, they needed to arrange the government and distribute powers so as to enable representatives chosen by the people to protect the rights of the people while avoiding tyranny, either by the one, the few, or the many. To help them so craft the government, they relied on their deep knowledge of history and human nature that they gained from both history and what Jefferson called “the elementary books of public right.”
- Spend some time considering the Preamble to the Constitution. It is remarkable in stating two things: first, what the purposes of the government established by the Constitution are to be, and second, that it is the people who are establishing it for these purposes. Students should be able to relate everything mentioned in the Constitution to both of these elements of the Preamble: how does each arrangement achieve these stated purposes of government; and how does it reflect the consent of the governed?
- Pay close attention to the way the Framers carefully chose the words of the Constitution. The government has powers, not rights, that are granted by the consent of those being governed. The people do not give up their rights. Rather, they delegate or vest some of their power to protect their rights to establish a government. Thus do they vest those powers to protect their rights in a government that they control. The natural rights mentioned in the Declaration of Independence are not themselves given to the government by the Constitution. Instead, the people enact the Constitution to vest power in the core branches of the government to secure the natural rights and fundamental purposes outlined in the Declaration. The people are ultimately sovereign, and only the people, not the federal government (or the state governments, for that matter). Make clear that the various powers are not vested in the federal government as a whole, but rather specifically vested in specific branches separate from one another.
- Emphasize that the Constitution, moreover, is specific about what parts of the government receive which powers and how. The Constitution gives enumerated powers not to the federal government itself but rather to each of its branches. Emphasize the meaning of the word “enumerated.” These enumerated powers are limited to the ones explicitly listed in the Constitution. Close attention to this wording will keep students from misinterpreting each branch to have more powers than it has been specifically granted.
- The separation of powers (along with checks and balances between the branches) is the key “mechanism” of the Constitution. Remind students that the separation of powers is not an arbitrary design, but serves two purposes: 1) it upholds the rule of law (and good government) by focusing government on its core functions of making law, enforcing law, and adjudicating law; and 2) it preserves liberty (and limited government) by preventing the accumulation of power in the hands of any one branch, which Madison defines as the very definition of tyranny.
- Have students converse about the importance of the rule of law. With deep historical roots (especially British constitutional history and particular events such as the Magna Carta), the rule of law is a general concept of government that is straightforward but extremely important and

historically rare. First, it states that all of the governed abide by the law and are equally protected by the law; and second, that even those who govern must abide by the same law. It means that everyone—citizens and government officials alike—should be governed by agreed-upon rules that apply equally to everyone, rather than by the arbitrary judgment of government officials applying one set of rules to the governed and a separate set to themselves. The law is above any one person or group of people and their interests, and everyone is equally accountable to the law. John Adams put it simply when he described the purpose of a constitution government as “a government of laws, not of men.”

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENTS

Assignment: Explain the reasons why a new Constitution was necessary and the main qualities the Constitution brought to bear on American government, according to *The Federalist* (2–3 paragraphs).

Lesson 2 — The Case for Union

2-3 classes

LESSON OBJECTIVE

Students learn about the Federalists' argument for union, particularly the unexpected benefits of a large republic with a diversity of opinions and interests.

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Constitution 101

The Federalist Papers

Lecture 3

Lectures 2 and 3

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution

The Federalist, Nos. 6, 9, 10, 23

TERMS AND TOPICS

Constitution

Federalists

Anti-Federalists

union

republic

representative democracy

direct democracy

representation

extended sphere

interest

faction

parties

property

material inequality

majority tyranny

human nature

national security

commercial republic

taxation

regulation

commerce

QUESTIONS FOR THE AMERICAN MIND

- What was the Federalists' case for union?
- How is representative democracy distinct from direct democracy? Why did the Founders opt for representative democracy over the "pure" version of democracy practiced in ancient Athens? What did the Founders assert was the inadequacy of ancient democracy?
- What are the benefits of representation? What role do elections serve?

- What are the merits and challenges of a large republic?
- Why does *The Federalist* argue for the size of the republic to be larger than commonly thought possible? What are the advantages of this “extended sphere”?
- What are the positive and negative potentials of interests?
- What is the problem with factions?
- What concerns did the Founders have with parties?
- How are property and inequality sources of faction? How are these issues addressed in the Constitution?
- How does the Constitution seek to reconcile democracy (which means “rule by the majority”) with the rights of minorities? Stated differently, how does the Constitution do justice both to the equality of all and to the liberty of each?
- How did the Constitution balance freedom (majority rule) and justice (preserving minority rights)?
- According to *The Federalist*, what are the virtues and limitations of human nature?
- In what ways does the Constitution have the virtues of energy, stability, and responsibility?
- How does the Constitution address national security threats?
- Why is energetic government necessary for national security?
- What is the relationship between the government’s ends and its powers (means)?
- Why had there historically been doubts about the peacefulness of commercial republics?
- How does the Constitution address taxation, regulation, commerce, and protections for private property?
- Questions from the U.S. Civics Test:
 - Question 2: What is the supreme law of the land?
 - Question 3: Name one thing the U.S. Constitution does.
 - Question 4: The U.S. Constitution starts with the words “We the People.” What does “We the People” mean?
 - Question 58: Name one power that is only for the federal government.
 - Question 59: Name one power that is only for the states.

KEYS TO THE LESSON

The framers worked a careful balancing act in regard to the relationship between the union and the individual states. Keeping the country united was necessary for its survival, let alone its flourishing. The Constitution reflected a compact among the people but acknowledged their self-organization into different states, through which the Constitution was ratified. The republican nature of the federal government reflected and guaranteed the existence of republican governments in the states. One special innovation that the Constitution introduced was the idea of a large republic that would multiply the diversity of interests and result in a majority around only the most universally held views. This further justification for the unity of the country broke with most historical opinions and practices in republicanism and was one of the chief ingenuities of the framers.

Teachers might best plan and teach the Case for Union with emphasis on the following approaches:

- Emphasize for students the reality of majority tyranny. There is a straightforward though mistaken belief nowadays that justice is the rule of the majority and that 51 percent of the people have a moral right to impose whatever they wish on the 49 percent. The Founders rejected this

idea of democracy and morality as “might makes right.” They asserted objective standards of right and wrong by which government must abide in protecting rights if it is to be a just government. One of the keys to the Constitution was the attempt to make sure the majority would rule but that they would rule justly with respect to the rights of the minority.

- Highlight for students how *Federalist* 6, 9, and 10 all argue for improvements in mankind’s understanding of politics. This, however, was not and is not inevitable. While human knowledge may expand, judgments on that knowledge and the prudence to apply it properly do not automatically evolve in a positive manner. In fact, *The Federalist* emphasizes in these sections that human nature itself does not change, that human beings are as they always have been and would continue to be. The Federalists’ case for union, indeed, for the entire Constitution, depends on holding both of these positions: that we have learned much with respect to governing but that those who govern are human beings, and human beings will always have the capacity to be tyrants.
- Explain to students how the extended territory under American rule was thought to prevent majority tyranny by taking in a wider array of opinions and interests, many of which depended on geography, with the ties of occupation, culture, and religious beliefs that are connected to a certain location. To achieve a majority in government the representatives would have to achieve a broad consensus on the issues, meaning that only the most universally held positions would be possible to enact.
- Consider with students a second benefit of an extended sphere, namely that the pool of potential representatives would be larger, resulting in a greater number of quality persons who might represent the people. The larger population would also make it more likely that ideologues would be known and identified as such, thus making it harder for such persons to harness the support of such a diverse and large populace.
- Help students to see in the *Federalist* how national security for the fledgling country was of utmost importance in establishing union. *Federalist* 23 underscores this point while also entrusting the civilian army to the legislative representatives of the people.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain the reasons and benefits of union as expressed by *The Federalist* (2–3 paragraphs).

Name _____

Date _____

Unit 2 — Formative Quiz

Covering Lessons 1-2
10-15 minutes

DIRECTIONS: Answer each question in at least one complete sentence.

1. What was the Federalists' case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change? What did they mean by "constitutional veneration"?
2. The first stated purpose of the Constitution is "to form a more perfect union." What two realities are suggested by this language of "more perfect"?
3. What are the merits and challenges of a large republic?
4. What is the problem with factions?
5. According to *The Federalist*, what are the virtues and limitations of human nature?

Lesson 3 — Federalism

2-3 classes

LESSON OBJECTIVE

Students learn the Federalists' case for union with a federated republic, including the benefits, challenges, purposes, and powers of its various governments.

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Constitution 101

Lecture 4

The Federalist Papers

Lecture 4

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary sources. While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution

The Federalist, Nos. 39 and 45

TERMS AND TOPICS

Constitution

township

Federalists

republic

Anti-Federalists

commerce

union

expressed powers

federalism

implied powers

local government

concurrent powers

state government

reserved powers

federal government

QUESTIONS FOR THE AMERICAN MIND

- What is federalism? Why is it important?
- What are the distinctions among the local, state, and federal governments? What purposes does each serve, and what powers does each have to carry out its purposes?
- What are the ways the states can control the federal government?
- How does the Constitution control all the other governments?
- How was the New England township structured and why was it planned this way? What is the significance of the township model?
- Questions from the U.S. Civics Test:

- Question 2: What is the supreme law of the land?
- Question 4: The U.S. Constitution starts with the words “We the People.” What does “We the People” mean?
- Question 58: Name one power that is only for the federal government.
- Question 59: Name one power that is only for the states.

KEYS TO THE LESSON

The framers were very intentional about which level of government would have which powers based on a careful review of what each government’s purposes would be by nature. The result was a federal government that was limited to providing for the national defense and ensuring free trade among states, and little else. The vast majority of power remained with the people while most government power was at the state and local levels. The mixture of so many different governments at the state level of government all competing with each other and with the federal government would provide an additional safeguard against majority tyranny as individual actors vied for power while warding off infringements on their powers from other governments.

Teachers might best plan and teach Federalism with emphasis on the following approaches:

- Clarify for students the purposes of the federal government per the Preamble to the Constitution and the second paragraph of the Declaration of Independence. In particular, students should be able to articulate the purposes of government that a federal government might more effectively achieve, without compromising liberty, than a state government could. Students should see that these things are relatively few in number and pertain to fostering domestic tranquility and trade among the states while also defending against foreign threats.
- Explain how the division of power between the national government and the states (like the separation of powers within government) is another key way to protect liberty. Moreover, by recognizing that the powers not delegated to the federal government are reserved to the states or to the people, the Constitution prevents the federal government from becoming administratively centralized and too powerful.
- Read and discuss with students the arguments in *Federalist* 39 and 45 regarding sovereignty and representation in the Constitution. Publius rejects the notion that the states are sovereign, asserting that it is the entire American people who are sovereign but who have organized themselves by states. The necessary condition for republican government is indeed that all of the power comes in one way or another from the people. *Federalist* 39 also outlines the ways in which the national government is both national and federal based on the origins of members in each branch of government. *Federalist* 45 reinforces the point that the purpose of the Constitution is the happiness of the people and is not ultimately concerned with whether the national or state governments are sovereign. After all, the people are sovereign.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment 1: Explain the principle, structure, and benefits of federalism as expressed by *The Federalist* (2–3 paragraphs).

Lesson 4 — Separation of Powers and Checks and Balances

3-4 classes

LESSON OBJECTIVE

Students learn why the Constitution separates the powers in the federal government among three branches, how these powers are distributed, and the means by which each branch may check the authority of the others and so maintain a balance in power.

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<i>Introduction to the Constitution</i>	Lecture 8
<i>Constitution 101</i>	Lecture 4
<i>The Federalist Papers</i>	Lecture 5

PRIMARY SOURCES

Students are to read or, if they have previously read, review the following primary source(s). While reading, students should annotate these sources. For particularly challenging texts or if the class is offered earlier in high school, the teacher may wish to provide students with guided reading questions to assist with comprehension, clarity, and direction. Using their annotations and any guided reading questions, students should come to class prepared to participate in a seminar conversation on each text.

The U.S. Constitution
The Federalist, Nos. 47, 48, 49, 51

TERMS AND TOPICS

separation of powers	implied powers
branch	concurrent powers
checks and balances	reserved powers
expressed powers	

QUESTIONS FOR THE AMERICAN MIND

- What is meant by the powers of the federal government being separately divided?
- What is the case for structuring the federal government so that its powers are separated from one another?
- How does the Constitution divide and allocate the various powers of the federal government?
- What are checks and balances? What is their purpose?
- To what in human nature do checks and balances appeal, and what do they channel?
- How can each branch check the power of the others?
- Questions from the U.S. Civics Test:
 - Question 15: There are three branches of government. Why?
 - Question 16: Name the three branches of government.

KEYS TO THE LESSON

The interference of the British Crown in the representative forms of government in the colonies highlighted for the framers the importance of dividing and separating government power even within a level of government. Inspired by the ideas of Montesquieu and reinforced by their experience, the framers organized power based on the nature of the power with respect to law: law-making, law-enforcing, and law-judging. These had long been recognized as the natural tasks of governance, but it was in assigning the tasks to separate and competing entities that was new in the Constitution, especially the establishment of a judiciary separate from the executive. Additionally, the framers assigned certain processes to each branch to both check the power and work with the other branches while still encouraging and channeling the virtues of each kind of governmental power and statecraft to achieve good government and eschew tyranny.

Teachers might best plan and teach Separation of Powers and Checks and Balances with emphasis on the following approaches:

- Help students understand the importance of the principles of separation of powers and federalism, and why these ideas are central to the Constitution’s safeguards against the exponential and corrupting tendencies of power.
- Emphasize that a chief concern of the Framers of the Constitution was to allow the will of the majority to rule, thus guaranteeing the consent of the governed, while still preserving the rights of the minority, thus securing justice. Separation of powers is perhaps the best and most significant example of how the Founders sought to achieve this consent and justice.
- Show students how the Constitution does not deny, demonize, or elevate human nature, but rather recognizes and seeks to channel the proclivities of human nature into constructive governing while mitigating against man’s baser tendencies. In brief, the Constitution is constructed in light of a fundamental understanding of man’s unchanging human nature, born of the Founders’ knowledge of history and political thought as well as their own experience and the lessons of prudence.
- Help students understand how the separation of powers is rooted in the Founders’ argument that human nature is fixed and unchanging, good but also flawed and tending toward corruptive power. The dangers of tyranny and lawlessness are always present and must be guarded against. Therefore, a good government would account for the realities of human nature and reject utopias as impossible. Separation of powers accounts for this.
- Read with students this passage from *Federalist 51*, harnessing the ambitions of human nature for the sake of constitutional government:

“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.”

- Walk students through how the separation of powers guards against the ability of one (in the presidency) or a faction (in Congress) to dominate and control the other, while an independent judiciary provides an impartial application of law. Note that the people (by elections and constitutional amendment) have the ultimate authority to check any and all of the branches of government. Each branch is delegated specific powers to fulfill the core functions of government (legislative, executive, and judicial). The system of checks and balances encourages each branch to protect its own powers and to do its assigned duty. The separation of powers coupled with checks and balances was intended to prevent the defects of republican government (namely, the tyrannical rule of a majority faction) while retaining what was good: the consent of the governed under the constitutional rule of law.
- Read with students from the corresponding *Federalist* essays. In *Federalist 47*, note with students how Publius takes up Thomas Jefferson and James Madison's understanding of tyranny as the accumulation of power in the same set of hands, where the same person or group is lawmaker, law-enforcer, and judge. In brief, tyranny comes from the absence of a separation of powers. *Federalist 48* demonstrates that the tendency of those who have power is to ignore barriers and expand their power if others do not have the means to check and counter-balance those tendencies.
- Moreover, Publius highlights how in the Constitution it is not only the legislature that represents the people, but *every* branch of government. As such, each must have the ability to defend both the Constitution and encroachments on its own power by the other branches. *Federalist 49* argues for the coequality of the branches with respect to the meaning of the Constitution: each branch has a duty to uphold and interpret the Constitution. And *Federalist 51* makes the case for checks and balances, along with stating the end of government is justice, especially meaning that the weaker (or the minority) is defended against the stronger (or the tyranny of the majority). This is a fundamentally different understanding of justice than that which gripped the twentieth century through totalitarianism: that the might of the majority and the powerful makes right.

STRENGTHENING UNDERSTANDING: POST-LESSON ASSIGNMENT

Assignment: Explain why the Constitution separates power into distinct branches and how it does so (2–3 paragraphs).

APPENDIX A

Study Guide

Test

Writing Assignment

Study Guide — A Constitution of Principles Test

Unit 2

Test on _____

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

Articles of Confederation	extended sphere	regulation
republic	interest	commerce
Federalists	faction	federalism
Anti-Federalists	parties	local government
power	property	state government
constitutional veneration	material inequality	federal government
Constitution	majority tyranny	township
union	human nature	separation of powers
representative democracy	national security	branch
direct democracy	commercial republic	checks and balances
representation	taxation	

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to understanding the principles of the Constitution.

The Articles of Confederation
 The U.S. Constitution
Federalist 10
Federalist 39
Federalist 47
Federalist 51

QUESTIONS FOR THE AMERICAN MIND

Based on notes from lessons and seminar conversations, answer each of the following.

Lesson 1 | The Case for the Constitution

- How did the Articles of Confederation structure the government? Why did its framers structure it in these ways?
- What were the weaknesses and failures of the Articles of Confederation?
- What was the Anti-Federalists' case against the Constitution?
- Why did the Anti-Federalists prefer smaller, simpler, more local, and more democratic government?
- What was the Federalists' case for the Constitution?

- What was the Federalists' case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change? What did they mean by "constitutional veneration"?
- What is the relationship between the Declaration of Independence and the Constitution?
- The first stated purpose of the Constitution is "to form a more perfect union." What two realities are suggested by this language of "more perfect"?
- How did the Constitution structure and arrange the powers of the government?
- What was involved in the act of founding?
- What must every government official take an oath to do?
- To whom are elected officials and the Constitution itself ultimately subject?

Lesson 2 | The Case for Union

- What was the Federalists' case for union?
- How is representative democracy distinct from direct democracy? Why did the Founders opt for representative democracy over the "pure" version of democracy practiced in ancient Athens? What did the Founders assert was the inadequacy of ancient democracy?
- What are the benefits of representation? What role do elections serve?
- What are the merits and challenges of a large republic?
- Why does *The Federalist* argue for the size of the republic to be larger than commonly thought possible? What are the advantages of this "extended sphere"?
- What are the positive and negative potentials of interests?
- What is the problem with factions?
- What concerns did the Founders have with parties?
- How are property and inequality sources of faction? How are these issues addressed in the Constitution?
- How does the Constitution seek to reconcile democracy (which means "rule by the majority") with the rights of minorities? Stated differently, how does the Constitution do justice both to the equality of all and to the liberty of each?
- How did the Constitution balance freedom (majority rule) and justice (preserving minority rights)?
- According to *The Federalist*, what are the virtues and limitations of human nature?
- In what ways does the Constitution have the virtues of energy, stability, and responsibility?
- How does the Constitution address national security threats?
- Why is energetic government necessary for national security?
- What is the relationship between the government's ends and its powers (means)?
- Why had there historically been doubts about the peacefulness of commercial republics?
- How does the Constitution address taxation, regulation, commerce, and protections for private property?

Lesson 3 | Federalism

- What is federalism? Why is it important?
- What are the distinctions between the local, state, and federal governments? What purposes does each serve, and what powers does each have to carry out its purposes?
- What are the ways the states can control the federal government?
- How does the Constitution control all the other governments?

- How was the New England township structured and why was it planned this way? What is the significance of the township model?

Lesson 4 | Separation of Powers and Checks and Balances

- What is meant by the powers of the federal government being separately divided?
- What is the case for structuring the federal government so that its powers are separated from one another?
- How does the Constitution divide and allocate the various powers of the federal government?
- What are checks and balances? What are their purposes?
- To what in human nature do checks and balances appeal, and what do they channel?
- How can each branch check the powers of the others?

Name _____

Date _____

Test — A Constitution of Principles

Unit 2

TERMS AND TOPICS

Explain each of the following and the context in which it was discussed during this unit's lessons.

1. republic
2. constitutional veneration
3. representative democracy
4. direct democracy
5. representation
6. extended sphere
7. faction
8. majority tyranny
9. human nature
10. federalism
11. local government
12. federal government

13. township

14. separation of powers

15. checks and balances

PRIMARY SOURCES

Explain the main arguments in each of the following sources and their significance to understanding America's founding principles.

16. *Federalist 10*

17. *Federalist 47*

18. *Federalist 51*

QUESTIONS FOR THE AMERICAN MIND

Answer each of the following. Complete sentences are not necessary, but correct spelling and writing should be employed, and responses must fully answer each question.

19. Why did the Anti-Federalists prefer smaller, simpler, more local, and more democratic government?

20. What was the Federalists' case for the Constitution?

21. What was the Federalists' case for a written, fixed Constitution? Why did they consider it important to make the Constitution difficult to change?

22. What is the relationship between the Declaration of Independence and the Constitution?

23. What was the Federalists' case for union?

24. What are the benefits of representation? What role do elections serve?

25. Why does *The Federalist* argue for the size of the republic to be larger than commonly thought possible? What are the advantages of this "extended sphere"?

26. What is the problem with factions?

27. How are property and inequality sources of faction? How are these issues addressed in the Constitution?

28. According to *The Federalist*, what are the virtues and limitations of human nature?
29. What is the relationship between the government's ends and its powers (means)?
30. Why is federalism important?
31. What are the ways the states can control the federal government?
32. How was the New England township structured and why was it planned this way? What is the significance of the township model?
33. What is the case for structuring the federal government so that its powers are separated from one another?
34. To what in human nature do checks and balances appeal, and what do they channel?
35. How can each branch check the powers of the others?

Writing Assignment — A Constitution of Principles

Unit 2

Due on _____

DIRECTIONS

Citing primary sources and conversations from class in your argument, write a 500–800-word essay answering the question:

What are the most significant principles to which the United States Constitution adheres?

APPENDIX B

Primary Sources

The American People

James Madison

Alexander Hamilton

John Jay

THE DELEGATES OF THE UNITED STATES OF AMERICA IN CONGRESS

Articles of Confederation

LAW

March 1, 1781
United States of America

BACKGROUND

After forming their own country with the Declaration of Independence, the Congress created the Articles of Confederation during the Revolutionary War as the first national government for the United States.

ANNOTATIONS

NOTES & QUESTIONS

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names, send greeting:

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and
5 Seventy-Seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in the words following, viz.

10 Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

"Articles of Confederation," in *The U.S. Constitution: A Reader* (Hillsdale, MI: Hillsdale College Press, 2012), 163-71.

Article I

The stile of this confederacy shall be "The United States of America."

Article II

Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III

The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article IV

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

- 5 Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article V

- For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct,
 10 to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

- No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any
 15 term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

- 20 In determining questions in the United States, in Congress assembled, each State shall have one vote.

- Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and
 25 attendance on Congress, except for treason, felony, or breach of the peace.

Article VI

No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the

danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue or until the United States in Congress assembled shall determine otherwise.

Article VII

When land-forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII

All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no

treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities, whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party

absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like
 5 manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter
 10 in question, according to the best of his judgment, without favor, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which
 15 passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

20 The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States.—fixing the standard of weights and measures throughout the United States.—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not
 25 infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the

service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States", and to consist
5 of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit
10 bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental
15 officers, raise the men and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller
20 number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case
25 they shall raise, officer, cloth, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow
5 money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

10 The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on
15 any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

Article X

20 The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States
25 assembled is requisite.

Article XI

Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

5 **Article XII**

All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII

Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it hath pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual Union. Know Ye that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the

said confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

5 In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July, in the year of our Lord, one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

On the part and behalf of the State of New Hampshire:

Josiah Bartlett, John Wentworth, Jr.

10

On the part and behalf of the State of Massachusetts Bay:

John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten

15 On the part and behalf of the State of Rhode Island and Providence Plantations:
William Ellery, Henry Marchant, John Collins

On the part and behalf of the State of Connecticut:

Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams

20 On the part and behalf of the State of New York:

James Duane, Francis Lewis, William Duer, Gouverneur Morris

ANNOTATIONS

NOTES & QUESTIONS

On the part and behalf of the State of New Jersey:

John Witherspoon, Nathaniel Scudder

On the part and behalf of the State of Pennsylvania:

5 Robert Morris, Daniel Roberdeau, Jonathan Bayard Smith, William Clingan, Joseph Reed

On the part and behalf of the State of Delaware:

Thomas McKean, John Dickinson, Nicholas Van Dyke

10 On the part and behalf of the State of Maryland:

John Hanson, Daniel Carroll

On the part and behalf of the State of Virginia:

Richard Henry Lee, John Banister, Thomas Adams, John Harvie, Francis Lightfoot Lee

15

On the part and behalf of the State of North Carolina:

John Penn, Cornelius Harnett, John Williams

On the part and behalf of the State of South Carolina:

Henry Laurens, William Henry Drayton, John Matthews, Richard Hutson, Thomas Heyward, Jr.

5 On the part and behalf of the State of Georgia:

John Walton, Edward Telfair, Edward Langworthy

THE PEOPLE OF THE UNITED STATES OF AMERICA

The Constitution

LAW

March 4, 1789
United States of America

BACKGROUND

Delegates to the Constitutional Convention drafted and the states ratified this Constitution, forming the second national government for the United States of America.

ANNOTATIONS

NOTES & QUESTIONS

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and
5 establish this Constitution for the United States of America.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every sec-
10 ond Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected,

"The Constitution of the United States of America," in *The U.S. Constitution: A Reader* (Hillsdale, MI: Hillsdale College Press, 2012), 47-66.

be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service
5 for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enu-
10 meration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority
15 thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.
20 Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or
25 otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

5 The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

10 The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

15 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.

20 Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

25 Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

10 Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be
15 questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his
20 Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall
25 have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall

likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days
 5 (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be pre-
 10 sented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and
 15 Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the
 20 Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bank-
 ruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of
 Weights and Measures;

25 To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

5 To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

10 To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

15 To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

20 To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

25 To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

- 5 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.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

- 10 No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

- 15 No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

- 20 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.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

- 25 No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and

the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

5 No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II

10 Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President chosen for the same Term, be elected as follows:

15 Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

20 The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, 25 then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for

this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate
5 shall choose from them by Ballot the Vice President.

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall
10 any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death,
15 Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected,
20 and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the
25 Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of

the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

5 He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as
10 they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the
15 Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed,
20 and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III

25 Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good

Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

5 Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State,
10 or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall
15 make.

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.

20 Section 3. 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.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of
25 Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either
5 Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth
10 Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Con-
15 federation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstand-
20 ing.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under
25 the United States.

Article VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

5 Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names.

10 George Washington—

President and deputy from Virginia

Delaware

George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom

15 **Maryland**

James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll

Virginia

John Blair, James Madison, Jr.

North Carolina

20 William Blount, Richard Dobbs Spaight, Hugh Williamson

South Carolina

John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

ANNOTATIONS

Georgia

William Few, Abraham Baldwin

New Hampshire

John Langdon, Nicholas Gilman

5 **Massachusetts**

Nathaniel Gorham, Rufus King

Connecticut

William Samuel Johnson, Roger Sherman

New York

10 Alexander Hamilton

New Jersey

William Livingston, David Brearley, William Paterson, Jonathan Dayton

Pennsylvania

15 Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas FitzSimons, Jared Ingersoll, James Wilson, Gouverneur Morris

Attest William Jackson Secretary

Amendments to the Constitution of the United States of America

Amendment I

Ratified December 15, 1791

5 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

Ratified December 15, 1791

10 A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

Ratified December 15, 1791

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

15 **Amendment IV**

Ratified December 15, 1791

20 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

Ratified December 15, 1791

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval
5 forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

10 Amendment VI

Ratified December 15, 1791

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the na-
15 ture and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment VII

Ratified December 15, 1791

20 In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

25

Amendment VIII

Ratified December 15, 1791

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

5 Amendment IX

Ratified December 15, 1791

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

10 Ratified December 15, 1791

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI

Ratified February 7, 1795

15 The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII

Ratified June 15, 1804

20 The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all per-

sons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open
 5 all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.
 10 But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the
 15 Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number
 20 shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII

Ratified December 6, 1865

25 Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Ratified July 9, 1868

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

10 Ratified February 3, 1870

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

15 **Amendment XVI**

Ratified February 3, 1913

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

20 **Amendment XVII**

Ratified April 8, 1913

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

- 5 This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII

Ratified January 16, 1919

- 10 Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

- 15 Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX

- 20 Ratified August 18, 1920

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Ratified January 23, 1933

Section 1. The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of
5 January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President
10 elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein
15 neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons
20 from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amend-
25 ment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Ratified December 5, 1933

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

- 5 Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

- 10 Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII

Ratified February 27, 1951

- 15 Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term
20 within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

25

Amendment XXIII

Ratified March 29, 1961

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

- 5 A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the
- 10 District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV

Ratified January 23, 1964

- Section 1. The right of citizens of the United States to vote in any primary or other election
- 15 for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV

- 20 Ratified February 10, 1967

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

- Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote
- 25 of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

25

Amendment XXVI

Ratified July 1, 1971

5 Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII

Ratified May 7, 1992

10 No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 1

ESSAY

October 27, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) advocates for the proposed Constitution by introducing the forthcoming series of articles in its support and arguing for the necessity of union.

GUIDING QUESTIONS

1. What are the two choices Hamilton gives for people to establish a new government?
2. How will the Union be favorable to political prosperity?
3. How is the confederacy insufficient at present?
4. Why is there a need for an energetic government?
5. What is the preferred form of government?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 1-4.

Introduction

After full experience of the insufficiency of the existing federal government, you are invited to deliberate upon a New Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of
5 the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects, the most interesting in the world. It has been frequently remarked, that it seems to have been reserved to the people of this country to decide, by their conduct and example, the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever des-
10 tined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis at which we are arrived may, with propriety, be regarded as the period when that decision is to be made; and a wrong election of the part we shall act, may, in this view, deserve to be considered as the general misfortune of mankind.

This idea, by adding the inducements of philanthropy to those of patriotism, will heighten
15 the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, uninfluenced by considerations foreign to the public good. But this is more ardently to be wished for, than seriously to be expected. The plan offered to our deliberations, affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion
20 a variety of objects extraneous to its merits, and of views, passions and prejudices little favourable to the discovery of truth.

Among the most formidable of the obstacles which the new constitution will have to encounter, may readily be distinguished the obvious interest of a certain class of men in every state to resist all changes which may hazard a diminution of the power, emolument and
25 consequence of the offices they hold under the state establishments . . . and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from

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the subdivision of the empire into several partial confederacies, than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men into interested or ambitious views, merely because their situations might subject them to suspicion. Candour will oblige us to admit, that even such men may be actuated by upright intentions; and it cannot be doubted, that much of the opposition, which has already shown itself, or that may hereafter make its appearance, will spring from sources blameless at least, if not respectable . . . the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgement, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions, of the first magnitude to society. This circumstance, if duly attended to, would always furnish a lesson of moderation to those, who are engaged in any controversy, however well persuaded of being in the right. And a further reason for caution, in this respect, might be drawn from the reflection, that we are not always sure, that those who advocate the truth are actuated by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives, not more laudable than these, are apt to operate as well upon those who support, as upon those who oppose, the right side of a question. Were there not even these inducements to moderation, nothing could be more ill judged than that intolerant spirit, which has, at all times, characterized political parties. For, in politics as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, just as these sentiments must appear to candid men, we have already sufficient indications, that it will happen in this, as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude, that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts, by the loudness of their declamations, and by the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government, will be stigmatized as the offspring of a temper fond

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of power, and hostile to the principles of liberty. An over scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretence and artifice . . . the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the usual
5 concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten, that the vigour of government is essential to the security of liberty; that, in the contemplation of a sound and well informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people, than under the forbidding appearances of zeal for the firmness and
10 efficiency of government. History will teach us, that the former has been found a much more certain road to the introduction of despotism, than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career, by paying an obsequious court to the people . . . commencing demagogues, and ending
15 tyrants.

In the course of the preceding observations it has been my aim, fellow citizens, to put you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions, other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected
20 from the general scope of them, that they proceed from a source not unfriendly to the new constitution. Yes, my countrymen, I own to you, that, after having given it an attentive consideration, I am clearly of opinion, it is your interest to adopt it. I am convinced, that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves, which I do not feel. I will not amuse you with an appearance of deliberation, when
25 I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not however multiply professions on this head. My motives must remain in the depository of my own breast: my arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit, which will not disgrace the cause of truth.

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I propose, in a series of papers, to discuss the following interesting particulars . . . *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*
5 *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.*

In the progress of this discussion, I shall endeavour to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to
10 attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every state, and one which, it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new constitution,
15 that the Thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance its open avowal. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the constitution, or a dismem-
20 berment of the Union. It may, therefore, be essential to examine particularly the advantages of that Union, the certain evils, and the probable dangers, to which every state will be exposed from its dissolution. This shall accordingly be done.

Publius

PUBLIUS (SECRETARY OF FOREIGN AFFAIRS JOHN JAY)

Federalist No. 2

ESSAY

October 31, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (John Jay) argues for the proposed Constitution by explaining how the government it proposes is fitting to the American states, the people living within them, and their past dispositions toward government.

GUIDING QUESTIONS

1. Is government convenient or necessary?
2. What are some of the topographical features that are conducive to union?
3. What are some of the features that Americans share that make union possible?
4. How do these features help the states to be united?
5. What are some of the ways in which the states have already acted in unison?
6. Why is it important that the new Constitution is being recommended rather than imposed?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 5-9.

Concerning Dangers From Foreign Force & Influence

When the people of America reflect, that the question now submitted to their determination, is one of the most important that has engaged, or can well engage, their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it, must be
5 evident.

Nothing is more certain than the indispensable necessity of government; and it is equally undeniable, that whenever and however it is instituted, the people must cede to it some of their natural rights, in order to vest it with requisite powers. It is well worthy of consideration, therefore, whether it would conduce more to the interest of the people of America,
10 that they should, to all general purposes, be one nation, under one federal government, than that they should divide themselves into separate confederacies, and give to the head of each, the same kind of powers which they are advised to place in one national government.

It has until lately been a received and uncontradicted opinion, that the prosperity of the
15 people of America depended on their continuing firmly united, and the wishes, prayers and efforts of our best and wisest citizens have been constantly directed to that object. But politicians now appear, who insist that this opinion is erroneous, and that instead of looking for safety and happiness in union, we ought to seek it in a division of the states into distinct confederacies or sovereignties. However extraordinary this new doctrine may appear, it
20 nevertheless has its advocates; and certain characters who were formerly much opposed to it, are at present of the number. Whatever may be the arguments or inducements which have wrought this change in the sentiments and declarations of these gentlemen, it certainly would not be wise in the people at large to adopt these new political tenets, without being
fully convinced that they are founded in truth and sound policy.

25 It has often given me pleasure to observe, that independent America was not composed of detached and distant territories, but that one connected, fertile, wide spreading country, was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams,

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for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities.

With equal pleasure I have as often taken notice, that Providence has been pleased to give this one connected country, to one united people; a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms and efforts, fighting side by side throughout a long and bloody war, have nobly established their general liberty and independence.

This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous and alien sovereignties.

Similar sentiments have hitherto prevailed among all orders and denominations of men among us. To all general purposes we have uniformly been one people . . . each individual citizen every where enjoying the same national rights, privileges, and protection. As a nation we have made peace and war: as a nation we have vanquished our common enemies: as a nation we have formed alliances and made treaties, and entered into various compacts and conventions with foreign states.

A strong sense of the value and blessings of Union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time, when their habitations were in flames, when many of them were bleeding in the field, and when the progress of hostility and desolation left little room for those calm and mature inquiries and reflections, which must ever precede the formation of a wise and well balanced government for a free people. It is not to be wondered at that a government instituted in times so inauspicious, should

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on experiment be found greatly deficient and inadequate to the purpose it was intended to answer.

This intelligent people perceived and regretted these defects. Still continuing no less attached to union, than enamoured of liberty, they observed the danger which immediately threatened the former, and more remotely the latter; and being persuaded that ample security for both, could only be found in a national government more wisely framed, they, as with one voice, convened the late convention at Philadelphia, to take that important subject under consideration.

This convention, composed of men who possessed the confidence of the people, and many of whom had become highly distinguished by their patriotism, virtue, and wisdom, in times which tried the souls of men, undertook the arduous task. In the mild season of peace, with minds unoccupied by other subjects, they passed many months in cool uninterrupted and daily consultations; and finally, without having been awed by power, or influenced by any passion, except love for their country, they presented and recommended to the people the plan produced by their joint and very unanimous councils.

Admit, for so is the fact, that this plan is only *recommended*, not imposed, yet let it be remembered, that it is neither recommended to *blind* approbation, nor to *blind* reprobation; but to that sedate and candid consideration, which the magnitude and importance of the subject demand, and which it certainly ought to receive. But, as has been already remarked, it is more to be wished than expected that it may be so considered and examined. Experience on a former occasion teaches us not to be too sanguine in such hopes. It is not yet forgotten, that well grounded apprehensions of imminent danger induced the people of America to form the memorable Congress of 1774. That body recommended certain measures to their constituents, and the event proved their wisdom; yet it is fresh in our memories how soon the press began to teem with pamphlets and weekly papers against those very measures. Not only many of the officers of government who obeyed the dictates of personal interest, but others from a mistaken estimate of consequences, from the undue

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influence of ancient attachments, or whose ambition aimed at objects which did not correspond with the public good, were indefatigable in their endeavours to persuade the people to reject the advice of that patriotic congress. Many indeed were deceived and deluded, but the great majority reasoned and decided judiciously; and happy they are in reflecting that they did so.

They considered that the congress was composed of many wise and experienced men. That being convened from different parts of the country, they brought with them and communicated to each other a variety of useful information. That in the course of the time they passed together in inquiring into and discussing the true interests of their country, they must have acquired very accurate knowledge on that head. That they were individually interested in the public liberty and prosperity, and therefore that it was not less their inclination, than their duty, to recommend such measures only, as after the most mature deliberation they really thought prudent and advisable.

These and similar considerations then induced the people to rely greatly on the judgment and integrity of the congress; and they took their advice, notwithstanding the various arts and endeavours used to deter and dissuade them from it. But if the people at large had reason to confide in the men of that congress, few of whom had then been fully tried or generally known, still greater reason have they now to respect the judgment and advice of the convention; for it is well known that some of the most distinguished members of that congress, who have been since tried and justly approved for patriotism and abilities, and who have grown old in acquiring political information, were also members of this convention, and carried into it their accumulated knowledge and experience.

It is worthy of remark, that not only the first, but every succeeding congress, as well as the late convention, have invariably joined with the people in thinking that the prosperity of America depended on its Union. To preserve and perpetuate it, was the great object of the people in forming that convention, and it is also the great object of the plan which the convention has advised them to adopt. With what propriety, therefore, or for what good

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purposes, are attempts at this particular period made, by some men, to depreciate the importance of the union? or why is it suggested that three or four confederacies would be better than one? I am persuaded in my own mind, that the people have always thought right on this subject, and that their universal and uniform attachment to the cause of the union, rests on great and weighty reasons. They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the convention, seem clearly to foresee that the rejection of it would put the continuance of the union in the utmost jeopardy: that certainly would be the case; and I sincerely wish that it may be as clearly forseen by every good citizen, that whenever the dissolution of the union arrives, America will have reason to exclaim in the words of the Poet, "FAREWELL! A LONG FAREWELL, TO ALL MY GREATNESS."

Publius

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 6

ESSAY

November 14, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by outlining the benefits of forming a union given the propensity of human nature to division and war.

GUIDING QUESTIONS

1. How does Hamilton describe human nature?
2. What is it about human nature that leads men to conflict?
3. Will engaging in commerce be sufficient to keep the peace between nations?
4. What are some historical examples of nations engaging in war that Hamilton notes in particular?
5. What are the reasons people have gone to war in the past?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 20-26.

Concerning Dangers From War Between The States

The three last numbers of this work have been dedicated to an enumeration of the dangers to which we should be exposed, in a state of disunion, from the arms and arts of foreign nations. I shall now proceed to delineate dangers of a different, and, perhaps, still more
5 alarming kind, those which will in all probability flow from dissensions between the states themselves, and from domestic factions and convulsions. These have been already in some instances slightly anticipated; but they deserve a more particular and more full investigation.

If these states should either be wholly disunited, or only united in partial confederacies, a
10 man must be far gone in Utopian speculations, who can seriously doubt that the subdivisions into which they might be thrown, would have frequent and violent contests with each other. To presume a want of motives for such contests, as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent unconnected sovereignties,
15 situated in the same neighbourhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages.

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power, or the desire of pre-eminence and dominion . . . the jealousy of power,
20 or the desire of equality and safety. There are others which have a more circumscribed, though an equally operative influence, within their spheres: such are the rivalships and competitions of commerce between commercial nations. And there are others, not less numerous than either of the former, which take their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears, of leading individuals in the communi-
25 ties of which they are members. Men of this class, whether the favourites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquillity to personal advantage, or personal gratification.

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The celebrated Pericles, in compliance with the resentments of a prostitute, at the expense of much of the blood and treasure of his countrymen, attacked, vanquished, and destroyed the city of the *Samnians*. The same man, stimulated by private pique against the *Magarensians*, another nation of Greece, or to avoid a prosecution with which he was threatened as an accomplice in a supposed theft of the statuary *Phidias*, or to get rid of the accusations prepared to be brought against him for dissipating the funds of the state in the purchase of popularity, or from a combination of all these causes, was the primitive author of that famous and fatal war, distinguished in the Grecian annals by the name of the *Peloponnesian* war; which, after various vicissitudes, intermissions, and renewals, terminated in the ruin of the Athenian commonwealth.

The ambitious cardinal, who was prime minister to Henry VIIIth, permitting his vanity to aspire to the triple crown, entertained hopes of succeeding in the acquisition of that splendid prize by the influence of the emperor Charles Vth. To secure the favour and interest of this enterprising and powerful monarch, he precipitated England into a war with France, contrary to the plainest dictates of policy, and at the hazard of the safety and independence, as well of the kingdom over which he presided by his counsels, as of Europe in general. For if there ever was a sovereign who bid fair to realize the project of universal monarchy, it was the emperor Charles Vth, of whose intrigues Wolsey was at once the instrument and the dupe.

The influence which the bigotry of one female, the petulances of another, and the cabals of a third, had in the cotemporary policy, ferments, and pacifications, of a considerable part of Europe, are topics that have been too often descanted upon not to be generally known.

To multiply examples of the agency of personal considerations in the production of great national events, either foreign or domestic, according to their direction, would be an unnecessary waste of time. Those who have but a superficial acquaintance with the sources from which they are to be drawn, will themselves recollect a variety of instances; and those who have a tolerable knowledge of human nature, will not stand in need of such lights, to

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form their opinion either of the reality or extent of that agency. Perhaps, however, a reference, tending to illustrate the general principle, may with propriety be made to a case which has lately happened among ourselves. If SHAYS had not been a *desperate debtor*, it is much to be doubted whether Massachusetts would have been plunged into a civil war.

- 5 But notwithstanding the concurring testimony of experience, in this particular, there are still to be found visionary, or designing men, who stand ready to advocate the paradox of perpetual peace between the states, though dismembered and alienated from each other. . . . The genius of republics, say they, is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humours which have so often
10 kindled into wars. Commercial republics, like ours, will never be disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord.

- We may ask these projectors in politics, whether it is not the true interest of all nations to cultivate the same benevolent and philosophic spirit? If this be their true interest, have they
15 in fact pursued it? Has it not, on the contrary, invariably been found, that momentary passions, and immediate interests, have a more active and imperious control over human conduct, than general or remote considerations of policy, utility, or justice? Have republics in practice been less addicted to war than monarchies? Are not the former administered by men as well as the latter? Are there not aversions, predilections, rivalships, and desires of
20 unjust acquisition, that affect nations, as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known, that their determinations are often governed by a few individuals in whom they place confidence, and that they are of course liable to be tainted by the passions and views of those individuals? Has commerce hitherto done any
25 thing more than change the objects of war? Is not the love of wealth as domineering and enterprising a passion as that of power or glory? Have there not been as many wars founded upon commercial motives, since that has become the prevailing system of nations, as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered new incentives to the appetite both for the one and for the

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other? Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries.

Sparta, Athens, Rome, and Carthage, were all republics; two of them, Athens and Carthage, of the commercial kind. Yet were they as often engaged in wars, offensive and defensive, as
5 the neighbouring monarchies of the same times. Sparta was little better than a well regulated camp; and Rome was never sated of carnage and conquest.

Carthage, though a commercial republic, was the aggressor in the very war that ended in her destruction. Hannibal had carried her arms into the heart of Italy, and even to the gates of Rome, before Scipio, in turn, gave him an overthrow in the territories of Carthage, and
10 made a conquest of the commonwealth.

Venice, in latter times, figured more than once in wars of ambition; till becoming an object of terror to the other Italian states, Pope Julius the Second found means to accomplish that formidable league, which gave a deadly blow to the power and pride of that haughty republic.

15 The provinces of Holland, till they were overwhelmed in debts and taxes, took a leading and conspicuous part in the wars of Europe. They had furious contests with England for the dominion of the sea; and were among the most persevering and most implacable of the
10 opponents of Lewis XIV.

In the government of Britain the representatives of the people compose one branch of the
20 national legislature. Commerce has been for ages the predominant pursuit of that country. Yet few nations have been more frequently engaged in war; and the wars, in which that kingdom has been engaged, have in numerous instances proceeded from the people. There have been, if I may so express it, almost as many popular as royal wars. The cries of the nation and the importunities of their representatives have, upon various occasions, dragged
25 their monarchs into war, or continued them in it, contrary to their inclinations, and sometimes contrary to the real interests of the state. In that memorable struggle for superiority, between the rival houses of *Austria* and *Bourbon*, which so long kept Europe in a flame, it

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is well known that the antipathies of the English against the French, seconding the ambition, or rather the avarice, of a favourite leader, protracted the war beyond the limits marked out by sound policy, and for a considerable time in opposition to the views of the court.

5 The wars of these two last mentioned nations have in a great measure grown out of commercial considerations: the desire of supplanting, and the fear of being supplanted either in particular branches of traffic, or in the general advantages of trade and navigation; and sometimes even the more culpable desire of sharing in the commerce of other nations, without their consent.

10 The last war but two between Britain and Spain, sprang from the attempts of the English merchants, to prosecute an illicit trade with the Spanish main. These unjustifiable practices on their part, produced severities on the part of the Spaniards, towards the subjects of Great Britain, which were not more justifiable; because they exceeded the bounds of a just retaliation, and were chargeable with inhumanity and cruelty. Many of the English who were
15 taken on the Spanish coasts, were sent to dig in the mines of Potosi; and by the usual progress of a spirit of resentment, the innocent were after a while confounded with the guilty in indiscriminate punishment. The complaints of the merchants kindled a violent flame throughout the nation, which soon after broke out in the house of commons, and was communicated from that body to the ministry. Letters of reprisal were granted, and a war en-
20 sued; which, in its consequences, overthrew all the alliances that but twenty years before had been formed, with sanguine expectations of the most beneficial fruits.

From this summary of what has taken place in other countries, whose situations have borne the nearest resemblance to our own, what reason can we have to confide in those reveries, which would seduce us into the expectation of peace and cordiality between the members
25 of the present confederacy, in a state of separation? Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, the weaknesses, and the evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt

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as a practical maxim for the direction of our political conduct, that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?

5 Let the point of extreme depression to which our national dignity and credit have sunk; let the inconveniencies felt every where from a lax and ill administration of government; let the revolt of a part of the state of North Carolina; the late menacing disturbances in Pennsylvania, and the actual insurrections and rebellions in Massachusetts, declare!

10 So far is the general sense of mankind from corresponding with the tenets of those, who endeavour to lull asleep our apprehensions of discord and hostility between the states, in the event of disunion, that it has from long observation of the progress of society become a sort of axiom in politics, that vicinity, or nearness of situation, constitutes nations natural enemies. An intelligent writer expresses himself on this subject to this effect: “NEIGHBOURING NATIONS (says he) are naturally ENEMIES of each other, unless their common weakness forces them to league in a CONFEDERATE REPUBLIC, and their constitution prevents the differences that neighbourhood occasions, extinguishing that secret
15 jealousy, which disposes all states to aggrandize themselves at the expense of their neighbours.” This passage, at the same time, points out the EVIL and suggests the REMEDY.

Publius

PUBLIUS (ALEXANDER HAMILTON)

Federalist No. 9

ESSAY

November 21, 1787

The Independent Journal | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by explaining the new understandings in political philosophy that informed its creation.

GUIDING QUESTIONS

1. What was the problem with disunited republics of the past?
2. What are the five key elements of the advanced understanding of politics?
3. How does Publius respond to Anti-Federalist arguments claiming that Montesquieu rejected large republics?
4. According to Publius, does Montesquieu support a federal government intervening in the affairs of the states?

"Federalist 9," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 215-19.

The Union as a Safeguard Against Domestic Faction and Insurrection

A firm Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrast to the furious storms that are to succeed. If now and then intervals of felicity open to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction and tarnish the lustre of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated.

From the disorders that disfigure the annals of those republics the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted their gloomy sophisms. And, I trust, America will be the broad and solid foundation of other edifices, not less magnificent, which will be equally permanent monuments of their errors.

But it is not to be denied that the portraits they have sketched of republican government were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as

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indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided. To this catalogue of circumstances that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an objection to the new Constitution; I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single State or to the consolidation of several smaller States into one great Confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single State, which shall be attended to in another place.

The utility of a Confederacy, as well to suppress faction and to guard the internal tranquility of States, as to increase their external force and security, is in reality not a new idea. It has been practiced upon in different countries and ages, and has received the sanction of the most approved writers on the subject of politics. The opponents of the PLAN proposed have, with great assiduity, cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man expressed in another part of his work, nor to have adverted to the consequences of the principle to which they subscribe with such ready acquiescence.

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When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia can by any means be compared with the models from which he reasoned and to which the terms of his description apply. If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America.

Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here that, in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the Union, but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested.

So far are the suggestions of Montesquieu from standing in opposition to a general Union of the States, that he explicitly treats of a CONFEDERATE REPUBLIC as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism.

"It is very probable," (says he) "that mankind would have been obliged at length to live constantly under the government of a SINGLE PERSON, had they not contrived a kind of

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constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a CONFEDERATE REPUBLIC.

5 "This form of government is a convention by which several smaller *states* agree to become members of a larger *one*, which they intend to form. It is a kind of assemblage of societies that constitute a new one, capable of increasing, by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body.

10 "A republic of this kind, able to withstand an external force, may support itself without any internal corruptions. The form of this society prevents all manner of inconveniences.

15 "If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great influence over one, this would alarm the rest. Were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped and overpower him before he could be settled in his usurpation.

20 "Should a popular insurrection happen in one of the confederate states the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

25 "As this government is composed of small republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies."

I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the Union, and must effectually remove the false impressions which a misapplication of other parts of the work was
30 calculated to make. They have, at the same time, an intimate connection with the more

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immediate design of this paper; which is, to illustrate the tendency of the Union to repress domestic faction and insurrection.

5 A distinction, more subtle than accurate, has been raised between a *confederacy* and a *consolidation* of the States. The essential characteristic of the first is said to be, the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. 10 And it will be clearly shown in the course of this investigation that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government. 15

20 The definition of a *confederate republic* seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government. 25

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

PUBLIUS (JAMES MADISON)
Federalist No. 10

ESSAY

November 22, 1787

Daily Advertiser | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the risks of factions and majority tyranny and how the Constitution addresses them.

GUIDING QUESTIONS

1. How does Madison define faction?
2. How is faction part of human nature?
3. Can the problem of faction be solved by removing the causes of faction?
4. Is it practicable to make all people of one mind? How are opinions and passions related to the problem of faction?
5. What is the first task of government?
6. Since the causes of faction cannot be removed, what must be controlled?
7. How is minority faction solved?
8. What is the solution for majority faction?
9. What is the role of elected representatives in solving the problem of faction?
10. How does a large republic address the problem of majority faction?
11. What are the concerns of a republic being too large or too small?

"Federalist 10," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 231-37.

The Union as a Safeguard Against Domestic Faction and Insurrection

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.

5 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
10 governments have everywhere 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
15 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
20 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
25 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.

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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.

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

10 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.

15 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.

20 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 inter-
25 ests. 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.

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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
5 leaders ambitiously contending for preeminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities that where no substan-
10 tial 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
15 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 govern-
20 ment.

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
25 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
30 hold the balance between them. Yet the parties are, and must be, themselves the judges;

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

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

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

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

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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.

5 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
10 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
15 a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such
20 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
25 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
30 the nature of the cure and the efficacy which it must derive from the Union.

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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.

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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.

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In the first place it is to be remarked that however small the republic may be the representatives must be raised to a certain number in order to guard against the cabals of a few; and that however large it may be they must be limited to a certain number in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally 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

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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.

5 It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution
10 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
15 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,
20 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
25 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
30 in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed

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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
5 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
10 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 dis-
15 persed 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.

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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 (ALEXANDER HAMILTON)

Federalist No. 23

ESSAY

December 18, 1787

The New-York Packet | New York City, New York

BACKGROUND

Publius (Alexander Hamilton) argues for the proposed Constitution by explaining how the new government will have the energy necessary to function better than the Articles of Confederation.

GUIDING QUESTIONS

1. What are the objects of the federal government?
2. What are the principal purposes of the Union?
3. What does it mean to say that the powers granted by the Constitution to the federal government are enumerated but limitless?
4. Did the Articles of Confederation give the government an adequate means to enforce its authority? Why or why not?
5. What does Hamilton believe is the strongest argument for an energetic government?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 112-16.

The Necessity Of A Government, At Least Equally Energetic With The One Proposed

The necessity of a constitution, at least equally energetic with the one proposed, to the preservation of the union, is the point, at the examination of which we are now arrived.

5 This inquiry will naturally divide itself into three branches. The objects to be provided for by a federal government: the quantity of power necessary to the accomplishment of those objects: the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head.

10 The principal purposes to be answered by union, are these: the common defence of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations, and between the states; the superintendence of our intercourse, political and commercial, with foreign countries.

15 The authorities essential to the care of the common defence, are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation; because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite; and for this reason, no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be co-extensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defence.

25 This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms, as simple as they are universal . . . the *means* ought to be proportioned to the *end*; the persons from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained.

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Whether there ought to be a federal government intrusted with the care of the common defence, is a question, in the first instance, open to discussion; but the moment it is decided in the affirmative, it will follow, that, that government ought to be clothed with all the powers requisite to the complete execution of its trust. And unless it can be shown, that the
5 circumstances which may affect the public safety, are reducible within certain determinate limits: unless the contrary of this position can be fairly and rationally disputed, it must be admitted as a necessary consequence, that there can be no limitation of that authority, which is to provide for the defence and protection of the community, in any matter essential to its efficacy; that is, in any matter essential to the *formation, direction, or support* of
10 the NATIONAL FORCES.

Defective as the present confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the states, who are in fact under the most
15 solemn obligations to furnish the supplies required of them, the intention evidently was, that the United States should command whatever resources were by them judged requisite to the “common defence and general welfare.” It was presumed, that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for
20 the punctual performance of the duty of the members to the federal head.

The experiment has however demonstrated, that this expectation was ill founded and illusory; and the observations made under the last head will, I imagine, have sufficed to convince the impartial and discerning, that there is an absolute necessity for an entire change in the first principles of the system. That if we are in earnest about giving the union energy
25 and duration, we must abandon the vain project of legislating upon the states in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is, that the union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues

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which will be required for the formation and support of an army and navy, in the customary and ordinary modes practised in other governments.

If the circumstances of our country are such as to demand a compound, instead of a simple . . . a confederate, instead of a sole government, the essential point which will remain to be
5 adjusted, will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power: allowing to each the most ample authority for fulfilling THOSE which may be committed to its charge. Shall the union be constituted the guardian of the common safety? Are fleets, and armies, and revenues, necessary to this purpose? The government of the union must be empowered to pass all laws,
10 and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same state, the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the
15 end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigour and success.

Who so likely to make suitable provisions for the public defence, as that body to which the
20 guardianship of the public safety is confided? Which, as the centre of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exactions; and which, by the extension of its authority throughout the states, can alone establish uniformity and concert in the plans and measures, by
25 which the common safety is to be secured? Is there not a manifest inconsistency in devolving upon the federal government the care of the general defence, and leaving in the state governments the *effective* powers, by which it is to be provided for? Is not a want of cooperation the infallible consequence of such a system? And will not weakness, disorder, an

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undue distribution of the burthens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just achieved?

5 Every view we may take of the subject, as candid inquirers after truth, will serve to convince us, that it is both unwise and dangerous to deny the federal government an unconfined authority, in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modelled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration, should not, upon a dispassionate inspection, be found to answer this description it ought to be rejected. A government, the constitution of which renders it unfit to be intrusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention, would have given a better impression of their candour, if they had confined themselves to showing, that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils, about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face, of confiding to a government the direction of the most essential national concerns, without daring to trust it with the authorities

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which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative.

I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken, if any thing of weight has yet been advanced of this tendency; and I flatter myself, that the observations which have been made in the course of these papers, have
5 served to place the reverse of that position in as clear a light as any matter, still in the womb of time and experience, is susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favour of an energetic government; for any other can certainly never preserve the union of so large
10 an empire. If we embrace, as the standard of our political creed, the tenets of those who oppose the adoption of the proposed constitution, we cannot fail to verify the gloomy doctrines, which predict the impracticability of a national system, pervading the entire limits of the present confederacy.

Publius

PUBLIUS (JAMES MADISON)

Federalist No. 37

ESSAY EXCERPT

January 11, 1788

Daily Advertiser | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the arduous task of the convention but also the confidence Americans should have in light of the ease with which the delegates arrived at a consensus structure of government.

GUIDING QUESTIONS

1. What are some of the difficulties the convention encountered in producing the Constitution?
2. Were there difficulties in delineating the different branches of government?
3. Did different states have different interests they wanted to pursue? What were some of these differences?
4. What facets to human nature made the task difficult?
5. Does Madison believe their work was in some way divinely guided?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 179-85.

Concerning The Difficulties Which The Convention Must Have Experienced In The Formation Of A Proper Plan

...With equal readiness will it be perceived, that besides these inducements to candour, many allowances ought to be made, for the difficulties inherent in the very nature of the undertaking referred to the convention.

The novelty of the undertaking immediately strikes us. It has been shown in the course of these papers, that the existing confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it, the superstructure resting upon it. It has been shown, that the other confederacies which could be consulted as precedents, have been vitiated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the convention could do in such a situation, was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors as future experience may unfold them.

Among the difficulties encountered by the convention, a very important one must have lain, in combining the requisite stability and energy in government, with the inviolable attention due to liberty, and to the republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public: yet, that it could not be easily accomplished, will be denied by no one who is unwilling to betray his ignorance of the subject. Energy in government, is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws, which enter into the very definition of good government. Stability in government, is essential to national character, and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation is not more an evil in itself, than it is odious to the people; and it may be pronounced with assurance, that the people of this country, enlightened as they are, with regard to the nature,

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and interested, as the great body of them are, in the effects of good government, will never be satisfied, till some remedy be applied to the vicissitudes and uncertainties, which characterize the state administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once, the difficulty of mingling them together in their due proportions. The genius of republican liberty, seems to demand on one side, not only that all power should be derived from the people; but, that those intrusted with it should be kept in dependence on the people, by a short duration of their appointments; and that, even during this short period, the trust should be placed not in a few, but in a number of hands. Stability, on the contrary, requires, that the hands, in which power is lodged, should continue for a length of time the same. A frequent change of men will result from a frequent return of electors; and a frequent change of measures, from a frequent change of men: whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand....

When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself, as from the organ by which it is contemplated; we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. Experience has instructed us, that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces, the legislative, executive, and judiciary; or even the privileges and powers of the different legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science.

The experience of ages, with the continued and combined labours of the most enlightened legislators and jurists, have been equally unsuccessful in delineating the several objects and limits of different codes of laws, and different tribunals of justice. The precise extent of the common law, the statute law, the maritime law, the ecclesiastical law, the law of corporations, and other local laws and customs, remain still to be clearly and finally established in

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Great Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world....

Here then are three sources of vague and incorrect definitions; indistinctness of the object, imperfection of the organ of perception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The convention, in delineating the boundary between the federal and state jurisdictions, must have experienced the full effect of them all.

To the difficulties already mentioned, may be added the interfering pretensions of the larger and smaller states. We cannot err, in supposing that the former would contend for a participation in the government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them....

Would it be wonderful if, under the pressure of all these difficulties, the convention should have been forced into some deviations from that artificial structure and regular symmetry, which an abstract view of the subject might lead an ingenious theorist to bestow on a constitution planned in his closet, or in his imagination? The real wonder is, that so many difficulties should have been surmounted; and surmounted with an unanimity almost as unprecedented, as it must have been unexpected. It is impossible for any man of candour to reflect on this circumstance, without partaking of the astonishment. It is impossible, for the man of pious reflection, not to perceive in it a finger of that Almighty Hand, which has been so frequently and signally extended to our relief in the critical stages of the revolution.

We had occasion in a former paper, to take notice of the repeated trials which have been unsuccessfully made in the United Netherlands, for reforming the baneful and notorious vices of their constitution. The history of almost all the great councils and consultations, held among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective interests, is a history of factions, contentions, and disappointments; and may be classed among the most dark and degrading pictures, which

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display the infirmities and depravities of the human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect to which they are contrasted. In revolving the causes from which these exceptions result, and applying
5 them to the particular instance before us, we are necessarily led to two important conclusions. The first is, that the convention must have enjoyed in a very singular degree, an exemption from the pestilential influence of party animosities; the diseases most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion
10 is, that all the deputations composing the convention, were either satisfactorily accommodated by the final act; or were induced to accede to it, by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good; and by a despair of seeing this necessity diminished by delays or by new experiments.

Publius

PUBLIUS (JAMES MADISON)

Federalist No. 39

ESSAY

January 16, 1788

The Independent Journal | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by noting that the proposed Constitution is compatible with a republican form of government and that it contains both federal and national elements to its arrangement of power.

GUIDING QUESTIONS

1. How does Madison define a republican form of government?
2. How is the election of the members of the three branches of government consistent with the principles of republicanism defined by Madison?
3. How are the different branches set up to be both national and federal in character? Explain each one.
4. How is Madison using the terms "national" and "federal"?
5. What historical examples does Madison use to support his points?

"Federalist 39," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 251-56.

The Conformity Of The Plan To Republican Principles

The last paper having concluded the observations, which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

- 5 The first question that offers itself is, whether the general form and aspect of the government be strictly republican? It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the revolution; or with that honourable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the
10 convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What then are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitutions of different states, no satisfactory one would ever be
15 found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the
20 same appellation. The government of England, which has one republican branch only, combined with a hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

- 25 If we resort for a criterion, to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited

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period, or during good behaviour. It is *essential* to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favoured class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honourable title of republic. It is *sufficient* for such a government, that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been, or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every state in the union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behaviour.

On comparing the constitution planned by the convention, with the standard here fixed, we perceive at once, that it is, in the most rigid sense, conformable to it. The house of representatives, like that of one branch at least of all the state legislatures, is elected immediately by the great body of the people. The senate, like the present congress, and the senate of Maryland, derives its appointment indirectly from the people. The president is indirectly derived from the choice of the people, according to the example in most of the states. Even the judges, with all other officers of the union, will, as in the several states, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard, and to the model of the state constitutions. The house of representatives is periodically elective, as in all the states; and for the period of two years, as in the state of South Carolina. The senate is elective, for the period of six

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years; which is but one year more than the period of the senate of Maryland; and but two more than that of the senates of New York and Virginia. The president is to continue in office for the period of four years; as in New York and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. In the other states the election is annual. In several of the states, however, no explicit provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia, he is not impeachable till out of office. The president of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behaviour. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case, and the example of the state constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the state governments; and in its express guarantee of the republican form to each of the latter.

“But it was not sufficient,” say the adversaries of the proposed constitution, “for the convention to adhere to the republican form. They ought, with equal care, to have preserved the *federal* form, which regards the union as a *confederacy* of sovereign states; instead of which, they have framed a *national* government, which regards the union as a *consolidation* of the states.” And it is asked, by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires, that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country, could supply any defect of regular authority.

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First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

5 On examining the first relation, it appears, on one hand, that the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent states to which they respectively belong. It is to be the assent and ratifica-
10 tion of the several states, derived from the supreme authority in each state . . . the authority of the people themselves. The act, therefore, establishing the constitution, will not be a *national*, but a *federal* act.

That it will be a federal, and not a national act, as these terms are understood by the objectors, the act of the people, as forming so many independent states, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the
15 decision of a *majority* of the people of the union, nor from that of a *majority* of the states. It must result from the *unanimous* assent of the several states that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transac-
20 tion as forming one nation, the will of the majority of the whole people of the United States would bind the minority; in the same manner as the majority in each state must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the states, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted.
25 Each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new constitution will, if established, be a *federal*, and not a *national* constitution.

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The next relation is, to the sources from which the ordinary powers of government are to be derived. The house of representatives will derive its powers from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular state. So far the government is *national*, not *federal*.

5 The senate, on the other hand, will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the senate, as they now are in the existing congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the president is to be made by the states in their political characters. The votes allotted to
10 them are in a compound ratio, which considers them partly as distinct and co-equal societies; partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act, they are to be thrown into the form of individual delegations, from so many distinct and co-equal bodies politic. From this aspect of the government, it appears
15 to be of a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the *operation of the government*, is, by the adversaries of the plan of the convention, supposed to consist in this, that in the former, the powers operate on the political bodies composing the confederacy, in their political capacities; in the latter, on the individual citizens composing the
20 nation, in their individual capacities. On trying the constitution by this criterion, it falls under the *national*, not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which states may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual ca-
25 pacities, in its ordinary and most essential proceedings, will, on the whole, in the sense of its opponents, designate it in this relation, a *national* government.

But if the government be national, with regard to the *operation* of its powers, it changes its aspect again, when we contemplate it in relation to the *extent* of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but

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an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general, and partly in the municipal legislatures. In the former case, all

5 local authorities are subordinate to the supreme; and may be controled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be deemed a *national* one; since its

10 jurisdiction extends to certain enumerated objects only, and leaves to the several states, a residuary and inviolable sovereignty over all other objects. It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the

15 constitution: and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

20 If we try the constitution by its last relation, to the authority by which amendments are to be made, we find it neither wholly *national*, nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal on the other

25 hand, the concurrence of each state in the union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention, is not founded on either of these principles. In requiring more than a majority, and particularly, in computing the proportion by *states*, not by *citizens*, it departs from the *national*, and advances

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towards the *federal* character. In rendering the concurrence of less than the whole number of states sufficient, it loses again the *federal*, and partakes of the *national* character.

The proposed constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal constitution; but a composition of
5 both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal, and partly national; in the operation of these powers, it is national, not federal; in the extent of them again, it is federal, not national; and finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national.

10 Publius

PUBLIUS (JAMES MADISON)

Federalist No. 45

ESSAY EXCERPT

January 26, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by describing the responsibilities of the state governments and the federal government, including the new power to regulate commerce.

GUIDING QUESTIONS

1. What is the difference between the powers the federal constitution gives to the federal government and those left to state governments?
2. According to Publius' intent, would the federal government interfere with the power of state governments?
3. If the powers listed by Publius already existed in the Articles of Confederation, why was the Constitution needed?

The Federalist, ed. George W. Carey and James McClellan, The Gideon Edition (Indianapolis: Liberty Fund, 2001), 241-42.

A Further Discussion Of The Supposed Danger From The Powers Of The Union, To The State Governments

...The powers delegated by the proposed constitution to the federal government, are few and defined. Those which are to remain in the state governments, are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the state.

10 The operations of the federal government will be most extensive and important in times of war and danger; those of the state governments in times of peace and security. As the former periods will probably bear a small proportion to the latter, the state governments will here enjoy another advantage over the federal government. The more adequate indeed the federal powers may be rendered to the national defence, the less frequent will be those
15 scenes of danger which might favour their ascendancy over the governments of the particular states.

If the new constitution be examined with accuracy and candour, it will be found that the change which it proposes, consists much less in the addition of NEW POWERS to the union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it
20 is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing congress by the articles of confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them. The change relating
25 to taxation, may be regarded as the most important: and yet the present congress have as complete authority to require of the states, indefinite supplies of money for the common defence and general welfare, as the future congress will have to require them of individual citizens; and the latter will be no more bound than the states themselves have been, to pay

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the quotas respectively taxed on them. Had the states complied punctually with the articles of confederation, or could their compliance have been enforced by as peaceable means as may be used with success towards single persons, our past experience is very far from countenancing an opinion, that the state governments would have lost their constitutional powers, and have gradually undergone an entire consolidation. To maintain that such an event
5 would have ensued, would be to say at once, that the existence of the state governments is incompatible with any system whatever, that accomplishes the essential purposes of the union.

PUBLIUS (JAMES MADISON)

Federalist No. 47

ESSAY EXCERPTS

February 1, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining its core principle: the separation of powers.

GUIDING QUESTIONS

1. What is one of the main objections to the Constitution?
2. What does Madison consider to be the very definition of tyranny?
3. Whom does Madison chiefly cite in support of the separation of powers?

"Federalist 47," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 269-75.

The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts

HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and
5 the distribution of this mass of power among its constituent parts.

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

No political truth is certainly of greater intrinsic value, or is stamped with the authority of
15 more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a danger-
20 ous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of
25 liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit

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at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point.

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

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

From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the
25 same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no PARTIAL AGENCY in, or no CONTROL over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye,

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can amount to no more than this, that where the **WHOLE** power of one department is exercised by the same hands which possess the **WHOLE** power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had

5 possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment

10 of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The

15 entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or

20 body," says he, "there can be no liberty, because apprehensions may arise lest **THE SAME** monarch or senate should **ENACT** tyrannical laws to **EXECUTE** them in a tyrannical manner. " Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for **THE JUDGE** would then be **THE**

25 **LEGISLATOR**. Were it joined to the executive power, **THE JUDGE** might behave with all the violence of **AN OPPRESSOR**. " Some of these reasons are more fully explained in other passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author....

PUBLIUS (JAMES MADISON)

Federalist No. 48

ESSAY

February 1, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution in outlining the various checks and balances each branch of the government is afforded to guard itself against the encroachments of the others.

GUIDING QUESTIONS

1. Which branch of government in the U.S. is thought to be the strongest and most ambitious for power?
2. What is not sufficient to prevent tyranny?
3. What historical evidence does Madison give to show the tendency of branches to encroach on one another?

"Federalist 48," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 277-81.

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IT WAS shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary

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branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

5 In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended,
10 on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited; both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude,
15 yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures,
20 the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the
25 judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards

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of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without
5 end. I might find a witness in every citizen who has shared in, or been attentive to, the course of public administrations. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory, evidence, I will refer to the example of two States, attested by two unexceptionable authorities.

10 The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting "Notes on the State of
15 Virginia," p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would
20 surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An ELECTIVE DESPOTISM was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason, that convention
25 which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. BUT NO BARRIER WAS PROVIDED BETWEEN THESE SEVERAL POWERS. The judiciary and the

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executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will
5 render them obligatory on the other branches. They have accordingly, IN MANY instances, DECIDED RIGHTS which should have been left to JUDICIARY CONTROVERSY, and THE DIRECTION OF THE EXECUTIVE, DURING THE WHOLE TIME OF THEIR SESSION, IS BECOMING HABITUAL AND FAMILIAR.”

The other State which I shall take for an example is Pennsylvania; and the other authority,
10 the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution. "
15 In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances.

20 A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of legislature.

The constitutional trial by jury had been violated, and powers assumed which had not been
25 delegated by the constitution.

Executive powers had been usurped.

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The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

5 Those who wish to see the several particulars falling under each of these heads, may consult the journals of the council, which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government.

10 It appears, also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head: FIRST, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; SECON-
15 DLY, in most of the other instances, they conformed either to the declared or the known sentiments of the legislative department; THIRDLY, the executive department of Pennsylvania is distinguished from that of the other States by the number of members com-
posing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unau-
thorized measures would, of course, be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands.

20 The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

PUBLIUS (JAMES MADISON)

Federalist No. 49

ESSAY

February 5, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the risks in changing the form of government too often.

GUIDING QUESTIONS

1. What is Jefferson's proposal (the author of *Notes on the State of Virginia*)?
2. Why does Madison think Jefferson's proposal would weaken the necessary reverence for the Constitution?

"Federalist 49," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 283-86.

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THE author of the "Notes on the State of Virginia," quoted in the last paper, has subjoined to that valuable work the draught of a constitution, which had been prepared in order to be laid before a convention, expected to be called in 1783, by the legislature, for the establishment of a constitution for that commonwealth. The plan, like every thing from the same pen, marks a turn of thinking, original, comprehensive, and accurate; and is the more worthy of attention as it equally displays a fervent attachment to republican government and an enlightened view of the dangerous propensities against which it ought to be guarded. One of the precautions which he proposes, and on which he appears ultimately to rely as a palladium to the weaker departments of power against the invasions of the stronger, is perhaps altogether his own, and as it immediately relates to the subject of our present inquiry, ought not to be overlooked.

His proposition is, "that whenever any two of the three branches of government shall concur in opinion, each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution, or CORRECTING BREACHES OF IT, a convention shall be called for the purpose. "

As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others. The several departments being perfectly co-ordinate by the terms of their common commission, none of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers; and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who, as the grantors of the commissions, can alone declare its true meaning, and enforce its observance?

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There is certainly great force in this reasoning, and it must be allowed to prove that a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions. But there appear to be insuperable objections against the proposed recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits.

In the first place, the provision does not reach the case of a combination of two of the departments against the third. If the legislative authority, which possesses so many means of operating on the motives of the other departments, should be able to gain to its interest either of the others, or even one third of its members, the remaining department could derive no advantage from its remedial provision. I do not dwell, however, on this objection, because it may be thought to be rather against the modification of the principle, than against the principle itself.

In the next place, it may be considered as an objection inherent in the principle, that as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in a great measure, deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability. If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ANCIENT as well as NUMEROUS, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato. And in every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side.

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The danger of disturbing the public tranquillity by interesting too strongly the public passions, is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of government, and which does so much honor to the virtue and intelligence of the people of America, it must be confessed that the experiments are of too ticklish a nature to be unnecessarily multiplied. We are to recollect that all the existing constitutions were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; of a universal ardor for new and opposite forms, produced by a universal resentment and indignation against the ancient government; and whilst no spirit of party connected with the changes to be made, or the abuses to be reformed, could mingle its leaven in the operation. The future situations in which we must expect to be usually placed, do not present any equivalent security against the danger which is apprehended.

But the greatest objection of all is, that the decisions which would probably result from such appeals would not answer the purpose of maintaining the constitutional equilibrium of the government. We have seen that the tendency of republican governments is to an aggrandizement of the legislative at the expense of the other departments. The appeals to the people, therefore, would usually be made by the executive and judiciary departments. But whether made by one side or the other, would each side enjoy equal advantages on the trial? Let us view their different situations. The members of the executive and judiciary departments are few in number, and can be personally known to a small part only of the people. The latter, by the mode of their appointment, as well as by the nature and permanency of it, are too far removed from the people to share much in their prepossessions. The former are generally the objects of jealousy, and their administration is always liable to be discolored and rendered unpopular. The members of the legislative department, on the other hand, are numerous. They are distributed and dwell among the people at large. Their connections of blood, of friendship, and of acquaintance embrace a great proportion of the most influential part of the society. The nature of their public trust implies a personal

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influence among the people, and that they are more immediately the confidential guardians of the rights and liberties of the people. With these advantages, it can hardly be supposed that the adverse party would have an equal chance for a favorable issue.

5 But the legislative party would not only be able to plead their cause most successfully with the people. They would probably be constituted themselves the judges. The same influence which had gained them an election into the legislature, would gain them a seat in the convention. If this should not be the case with all, it would probably be the case with many, and pretty certainly with those leading characters, on whom every thing depends in such bodies. The convention, in short, would be composed chiefly of men who had been, who
10 actually were, or who expected to be, members of the department whose conduct was arraigned. They would consequently be parties to the very question to be decided by them.

It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpations of the legislature might be so flagrant and so sudden, as to admit of no specious coloring. A strong party
15 among themselves might take side with the other branches. The executive power might be in the hands of a peculiar favorite of the people. In such a posture of things, the public decision might be less swayed by prepossessions in favor of the legislative party. But still it could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question
20 itself. It would be connected with persons of distinguished character and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of, the measures to which the decision would relate. The PASSIONS, therefore, not the REASON, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be
25 controlled and regulated by the government.

We found in the last paper, that mere declarations in the written constitution are not sufficient to restrain the several departments within their legal rights. It appears in this, that occasional appeals to the people would be neither a proper nor an effectual provision for

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that purpose. How far the provisions of a different nature contained in the plan above quoted might be adequate, I do not examine. Some of them are unquestionably founded on sound political principles, and all of them are framed with singular ingenuity and precision.

PUBLIUS (JAMES MADISON)
Federalist No. 51

ESSAY

February 8, 1788

The New-York Packet | New York City, New York

BACKGROUND

Publius (James Madison) argues for the proposed Constitution by explaining the risks of a concentration of power and how the Constitution addresses them.

GUIDING QUESTIONS

1. What does it mean for each branch of government to have a will of its own?
2. Is the separation of powers absolute, or should the powers overlap? Why or why not?
3. What additional methods help the government to control itself?
4. How is the executive branch strengthened?
5. How is the power surrendered by the people divided to protect from government encroachment?
6. How does the argument against majority tyranny here relate to the argument made in Federalist 10?
7. What is the end of government and civil society according to Publius in Federalist 51?

"Federalist 51," in *The U.S. Constitution: A Reader*, ed. Hillsdale College Politics Faculty (Hillsdale, MI: Hillsdale College Press, 2012), 287-91.

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

To what expedient, then, shall we finally resort, for maintaining in practice the necessary
5 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
10 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
15 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,
20 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.

25 In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.
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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.

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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.

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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.

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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

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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.

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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 citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued 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,

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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
5 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
10 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,
15 also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the *republican cause*, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture
20 of the *federal principle*.