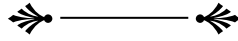


# FEDERALISM



By the time the delegates to the Constitutional Convention had gathered in Philadelphia in 1787, the American people had been accustomed for more than one hundred and fifty years to having most of their affairs managed first within the colonies and then in independent states. It was not surprising that the Articles of Confederation, the initial constitutional system for “The United States of America,” affirmed in its first article the general “sovereignty, freedom and independence” of the states. Beyond historical precedence, the commitment to state sovereignty drew support from sixteenth- and seventeenth-century theorists such as Jean Jacques Rousseau who argued that the habits and virtues needed by a self-governing people can be cultivated only in small republics. In short, history and theory seemed to be on the side of a confederation of small American republics or states.

If the American people were inclined to favor state sovereignty, they also were interested in comfortable preservation—that is, in the enjoyment of both “safety and happiness,” to borrow from the Declaration of Independence. By the mid-1780s, it was clear to many Americans that state sovereignty created obstacles to comfortable preservation, not the least being the impediments to a smooth-functioning commercial system. Concerns about the effects on the country of competing fiscal and commercial policies in the different states led to the Annapolis Convention of 1786. While the delegates to this convention did not come up with a specific plan for fixing the commercial system, they petitioned the confederation congress to arrange for a constitutional convention that would reconsider the Articles of Confederation with the aim of improving interstate commerce.

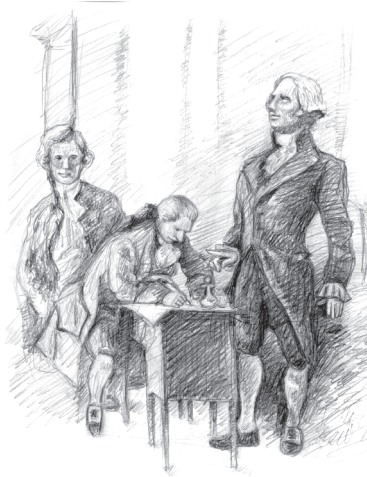
James Madison, one of seven delegates chosen to represent Virginia at the Constitutional Convention of 1787, prepared a document on the history of confederacies during the months preceding the meeting. Events such as Shays’s Rebellion in Massachusetts and disputes over the

commercial use of the Potomac River, along with his study of history, convinced him that a system based on state sovereignty was destined to fail. Madison worked with other members of the Virginia delegation on a plan for a basically national, rather than confederal, system of government. In addition to provisions for separate

legislative, executive, and judicial branches, the “Virginia Plan” would have empowered Congress “to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof.” The Virginia Plan proposed a national government that would be legally and functionally supreme over the states.

According to Madison, only a national system would be capable of protecting the fundamental interests and rights of the American people. Other delegates at the convention disagreed. Roger Sherman of Connecticut, for example, argued that “the objects of Union . . . were few” and that “the people are more happy [*sic*] in small than in large States.” Sherman was not alone in preferring a confederation of small republics to a national or unitary political system. Madison understood that he had to expose the weaknesses of the confederal model to save the Virginia Plan. Sherman helped him out on June 6 by conceding that some states were too small and, hence, subject to factious violence. Madison seized upon this argument. He responded that “faction & oppression” had “prevailed in the largest as well as the smallest” states, although less in the former than the latter.

The teaching for Madison was clear: large republics are more likely to provide “security for private rights, and the steady dispensation of Justice,” than small republics. This argument hit home with the delegates. Madison convinced them that what they wanted most from government, that is, protection for rights or republican liberty, could



best be achieved in a national system. Small republics, he argued, were actually bad for republican liberty, being hotbeds of factious division and violence. He summed up his position bluntly: “The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2d. place, that in case they shd. have such an interest, they may not be apt to unite in the pursuit of it.” Here was the outline of the famous defense of the large republic that appears in Madison’s *Federalist Paper No. 10*.

In the end, the delegates at the Constitutional Convention settled on a plan that combined national and confederal elements. To quote *Federalist Paper No. 39*: the proposed system “in strictness” was “neither national nor a federal Constitution, but a composition of both.” Madison’s June 6 speech, however, insured that the new “compound” republic would have a national as opposed to a confederal tilt. This innovative governmental model, what came to be called the “federal” model, represented one of America’s great contributions to the science of politics according to Madison. The model’s national elements were evident not only in the creation of separate executive and judicial departments as well as proportional representation in the House of Representatives, but in the supremacy clause that affirmed that the Constitution as well as national laws enacted under its authority would constitute the supreme law of the land. The confederal elements appeared in the provision for equal state representation in the United States Senate (a feature especially desired by the small states) and state participation in the ratification of amendments. The addition of the 10th Amendment in 1791 provided added protection for state interests (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”).

The defenders of the confederal model continued their attacks on the new system during the ratification debates that followed the convention. Patrick Henry of Virginia, for example, accused the delegates to the Federal Convention of violating their authorization by

proposing to establish a “consolidated” government based on the consent of the people, rather than the states. For Henry, the new constitutional system would endanger the rights and privileges of the people along with the “sovereignty” of the states. Richard Henry Lee, one of the Anti-Federalists, shared Henry’s fear that a large republic would not be hospitable to liberty and natural rights. Like many other opponents of the Constitution, Lee also argued that republican liberty can be preserved only by a virtuous citizenry and that only small republics are capable of nurturing civic and moral virtues.

The fact that the document that issued from the Federal Convention did not include a bill of rights seemed to lend support to the charge by Patrick Henry and others that the proposed governmental

system would promote neither the happiness nor the liberty of the people. In fact, several delegates to the convention, including George Mason of Virginia and Eldridge Gerry of Massachusetts, were sufficiently troubled by the absence of a bill of rights that they departed without adding their signatures to the document. Gerry also worried that the new government would not adequately represent the people and that its powers were not well defined. When it was clear that the opponents of the plan would not accept the argument that the framework set out by the delegates provided for a limited government of enumerated powers that would be incapable of emasculating natural rights and liberties, an agreement was reached during the ratification period to add amendments that would guarantee, among other things, freedom of speech and religion, trial by one’s peers, and protection against unreasonable searches and seizures.

The federal system or compound republic crafted by the Framers was an ingenious response to the demand for both effective or competent government on the one side, and rights-sensitive government on the other. The decision to divide power among (federalism) and within (checks and balances) several governments positioned the American people to enjoy the benefits of a large republic (e.g., strong defense against foreign encroachments, national system of commerce, etc.) while still retaining significant control over their day-to-day affairs within the states. The states, and not the national government, were entrusted with the “police powers,” that is, the

*Madison convinced them that what they wanted most from government, that is, protection for rights or republican liberty, could best be achieved in a national system.*

authority to protect the health, morals, safety and welfare of the people. It is worth noting that Madison was quite content to entrust the police powers to the states—he never desired that the United States have a unitary system of government.

Ratification of the Constitution in 1791 hardly put an end to the debate between the advocates of state sovereignty or small republicanism and the proponents of national sovereignty and the large republic. The concerns of James Madison and Patrick Henry, for example, are never far from the surface of contemporary debates about the power of the federal government to impose regulations on the states under the Constitution's commerce

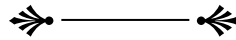
clause or the Fourteenth Amendment. There is considerable evidence, however, that the tension between these positions not only adds vitality to the constitutional system, but has been critically important to the advancement of both national security and equality in the enjoyment of fundamental rights. The federal arrangement that was crafted by the delegates at the Federal Convention of 1787 has long been recognized as one of the principal models of a modern democratic system of government.

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# REPUBLICAN GOVERNMENT



As Benjamin Franklin left Philadelphia's Convention Hall in September 1787, upon the completion of the work of the Framers of the Constitution, a woman approached him and asked the old sage of the Revolution what the delegates had created. Franklin responded, "A republic, Madame, if you can keep it." The woman's reaction to Franklin's reply is left unrecorded by history, but she might well have asked Franklin for a more detailed answer. Though the word "republic" was common currency in America at the time, the meaning of the term was imprecise, encompassing various and diverse forms of government.

Broadly, a republic meant a country not governed by a king. The root of the word is the Latin, *res publica*, meaning "the public things." "The word *republic*," Thomas Paine wrote, "means the *public good*, or the good of the whole, in contradistinction to the despotic form, which makes the good of the sovereign, or of one man, the only object of the government." In a republic, the people are sovereign, delegating certain powers to the government whose duty is to look to the general welfare of society. That citizens of a republic ought to place the common good before individual self-interest was a key assumption among Americans of the eighteenth century. "Every man in a republic," proclaimed Benjamin Rush, "is public property. His time and talents—his youth—his manhood—his old age, nay more, life, all belong to his country."

Republicanism was not an American invention. In shaping their governments, Americans looked to history, first to the ancient world, and specifically to the Israel of the Old Testament, the Roman republic, and the Greek city-states. New Englanders in particular often cited the ancient state of Israel as the world's first experiment in republican government and sometimes drew a parallel between the Twelve Tribes of Israel and the thirteen American states. In 1788, while ratification of the Constitution was being debated, one Yankee preacher gave a sermon entitled, "The Republic of the Israelites an Example

to the American States." Indeed, the Bible was cited by American authors in the eighteenth century more often than any other single source.

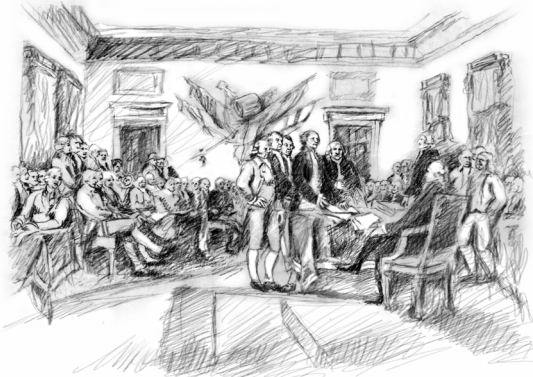
Americans not only knew their Bible, but also the history of the Greeks and Romans. The elite class mastered ancient languages and literature, a requirement of colleges at the time. To these men

of the eighteenth century, ancient languages were not dead, nor were ancient events distant; rather, the worlds of Pericles and Polybius, Sallust and Cicero were vibrant and near. The relatively minor advancements in technology across 2,000 years—people still traveled by horse and sailing ship—

served to reinforce the bond eighteenth-century Americans felt with the ancients.

Like the Greeks and Romans of antiquity, Americans believed that government must concern itself with the character of its citizenry. Indeed, virtue was "the Soul of a republican Government," as Samuel Adams put it. Virtue had two connotations, one secular and the other sacred. The root of the word was the Latin, *vir*, meaning "man," and indeed republican virtue often referred to the display of such "manly" traits as courage and self-sacrifice for the common good. These qualities were deemed essential for a republic's survival. "A popular government," Patrick Henry proclaimed, "cannot flourish without virtue in the people." But virtue could also mean the traditional Judeo-Christian virtues, and many Americans feared that God would punish the entire nation for the sins of its people. "Without morals," Charles Carroll proclaimed, "a republic cannot subsist any length of time." New Englanders in particular sought to have society's institutions—government and schools as well as churches—inculcate such qualities as industry, frugality, temperance, and chastity in the citizenry. The Massachusetts Constitution of 1780, for example, provided for "public instructions in piety, religion, and morality."

The second ingredient of a good republic was a well-constructed government with good institutions.





“If the foundation is badly laid,” George Washington said of the American government, “the superstructure must be bad.” Americans adhered to a modified version of the idea of “mixed” government, advocated by the Greek thinker Polybius and later republican theorists. A mixed republic combined the three basic parts of society—monarchy (the one ruler), aristocracy (the rich few), and democracy (the people)—in a proper formula so that no one part could tyrannize the others. But Americans believed that the people of a republic were sovereign, so they sought to create institutions that approximated the monarchical and aristocratic elements of society. The Framers of the Constitution did just this by fashioning a single executive and a Senate once removed from the people. The problem, as John Adams pointed out in his *Thoughts on Government*, was that “the possible combinations of the powers of society are capable of innumerable variations.”

Americans had every reason to be pessimistic about their experiment in republicanism. History taught that republics were inherently unstable and vulnerable to decay. The Roman republic and the city-state of Athens, for instance, had succumbed to the temptations of empire and lost their liberty. The histories of the Florentine and Venetian republics of Renaissance Italy too had been glorious but short-lived. Theorists from the ancient Greek thinker Polybius to the seventeenth-century English radical Algernon Sidney warned that republics suffer from particular dangers that monarchies and despotisms do not. Republics were assumed to burn brightly but briefly because of their inherent instability. One element of society always usurped power and established a tyranny.

The great danger to republics, it was generally believed, stemmed from corruption, which, like virtue, had both a religious and a worldly meaning. Corruption referred, first, to the prevalence of immorality among the people. “Liberty,” Samuel Adams asserted, “will not long survive the total Extinction of Morals.”

“If the Morals of the people” were neglected, Elbridge Gerry cautioned during the crisis with England, American independence would not produce liberty but “a Slavery, far exceeding that of every other Nation.”

This kind of corruption most often resulted from avarice, the greed for material wealth. Several American colonial legislatures therefore passed

sumptuary laws, which prohibited ostentatious displays of wealth. “Luxury . . . leads to corruption,” a South Carolinian declared during the Revolutionary era, “and whoever encourages great luxury in a free state must be a bad citizen.” Another writer warned of the “ill effect of superfluous riches” on republican society. Avarice was seen as a “feminine” weakness; the lust for wealth rotted away “masculine” virtues. John Adams bemoaned “vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues.”

*Fear of government’s tendency to expand its power at the expense of the people’s liberty was part of Americans’ English political heritage.*

The second meaning of corruption referred to placing private interest above the common good. This temptation plagued public officials most of all, who had ample opportunity to misappropriate public funds and to expand their power.

“Government was instituted for the general good,” Charles Carroll wrote, “but officers intrusted with its powers have most commonly perverted them to the selfish views of avarice and ambition.” Increasingly in the eighteenth century, Americans came to see government itself as the primary source of corruption.

Fear of government’s tendency to expand its power at the expense of the people’s liberty was part of Americans’ English political heritage. They imbibed the writings of late-seventeenth-century English radicals and eighteenth-century “country” politicians who were suspicious of the power of British officials (the “court”). Government corruption was manifested in patronage (the awarding of political office to friends), faction (the formation of parties whose interests were opposed to the common good), standing (permanent) armies, established churches, and the promotion of an elite class. Power, these country writers argued, was possessed by the government; it was aggressive and expansionist. Liberty was the property of the governed; it was sacred and delicate. The history of liberty in the world was a history of defeat by the forces of tyranny.

Though the history of republicanism was a dismal one, the lessons of history as well as their own colonial experience convinced the American Founders that they possessed sufficient information on which to base a new science of politics. “Experience must be our only guide,” John Dickinson proclaimed at the Philadelphia Convention; “reason may mislead us.” The Framers of the United States Constitution all had experience as public servants,

and it must be remembered that the document they produced did not spring forth as something entirely new in the American experience. Rather, the Founders had learned much from the operation of their colonial charters, state constitutions, and the Articles of Confederation.

At Philadelphia, the Founders focused on the proper construction of the machinery of government as the key to the building of a stable republic. The Constitution makes no mention of the need for virtue among the people, nor does it make broad appeals for self-sacrifice on behalf of the common good. It is a hard-headed document forged by practical men who had too often witnessed avarice and ambition among their peers in the state house, the courtroom, and the counting house. A good constitution, the Founders held, was the key to good government. Corruption and decay could be overcome primarily through the creation of a written constitution—something England lacked—that carefully detailed a system in which powers were separated and set in opposition to each other so that none could dominate the others.

James Madison, often called “The Father of the Constitution” because of the great influence of his ideas at Philadelphia, proposed to arrange the machinery of government in such a fashion as not to make virtue or “better motives” critical to the advancement of the common good. Acknowledging in *The Federalist Papers* that “enlightened statesmen will not always be at the helm,” Madison believed that the separate powers of government—legislative, executive, and judicial—must be set in opposition to one another, so that “ambition must be made to counteract ambition.”

“In framing a government which is to be administered by men over men,” Madison asserted, “the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

James Wilson, representing Pennsylvania at the Philadelphia Convention, declared that the Constitution’s separation of powers and checks and balances made “it advantageous even for bad men to act for the public good.” This is not to say that the delegates believed that the republic could survive if corruption vanquished virtue in society. Madison himself emphasized the importance of republican virtue when defending the new government in *The Federalist Papers*. But the Framers

agreed with Madison that men were not angels, and most were satisfied that the Constitution, as George Washington put it, “is provided with more checks and barriers against the introduction of Tyranny . . . than any Government hitherto instituted among mortals.”

The question remained, however, whether one part of society would come to dominate. No matter how perfect the design, the danger remained that a faction would amass enough political power to take away the liberty of others. To combat this problem, classical republican theory called for creating a uniformity of opinion among the republican

citizenry so that factions could not develop. The ancient Greek city-states, for example, feared anything that caused differentiation among citizens, including commerce, which tended to create inequalities of wealth and opposing interests. In

contrast, Madison and the Founders recognized that factionalism would be inherent in a commercial republic that protected freedom of religion, speech, press, and assembly. They sought only to mediate the deleterious effects of faction.

Republics also were traditionally thought to be durable only when a small amount of territory was involved. The Greek city-states, the Roman republic, the Italian republics, and the American states all encompassed relatively small areas. When the Roman republic expanded in its quest for empire, tyranny was the result. Madison turned this traditional thinking on its head in *The Federalist Papers*, arguing that a large republic was more conducive to liberty because it encompassed so many interests that no single one, or combination of several, could gain control of the government.

Not all Americans accepted the Madisonian solution. Agrarians, such as Thomas Jefferson, were uncomfortable with the idea of a commercial republic centered on industry and sought to perpetuate a nation of independent farmers through the expansion of the frontier. Though uneasy about the “energetic government” created by the Constitution, Jefferson endorsed the Framers’ work after a bill of rights was added to the document. “Old republicans” like Samuel Adams and George Mason opposed the Constitution, even after the addition of a bill of rights, fearing that the power granted to the central government was too great and wistfully looking back to the Revolutionary era when virtue, not ambition, was the animating principle of government. But in 1789, as the new government went into operation,

*[The Constitution] is a hard-headed document forged by practical men who had too often witnessed avarice and ambition among their peers.*

most Americans shared the optimism of Benjamin Franklin, who had decided at the conclusion of the Philadelphia Convention that the sun carved into the back of the chair used by George Washington was a rising—not a setting—sun, and thereby indicative of the bright prospects of the nation.

“We have it in our power to begin the world over again,” Thomas Paine had written in 1776, during the heady days of American independence. And indeed the American Founders in 1787 were keenly aware that they possessed a rare opportunity.

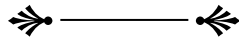
Like the legendary Lycurgus of Ancient Greece, they were to be the supreme lawgivers of a new republic, a *novus ordo seclorum* or new order of the ages. The American Founders were aware that the eyes of the world and future generations were upon them, and they were determined to build an eternal republic founded in liberty, a shining city upon a hill, as an example to all nations for all time.

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# LIMITED GOVERNMENT



Thomas Jefferson accurately represented the convictions of his fellow colonists when he observed in the Declaration of Independence that a government, to be considered legitimate, must be based on the consent of the people and respect their natural rights to “life, liberty and the pursuit of happiness.” Along with other leading members of the founding generation, Jefferson understood that these principles dictated that the government be given only limited powers that, ideally, are carefully described in written charters or constitutions.

Modern theorists like John Locke and the Baron de Montesquieu had been making the case for limited government and separation of powers during the century prior to the American Revolution. Colonial Americans were quite familiar with Locke’s argument from his *Two Treatises of Government* that “Absolute Arbitrary Power, or Governing without settled standing Laws, can neither of them consist with the ends of Society and Government. . . .” Locke added that the reason people “quit the freedom of the state of Nature [is] to preserve their Lives, Liberties and Fortunes.” Civil society has no higher end than to provide for the safety and happiness of the people, and this is best done under a system of known rules or laws that apply equally to “the Rich and Poor, . . . the Favorite at Court, and the Country Man at plough.” For his part, Montesquieu argued that only where governmental power is limited in scope, and then parceled out among different departments, will people be free from oppression. Constitutional government, for modern natural rights theorists, should be limited government dedicated to the comfortable preservation of the people—that is, to their security, freedom, and prosperity.

John Adams echoed the beliefs of many Americans when he argued that only by creating a balance of forces within the government could the people hope to escape despotism and misery. An unchecked legislature, he observed, would be capable not only of making tyrannical laws, but of

executing them in a tyrannical manner as well. In his famous draft of a constitution for the commonwealth of Massachusetts, Adams declared that the “legislative, executive and judicial power shall be placed in separate departments, to the end that it might be a government of laws, and not of men.”

This document, along with his *Defence of the Constitutions of Government of the United States of America*, containing a strong case for checks and balances in government, were well known to the delegates who attended the Constitutional Convention of 1787.



James Wilson, one of the foremost legal scholars of the founding period and a delegate from Pennsylvania at the Constitutional Convention, agreed with Adams’ insistence that the power of government should be divided to the end of advancing the peace and happiness of the

people. In the words of Wilson, “In government, the perfection of the whole depends on the balance of the parts, and the balance of the parts consists in the independent exercise of their separate powers, and, when their powers are separately exercised, then in their mutual influence and operation on one another. Each part acts and is acted upon, supports and is supported, regulates and is regulated by the rest.”

Both the Articles of Confederation and the Constitution of the United States provided for governments with limited powers. As John Jay had discovered as America’s secretary of foreign affairs, the power of the central government was severely limited under the Articles and, hence, could be trusted to a unitary legislative department. Fear of governmental tyranny and a desire to preserve the power enjoyed by the new states resulted in the creation of a central government that could not effectively oversee interstate commerce or do other things that were critical to ensuring the safety and happiness of the people. In a letter to Edmund Randolph at the end of 1786, George Washington bemoaned the “awful situation of our affairs” which he attributed to “the want of sufficient power



in the foederal head.” Washington quickly joined the movement to create a new governmental system that was equal to “the exigencies of Union,” to quote from the instructions given the delegates to the Constitutional Convention of 1787.

The Constitution of 1787 grew out of a plan drafted largely by James Madison during the winter and spring before the Convention. The “Virginia Plan” proposed a central government that was supreme over the states. Evidence that the national government was to be entrusted with considerable power could be found in the provisions for a bicameral legislature and independent executive and judicial departments.

The delegates who attended the Constitutional Convention were sufficiently versed in modern political theory to understand that they would have to divide the power of the national government if they intended to entrust it with real authority over the lives of the people and the states. They understood the dangers of imparting considerable political power to a unitary sovereign. In this connection, there was never any doubt in their minds that they should create a government of “delegated and enumerated” powers, that is, that the government should only be entrusted with specified (enumerated) powers that derived directly from the people. While they worried about the “turbulence and follies” of democracy, they recognized that government had to be based on the consent of the people to be legitimate.

The Virginia Plan anticipated the bicameral legislature and independent executive and judicial departments found in the United States Constitution today. Building on Madison’s model, the delegates assigned responsibilities to the departments based on their peculiar characteristics. The six-year term of senators, for example, seemed to make this a proper institution to involve in foreign policy (e.g., ratification of treaties) since senators would have more time than members of the House of Representatives to acquaint themselves with international affairs and their longer terms and larger constituencies (entire states) also would give them more freedom to attend to matters other than the immediate interests of constituents back home. The House of Representatives was entrusted with the important power to initiate revenue (taxation) bills precisely because the members of

this chamber are tied so closely to the people by short terms and small districts.

In addition to matching powers and governmental responsibilities, the delegates were careful to position each department to “check and balance” the other departments. Examples are the executive’s veto power, the congressional impeachment power, and the judicial review power entrusted to the Supreme Court, the only national court formally established by the Constitution. Although in good Lockean fashion the legislative department was designed to be the preeminent

department, it was still subjected to checks by the other branches of the government. Separation of powers as well as the system of checks and balances were devices for reducing the threat of governmental tyranny, not excluding legislative tyranny.

*There was never any doubt in their minds that they should create a government of “delegated and enumerated” powers . . .*

However, the constitutional arrangement, put into its final wording by Gouverneur Morris, was not driven entirely by a desire to eliminate the threat of tyrannical government. The system of separated and divided powers also was intended to promote competence in government. The president can employ his veto not only to check legislative action that he considers irresponsible, but to provoke Congress to improve a legislative enactment. The Senate can use its authority to ratify presidential nominations of cabinet officers or judges to ensure that qualified candidates are named to fill these positions.

Writing in *Federalist No. 9*, Alexander Hamilton identified the principle of separated and divided powers, along with checks and balances, as among the inventions of the new science of politics that had made republican government defensible. Madison described in *Federalist No. 51* the benefits of the governmental arrangement represented in the new Constitution: “In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.” Significantly, Anti-Federalists as well as Federalists agreed that governmental powers should be limited and that these powers should be subject to internal as well as external checks.

It is important to emphasize that the Framers settled on an arrangement that divided yet blended the legislative, executive, and judicial powers. This facilitates interdepartmental checking while promoting mature deliberation. Their aim was to create a decent and competent democracy, something beyond mere non-tyrannical government. They placed the whole of the government, and even the people, under constitutional limitations. The Constitution is the supreme law of the land, not the enactments of Congress or the order of the president or the momentary will of the people. As Chief Justice Marshall declared in *Marbury v. Madison* (1803), “The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.” Even the

desires of the people are held in check by the Constitution. The political system still meets the criteria of democratic government, however, since the people hold the power, through their representatives, to amend the Constitution.

The paradigm of constitutional government embraced by the American people in 1787, that is, limited government based on the consent of the people and committed to the protection of fundamental rights, has become the dominant model throughout the world. The rhetoric of rights, whether couched in the language of natural rights or human rights, is universally appealing. Also universally accepted is the argument that rights are most secure when governmental powers are limited in scope and subject to internal and external checks.

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