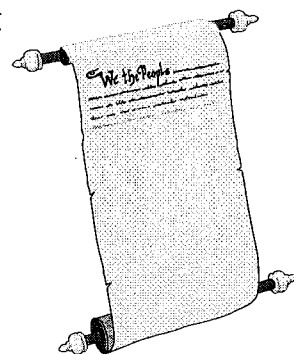


Advanced Placement American Government Unit III: The Federal System



- Tuesday 9/26 Evaluating sample AP essay questions.
(Group Activity)
- Wednesday 9/27 Reading quiz: pages 49-62 (Wilson)
- Thursday 9/28 Practice Essay for AP Exam - Start in class, finish
for homework (27 points applied to test/quiz
Category).
- Friday 9/29 Collect Practice Essay. TBA-Either Finish DNA and Death
Penalty or- Start Grodzins-Federal System
- Monday 10/02 Quiz pages 63-72 (Wilson Textbook)/Grodzins in class summary.
- Tuesday 10/3 Grodzins Summary due. Class Discussion/Activity. Food
opportunity- You figure it out ☺
- Wednesday 10/04 Answers due for questions over *Federalist #10*
(Reading in Wilson pp. A20-A24, questions in
unit packet).
Seminar discussion of the ideas of *Federalist #10* and how they
compare to de Tocqueville's ideas in the *Omnipotence of the
Majority*.
- Thursday 10/05 Hand out Unit Test Essay Questions- No notes or other help
allowed during test. Only time I do this for you. Start Fed 39 in
class.
- Friday 10/06 Fed 39 Answers due 1-5. Class discussion
- Monday 10/9 Essay Test Unit 1- Two Free Response Questions- 45 Minutes.
- Tuesday 10/10 AP Multiple Choice/True-False Test- 60 Questions total. 45
Minutes. Chapter(s) 1-4

3

Federalism

I. Reviewing the Chapter

A. Chapter Focus

The central purpose of the chapter is to introduce you to some of the complexities of government in the United States caused by the adoption of a federal system—that is, one in which both the national and state governments have powers independent of one another. You should also note how the nature and the effects of American federalism have changed throughout American history and continue to change to this day. After reading and reviewing the material in this chapter, you should be able to do each of the following:

1. Explain the difference between federal and centralized systems of government, and give examples of each.
2. Show how competing political interests at the Constitutional Convention led to the adoption of a federal system, but one that was not clearly defined.
3. Outline the ways in which the courts interpreted national and state powers and how the doctrine of dual federalism came to be moot.
4. State why federal grants-in-aid to the states have been politically popular, and cite what have proved to be the pitfalls of such grants.
5. Distinguish between categorical grants and block grants or general revenue sharing.
6. Explain why, despite repeated attempts to reverse the trend, categorical grants have continued to grow more rapidly than block grants.
7. Distinguish between mandates and conditions of aid with respect to federal grant programs to states and localities.
8. Discuss whether or to what extent federal grants to the states have succeeded in creating uniform national policies comparable to those of centralized governments.

B. Study Outline

I. Governmental structure

A. Federalism: good or bad?

1. Definition: political system with local government units, in addition to national one, that can make final decisions
2. Examples of federal governments: Canada, India, Germany
3. Examples of unitary governments: France, Britain, Italy
4. Special protection of subnational governments in federal system is the result of
 - a. Constitution of country
 - b. Habits, preferences, and dispositions of citizens
 - c. Distribution of political power in society
5. National government largely does not govern individuals directly but gets states to do so in keeping with national policy

6. Negative views: block progress and protect powerful local interests
 - a. Laski: states "poisonous and parasitic"
 - b. Riker: perpetuation of racism
7. Positive view
 - a. Elazar: strength, flexibility, liberty
8. Federalism makes good and bad effects possible
 - a. Different political groups with different political purposes come to power in different places
 - b. *Federalist* No. 10: small political units dominated by single political faction
- B. Increased political activity
 1. Most obvious effect of federalism: facilitates mobilization of political activity
 2. Federalism lowers the cost of political organization at the local level
- II. The Founding
 - A. A bold, new plan to protect personal liberty
 1. Founders believed that neither national nor state government would have authority over the other because power derives from people, who shift their support
 2. New plan had no historical precedent
 3. Tenth Amendment was added as an afterthought, to define power of states
 - B. Elastic language in Article I: necessary and proper
 1. Precise definitions of powers politically impossible because of competing interests, such as commerce
 2. Hence vague language—"necessary and proper"
 3. Hamilton's view: national supremacy because Constitution supreme law
 4. Jefferson's view: states' rights with people ultimate sovereign
- III. The debate on the meaning of federalism
 - A. The Supreme Court speaks
 1. Hamiltonian position espoused by Marshall
 2. *McCulloch v. Maryland* settled two questions
 - a. Could Congress charter a national bank? (yes, because "necessary and proper")
 - b. Could states tax such a bank? (no, because national powers supreme)
 3. Later battles
 - a. Federal government cannot tax state bank
 - b. Nullification doctrine led to Civil War: states void federal laws they deem in conflict with Constitution
 - B. Dual federalism
 1. Both national and state governments supreme in their own spheres
 2. Hence interstate versus intrastate commerce
 - a. Early product-based distinction difficult
 - b. "Original package" also unsatisfactory
 - c. Today dual federalism virtually extinct
- IV. Federal-state relations
 - A. Grants-in-aid
 1. Grants show how political realities modify legal authority
 2. Began before Constitution with "land grant colleges," various cash grants to states
 3. Dramatically increased in scope in twentieth century
 4. Were attractive for various reasons
 - a. Federal budget surpluses (nineteenth century)
 - b. Federal income tax became flexible tool
 - c. Federal control of money supply meant national government could print more money
 - d. "Free" money for state officials
 5. Required broad congressional coalitions
 - B. Meeting national needs

1. 1960s shift in grants-in-aid
 - a. From what states demanded . . .
 - b. . . . To what federal officials found important as national needs
- C. The intergovernmental lobby
 1. Hundreds of state, local officials lobby in Washington
 2. Purpose: to get more federal money with fewer strings
- D. Categorical grants versus revenue sharing
 1. Categorical grants for specific purposes; often require local matching funds
 2. Block grants devoted to general purposes with few restrictions
 3. Revenue sharing requires no matching funds and provides freedom in how to spend
 - a. Distributed by statistical formula
 - b. Ended in 1986
 4. Neither block grants nor revenue sharing achieved goal of giving states more freedom in spending
- V. The slowdown in "free" money
 - A. Block grants grow more slowly than categorical
 1. No single interest group has a vital stake in multipurpose block grants, revenue sharing
 2. Categorical grants are matters of life or death for various agencies
 3. Revenue sharing was wasteful and lacked a constituency
 - B. Rivalry among the states
 1. Increased competition a result of increased dependency
 2. Snowbelt (Frostbelt) versus Sunbelt states
 3. Actual difficulty telling *where* funds spent
 4. Census takes on monumental importance
- VI. Federal aid and federal control
 - A. Mandates
 1. Federal rules states or localities must obey, whether receiving aid or not
 - a. Antidiscrimination rules
 - b. Pollution-control laws
 2. Administrative and financial problems often result
 3. Most controversial mandates result from court decisions
 - a. Easier now for citizens to sue localities
 - B. Conditions of aid
 1. Attached to grants states receive voluntarily
 2. Conditions range from specific to general
 3. Divergent views of states and federal government on costs, benefits
 - a. Example: Rehabilitation Act of 1973
 4. Failed presidential attempts to reverse trend
 - a. Example: Nixon's New Federalism creating revenue sharing
 5. Reagan's attempt to consolidate categorical grants; Congress's cooperation in name only
 - C. The states respond
 1. Experiments with new ways of delivering services
 - a. Encouraged by federal laws such as Federal Support Act
 - b. Discouraged by federal rules but still some innovation
 - c. Examples: child care, welfare, education (Minnesota, Rhode Island, Maryland)
 - D. Sorting things out
 1. One view
 - a. Federal government pays for national programs
 - b. States pay for local programs
 2. Eisenhower's attempt (1957)
 3. Reagan's "swap" (1981)
 - a. Failed because Constitution purposely left responsibilities vague

VII. Federalism and public policy

A. Nation still far from wholly centralized

1. Members of Congress still *local* representatives
2. Members of Congress represent different constituencies from the same localities
3. Link to local political groups eroded
4. No single national policy in most policy areas
 - a. Example: welfare
5. Increasing difficulty of managing programs
 - a. Example: Oakland aircraft hangar
6. Differences of opinion over which level of government works best

C. Key Terms Match

Match the following terms and descriptions. (Note: One of the descriptions should be matched with two terms.)

- | | |
|--|---|
| a. AFDC | 1. ____ Governmental concerns considered to be primarily the responsibility of the central government |
| b. block grants | 2. ____ Governmental concerns considered to be primarily the responsibility of the state governments |
| c. categorical grants | 3. ____ Supreme or ultimate political authority |
| d. conditions of aid | 4. ____ A system in which sovereignty is wholly in the hands of the national government |
| e. confederation or confederal system | 5. ____ A system in which the state governments are sovereign and the national government may do only what the states permit |
| f. dual federalism | 6. ____ A system in which sovereignty is shared between the national and the state governments |
| g. Economic Development Administration | 7. ____ The Founders' term for a federation |
| h. federal system | 8. ____ The clause that stipulates that powers not delegated to the United States are reserved to the states or to the people |
| i. federal republic | 9. ____ A Supreme Court decision embodying the principle of implied powers of the national government |
| j. grants-in-aid | 10. ____ The term used by the Supreme Court to create the category of "implied powers" of the national government |
| k. intergovernmental lobby | 11. ____ The doctrine espoused by Calhoun that states could hold certain national government policies invalid within their boundaries |
| l. interstate commerce | 12. ____ The doctrine that both state and national governments are supreme in their respective spheres |
| m. intrastate commerce | 13. ____ Business that is conducted in more than one state |
| n. land grant colleges | 14. ____ Business that is conducted entirely within one state |
| o. Madison, James | 15. ____ Federal funds provided to states and localities |
| p. <i>McCulloch v. Maryland</i> | 16. ____ State educational institutions built with the benefit of federally donated lands |
| q. mandates | 17. ____ A program proposed in the 1960s to give federal funds to a small number of large cities with acute problems |
| r. Model Cities | |
| s. national interests | |
| t. necessary-and-proper clause | |
| u. New Federalism | |
| v. nullification | |
| w. revenue sharing | |

(continued)

- x. sovereignty
- y. states' rights
- z. Tenth Amendment
- aa. unitary system

- 18. ____ A federal grant for a specific purpose, often with accompanying conditions and/or requiring a local match
- 19. ____ A federal grant that could be used for a variety of purposes, usually with few accompanying restrictions
- 20. ____ Federal rules that states must follow, whether they receive federal grants or not
- 21. ____ Federal rules that states must follow if they choose to receive the federal grants with which the rules are associated
- 22. ____ Nixon's attempt in the 1970s to reduce federal restrictions on grants-in-aid
- 23. ____ An interest group made up of mayors, governors, and other state and local officials who depend on federal funds
- 24. ____ The *Federalist* author who said that both state and federal governments "are in fact but different agents and trustees of the people, constituted with different powers"
- 25. ____ A federally funded program to distribute welfare benefits
- 26. ____ A part of the U.S. Department of Commerce

D. Did You Think That . . . ?

Below are listed a number of misconceptions. You should be able to refute each statement in the space provided, referring to information or argumentation contained in this chapter. Sample answers appear at the end of the Handbook.

1. "The Constitution clearly established the powers of the national and state governments."

2. "Most governments in the world today have both national and state governments, as in the United States."

3. "Our national government spends most of its time governing individual citizens."

4. "The complexity of federalism tends to discourage citizen participation in government."

GOVERNMENT

QUESTIONS FEDERALIST # 10

1. WHAT IS A FACTION?
2. ACCORDING TO JAMES MADISON, WHAT IS THE PRINCIPLE CAUSE OF FACTIONS IN SOCIETY?
3. HOW WOULD YOU CHARACTERIZE MADISON'S VIEWS ON FACTIONS? HOW DO YOU ACCOUNT FOR HIS BELIEFS?
4. HOW DOES MADISON PROPOSE TO DEAL WITH FACTIONS?
5. WHAT SPECIFIC PROVISIONS ARE INCORPORATED INTO THE CONSTITUTION WHICH RESTRAIN FACTIONS FROM GAINING CONTROL OVER THE ENTIRE GOVERNMENT?
6. IS IT POSSIBLE FOR ONE FACTION TO GAIN CONTROL OF THE ENTIRE GOVERNMENT? IF YES, UNDER WHAT CIRCUMSTANCES?
7. CONSIDERING THE GROWTH OF POLITICAL ACTION COMMITTEES (PACS) AND OTHER SINGLE ISSUE GROUPS, DO WE NEED TO PLACE NEW CHECKS ON THESE ACTIONS IN ORDER TO PRESERVE DEMOCRACY?

AP GOVERNMENT

QUESTIONS FEDERALIST # 10

1. WHAT IS A FACTION?
2. ACCORDING TO JAMES MADISON, WHAT IS THE PRINCIPLE CAUSE OF FACTIONS IN SOCIETY?
3. HOW WOULD YOU CHARACTERIZE MADISON'S VIEWS ON FACTIONS? HOW DO YOU ACCOUNT FOR HIS BELIEFS?
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The Federalist No. 10

November 22, 1787

James Madison

TO THE PEOPLE OF THE STATE OF NEW YORK.

Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail therefore to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice and confusion introduced into the public councils, have in truth been the mortal diseases under which popular governments have every where perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American Constitutions on the popular models; both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side as was wished and expected. Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty; that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and over-bearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found indeed, on a candid review of our situation, that some of the distresses under which we labor, have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and particularly, for that prevailing and increasing distrust of public engagements; and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

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

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

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

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

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

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

No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men, are unfit to be both judges and parties, at the same time; yet, what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens, and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are and must be themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic 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 over-burden 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 enquiries are directed: Let me add that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

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

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

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking.

Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens, elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interest of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal, and it is clearly decided in favor of the latter by two obvious considerations.

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

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

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

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of Republican, than of Democratic Government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties

and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence it clearly appears, that the same advantage, which a Republic has over a Democracy, in controlling the effects of factions, is enjoyed by a large over a small Republic—is enjoyed by the Union over the States composing it. Does this advantage consist in the substitution of Representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice? It will not be denied, that the Representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the Union, increase this security? Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

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

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

PUBLIUS

national standards. President Reagan's New Federalism proposed the merging of grant-in-aid programs into block grants to the states leading eventually to a reduced federal role in financing state and local governments. The continuing conflict between the themes and realities of centralization and decentralization are examined in the following selection.

10

Morton Grodzins
THE FEDERAL SYSTEM

Federalism is a device for dividing decisions and functions of government. As the constitutional fathers well understood, the federal structure is a means, not an end. The pages that follow are therefore not concerned with an exposition of American federalism as a formal, legal set of relationships. The focus, rather, is on the purpose of federalism, that is to say, on the distribution of power between central and peripheral units of government.

I. THE SHARING OF FUNCTIONS

The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the American federal system. Consider the health officer, styled "sanitarian," of a rural county in a border state. He embodies the whole idea of the marble cake of government.

The sanitarian is appointed by the state under merit standards established by the federal government. His base salary comes jointly from state and federal funds, the county provides him with an office and office amenities and pays a portion of his expenses, and the largest city in the county also contributes to his salary and office by virtue of his appointment as a city plumbing inspector. It is impossible from moment to moment to tell under which governmental hat the sanitarian operates. His work of inspecting the purity of food is carried out under federal standards; but he is enforcing state laws when inspecting commodities that have not been in

From Morton Grodzins, ed., *Goals for Americans: The Report of the President's Commission on National Goals* (New York: The American Assembly), pp. 265-282. Reprinted by permission.



2.1

The Federalist, No. 39

James Madison

At the time of the framing of the Constitution, the founders were aware of two basic forms of government: a national government, with total central domination, and a confederation, a loose alliance of states in which the central government has virtually no power. When the Constitution and *The Federalist* were written, a "federal" government and a "confederation" were synonymous. The governmental form that has come to be called *federalism*, in which authority is divided between two independent levels, was the invention of the founders, though the label came later.

Critics of the Constitution believed the document gave so much power to the central government that it was in fact "national" in character. In *The Federalist*, No. 39, James Madison refutes this charge and asserts that the new government is "neither a national nor a federal Constitution, but a composition of both." Being a politician, Madison took great pains to point out that the national government's powers are strictly limited to those enumerated in the Constitution and that the residual sovereignty of the states is greater than that of the national government. The first part of this paper can also be regarded as an elegant statement of what Madison meant by the term *republic*.

To the People of the State of New York: 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 honorable determination, which animates every votary [devotee] of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the Convention therefore be found to depart from the republican character, its advocates must abandon it as no longer defensible.

* A republican form of government is one in which power resides in the people but is formally exercised by their elected representatives.

James Madison

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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 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 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.

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 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 favored 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 honorable 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 coordinate 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

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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 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 constitutional 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 enquiring 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 enquire how far the Convention were authorised to propose such a government; and thirdly, how far the duty they owed to their country, could supply any defect of regular authority.

* The Seventeenth Amendment, adopted in 1913, changed the election procedure for senators from indirect election by state legislatures to direct election by the people of each state.

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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.

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 ratification 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 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 other wise 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 transaction 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 a 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. 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.

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*. 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 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 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 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 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. So far the national countenance of the Government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the Government on the people in their individual capacities, in its ordinary and most essential proceedings, may on the whole 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 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 local authorities are subordinate to the supreme; and may be controuled, 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 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, accord-

* The tribunal to resolve boundary disputes became the Supreme Court (see *McCulloch v. Maryland*, which follows this selection).

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ing to the rules of the 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.

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 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 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 is in strictness neither a national nor a federal constitution; but a composition of 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.

Summary Questions

1. According to Madison, why was the new U.S. Constitution neither a "national" nor a "federal" document? Which of its features were designed to curb the national government's domination of the states?
2. Madison believed the Constitution set up a republican rather than a democratic form of government. What features of the document were designed to give the people an indirect rather than a direct influence on public policy?

QUESTIONS FOR FEDERALIST #39

Answer on separate paper.

1. Why, according to Madison, is it altogether necessary that the new government be republican in nature?
2. On what grounds does he reject the "republican" label when used to describe certain other governments of his day?
3. What would be the difference, in his thinking, between a "federal" and a "national" government?
4. Using this distinction from answer #3, how does Madison describe:
 - a. the proposed act of establishing a Constitution?
 - b. the composition of Congress and the executive branch?
 - c. the actual operation of governmental powers?
 - d. the extent of those governmental powers?
 - e. the process of amending the Constitution?
5. Madison concludes that the proposed Constitution is neither federal nor national, but a mixture. How do you think that the Constitution might have differed if the authors had decided simply on a:
 - a. national government?
 - b. federal government?

- From the Wilson text workbook

