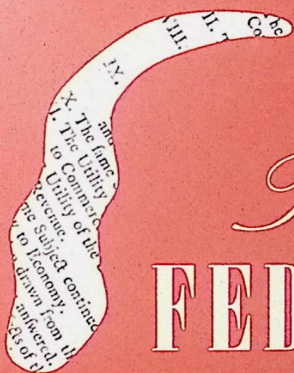


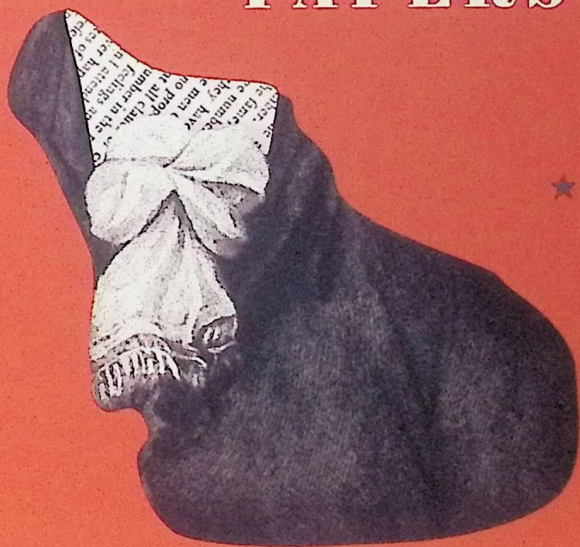


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The

FEDERALIST PAPERS



ALEXANDER HAMILTON
JAMES MADISON JOHN JAY

A Document That Shaped a Nation

The *Federalist Papers* brilliantly defended what was in its time a revolutionary charter—the Constitution of the United States. Written by Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* explain the complexities of a constitutional government—its political structure and principles based on the inherent rights of man. Scholars have long regarded this work as a milestone in political science and a classic of American political theory.

Based on the original McLean edition of 1788 and edited by noted historian Clinton Rossiter, this special edition includes: An Introduction, textual notes, and a select bibliography by Charles R. Kesler; A table of contents with a brief précis of each essay; An appendix with a copy of the Constitution cross-referenced to *The Federalist Papers*; An index of ideas that lists the major political concepts discussed; Copies of the Declaration of Independence and Articles of Confederation.

A companion volume, *The Anti-Federalist Papers and the Constitutional Convention Debates*, edited by Ralph Ketcham, is also available in a Signet Classics volume.



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Cover design by **\$7.95 USA**
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ISBN 978-0-451-52881-0



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780451528810



SIGNET CLASSICS

Published by New American Library, a division of
Penguin Group (USA) Inc., 375 Hudson Street,
New York, New York 10014, USA

Penguin Group (Canada), 90 Eglinton Avenue East, Suite 700, Toronto,
Ontario M4P 2Y3, Canada (a division of Pearson Penguin Canada Inc.)
Penguin Books Ltd., 80 Strand, London WC2R 0RL, England

Penguin Ireland, 25 St. Stephen's Green, Dublin 2,
Ireland (a division of Penguin Books Ltd.)

Penguin Group (Australia), 250 Camberwell Road, Camberwell, Victoria 3124,
Australia (a division of Pearson Australia Group Pty. Ltd.)

Penguin Books India Pvt. Ltd., 11 Community Centre, Panchsheel Park,
New Delhi - 110 017, India

Penguin Group (NZ), 67 Apollo Drive, Rosedale, Auckland 0632,
New Zealand (a division of Pearson New Zealand Ltd.)

Penguin Books (South Africa) (Pty.) Ltd., 24 Sturdee Avenue,
Rosebank, Johannesburg 2196, South Africa

Penguin Books Ltd., Registered Offices:
80 Strand, London WC2R 0RL, England

Published by Signet Classics, an imprint of New American Library, a division of
Penguin Group (USA) Inc. Previously published in a Mentor edition.


First Signet Classics Printing, April 2003

41 43 45 47 49 50 48 46 44 42

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Introduction

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

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

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

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

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

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

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

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

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

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

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

He chose "Publius" as the pseudonym, trumping his adversaries' invocation of heroes of the late Roman republic (Brutus and Cato) with a reference to one of the founders and saviors of republican Rome—Publius Valerius Publicola, whose biography was paired with that of Solon in Plutarch's famous *Parallel Lives*. Solon, the democratic lawgiver of Athens, had lived to see his polity overthrown by a tyrant; but the Roman Publius firmly established his republic, which endured and expanded for centuries. Moreover, after making his laws, Solon

had left Athens for ten years in order to avoid having to interpret his legislation. By contrast, Publius had remained in Rome in order to serve as consul, to improve (at a critical moment) the city's primitive republican laws, and to impart his own spirit of moderation, justice, and wisdom to the regime.¹⁰ What did this imply for the American Publius? At least this, that he wished to seize a fleeting moment favorable to constitution-making—when the wise and moderate men of the Federal Convention would have their greatest influence—in order to form a just and enduring republic in an extensive land. To accomplish this he had to speak or, rather, write moderately, which meant, *inter alia*, confining his ingenuity to the defense and explanation of the proposed Constitution. By offering himself as their prudent counselor, Publius clearly subordinated himself to the people of New York and, by extension, the United States. But insofar as the people were persuaded by his interpretation of the Constitution and of republicanism, his own authority grew—as did the authority of wise statesmen who in the future would seek to guide their country by following his example.

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

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

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

Given their famous falling out a few years later, after which they remained bitter political enemies, Hamilton and Madison might seem unlikely co-authors. Indeed, several scholars in the twentieth century have exercised themselves over the alleged schizophrenia of Publius, straining to identify latent disagreements between the principal co-authors.¹⁴ This approach clearly risked read-

ing back into the 1780s the fierce partisan disputes of the 1790s. Besides, it has actually proved very difficult to determine who wrote several numbers of *The Federalist* (particularly Nos. 55–58 and 62–63) claimed by both Madison and Hamilton. Even more scholarly ink has been spilled on this authorship controversy than on the book's supposed "split personality." External evidence is inconclusive, and internal evidence (drawing on subject matter, arguments, style) has not dispelled the ambiguity.¹⁵ Researchers have resorted to computer analysis of the text in the attempt to settle who wrote what, but they have been hard-pressed to find a distinction they could rely on—sentence length, "marker" words—all the more obvious tests failed to turn up a distinction that made a difference. Finally, a statistical difference was found in the use of utterly trivial words, but this threatened to make the differences between Hamilton and Madison utterly trivial.¹⁶

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

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

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

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

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

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

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

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

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

I. The Union

Nos. 1–14: Introduction and “*the utility of the UNION to your political prosperity*”

Nos. 15–22: “*The insufficiency of the present Confederation to preserve that Union*”

Nos. 23–36: “*The necessity of a government at least equally energetic with the one proposed, to the attainment of this object*”

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

Nos. 37–40: The delicate work of the Convention and the “general form” of the proposed government (i.e., its republicanism and federalism)

Nos. 41–46: The “quantity” or “general mass of power” invested in the new government and whether this is dangerous to the States

Nos. 47–84: The “particular structure” of the government and the distribution” of its mass of power

Nos. 47–51: The separation of powers in general

Nos. 52–58: The House of Representatives

Nos. 59–61: The regulation of elections

Nos. 62–66: The Senate

Nos. 67–77: The Executive

Nos. 78–83: The Judiciary

No. 84: Miscellaneous objections, including the lack of a Bill of Rights

No. 85: Conclusion, including the Constitution’s “*analogy to your own State constitution*” and “*The additional security which its adoption will afford to the preservation of that [republican] species of government, to liberty, and to property*”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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pendence on the people" is the primary means of keeping government limited, Publius insists that "auxiliary precautions" like bicameralism and separation of powers are also necessary. Paradoxically, the Constitution mixes the powers of the three branches in order to keep them separate. In the famous formula of No. 51, "the interest of the man must be connected with the constitutional rights of the place," Publius argues, so that the officers of each department have a personal motive to exert their constitutional powers on behalf of their department's independence. "Ambition must be made to counteract ambition," Publius advises, meaning that ambition must be taught to vie with ambition in defense of each branch's rights and thus in support of the Constitution as a whole. Necessity or self-interest is thus made to coincide with duty, and statesmanlike habits are grafted onto the native stock of self-assertion.²⁸

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

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

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

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

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

First, it protects against governmental tyranny, i.e., the ability of one or more branches to encroach upon the other(s) and to breach the overall limits set to the national government by the Constitution. Though "a de-

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

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

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

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

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

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

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

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

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

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

—Charles R. Kesler
March 1999

Endnotes

¹George Mason, "Objections to the Constitution of Government formed by the Convention (1787)," in Herbert J. Storing, ed., *The Complete Anti-Federalist* (Chicago: University of Chicago Press, 1981), vol. 2, p. 13 (2.2.15); Letters of Centinel, in Storing, vol. 2, pp. 139, 156 (2.7.10, 2.7.64). A collection of Anti-Federalist writings that appeared in New York in the midst of the ratification struggle echoed this charge in its very title: *Observations on the Proposed Constitution for the United States of America, Clearly Showing It To Be a Complete System of Aristocracy and Tyranny and Destructive of the Rights and Liberties of the People*. See Storing, vol. 2, p. 135n3.

²*The Papers of Alexander Hamilton*, ed. Harold C. Syrett and Jacob E. Cooke, 24 vols. (New York: Columbia University Press, 1961–1979), vol. 4, p. 253; *The Papers of James Madison*, ed. Robert A. Rutland et al. (Chicago: University of Chicago Press, 1977), vol. 10, pp. 163–64.

³A fine selection of other writings on behalf of the new Constitution is available in Colleen A. Sheehan and Gary L. McDowell, eds., *Friends of the Constitution: Writings of the "Other" Federalists* (Indianapolis: Liberty Fund, 1998).

⁴*The Federalist*, No. 78, p. 466.

⁵*The Federalist*, No. 38, pp. 227–29.

⁶Letter to Madison, November 18, 1788, in Andrew A. Lipscomb, ed., *The Writings of Thomas Jefferson*, 20 vols. (Washington, D.C.: The Thomas Jefferson Memorial Association, 1903), vol. 7, p. 183; From the Minutes of the Board of Visitors of the University of Virginia, March 4, 1825, in *Ibid.*, vol. 19, pp. 460–61.

⁷Syrett and Cooke, *The Papers of Alexander Hamilton*, vol. 4, p. 253; and cf. p. 276.

⁸See the interesting discussion in Albert Furtwangler, *The Authority of Publius: A Reading of the Federalist Papers* (Ithaca: Cornell University Press, 1984), pp. 45–54.

⁹See Herbert J. Storing, *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981), vol. 1, pp. 9–11; and Jackson Turner Main, *The Antifederalists: Critics of the Constitution 1781–1788* (Chapel Hill: University of North Carolina Press, 1961), pp. viii–x.

¹⁰For further information on the Roman Publius, see the note to *Federalist* No. 1.

¹¹Furtwangler, *The Authority of Publius*, pp. 51–56.

¹²Cf. Madison's letter to Jefferson, August 10, 1788, in *The Papers of Thomas Jefferson*, ed. Julian Boyd (Princeton: Princeton University Press, 1956), vol. 13, pp. 498–99, and Elizabeth Fleet, ed., "Madison's 'Detached Memoranda,'" *William and Mary Quarterly*, 3rd series, 3 (1946), p. 565. See Furtwangler, *The Authority of Publius*, pp. 26–30.

¹³Furtwangler, *The Authority of Publius*, pp. 54–59.

¹⁴For example, see Alpheus T. Mason, "The Federalist—A Split Personality," *American Historical Review*, 57, no. 3 (April 1952), pp. 625–43; and Douglass Adair, "The Authorship of the Disputed Federalist Papers," in Trevor Colbourn, ed., *Fame and the Founding Fathers: Essays by Douglass Adair* (New York: W. W. Norton, 1974), pp. 27–74. There is a convincing rejoinder in George W. Carey, "Publius—A Split Personality?" *The Review of Politics*, 46, no. 1 (January 1984), pp. 5–22.

¹⁵See the intelligent review of the authorship dispute in Jacob E. Cooke's introduction to *The Federalist* (Middletown, CT: Wesleyan University Press, 1961), pp. xix–xxx.

¹⁶For instance, in *The Federalist*, Hamilton's average sentence contained 34.55 words, Madison's 34.59. The average standard deviation of their sentence lengths was 19.2 words for Hamilton, 20.3 for Madison. See Frederick Mosteller and David L. Wallace, *Inference and Disputed Authorship: The Federalist* (Reading, MA: Addison-Wesley, 1964), p. 7 and *passim*; and Furtwangler, *The Authority of Publius*, pp. 31–32. For the purposes of this edition of *The Federalist*, we attribute the disputed papers to Madison, which is the conclusion regarded as most probable by both Cooke, using traditional methods, and Mosteller and Wallace, using statistical analysis.

¹⁷Furtwangler, *The Authority of Publius*, pp. 25–30.

¹⁸Douglass Adair first drew attention to its novelty. See

Adair, "The Federalist Papers," in Trevor Colbourn, ed., *Fame and the Founding Fathers: Essays by Douglass Adair* (New York: W. W. Norton, 1974), p. 257.

¹⁹Speeches of Patrick Henry, June 5, 1788, 5.16.8, in Storing, ed., *The Complete Anti-Federalist*, vol. 5, p. 226.

²⁰Essays by a Farmer, V, 5.1.75, in Storing, ed., *The Complete Anti-Federalist*, vol. 5, p. 45.

²¹Cf. Letters from a Federal Farmer, XI, 2.8.145–46, in Storing, *The Complete Anti-Federalist*, vol. 2, pp. 287–88.

²²Letters of Centinel, I, 2.7.8, in Storing, ed., *The Complete Anti-Federalist*, vol. 2, p. 138.

²³Letters from the Federal Farmer, II, 2.8.15, in Storing, ed., *The Complete Anti-Federalist*, vol. 2, p. 230; Letters of Centinel, I, 2.7.9, in Storing, *ibid.*, vol. 2, pp. 138–39.

²⁴Letters of Centinel, I, 2.7.9, in Storing, ed., *The Complete Anti-Federalist*, vol. 2, pp. 138–39; and Essays by a Farmer, II, 5.1.34, in Storing, *ibid.*, vol. 5, p. 23.

²⁵For an excellent summary of the evidence, see Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: University of Chicago Press, 1994), pp. 6–12.

²⁶See, e.g., Robert Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), ch. 1, and the critique in George Carey, *The Federalist: Design for a Constitutional Republic* (Urbana, IL: University of Illinois Press, 1989), ch. 1.

²⁷See Charles R. Kesler, "Federalist 10 and American Republicanism," in Charles R. Kesler, ed., *Saving the Revolution: The Federalist Papers and the American Founding* (New York: The Free Press, 1987), ch. 1.

²⁸Cf. the fine discussion in Harvey C. Mansfield, Jr., *America's Constitutional Soul* (Baltimore: Johns Hopkins University Press, 1991), pp. 122–24.

²⁹See William Kristol, "The Problem of the Separation of Powers: Federalist 47–51," in Kesler, ed., *Saving the Revolution*, ch. 5.