

Question from live audience

Peter

I'm having difficulty understanding how pluralism applies not only to religion but to civil rights and the connection of those two to Commerce. Could you give further explanation, please?

1. Stronger factions (whether religious, racial, ethnic or economic) oppress weaker factions, if they are able to do so.
2. Increasing economic competition through commerce among the states and the extended commercial republic were understood by at least Madison and Hamilton (although with different emphases) to be tools to break up, multiply, and reduce the relative power of particular factions.
3. Prior to (and even after) the 14th amendment, when the residual sovereignty of the states left them with almost unrestrained police power, this approach was largely effective as to religion, and economics, less so as to ethnicity, and not as to race, at least in the South.

4. Since the passage of the 14th amendment and the civil rights laws of the 1960s, this pluralism has reduced the relative power of factions based on race and ethnicity as well.

5. The impact of national factions.

6. Socialism, as described while not using that term in Federalist 10, seeks to reduce the numerosity of factions.

3. Truths and axioms

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

3. Truths and axioms *McCulloch v. Maryland*

"To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable."

"To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur.



Michael Needle
University of Iowa

This passage seems to contemplate that there are no conceptual limits to federal power as long as there is a connection—sometimes however tenuous or attenuated—between the means and a legitimate end.

This, I think, has played out in the Supreme Court's expansive view of the Commerce power and the Necessary and Proper power over the past 150 years. It also seems to be the predictable consequence of Hamilton's conceptions of power. Doesn't Hamilton's assertion fatally contradict the broader notion that the federal government will be one of limited and express powers?

Excerpt from #44 (Madison)

If it be asked, what is to be the consequence, in case the congress shall misconstrue this part of the constitution, and exercise powers not warranted by its true meaning? I answer, the same as if they should misconstrue or enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of these were to be violated; the same in short, as if the state legislatures should violate their respective constitutional authorities. In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort, a remedy must be obtained from the people, who can, by the election of more faithful representatives, annul the acts of the usurpers.

4. Powers to carry out responsibilities

Whether there ought to be a federal government intrusted with the care of the common defence, is a question, in the first instance, open to discussion; but the moment it is decided in the affirmative, it will follow, that, that government ought to be clothed with all the powers requisite to the complete execution of its trust.

5. No limitation on the authority to defend the country

[T]hat there can be no limitation of that authority, which is to provide for the defence and protection of the community, in any matter essential to its efficacy; that is, in any matter essential to the formation, direction, or support of the NATIONAL FORCES.

6. Full power to support an army and navy

[T]here is an absolute necessity for an entire change in the first principles of the system. That if we are in earnest about giving the union energy and duration, we must abandon the vain project of legislating upon the states in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is, that the union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy, in the customary and ordinary modes practised in other governments.

7. Power and objects

If the circumstances of our country are such as to demand a compound, instead of a simple . . . a confederate, instead of a sole government, the essential point which will remain to be adjusted, will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power: allowing to each the most ample authority for fulfilling THOSE which may be committed to its charge. Shall the union be constituted the guardian of the common safety? Are fleets, and armies, and revenues, necessary to this purpose? The government of the union must be empowered to pass all laws, and to make all regulations which have relation to them.

8. The same applicable to commerce

The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend.

Is the administration of justice between the citizens of the same state, the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigour and success.

9. Federal government as the center of information

Who so likely to make suitable provisions for the public defence, as that body to which the guardianship of the public safety is confided?

Which, as the centre of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE,

10. Careful attention of the people

[T]hat it is both unwise and dangerous to deny the federal government an unconfined authority, in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modelled in such a manner as to admit of its being safely vested with the requisite powers.

11. The government of a free people

A government, the constitution of which renders it unfit to be intrusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depository of the NATIONAL INTERESTS.

Hamilton asserts that we must extend the grasp of the federal government instead of letting it go to states, but I question the extent that Hamilton argues for.

Hamilton claims that the government must be watched so that it does not overexert itself — I believe that we have watched this happen throughout history and we cannot go back.

David Park
Georgetown University

THE FEDERALIST #39

1. Is the Constitution Republican?

The first question that offers itself is, whether the general form and aspect of the government be strictly republican? It is evident that no other form would be reconcileable with the genius of the people of America; with the fundamental principles of the revolution;....**If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.**

2. Cannot define based on countries claiming to be Republican

What then are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitutions of different states, no satisfactory one would ever be found....[Holland, Venice, Poland, and England] These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

3. Publius's definition of Republic based on principles of government.

[W]e may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour. It is essential to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favoured class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honourable title of republic. It is sufficient for such a government, that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by tenures just specified;

4. No nobility titles and guarantee of republican government.

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

5. Antifederalist objection: not a confederacy of states.

But it was not sufficient, say the adversaries of the proposed constitution, for the convention to adhere to the republican form. They ought, with equal care, to have preserved the federal form, which regards the union as a confederacy of sovereign states; instead of which, they have framed a national government, which regards the union as a consolidation of the states.

6. Five issues identify the Constitution's real character.

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

7. The first: the foundation: consent of the people in each state.

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

8. Foundation, therefore, federal.

That it will be a federal, and not a national act, as these terms are understood by the objectors, the act of the people, as forming so many independent states, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a majority of the people of the union, nor from that of a majority of the states. It must result from the unanimous assent of the several states that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority;

9. McCulloch v. Maryland

No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass.

Chief Justice Marshall

10. Second: the sources of power: House-national; the Senate-federal.

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

The senate, on the other hand, will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the senate, as they now are in the existing congress. So far the government is federal, not national.

11. Third: the operation of the government-- national.

[T]he operation of the government on the people in their individual capacities, in its ordinary and most essential proceedings, will, on the whole, in the sense of its opponents, designate it in this relation, a national government.

12. Fourth: the extent of the government powers--federal

The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature....In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several states, a residuary and inviolable sovereignty over all other objects.

13. Exception: Supreme Court and state boundary disputes.

It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the constitution: and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact;

14. The Fifth: the amendment process.

If we try the constitution by its last relation, to the authority by which amendments are to be made, we find it neither wholly national, nor wholly federal....In requiring more than a majority, and particularly, in computing the proportion by states, not by citizens, it departs from the national, and advances towards the federal character. In rendering the concurrence of less than the whole number of states sufficient, it loses again the federal, and partakes of the national character.

15. Not national; not federal; but compound Republic.

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



Sophia Shams
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Federalist #39 discusses the difference between a federal and national government. Madison states that the House of Representatives indicates a national government because it derives its powers from the people, and the Senate indicates a federal government because it derives its powers from the states. This balance between federal and national government seems to be disrupted by the Seventeenth Amendment. As a result, it seems as though the legislative power has become national, rather than a combination of national and federal like the Founders intended.

THE FEDERALIST #45

1. If not individually, does the mass of power threaten states?

Having shown, that no one of the powers transferred to the federal government is unnecessary or improper, the next question to be considered is, whether the whole mass of them will be dangerous to the portion of authority left in the several states.

2. Historically, states in a confederacy destabilize the central power.

We have seen in all the examples of ancient and modern confederacies, the strongest tendency continually betraying itself in the members, to despoil the general government of its authorities, with a very ineffectual capacity in the latter to defend itself against the encroachments. Although in most of these examples, the system has been so dissimilar from that under consideration, as greatly to weaken any inference concerning the latter, from the fate of the former; yet, as the states will retain, under the proposed constitution, a very extensive portion of active sovereignty, the inference ought not to be wholly disregarded.

3. Advantages of the state governments.

The state governments will have the advantage of the federal government, whether we compare them in respect to the immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them; to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other.

4. The states are constituent parts of the federal government.

The state governments may be regarded as constituent and essential parts of the federal government; whilst the latter is no wise essential to the operation or organization of the former.

5. Powers delegated to federal government are few; those of states broad.

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

6. Federal government strongest in war.

The operations of the federal government will be most extensive and important in times of war and danger; those of the state governments in times of peace and security.

7. Most powers of federal government not new.

[T]he change which it proposes, consists much less in the addition of NEW POWERS to the union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing congress by the articles of confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them.



Emily Hildreth

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In Federalist 45, James Madison writes that the number one goal of the federal government is public welfare: "the public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever, has any other value, than as it may be fitted for the attainment of this object." He argues that if the plan for the Union were averse to public happiness, he would reject the plan. Today, I can't help but wonder how many Americans would consider the federal government a source of "happiness" - regardless of the political party in office. I also wonder how many politicians would similarly voice "public happiness" as the sole function of the federal government.



Bradley Tune
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The republican government described in this letter has both national and federal features. There is a careful balance between different needs. This is a unique system, but America is a unique nation. This unique republican system, carefully balancing interests, seems particularly well suited to the unique needs of America.

Please email your questions & comments to
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