

December 26, 1787

EAE 0422 A

1 Independent of all other reasonings upon the subject, it is  
 a full answer to those who require a more peremptory provi-  
 5 sion against military establishments in time of peace, to say  
 that the whole powers of the proposed government is to be  
 in the hands of the representatives of the people. This is the  
 essential, and, after all, the only efficacious security for the  
 rights and privileges of the people, which is attainable in civil  
 society.\*

10 If the representatives of the people betray their con-  
 stituents, there is then no resource left but in the exertion of  
 that original right of self-defence, which is paramount to all  
 positive forms of government, and which against the usurpa-  
 tion of the national rulers, may be exerted with infinitely bet-  
 15 ter prospect of success than against those of the rulers of an  
 individual state. In a single state, if the persons intrusted with  
 supreme power become usurpers, the different parcels, subdivi-  
 sions, or districts of which it consists, having no distinct  
 government in each, can take no regular measures for defence.  
 20 The citizens must rush tumultuously to arms, without concert,  
 without system, without resource; except in their courage and  
 despair. The usurpers, clothed with the forms of legal au-  
 thority, can too often crush the opposition in embryo. The  
 smaller the extent of the territory, the more difficult will it be  
 25 for the people to form a regular or systematic plan of opposi-  
 tion, and the more easy will it be to defeat their early efforts.  
 Intelligence can be more speedily obtained of their prepara-  
 tions and movements, and the military force in the possession  
 of the usurpers can be more rapidly directed against the part  
 30 where the opposition has begun. In this situation there must  
 be a peculiar coincidence of circumstances to insure success  
 to the popular resistance.

35 The obstacles to usurpation and the facilities of resistance  
 increase with the increased extent of the state, provided the  
 citizens understand their rights and are disposed to defend  
 them. The natural strength of the people in a large commu-  
 nity, in proportion to the artificial strength of the government,  
 is greater than in a small, and of course more competent to a  
 40 struggle with the attempts of the government to establish a  
 tyranny. But in a confederacy the people, without exaggera-  
 tion, may be said to be entirely the masters of their own fate.  
 Power being almost always the rival of power, the general gov-  
 ernment will at all times stand ready to check the usurpations  
 of the state governments, and these will have the same dis-  
 45 position towards the general government. The people, by  
 throwing themselves into either scale, will infallibly make it  
 preponderate. If their rights are invaded by either, they can  
 make use of the other as the instrument of redress. How wise  
 will it be in them by cherishing the union to preserve to them-  
 selves an advantage which can never be too highly prized!

\*Its full efficacy will be examined hereafter.—PUBLIUS

The reader is referred especially to Numbers 39, 52, and 57 for a discussion of  
 popular control of the House of Representatives and of the government generally.

March 8, 1788

1 A review of the principal objections that have appeared  
against the proposed court for the trial of impeachments, will  
not improbably eradicate the remains of any unfavorable im-  
pressions which may still exist in regard to this matter.

5 The *first* of these objections is, that the provision in ques-  
tion confounds legislative and judiciary authorities in the  
same body, in violation of that important and well-established  
maxim which requires a separation between the different de-  
partments of power. The true meaning of this maxim has  
10 been discussed and ascertained in another place, and has been  
shown to be entirely compatible with a partial intermixture of  
those departments for special purposes, preserving them, in  
the main, distinct and unconnected. This partial intermixture  
is even, in some cases, not only proper but necessary to the  
15 mutual defence of the several members of the government  
against each other. An absolute or qualified negative in the ex-  
ecutive upon the acts of the legislative body, is admitted, by  
the ablest adepts in political science, to be an indispensable  
barrier against the encroachments of the latter upon the for-  
mer. And it may, perhaps, with no less reason be contended,  
20 that the powers relating to impeachments are, as before inti-  
mated, an essential check in the hands of that body upon the  
encroachments of the executive. The division of them be-  
tween the two branches of the legislature, assigning to one the  
right of accusing, to the other the right of judging, avoids  
25 the inconvenience of making the same persons both accusers  
and judges; and guards against the danger of persecution,  
from the prevalency of a factious spirit in either of those  
branches. As the concurrence of two thirds of the Senate will  
be requisite to a *condemnation*, *the security to innocence*,  
30 from this additional circumstance, will be as complete as itself  
can desire.

35 It is curious to observe, with what vehemence this part of  
the plan is assailed, on the principle here taken notice of, by  
men who profess to admire, without exception, the constitu-  
tion of this State; while that very constitution makes the Sen-  
ate, together with the chancellor and judges of the Supreme  
Court, not only a court of impeachments, but the highest  
40 judicatory in the State, in all causes, civil and criminal. The  
proportion, in point of numbers, of the chancellor and judges  
to the senators, is so inconsiderable, that the judiciary author-  
ity of New York, in the last resort, may, with truth, be said to  
reside in its Senate. If the plan of the convention be, in this  
respect, chargeable with a departure from the celebrated  
45 maxim which has been so often mentioned, and seems to be so  
little understood, how much more culpable must be the con-  
stitution of New York?\*

50 A *second* objection to the Senate, as a court of impeach-  
ments, is, that it contributes to an undue accumulation of  
power in that body, tending to give to the government a coun-  
tenance too aristocratic. The Senate, it is observed, is to have  
concurrent authority with the Executive in the formation of  
treaties and in the appointment to offices: if, say the objectors,  
55 to these prerogatives is added that of determining in all cases  
of impeachment, it will give a decided predominancy to sen-  
atorial influence.

SUJET JURY

SUJET CANDIDAT N°

CODE SUJET : CCV 4



1 The same rule which teaches the propriety of a partition  
between the various branches of power, teaches likewise that  
this partition ought to be so contrived as to render the one in-  
dependent of the other. To what purpose separate the execu-  
5 tive or the judiciary from the legislative, if both the executive  
and the judiciary are so constituted as to be at the absolute de-  
votion of the legislative? Such a separation must be merely  
nominal, and incapable of producing the ends for which it was  
established. It is one thing to be subordinate to the laws, an-  
10 other to be dependent on the legislative body. The first com-  
ports with, the last violates, the fundamental principles of  
good government; and, whatever may be the forms of the  
Constitution, unites all power in the same hands. The ten-  
15 dency of the legislative authority to absorb every other, has  
been fully displayed and illustrated by examples in some pre-  
ceding numbers. In governments purely republican, this ten-  
dency is almost irresistible. The representatives of the people,  
in a popular assembly, seem sometimes to fancy that they are  
20 the people themselves, and betray strong symptoms of impa-  
tience and disgust at the least sign of opposition from any  
other quarter; as if the exercise of its rights, by either the ex-  
ecutive or judiciary, were a breach of their privilege and an  
outrage to their dignity. They often appear disposed to exert  
25 an imperious control over the other departments; and as they  
commonly have the people on their side, they always act with  
such momentum as to make it very difficult for the other  
members of the government to maintain the balance of the  
Constitution.

30 It may perhaps be asked, how the shortness of the duration  
in office can affect the independence of the Executive on the  
legislature, unless the one were possessed of the power of ap-  
pointing or displacing the other. One answer to this inquiry  
may be drawn from the principle already mentioned—that is,  
35 from the slender interest a man is apt to take in a short-lived  
advantage, and the little inducement it affords him to expose  
himself, on account of it, to any considerable inconvenience  
or hazard. Another answer, perhaps more obvious, though not  
more conclusive, will result from the circumstance of the in-  
fluence of the legislative body over the people; which might  
40 be employed to prevent the reëlection of a man who, by an  
upright resistance to any sinister project of that body, should  
have made himself obnoxious to its resentment.

It may be asked also, whether a duration of four years  
would answer the end proposed; and if it would not, whether  
45 a less period, which would at least be recommended by  
greater security against ambitious designs, would not, for that  
reason, be preferable to a longer period, which was, at the  
same time, too short for the purpose of inspiring the desired  
firmness and independence of the magistrate.

50 It cannot be affirmed, that a duration of four years, or any  
other limited duration, would completely answer the end  
proposed; but it would contribute towards it in a degree which  
would have a material influence upon the spirit and character  
of the government. Between the commencement and termi-  
55 nation of such a period, there would always be a considerable  
interval, in which the prospect of annihilation would be suffi-  
ciently remote, not to have an improper effect upon the con-  
duct of a man imbued with a tolerable portion of fortitude;  
and in which he might reasonably promise himself, that there  
60 would be time enough before it arrived, to make the commu-  
nity sensible of the propriety of the measures he might in-  
cline to pursue. Though it be probable that, as he approached  
the moment when the public were, by a new election, to sig-  
nify their sense of his conduct, his confidence, and with it his  
65 firmness, would decline; yet both the one and the other would  
derive support from the opportunities which his previous  
continuance in the station had afforded him, of establishing  
himself in the esteem and good-will of his constituents. He  
might, then, with prudence, hazard the incurring of reproach  
70 in proportion to the proofs he had given of his wisdom and in-  
tegrity, and to the title he had acquired to the respect and at-  
tachment of his fellow-citizens. As, on the one hand, a  
duration of four years will contribute to the firmness of the  
Executive in a sufficient degree to render it a very valuable in-  
75 gredient in the composition; so, on the other, it is not enough  
to justify any alarm for the public liberty.

« The Federalist N°71 », Hamilton, in Alexander Hamilton, John Jay and James Madison, *The Federalist*, Ed. Robert Scigliano, New York : The Modern Library, 2001, p. 459-461.

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CODE SUJET: CCV 5
SUJET JURY
SUJET CANDIDAT n°

Question au programme :

Alexander Hamilton, John Jay et James Madison, *The Federalist: A Commentary on the Constitution of the United States*.

In a speech to the Virginia Ratifying Convention in June 1788, Patrick Henry declared:  
« It is on a supposition that our American Governors shall be honest, that all the good qualities of this Government are founded: But its defective, and imperfect construction, puts it in their power to perpetrate the worst of mischiefs, should they be bad men. »  
How may this statement apply to *The Federalist*?

Source: Patrick Henry, "Speeches of Patrick Henry", *The Anti-Federalist Papers and the Constitutional Convention Debates*, ed. Ralph Ketcham, New York, Signet Classic, 1986, p.214

Question au programme :

**Alexander Hamilton, John Jay et James Madison, *The Federalist: A Commentary on the Constitution of the United States.***

Is the following summary of the Constitutional debate an accurate description of the argumentation presented in *The Federalist*?

« Not infrequently, the controversy over the adoption of the Constitution has been represented as, at heart, an argument between the advocates of small and large republics: between Americans whose principal commitment was to small, self-governing communities and those who hoped to move the theater of politics onto a broader stage, where popular desires could be refined and filtered, countervailing interests could become a substitute for public virtue as a mechanism for protecting private rights and public good, and an efficient conduct of affairs would bind the people to the system. »

Source: Lance Banning, *The Sacred Fire of Liberty: James Madison & the Founding of the Federal Republic*, Ithaca, Cornell University Press, 1995, p.227

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CODE SUJET: LCV 4

SUJET JURY

SUJET CANDIDAT n°

Question au programme :

Alexander Hamilton, John Jay, et James Madison, *The Federalist : A Commentary on the Constitution of the United States*.

Sujet de leçon :

Representation in *The Federalist Papers*

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SUJET JURY

SUJET CANDIDAT N°

CODE SUJET : LCV7

Question au programme :

Alexander Hamilton, John Jay et James Madison, *The Federalist: A Commentary on the Constitution of the United States.*

Pragmatism in *The Federalist.*

SUJET JURY
SUJET CANDIDAT N°

CODE SUJET : LCV 2
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Question au programme :

**Alexander Hamilton, John Jay et James Madison, *The Federalist: A Commentary on the Constitution of the United States.***

In the conclusion of its first article denouncing the new Constitution, Centinel wrote:  
« From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent* ARISTOCRACY. »

How may this statement apply to *The Federalist*?

Source: Centinel, “ ‘Centinel,’ Number 1, October 5, 1787”, *The Anti-Federalist Papers and the Constitutional Convention Debates*, ed. Ralph Ketcham, New York, Signet Classic, 1986, p.236

Question au programme :

Alexander Hamilton, John Jay et James Madison, *The Federalist: A Commentary on the Constitution of the United States*.

In a 1788 letter, James Madison wrote:

« It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power. »

How may this statement apply to *The Federalist*?

Source: James Madison to Thomas Jefferson, October 17, 1788, *The Papers of James Madison*, ed. William T. Hutchinson et al., Chicago, University of Chicago Press, 1962, II:299

Question au programme :

Alexander Hamilton, John Jay et James Madison, *The Federalist: A Commentary on the Constitution of the United States*.

Discuss the following remark:

« *The Federalist* then, was able to claim that the Constitution of 1787 was “republican,” by changing the concept of republicanism from notions of smallness and personal citizen-participation into an idea of “responsibility” of elected magistrates, into an idea of personal accountability for all actions committed in office, into an idea of government somehow representative and responsible in all of its parts, not just in its legislature. »

Source: Patrick Riley, “Martin Diamond’s View of “The Federalist””, *Publius*, Vol. 8, No. 3, Dimensions of the Democratic Republic: A Memorial to Martin Diamond (Summer, 1978), p.94

Question au programme :

Alexander Hamilton, John Jay et James Madison, *The Federalist: A Commentary on the Constitution of the United States*.

Show how this remark can apply to *The Federalist*:

« As a system of self-government the Constitution presupposes that men can rise above what is lowest in them. »

Source: Harvey C. Mansfield, Jr., "Republicanizing the Executive," *Saving the Revolution: The Federalist Papers and The American Founding*, ed. Charles R. Kesler, New York, The Free Press, 1987, p.183