

the series, which initially may have been slated to comprise twenty or twenty-five papers, not the eighty-five that finally resulted.¹¹

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

Given their famous falling out a few years later, after which they remained bitter political enemies, Hamilton and Madison might seem unlikely co-authors. Indeed, several scholars in the twentieth century have exercised themselves over the alleged schizophrenia of Publius, straining to identify latent disagreements between the principal co-authors.¹⁴ This approach clearly risked reading back into the 1780s the fierce partisan disputes of the 1790s. Besides, it has actually proved very difficult to determine who wrote several numbers of *The Federalist*

(particularly Nos. 55-58 and 62-63) claimed by both Madison and Hamilton. Even more scholarly ink has been spilled on this authorship controversy than on the book's supposed "split personality." External evidence is inconclusive, and internal evidence (drawing on subject matter, arguments, style) has not dispelled the ambiguity.¹⁵ Researchers have resorted to computer analysis of the text in the attempt to settle who wrote what, but they have been hard-pressed to find a distinction they could rely on—sentence length, "marker" words—all the more obvious tests failed to turn up a distinction that made a difference. Finally, a statistical difference was found in the use of utterly trivial words, but this threatened to make the differences between Hamilton and Madison utterly trivial.¹⁶

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

When Hamilton decided to issue the collected papers in two hardcover volumes (published on March 22 and May 28, 1788), he added a Preface to the first volume in which he apologized for the "violations of method and repetitions of ideas" involved in the transformation of a newspaper series into a book. He admitted, however, that the "latter defect" had been "intentionally indulged" for rhetorical purposes—that is, in order to

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

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

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

The utility of the UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least equally energetic with the one proposed, to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own State constitution—and lastly, The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property. (No. 1, p. 4)

This outline was followed, though not without modification. The fourth topic, on the Constitution's conformity to "the true principles of republican government," grew to be a survey of the "particular structure" of the whole government, encompassing *Federalist* Nos. 47-84. The fifth and sixth topics, "anticipated and exhausted" (pp. 488-489) in the previous section, shrank accordingly to the dimensions of a single paragraph apiece in the concluding paper, *Federalist* No. 85.

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

I. The Union

- Nos. 1-14: Introduction and "the utility of the UNION to your political prosperity"
 Nos. 15-22: "The insufficiency of the present Confederation to preserve that Union"
 Nos. 23-26: "The necessity of a government at least equally energetic with the one proposed, to the attainment of this object"

II. The Merits of this Constitution or "The conformity of the proposed Constitution to the true principles of republican government"

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

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

been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice." But reflective men know that politics cannot ignore the role of "accident and force" in human affairs, and the first volume of *The Federalist* is a long tutorial in the ways in which American republicans should anticipate the threats that will, inevitably, be posed by "accident and force." Publius concentrates his arguments, therefore, on the forceful necessities that require Union. "Among the many objects to which a wise and free people find it necessary to direct their attention," he observes in No. 3 (p. 10), "that of providing for their safety seems to be first." He amplifies the thought in No. 8 (p. 35): "Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates." These are not "vague inferences," Publius notes, but "solid conclusions, drawn from the natural and necessary progress of human affairs."

Indeed, "nothing is more certain than the indispensable necessity of government" (No. 2, p. 5), which is made necessary precisely by the problem of safety or self-preservation. Throughout *The Federalist's* first volume or first part, the Constitution seems to be for the sake of the Union, and the Union seems to be for the sake of safety or self-preservation. Nature is always close to necessity in these papers, and politics close to physics or mathematics in its calculus of the human passions. Publius describes representation, for example, as a "great mechanical power" by which the will of society may be concentrated and "its force directed to any object which the public good requires." The emphasis is on concentrating and projecting society's will, not on refining or shaping it. The problem of politics seems to be how to arrange "the momentum of civil power" so that it acts on individuals, moving their passions in the proper direction (No. 13, pp. 65-66). Similarly, he argues that the national government's powers to levy taxes and to raise and maintain an army ought to exist "without limitation" because it is impossible to foresee the extent and variety of national emergencies or the means necessary

to meet them. This reasoning, he insists, is axiomatic, resting on such "simple" and "universal" truths as that "the means ought to be proportioned to the end." So though the principles of morals and politics do not have "the same degree of certainty with those of the mathematics," Publius assures his readers that "they have much better claims in this respect" than men usually think (No. 23, p. 121; No. 30, pp. 156, 158-159; No. 31, pp. 161-162).

In Nos. 9 and 10, however, Publius shows that the Union, besides being necessary for our survival, is also useful to liberty. But even these famous papers remain in decisive respects within the horizon of the first volume. According to No. 10, the protection of the unequal faculties of men is "the first object of government" (p. 46), though earlier we had been instructed that "safety" is the first object of a people's attention. Self-preservation may be first in the sense of being the earliest or most urgent object of government, then, but what is first in time need not remain first in rank. The protection of the unequal faculties of men "from which the rights of property originate" may thus become "the first object of government" once safety has been attended to; government does have higher, though not more urgent, ends than the protection of mere life. Still, in No. 10 these higher ends embrace essentially the rights of property and the protection of the diverse faculties of men that give rise to these rights. In other words, the ends of government or of the Constitution appear more or less confined to the objects of the Union, which he defines as "the common defense of the members," "the preservation of the public peace," "the regulation of commerce with other nations and between the States," and the conduct of foreign policy (No. 23, p. 121).

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

for the public benefit" that will be championed by future presidents (No. 57, p. 318; No. 62, p. 348; No. 63, p. 350; No. 71, p. 400; No. 72, p. 405). Security against foreign danger, which earlier had been singled out as the first object of a wise and free people's attention, is downgraded to "one of the primitive objects of civil society" (No. 3, p. 10; No. 41, p. 224). From this point of view, the protection of the diverse "faculties of men, from which the rights of property originate" (No. 10, p. 46) appears now as an intermediate goal, somewhere between securing the mere "safety" and the "happiness" of society.

The change in tone is heralded in the concluding paragraph of the first volume: "a further and more critical investigation," Publius promises, "will serve to recommend [the Constitution] still more to every sincere and disinterested advocate for good government." This "more critical and thorough survey of the work of the convention," as he calls it in *Federalist* No. 37, occupies the rest of the book, and is addressed to "the candid and judicious part of the community," those who "add to a sincere zeal for the happiness of their country, a temper favorable to a just estimate of the means of promoting it" (No. 36, p. 192; No. 37, pp. 192-193). Rather than teaching men to heed their passions so that they may gratify their fundamental passion for self-preservation—rather than using necessity as an effective substitute for moderation, in other words—Publius chooses to speak in moderate tones to moderate men. He encourages his readers to listen to moderation's counsel and, bit by bit, to yield to it.

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

from gaining control of the national governmental apparatus. The selections reprinted here from *The Federalist*, which was written between October 1787 and August 1788, outline the theory and mechanism of the separation of powers.

4

James Madison

FEDERALIST 47



I proceed to examine the particular structure of this government, and 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 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 great intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied.

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 of at least displaying and recommending it most effectually to the attention of mankind. . . .

From . . . facts, by which Montesquieu was guided, it may clearly be inferred, that in saying, "there can be no liberty, where the legislative and executive powers are united in the same person, or body of magistrates"; or "if the power of judging,

be not separated from these departments, each other. His power of one power of another subverted. . . .

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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 . . . 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. . . .

If we look into the constitutions of the several states, we find, that notwithstanding the emphatical, and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. . . .

The constitution of Massachusetts has observed a sufficient, though less pointed caution, in expressing this fundamental article of liberty. It declares, "that the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu. . . . It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very constitution to which it is prefixed, a partial mixture of powers has been admitted. . . .

FEDERALIST 48



. . . 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 neither 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 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. . . .

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 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 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; 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, the encroachment which it makes on the coordinate departments. It is not infrequently 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 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 of those who fill the other departments; a dependence is thus created in the latter, which gives still greater facility to encroachment of the former. . . .

FEDERALIST 51



To what expedient then shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. . . .

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In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. . . .

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

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government, which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.)

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

But it is not possible to give each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconvenience 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?

INTERPRETING THE CONSTITUTION

The preceding selections have offered contrasting views on the framing, nature, and purpose of the Constitution. As background, John Locke's political philosophy expressed in his *Second Treatise, Of Civil Government* (1690) supported the political beliefs of many eighteenth-century Americans in government as a social contract between rulers and ruled to protect the natural rights of citizens to life, liberty, and, very importantly, property.

To John Roche, the Constitution was a practical political document reflecting compromises among state delegations with contrasting political and economic interests, and being advocates of strong national power and proponents of states' rights. Charles Beard saw the Constitution as a reflection of the interests of property owners and creditors who feared that the rule of the debtor majority would inflate currency, cancel debts, and deprive creditors of their rightful property. James Madison's selections from *The Federalist* suggest a mistrust of government, a wary view of both political leaders and the people, and an emphasis upon the need for governmental checks and balances to prevent the arbitrary exercise of political power. Madison also distrusted what he termed "faction," by which he meant political parties or special-interest groups, which he considered intrinsically to be opposed to the national interest (see *Federalist 10*, Chapter 4).

The separation of powers among the executive, legislative, and judicial branches is an outstanding characteristic of our constitutional system. A uniquely American separation of powers incorporated an *independent* executive, pitting the president against Congress and requiring their cooperation to make the government work. The separation of powers was a constitutional filter through which political demands had to flow before they could be translated into public policies.

James Madison clearly saw the separation-of-powers system, incorporating checks and balances among the branches of government, as a process that would help to prevent arbitrary and excessive governmental actions. The three branches of the government, but particularly the president and Congress, would have independent political bases, motivations, and powers that would both enable and encourage them to compete with each other.

While Madison saw the separation of powers as an important limit upon arbitrary government, Alexander Hamilton represented a different point of view. He viewed the independent presidency, a central component of the separation of powers, as an office that could make the national government energetic and effective. "Energy in the executive is the definition of good government," wrote Hamilton in *The Federalist*, No. 70, and the constitutional separation of powers would provide that energy rather than simply making the

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AP Government

Questions: Federalist #47, #48, & #51 by James Madison

1. Madison points out in Federalist 47 that the powers of the three branches of government are distributed and blended together in certain ways. At the same time he notes that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

How does Madison justify the intermixture of powers with his theory of the separations of powers?

2. What is Madison's view of the inherent power potentials of the legislative, executive, and judicial branches of government?

3. What does Madison mean when he says (Federalist 51), "The great security against the 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 encroachment of others"?

4. How did Madison's view of human nature affect his theory of government?

5. The entire thrust of Madison's argument in Federalist 47, 48, and 51 seems to be in the direction of controlling and even weakening the exercise of governmental power. This is a negative view of the role of government. The main question The Federalist raises seems to be how to prevent the arbitrary exercise of political power, rather than how to guarantee effective political leadership.

Do you accept Madison's goal as the primary one in establishing a governmental system?

Is the Constitution really as negative as Madison implies?

Part Two/Classic Statement

“The Omnipotence of the Majority in the United States and Its Effects” from Democracy in America, by Alexis de Tocqueville¹

Introduction

Tocqueville's classic on American democracy is in many ways an admiring work: he was particularly taken with the spirit of equality and energy that he met from his first days here. But by the same token, he discerned flaws and dangers in the world's newest democracy as well, and some of these were in his view very much bound up with the nation's strengths.

Nowhere is this more true than in his discussion of the will of the majority. While the principle of majority rule was inseparable from the workings of a democratic system, that majority rule could, if not challenged or limited, lead to tyranny and to the undoing of the democratic experiment. Over a century and a half later, and in an era very different from the days of Jacksonian democracy, see whether you find that any of Tocqueville's thoughts on this subject still ring true.

The absolute sovereignty of the will of the majority is the essence of democratic government, for in democracies there is nothing outside the majority capable of resisting it.

Most American constitutions have sought further artificially to increase this natural strength of the majority.

Of all political powers, the legislature is the one most ready to obey the wishes of the majority. The Americans wanted the members of the legislatures to be appointed *directly* by the people and for a *very short* term of office so that they should be obliged to submit not only to the general views but also to the passing passions of their constituents.

The members of both houses have been chosen from the same class and appointed in the same way, so that the activity of the legislative body is almost as quick and just as irresistible as that of a single assembly. . . .

¹ *Democracy in America* was published as a result of the French author's trip to America in 1831, to observe the workings of this New World democracy. His observations from the early days of Jacksonian democracy, published in two separate volumes, would be hailed as "the greatest book ever written on America." The excerpts presented here are taken from Volume I, Part II; Chapter 7, as presented in *Democracy in America* (New York: Harper and Row, 1966).

In America several particular circumstances also tend to make the power of the majority not only predominant but irresistible.

The moral authority of the majority is partly based on the notion that there is more enlightenment and wisdom in a numerous assembly than in a single man, and the number of the legislators is more important than how they are chosen. It is the theory of equality applied to brains. This doctrine attacks the last asylum of human pride; for that reason the minority is reluctant in admitting it and takes a long time to get used to it. Like all powers, and perhaps more than any other of them, the power of the majority needs to have proved lasting to appear legitimate. When it is beginning to establish itself, it enforces obedience by constraint; it is only when men have long lived under its laws that they begin to respect it.

The idea that the majority has a right based on enlightenment to govern society was brought to the United States by its first inhabitants; and this idea, which would of itself be enough to create a free nation, has by now passed into mores and affects even the smallest habits of life.

Under the old monarchy the French took it as a maxim that the king could do no wrong, and when he did do wrong, they thought the fault lay with his advisers. This made obedience wonderfully much easier. One could grumble against the law without ceasing to love and respect the lawgiver. The Americans take the same view of the majority.

The moral authority of the majority is also founded on the principle that the interest of the greatest number should be preferred to that of those who are fewer. Now, it is easy to understand that the respect professed for this right of the greatest number naturally grows or shrinks according to the state of the parties. When a nation is divided between several great irreconcilable interests, the privilege of the majority is often disregarded, for it would be too unpleasant to submit to it.

If there existed in America one class of citizens whom the legislators were trying to deprive of certain exclusive privileges possessed for centuries and wanted to force them down from a high station to join the ranks of the crowd, it is probable that that minority would not easily submit to its laws.

But as men equal among themselves came to people the United States, there is as yet no natural or permanent antagonism between the interests of the various inhabitants.

There are states of society in which those who are in the minority cannot hope to win the majority over, for to do so would involve abandoning the very aim of the struggle in which they are engaged against it. An aristocracy, for instance, could not become a majority without giving up its exclusive privileges, and if it did let them go, it would no longer be an aristocracy.

In the United States, political questions cannot arise in such general and absolute fashion, and all the parties are ready to recognize the rights of the majority because they all hope one day to profit themselves by them.

Hence the majority in the United States has immense actual power and a power of opinion which is almost as great. When once its mind is made up on any question, there are, so to say, no obstacles which can retard, much less halt, its progress and give it time to hear the wails of those it crushes as it passes.

The consequences of this state of affairs are fate-laden and dangerous for the future. . . .

I have spoken before of the vices natural to democratic government, and every single one of them increases with the growing power of the majority.

To begin with the most obvious of all:

Legislative instability is an ill inherent in democratic government because it is the nature of democracies to bring new men to power. But this ill is greater or less according to the power and means of action accorded to the legislator.

In America the lawmaking authority has been given sovereign power. This authority can carry out anything it desires quickly and irresistibly, and its representatives change annually. That it is to say, just that combination has been chosen which most encourages democratic instability and allows the changing wishes of democracy to be applied to the most important matters.

Thus American laws have a shorter duration than those of any other country in the world today. Almost all American constitutions have been amended within the last thirty years, and so there is no American state which has not modified the basis of its laws within that period.

As for the laws themselves, it is enough to glance at the archives of the various states of the Union to realize that in America the legislator's activity never slows down. Not that American democracy is by nature more unstable than any other, but it has been given the means to carry the natural instability of its inclinations into the making of laws.

The omnipotence of the majority and the rapid as well as absolute manner in which its decisions are executed in the United States not only make the law unstable but have a like effect on the execution of the law and on public administrative activity.

As the majority is the only power whom it is important to please, all its projects are taken up with great ardor; but as soon as its attention is turned elsewhere, all these efforts cease; whereas in free European states, where the administrative authority has an independent existence and an assured position, the legislator's wishes continue to be executed even when he is occupied by other matters.

Much more zeal and energy are brought to bear in America on certain improvements than anywhere else.

In Europe an infinitely smaller social force is employed, but more continuously. . . .

My greatest complaint against democratic government as organized in the United States is not, as many Europeans make out, its weakness, but rather its irresistible strength. What I find most repulsive in America is not the extreme freedom reigning there but the shortage of guarantees against tyranny.

When a man or a party suffers an injustice in the United States, to whom can he turn? To public opinion? That is what forms the majority. To the legislative body? It represents the majority and obeys it blindly. To the executive power? It is appointed by the majority and serves as its passive instrument. To the police? They are nothing but the majority under arms. A jury? The jury is the majority vested with the right to pronounce judgment; even the judges in certain states are elected by the majority. So, however iniquitous or unreasonable the measure which hurts you, you must submit.

But suppose you were to have a legislative body so composed that it represented the majority without being necessarily the slave of its passions, an executive power having a strength of its own, and a judicial power independent of the other two authorities; then you would still have a democratic government, but there would be hardly any remaining risk of tyranny.

I am not asserting that at the present time in America there are frequent acts of tyranny. I do say that one can find no guarantee against it there and that the reasons for the government's gentleness must be sought in circumstances and in mores rather than in the laws. . . .

It is when one comes to look into the use made of thought in the United States that one most clearly sees how far the power of the majority goes beyond all powers known to us in Europe.

Thought is an invisible power and one almost impossible to lay hands on, which makes sport of all tyrannies. In our day the most absolute sovereigns in Europe cannot prevent certain thoughts hostile to their power from silently circulating in their states and even in their own courts. It is not like that in America; while the majority is in doubt, one talks; but when it has irrevocably pronounced, everyone is silent, and friends and enemies alike seem to make for its bandwagon. The reason is simple: no monarch is so absolute that he can hold all the forces of society in his hands and overcome all resistance, as a majority invested with the right to make the laws and to execute them can do.

Moreover, a king's power is physical only, controlling actions but not influencing desires, whereas the majority is invested with both physical and moral authority, which acts as much upon the will as upon behavior and at the same moment prevents both the act and the desire to do it.

I know no country in which, speaking generally, there is less independence of mind and true freedom of discussion than in America.

There is no religious or political theory which one cannot preach freely in the constitutional states of Europe or which does not penetrate into the others, for there is no country in Europe so subject to a single power that he who wishes to speak the truth cannot find support enough to protect him against the consequences of his independence. If he is unlucky enough to live under an absolute government, he often has the people with him; if he lives in a free country, he may at need find shelter behind the royal authority. In democratic countries the aristocracy may support him, and in other lands the democracy. But in a democracy organized on the model of the United States there is only one authority, one source of strength and of success, and nothing outside it.

In America the majority has enclosed thought within a formidable fence. A writer is free inside that area, but woe to the man who goes beyond it. Not that he stands in fear of an *auto-da-fé*, but he must face all kinds of unpleasantness and everyday persecution. A career in politics is closed to him, for he has offended the only power that holds the keys. He is denied everything, including renown. Before he goes into print, he believes he has supporters; but he feels that he has them no more once he stands revealed to all, for those who condemn him express their views loudly, while those who think as he does, but without his courage, retreat into silence as if ashamed of having told the truth.

Formerly tyranny used the clumsy weapons of chains and hangmen; nowadays even despotism, though it seemed to have nothing more to learn, has been perfected by civilization. . . .

The influence of what I have been talking about is as yet only weakly felt in political society, but its ill effects on the national character are already apparent. I think that the rareness now of outstanding men on the political scene is due to the ever-increasing despotism of the American majority.

When the Revolution broke out, a crowd of them appeared; at that time public opinion gave direction to men's wills but did not tyrannize over them. The famous men of that time, while they freely took part in the intellectual movement of the age, had a greatness all their own; their renown brought honor to the nation, not vice versa. . . .

Among the immense thrusting crowd of American political aspirants I saw very few men who showed that virile candor and manly independence of thought which often marked the Americans of an earlier generation and which, wherever found, is the most salient feature in men of great character. At first glance one might suppose that all American minds had been fashioned after the same model, so exactly do they follow along the same paths. A foreigner does, it is true, sometimes meet Americans who are not strict slaves of slogans; such men may deplore the defects of the laws and the unenlightened mutability of democracy; often they even go as far as to point out the defects which are changing the national character and suggest means by which this tendency could be corrected, but no one, except yourself, listens to them, and you, to whom they confide these secret thoughts, are only a stranger and will pass on. To you they will disclose truths that have no use for you, but when they go down into the marketplace they use quite different language.

If these lines ever come to be read in America, I am sure of two things; first, that all readers will raise their voices to condemn me; secondly, that in the depths of their conscience many will hold me innocent. . . .

Governments ordinarily break down either through impotence or through tyranny. In the first case power slips from their grasp, whereas in the second it is taken from them.

Many people, seeing democratic states fall into anarchy, have supposed that government in such states was by nature weak and impotent. The truth is that once war has broken out between the parties, government influence over society ceases. But I do not think a lack of strength or resources is part of the nature of democratic authority; on the contrary, I believe that it is almost always the abuse of that strength and the ill use of those resources which bring it down. Anarchy is almost always a consequence either of the tyranny or of the inability of democracy, but not of its impotence.

One must not confuse stability with strength or a thing's size with its duration. In democratic republics the power directing society is not stable, for both its personnel and its aims change often. But wherever it is brought to bear, its strength is almost irresistible.

The government of the American republics seems to me as centralized and more energetic than the absolute monarchies of Europe. So I do not think that it will collapse from weakness.

If ever freedom is lost in America, that will be due to the omnipotence of the majority driving the minorities to desperation and forcing them to appeal to physical force. We may then see anarchy, but it will have come as the result of despotism.

Questions for Understanding and Discussion

1. What did various American states, and the federal Constitution, do to make legislative bodies even more responsive to the wishes of the majority than the basic principle of democracy might demand?
2. Why are Americans, more than members of more traditional societies, likely to recognize the rights of the majority?
3. On what grounds does Tocqueville expect to find greater legislative instability in the United States than in other countries?
4. Explain why the author, unlike others, is more fearful of the power of democratic regimes than of their weakness.
5. How do you react to Tocqueville's assertion that there is more mind control in this country than in any other?
6. What is his explanation for his observation that few truly outstanding individuals seek political office in this country?
7. How, according to Tocqueville, might the "omnipotence" of the majority lead to anarchy?
8. Of the various observations presented here by Tocqueville, which ones seem to you particularly relevant today? Why?

Advanced Placement U.S. Government
Question Sheet for Liberty: Part 6

1. In the opening minutes of Episode 6, Historian Gordon Wood remarked that George Washington's resignation of his commission and taking leave of public life at the end of the Revolutionary War was an "electrifying event throughout the world." In fact even Napoleon knew this when he said on his deathbed, "They wanted me to be another Washington." Why was it so electrifying?
2. Wood also mentions the difficulty of "bringing together separate states." Why do you think the states might have resisted having a national government instead of 13 separate governments? Can you cite a modern example where similar challenges exist?
3. In Episode 6, Abigail Adams writes a letter to her sister in which she refers to the "inherited power" of British nobility and aristocracy saying, "There's a servility of manners here, a distinction between nobility and common citizens, which, happily, is foreign to Americans." Do you agree with Abigail Adams's statement? Explain your view.
4. Later in the episode, Alexander Hamilton laments the inaction of the government to enforce the law put forth by the Articles of Confederation. Review the Articles. List at least three issues or problems you see that would back up Hamilton's view.
5. After Shays's Rebellion, it became obvious that something needed to be changed, so the Constitutional Convention was called to revise the Articles of Confederation. The first vote of this Convention was to, in the words of the narrator, "keep their proceedings absolutely secret". Why do you feel the convention was not open to the public? Could this be done today? Explain your answers.
6. Compare the preamble to the Articles of Confederation with the preamble to the US Constitution. Why would the framers of the Articles write the names of all the states in the preamble, while the framers of the Constitution simply wrote, "We, the People..."?
7. In Episode 6, the narrator mentions that the role of checks and balances in a large democracy is to protect the rights of minorities from potential tyranny. How do you think checks and balances might accomplish this? Give at least two examples, either hypothetical or historical, from your reading and/or studies of the Constitution.
8. As the Constitution is completed and submitted for ratification, the supporters of the document are known as "Federalists" and the opponents as "Anti-Federalists". One issue that divided the two groups was whether the Constitution should contain a "Bill of Rights". What arguments both for and against a Bill of Rights might the two groups have developed?

9. Gordon Wood notes that the Bill of Rights is “what makes us a single people... We’re the first nation, I suppose, in modern times, to make ideology the basis of our existence.” In your view, does the Bill of Rights fill that role? Explain your answer.

10. Historian Pauline Maier states in the closing minutes of *Are We to be a Nation* that, “I think it’s one of the greatest ironies of human history that the American Revolution is sometimes considered no revolution at all (a.k.a. the Kirchhoff’s argument). That honor goes to others -- the French Revolution, the Russian Revolution -- revolutions that fail to realize their promise of liberty, revolutions that ultimately failed. Our revolution, I think, is underestimated mainly because it succeeded.” Do you agree with this assessment? Explain your answer.