

# An Argument Open to All

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Reading *The Federalist* in the  
Twenty-First Century

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# *Contents*

Publius, Our Contemporary: An Introduction 1

## PART 1.

*Something Must Be Done to Save the Union* 7

FEDERALIST 1. On the Frequency of “Reflection and Choice”  
by “We the People” 9

FEDERALIST 2. How Much *Pluribus* within a Single *Unum*? 12

FEDERALIST 3. Federalism and Foreign Policy 17

FEDERALIST 4. “Concerning Dangers from Foreign Force” 20

FEDERALIST 5. In Union There Is Strength 23

FEDERALIST 6. Humankind as “Ambitious, Vindictive, and  
Rapacious” 26

FEDERALIST 7. Endless Sources of Conflict (and War), Even within the  
United States 29

FEDERALIST 8. On the Rise of a Militarized State 33

## PART 2.

*Bigger Is, in Fact, Better* 37

FEDERALIST 9. The New (and Improved) Science of Politics 39

FEDERALIST 10. Can Moral or Religious Education Overcome Natural  
Tendencies toward Faction? 42

- FEDERALIST 11. It's a Harsh and Competitive World Out There 45
- FEDERALIST 12. Commerce and State Finance 47
- FEDERALIST 13. Economies of Scale 50
- FEDERALIST 14. Publius and Permanent Revolution (or, at Least, Improvement) 52

### PART 3.

*Why "Confederation" Is Both "Odious"  
and an "Imbecility" 55*

- FEDERALIST 15. "The Imbecility of Our Government" 57
- FEDERALIST 16. Why Confederation Is "Odious" and a National Government Is Necessary 60
- FEDERALIST 17. The Political Sociology of Federalism (Part I) 64
- FEDERALIST 18. Ancient History as Caution 68
- FEDERALIST 19. The Defects of Multiple Sovereigns 70
- FEDERALIST 20. The Dutch Provide the Final Cautionary Example 72
- FEDERALIST 21. On the Importance of Sanctions 75
- FEDERALIST 22. Publius as Majoritarian 78

### PART 4.

*The State and the Machinery of Death  
(or, at Least, Defense): Standing Armies 83*

- FEDERALIST 23. "Common Defence" and (Un)limited Government 85
- FEDERALIST 24. The Inconvenience of Militia Service 88
- FEDERALIST 25. More on the Merits of Standing Armies 91

- FEDERALIST 26. In Whom Do We Place Our “Confidence”? 93
- FEDERALIST 27. Further Reflections on Confidence in the National Government 98
- FEDERALIST 28. The Necessity of Force 101
- FEDERALIST 29. “Concerning the Militia” 104

## PART 5.

*How Does One Pay for the Services Supplied by the Union?  
On Taxes and the Taxing Power* 109

- FEDERALIST 30. First Death, Now Taxes 111
- FEDERALIST 31. On the Inutility of Specified Limits 114
- FEDERALIST 32. Taxation and Constitutional Interpretation 116
- FEDERALIST 33. The Irrelevance of Text 119
- FEDERALIST 34. Drafting a Constitution with the Long View in Mind 123
- FEDERALIST 35. Who Will Allocate the Tax Burdens, and Why Should We Trust Them? 126
- FEDERALIST 36. State and National Officials as Partners or Adversaries 129

## PART 6.

*To Err Is Human (and Perfect Clarity Is Chimerical)* 133

- FEDERALIST 37. Human (and Even Divine) Fallibility and Written Constitutions 135
- FEDERALIST 38. The Best as the Enemy of the Good—and the Necessary 139
- FEDERALIST 39. Federalism, “Compact,” and the Specter of Secession 141

## PART 7.

*On the Limits of the “Rule of Law”* 147

FEDERALIST 40. Exigency and Fidelity to Law 149

FEDERALIST 41. Existential Dangers and Legal Fidelity 152

## PART 8.

*National and State Prerogatives**(and Maintenance of a Federal Political Order)* 155

FEDERALIST 42. Who Should Control Naturalization (and Immigration)? 157

FEDERALIST 43. Controlling Internal Insurrections 160

FEDERALIST 44. Confidence, Money, and Debt 163

FEDERALIST 45. Evaluating the Constitutional Order 168

FEDERALIST 46. The Political Sociology of Federalism (Part II) 171

FEDERALIST 47. Is “Separation of Powers” a Helpful Maxim? 175

FEDERALIST 48. “Parchment Barriers” 178

## PART 9.

*Veneration versus Reflection* 181

FEDERALIST 49. “Veneration” versus “Reflection and Choice” 183

FEDERALIST 50. Maintaining Constitutional Fidelity 186

## PART 10.

*Institutional Design: The Legislature* 189

FEDERALIST 51. Designing Institutions for Devils (Who Organize Themselves into Political Parties) 191

- FEDERALIST 52. Suffrage and Representation 196
- FEDERALIST 53. For How Long Should Representatives Serve? 200
- FEDERALIST 54. Who Counts as Worthy of Representation, and for How Much? 203
- FEDERALIST 55. Does Size Matter, and If Not, What Does? 206
- FEDERALIST 56. “Local Knowledge” and Representation 211
- FEDERALIST 57. Does “Representation” Mean “Mirroring”? 213
- FEDERALIST 58. Does the “Iron Law of Oligarchy” Apply to the House of Representatives? 217

## PART 11.

### *Who Should Be in Charge of Elections?* 221

- FEDERALIST 59. The Death of State Autonomy? 223
- FEDERALIST 60. Manipulating Elections 225
- FEDERALIST 61. What Is a Propitious Time to Choose Representatives? 227

## PART 12.

### *On the Senate* 231

- FEDERALIST 62. On the “Lesser Evil” 233
- FEDERALIST 63. Let Sleeping Sovereigns Lie? 238
- FEDERALIST 64. The Senate’s Superior Wisdom on Foreign Affairs 241
- FEDERALIST 65. The Senate’s Confirmation and Impeachment Powers 245
- FEDERALIST 66. The Past Is a Different Country 249

## PART 13.

*On the Executive* 253

- FEDERALIST 67. A Monarchical President? 255
- FEDERALIST 68. Selecting the President 260
- FEDERALIST 69. Comparing the President with the/a King 265
- FEDERALIST 70. Unity in the Executive 269
- FEDERALIST 71. How Long Should a President Be Able to Serve? 272
- FEDERALIST 72. You Can't Get Too Much of a Good President 275
- FEDERALIST 73. Why the Presidential Veto? 277
- FEDERALIST 74. The Presidential Prerogative to Pardon 281
- FEDERALIST 75. The Complicated Process of Making or Refusing to  
Make Treaties 285
- FEDERALIST 76. The Appointment Power 288
- FEDERALIST 77. The Constitutional Bona Fides of a Unilateral  
Authority to Remove Executive Branch Officials 292

## PART 14.

*The Roles of the National Judiciary* 297

- FEDERALIST 78. Is the Judiciary "Above Politics"? 299
- FEDERALIST 79. Fixed Salaries—but What about Inflation? 304
- FEDERALIST 80. The Importance of Federal Courts 307
- FEDERALIST 81. Disciplining Judges by Threatening  
Impeachment? 310
- FEDERALIST 82. A Judiciary for the Whole 313
- FEDERALIST 83. Trial by Jury 316

PART 15.

*Reprise: The Importance of Institutions and the Necessity of a  
Strong National Government* 321

FEDERALIST 84. The Limited Importance—If Not Outright  
Dangers—of Bills of Rights 323

FEDERALIST 85. “A Nation [with] a National Government” 327

Acknowledgments 331

Notes 335

Index 345

# Publius, Our Contemporary

## *An Introduction*

- “[M]en are ambitious, vindictive, and rapacious.” Only those willfully ignorant of “the uniform course of human events” and “the accumulated experience of ages” should expect “harmony between a number of independent, unconnected sovereignties in the same neighborhood.”
- Because “[t]he circumstances that endanger the safety of nations are infinite, . . . no constitutional shackles can wisely be imposed on the power to which the care of [that safety] is committed.”
- “It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions.”

These are surely provocative, even troubling, assertions. At the very least, they challenge one of the central premises of liberal constitutionalism—that government must be limited in its power in order to preserve the primary good of liberty. So who would say such things? The answer is “Publius,” the nom de plume adopted by Alexander Hamilton, John Jay, and James Madison when crafting the eighty-five essays that we know collectively as *The Federalist*.<sup>1</sup> We might, of course, read them only as ways of understanding eighteenth-century thought, secure in the knowledge that we think differently (and presumably better) now. But we might also read them as insights into basic political reality, very much including that of the twenty-first century.

*The Federalist* is, without doubt, the best known, most widely read and analyzed extended work of American political thought. A host of books and articles by historians, political theorists, lawyers, and others devote themselves to uncovering the ultimate meaning of some particularly canonical essay among the eighty-five. Prime examples include *Federalist* 10, famous for its theory of “factions,” or 78, in which Hamilton defends judicial review. Yet other works seek to describe the intellectual

influences on the three authors. Do their arguments owe more to Hume than to Locke, more to the unnamed Machiavelli or Thomas Hobbes than to the often-named Montesquieu? Did the thoughts expressed in the essays represent a broad “consensus,” at least of American political elites of the time? Or, on the contrary, was Publius unusual in his viewpoints as well as his intelligence? Or we might wonder how many people, located where, and at what time (before or after key ratification votes in several states, for example), actually read any of the essays and had their minds changed as a result? That *we* today find them of great interest is no evidence at all for their influence at the time they were written.

Some authors question Madison’s or Hamilton’s sincerity, especially given what each had said at the Philadelphia Convention, which had concluded only months before (and whose proceedings were kept remarkably secret), let alone the views expressed later in their important political careers. There is also the independent question of how the essays fit into the general corpus of Madison’s and Hamilton’s thought. Anyone with specific biographical interests must attend to Ray Raphael’s powerful question: Why should we believe that these particular essays, published over the roughly eight-month period between October 27, 1787, and May 28, 1788, uniquely capture the authors’ complex body of thought? “[I]f Hamilton was indeed wise and brilliant,” Raphael asks, “when exactly was that so? When he penned his essays as Publius or when he was touting a stronger, more centralized government both before and after that time?”<sup>2</sup> With Madison, the question runs in the opposite direction. The arguments about the seemingly inevitable inadequacies of state government and thus the necessity of a strong national government that he articulated in *The Federalist* differ dramatically from those he made especially eleven years later, when he wrote the Virginia Reports objecting to the Alien and Sedition Acts of 1798. Presenting *The Federalist* as dispositive evidence for their thought is like analyzing the political thought of presidents by focusing exclusively on their campaign speeches or inaugural addresses. There is no doubt something to be learned from them, but it would be palpably foolish to rely on them as guides to what the presidents “really” thought or, even more, how they would behave in office.

The eighty-five essays that make up *The Federalist* were part of a self-conscious political campaign to elicit support from wavering delegates, particularly in New York State. All three authors were well aware of pru-

dential considerations with regard to specific arguments they were making (and, just as important, those they left unsaid). One may truthfully describe *The Federalist* as one of the great campaign documents of all times, prepared in a very particular context by politically savvy individuals. Indeed, part of what is most illuminating about the essays may well be the importance of adjusting, for good and for ill, to the necessities presented by concrete circumstances. They never pretended to have the luxury of presenting a picture of a truly ideal government.

This volume, however, has almost nothing to do with addressing or, even more certainly, resolving any of the questions set out above. Instead, what follows are eighty-five short—and highly “presentist”—essays on each of the separate contributions by the fictive Publius. By ignoring the actual human beings hiding behind the mask of Publius, we can simply elide almost all of these issues. The strength of Publius’s arguments in behalf of the Constitution—let alone their present relevance—do not at all depend on our knowledge as to who actually wrote the essays in question. Publius himself suggests as much in the powerful conclusion to *Federalist* 14, about the importance of thinking for oneself rather than submitting to ideas attached to the prestige of “names.” If Publius has something interesting to say to us today, as nonhistorians trying to make our way in the twenty-first century, that is entirely independent of the identity of the person penning the words.

Each of my essays is between 800 and 2,300 words. That is not, needless to say, enough space to do justice to many (perhaps any) of the original essays. Instead, in respectful homage to their origin as eighteenth-century op-eds designed for public consumption and debate, I conceive of my own essays in a similar spirit. Each focuses on a limited number of major points and asks the same basic question: What does this essay contribute to our understanding of twenty-first-century politics? At the very least, Publius addresses many *questions* that still unsettle us; but what about his *answers*? Perhaps they too remain compelling; if not, then perhaps we can learn something important by rejecting them. The purpose of the original essays was to spur thought and action by their eighteenth-century readers. Though I hope my own essays have a respectable shelf life, I have no illusions about being read 225 years from now. I do hope, though, that they can generate useful thought (and perhaps even action) about our contemporary political situation.

Just as relatively few modern readers begin at *Federalist* 1 and read straight through to 85, I would be surprised if most readers of this book read it straight through. There is repetition among Publius's own essays, perhaps because their authors knew it was foolish to assume that someone picking up the newspaper that day—or seeing a copy perhaps weeks later—would have read and remembered all the essays that preceded it. Although I have tried to minimize the repetition in my own essays, it has surely not been eliminated entirely, for which I beg the reader's indulgence. Although I certainly hope that the whole is greater than the sum of its parts, I have tried to make each of my essays "freestanding"; ideally, each should be understood without the reader having perused all of what came before. I do hope, though, that everyone will read at least the first essay, on *Federalist* 1, as it announces the major theme of the book, to which I refer regularly in later essays.

I cannot emphasize strongly enough that this project has nothing at all to do with establishing an "original understanding" of the Constitution that can be viewed as the equivalent of commands for judges and others trying to interpret the Constitution. As it happens, I have strong reservations about the entire originalist enterprise. For starters, as any close reading of *The Federalist* makes clear, there are perhaps fatal tensions in some of the arguments, sometimes within even a single essay and more certainly *among* the various essays. (And it is surely relevant to the enterprise of originalism that the uneasy alliance between Madison and Hamilton collapsed early in the Washington administration amid bitter disagreements over the basic meaning of the Constitution they both endorsed.) Moreover, as the essay on *Federalist* 37 shows, there are other reasons, rooted in the very nature of language, for doubting the cogency of the attempt to divine definitive understandings either of the complex words or concepts that make up the Constitution. But these reservations are the topic for another, very different book.<sup>3</sup>

Instead, I am interested in whether *The Federalist* speaks to us *today*, as members of the American political community or, for that matter, as a foreign reader who has been led to believe in the potential importance of *The Federalist* with regard, say, to designing a new constitution in one of the many countries undergoing varieties of "regime change," which includes the drafting of new constitutions. One of the themes that will emerge in many of the essays is that Publius had only limited faith in what we might term a "legalized" Constitution, that is, one consisting of com-

mands whose meanings, when ambiguous, should be resolved by judges whose authority gives them primacy over all other interpreters. It is not that Publius did not see a useful role for judges; he spells it out particularly in *Federalist* 78. But it would be a huge error to ignore the extent to which Publius relied far more on politics, in the highest sense of that term, including a widely shared commitment to “prudence.” There is almost no reason to believe that he would commend racing off to courthouses to find out what judges might declare to be the one true meaning of the Constitution.

Some might find in *The Federalist* normative guidance on designing our collective futures; others might find themselves skeptical about the arguments presented and so come to believe that we need to deviate from, rather than simply follow, the decisions made well over two centuries ago in Philadelphia. In two other books I have written, *Our Undemocratic Constitution: Where Our Constitution Goes Wrong (and How We the People Can Correct It)*<sup>4</sup> and *Framed: America’s 51 Constitutions and the Crisis of Governance*,<sup>5</sup> I have set out my criticisms of the Constitution and advocated a new constitutional convention to address its weaknesses. I will not rehearse those arguments here.

Rather, my point is that every one of the essays that make up *The Federalist* contains something that should spark our interest today. Sometimes the connections between then and now are glaringly obvious, as is true of the three excerpts at the beginning of this introduction, taken, respectively, from *Federalists* 6, 23, and 41. We live in a time, after all, when governmental agencies like those devoted to “national security” and “central intelligence” appear to defend basically unlimited power when used in the service of what the last excerpt called “the impulse of self-preservation.” In other instances, contemporary relevance might be harder to discern, though I believe that it is still there when each given essay is examined carefully. Thus, I hope that by the end of the book readers are persuaded that it has been worthwhile to pay careful attention to at least parts of all of the essays. It would have made this book prohibitively long to include the original essays within the text, but they are easily available in many different print and online editions.<sup>6</sup> I certainly hope that this book encourages readers to return to the original texts.

The referent for “our interest” may be quite broad. Many countries around the world are actively (often controversially) engaged in drafting new constitutions. Since 2000 alone, these have included Tunisia, Egypt,

Bolivia, Iraq, Kenya, Hungary, and the European Union, to name only a partial and necessarily mixed list. Indeed, in the aftermath of the referendum in Scotland on secession from the United Kingdom, there is serious talk of convening a “constitutional convention” that would set out the explicit terms of a far more federal UK than is now the case.

For better or worse, those charged with drafting new constitutions often look to *The Federalist* for insights, not least because organizations like the American Bar Association are quick to send the drafters copies and to insist they are worth reading. I agree with the ABA that the essays are worth reading, though not because they are especially useful as a how-to guide to constitution writing in the twenty-first century. Instead, what is most striking about the essays as a whole is their decidedly unsentimental analyses of what Publius deems political realities. Many of those analyses have decided implications for anyone, American or foreign, interested in the relationships between governmental institutions and the challenges actually facing political systems. In any event, I hope that this book, and its own 85 essays, might contribute to the important work of drafters who are rightly worried about the state of contemporary political (dis)order and might be tempted to look at *The Federalist* for insights, whether positive or negative.

Contexts inevitably matter when reading (or writing) a book. We may speak more or less the same language as Publius and even inhabit, in some sense, the same country. But we necessarily approach his subjects with our own sensibilities and what Publius would describe (and commend) as the lessons of our own experience. We are in the position of the theatergoer who has already seen *King Lear*. The first scene is overlaid with our knowledge that act 5 will feature dead bodies and ineffable sadness. Similarly, we know things that Publius, however intelligent and well-informed, simply could not have known and that color the use we make of what he wrote. So I invite you to explore *The Federalist*, written long ago in the late eighteenth century, and contemplate how it speaks to our very different situations in the twenty-first century.

*On the Frequency of “Reflection and Choice”  
by “We the People”*

IN HIS FIRST PAPER, introducing what we know as *The Federalist*, Publius tells his audience 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, or whether they are forever destined to depend for their political constitutions on accident and force.” No sentence more marks Publius as a child of the Enlightenment. He calls on his readers to join him in an unsentimental, intellectually ruthless evaluation of their political situation. One can imagine Thomas Jefferson agreeing with this sentence, even if one is confident that Publius would have dismissed Jefferson’s suggestion that we engage in a “revolution” every nineteen years.

Publius begins the essay by referring to the “unequivocal experience of the inefficiency of the subsisting federal government.” Later, in *Federalist* 15, he will label as an “imbecility” the government established by the Articles of Confederation in America’s first (and largely forgotten) constitution. He is obviously defending the proposed constitution as a decided improvement. Were this book about the history of America during the 1780s, we could inquire at some length into its actual degree of “inefficiency” or “imbecility.” Some people certainly disagreed and believed that the United States could survive and prosper without the drastic changes proposed by the Philadelphians, and some, albeit relatively few, historians share these inclinations.

These genuine cleavages of opinion among political elites—those capable of being elected to ratifying conventions—were reflected in the quite narrow margins by which the Constitution was approved in several state ratifying conventions. The pros and cons were only ten votes apart in New Hampshire and Virginia, and New York’s politically decisive ratification was by a vote of 30–27. Rhode Island, which had rejected the Constitution in a popular referendum, finally held a convention that ratified the

document—on May 29, 1790, more than a year after George Washington took his oath of office as our first president—by the less-than-inspiring vote of 34–32. Its decision to join the Union may have been encouraged by hints that Massachusetts and Connecticut would jointly invade and carve up the state should it insist on remaining independent (which would mean that Newport, then a leading port, would remain a haven for smugglers wishing to avoid American tariffs).

But it is not this book's purpose to adjudicate historical debates. I am more than happy to stipulate that Publius was absolutely correct in his dire description of the challenge facing citizens of the young country. After all, it is dire situations that most call for both "reflection and choice," rather than thoughtless adherence to conventional wisdom.

The central question is whether we still believe, well into the third century after October 27, 1787, when Publius's initial essay was published, that it makes sense to subject American constitutionalism to the standards of "reflection and choice." Can we as Americans—or anyone living elsewhere in the world—make informed and reflective choices about what is necessary for "establishing good government"? Or are we trapped by contingencies of "accident and force"—including what political scientists call the "path dependence" generated by prior choices—that make a hollow mockery of claims to political autonomy?

The American Revolution was in large measure fought over claims by the British that Parliament possessed full sovereignty over their North American colonies. Its triumph—and the triumph of the vision, set out in the Declaration of Independence, of government by consent of the governed—was sharply manifested in the first three words of the Preamble to the 1787 Constitution. "We the People" would have full authority to "ordain" a new political order. That is what it means to be a free people, at least in 1787.

But Publius was not praising unfettered *will*, which could be arbitrary and unjust. Instead, what dignified the American experience and made it of world-historical importance is the *reflection* that precedes choice. The citizenry must be offered good reasons, to be accepted or rejected on the basis of the quality of the arguments. Thus Publius promises, near the conclusion of his essay, to "frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. . . . My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth."

Even two centuries later, we can find Publius's promise deeply inspirational, speaking to what Lincoln called "the better angels of our nature."

When would-be democracies emerge from authoritarian backgrounds, cynics sometimes speak of a principle of "one person, one vote, one time." The winners, they suggest, will use the power gained in a presumptively legitimate election to entrench themselves in power. We must ask ourselves if we look at what happened in 1787–1788 in a similar way: Was it a unique event of government created by "reflection and choice"? If so, it presumably becomes incumbent on the citizenry thereafter to accept without further reflection what was done then.

But perhaps it presents a model for "We the People" *throughout* our collective lifetime. This would suggest the possibility of emulating the Framers first by asking probing questions about the "efficiency"—perhaps even "imbecility"—of the government established by their Constitution and then offering improvements, even radical ones (as was the Constitution relative to the Articles), for contemporary "reflection and choice."

The history of the United States since George Washington's inauguration in 1789 certainly features additional episodes of "reflection and choice." There have, for instance, been some important textual amendments. One might wonder if *all* of them meet the criteria of uncoerced "reflection and choice." After all, the landmark Thirteenth and Fourteenth Amendments were generated by an extraordinarily bloody war and, in the case of the latter, a military "reconstruction" that dictated as one of its conditions the ratification of the proposed amendment by the defeated Confederate states.

Full consideration of this question would take us too far afield from the central question, which is the meaning of Publius's injunction for us today. But other amendments, even if less transcendently important, are nonetheless significant and were added to the text after public discussion and choice. At the national level, though, few people now alive can remember such "reflection and choice." In terms of actual consequences for the operation of the American political system, the last truly significant alteration was the Twenty-second Amendment, added in 1951 to remove any temptation that a president emulate FDR by running for a third term in office. One could imagine Bill Clinton running for his seventh term as president in 2016 if the amendment did not clearly forbid that!

Today, what would we need in order to take seriously the possibility of "reflection and choice" in a discussion of the adequacy of the United States

Constitution? Let me suggest some answers, though they are certainly only the beginning. First, we must assume that the Constitution *ought* to be subjected to full and fearless critique. One might hope that it survives the critiques and reinforces the common belief that it is truly splendid; but, at least for the period of “reflection and choice,” we must suspend any such assumptions and instead take seriously the possibility that we have blinded ourselves to deficiencies, some of them perhaps extremely serious. A second assumption is that “We the People” are in fact *capable* of such an inquiry, so those who embrace the Publian creed of full candor in argument will be received by an audience who, even if they ultimately reject those arguments, will do so in a spirit of good faith by presenting their own reasons that can equally be subjected to critical review.

I will return to these themes. As we shall see, one can scarcely read *The Federalist* as expressing great faith in what we today might view as “democracy.” Still, Publius *is* expressing his faith that there exist among his readers a critical mass with the proper disposition and abilities, and that it is worth taking the pains to write the collection of essays we know as *The Federalist* in an attempt to engage them. Although he doubts the motives of at least some of the new Constitution’s opponents, he professes to concede that some oppose it in good faith, motivated by the same desire he has—to serve the public interest. Why, then, shouldn’t he expect them to change their minds when presented with arguments that address their concerns and demonstrate why they have little reason to worry?

Publius in *Federalist* 1 seems to believe in the existence of an American public that can be trusted to discuss and then decide absolutely basic questions at the heart of governance. Do we think that is possible today, or is it a quixotic, even potentially dangerous fantasy?

## FEDERALIST 2

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### *How Much Pluribus within a Single Unum?*

**F**EDERALIST 2 FOCUSES ON the extent to which the United States has gained its unity by virtue of nature’s bounty, including extensive rivers. But, Publius adds, “With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to *one*

*united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence”* (emphasis added).

If we were interested in historical truth, it would be easy to demonstrate the utter fatuity of this declaration, just as, incidentally, one might express similar skepticism about the assertion in the first sentence of the Declaration of Independence that the various colonies consisted of “one people” entitled to secede from the British Empire and take its rightful place, as a single people, among the nations of the earth. Many distinguished historians have shown that those who came from elsewhere (not to mention, of course, the Native American tribes who already inhabited the land) were descended from a wide variety of ancestors, including hundreds of thousands of slaves coercively brought from all over Africa. They most certainly did not all speak the same language. Benjamin Franklin, for example, was appalled by the presence of German speakers in Pennsylvania; just as certainly, they did not profess the same religion, even if one decides to ignore the difference between Catholics and dissenting Protestants; and they scarcely could be described as “very similar in their manners and customs.” Among the settlers from Great Britain alone, never mind those from other parts of Europe, there were remarkable variations of background. To assume homogeneity simply because of common British origin would be like assuming in today’s America that there are no interesting differences among long-established residents of, say, Maine, New Mexico, North Dakota, or Georgia. Finally, they were hardly “attached to the same principles of government”; think only of the significant number, whom we tend to forget, who cast their lot with King George III and after defeat resettled in Canada, Jamaica, Great Britain, and, in the case of some former slaves, Sierra Leone.

One might dismiss the Loyalists and exiles from post-Revolutionary America as “un-American,” but one can scarcely direct this epithet at those who engaged in often-bitter debates in Philadelphia, where three delegates refused to sign the Constitution, or at the ratifying conventions afterward, or at some of the pamphlets and speeches rendered “out of doors” in public gatherings. It would be unfair to tax Publius with knowledge of a future

civil war, but that event further calls into question his optimism about homogeneity and concord in America.

For my purposes, it doesn't matter that Publius was a terrible sociologist. What makes his assertion worth our attention today is whether we share his presumed belief that the success (or failure) of the American political experiment (and perhaps similar experiments elsewhere) *does* depend on a requisite degree of homogeneity. Indeed, the correct word may be "homogeneities," as he includes ancestry, language, religion, and broader culture as the source of "manners and customs." The disciplines of American history and political science after World War II were rife with analyses emphasizing the importance of "consensus" on basic political issues and the existence of a distinctive "civic culture" that differentiated the United States from less lucky, more divided countries. Many political scientists thought the existence of such social and cultural phenomena rendered the particularities of formal political systems (or constitutions) almost irrelevant.

It takes little reading of modern newspapers or political speeches to realize that there are many "*Federalist-2* Publians" in twenty-first-century America, who are concerned—perhaps even terrified—that the American "We" is becoming irreparably fragmented. Our national motto, *E pluribus unum*, suggests that whatever their apparent differences, Americans ultimately achieve a necessary unity. How is this to be attained? Some believe that it is enough to share a commitment to the political vision outlined in the Preamble or a willingness to be bound by decisions reached through the institutional procedures the Constitution has established. Others believe more is required, that, for example, there should also be a commitment to accept English as the only "American" language. Whatever else they may think about learning from the French, the proponents of this view presumably applaud the declaration in Article 2 of the French Constitution of 1958 that "[t]he language of the Republic shall be French." No nonsense about "multiculturalism" and the recognition of multiple languages within the polity, as one finds, for example, in Canada or in what is often called the world's largest democracy, India.

Similarly, the late Harvard political scientist Samuel P. Huntington published in 2004 as his last book *Who Are We? The Challenges to America's National Identity*.<sup>1</sup> He adopted a "Publian" reading of our history, asserting that "the American people who achieved independence in

the late eighteenth century were few and homogeneous: overwhelmingly white (thanks to the exclusion of blacks and Indians from citizenship), British, and Protestant, broadly sharing a common culture, and overwhelmingly committed to the political principles embodied in the Declaration of Independence, the Constitution, and other founding documents.”<sup>2</sup> Huntington despaired that this world was irredeemably lost. America is now fully multiracial—both African and Native Americans are full citizens, for starters—with many ethnicities and religions represented in the American “mosaic.” In his book he noted the increasing multilingualism generated primarily by the vast new numbers of Spanish-speaking immigrants, who he feared were far less likely to leave their initial language than were Asians, another increasing part of the American mosaic. Huntington noted that the Union of Soviet Socialist Republics was no more, destroyed by the secession of groups rejecting rule by “foreign” Russians. And even a full decade ago he noted as well that Great Britain has become considerably more “devolved” particularly with regard to Scotland. One suspects he would not have been surprised to learn that nearly 45 percent of Scottish voters would in 2014 support secession from the Union with Great Britain that was formally established in 1707.

After writing that “No society is immortal,” Huntington goes on to quote Rousseau: “If Sparta and Rome perished, what state can hope to endure forever?”<sup>3</sup> Thus Huntington suggested that we should not blithely assume that even the post-Civil War United States would maintain itself into the indefinite future. He explicitly rejected the wisdom of relying only on what might be termed “constitutional attachment,” describing this as the “classic Enlightenment-based, civic concept of a nation” in which “nationalism,” lacking any other commonalities, was predicated entirely on commitment to abstract propositions. “History and psychology, however, suggest that this is unlikely to be enough to sustain a nation for long.”<sup>4</sup> Instead, he called for renewed emphasis on the “core culture” that he believed dominated in 1787. Although he emphasized that his call for returning to an “Anglo-Protestant culture” did not mean privileging “the Anglo-Protestant people”—non-Anglo-Protestants could assimilate to that culture, just as immigrants to France are expected to take on the trappings of “Frenchness,” beginning with language—critics accused him of nostalgia for an America controlled by persons of his own Anglo-Protestant background. Harsher analyses were offered as well.

One need not agree with Huntington's analysis in order to wonder if there are in fact limits to the heterogeneity that a society can welcome if it would try to achieve what the Constitution calls a "Republican Form of Government." Does such a government require a version of "We the People" that, at the very least, shares important ideological presuppositions, even if they are expressed in different national languages? Consider the limitation of American law, going back to the initial naturalization law of 1795, that no one shall be eligible for naturalization—in effect being "reborn" as a full "American" to replace one's former civic identity—unless the applicant for citizenship has not only been resident within the United States for at least five years and shown him- or herself to be "a person of good moral character," but is also, and crucially, "attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

In one of the most eloquent judicial opinions in the history of the United States Supreme Court, which invalidated punishment of Jehovah's Witnesses who refused to salute the American flag, Justice Robert Jackson wrote, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us." One might wonder how this magnificent credo of American liberty coexists with the demand that would-be citizens demonstrate attachment "to the principles of the Constitution." Can these "principles" ultimately be reduced to the nonorthodoxy so eloquently expressed by Jackson, or is there something more, such as acceptance of certain substantive commitments?<sup>5</sup>

Most of us, I suspect, are hesitant simply to hope for the best with regard to those who wish to enter the United States, whether as resident aliens, who by definition have no wish to become citizens, or, even more so, as citizens with the right, among other things, to vote. I know that I have qualms about certain sizable groups of immigrants who come from undemocratic, indeed anti-democratic, countries and, because they live together in this country and recreate their own versions of their former cultures, may be contemptuous of some of the assumptions required to operate a republican form of government. This may include, for example, a genuine commitment to the "good order and happiness of the United States" and its multiple groups and not only one's own kith and kin. Of

course, one might argue that it is far too late in the day to posit the actual relevance of the republican vision, that our political system is so wholly committed to interest-group politics that it is completely legitimate for a voter—or a public official?—to be concerned exclusively with his or her private interests, including those “partial” groups one identifies with, in contrast to a completely fictitious “We the [one] People of the United States.”

As Huntington noted, these concerns are not limited to the United States. As a frequent visitor to Israel, I have wondered more than once if the significant immigration from the former Soviet Union was altogether good for Israel, inasmuch as many of those immigrants appear to have little commitment to pluralistic democracy. (This is, incidentally, even more true of those labeled as “ultra-Orthodox” or “Haredi,” some of whom reject the legitimacy of the state of Israel on the ground that only the Messiah can legitimately establish such a state.) Israel, it should be noted, differs from the United States in granting immediate citizenship, under the Law of Return, to any Jew who declares that he or she wishes to be a part of the Jewish homeland. This means, among other things, that newcomers can vote almost immediately. There is nothing like the American requirement of a five-year residence before one becomes a citizen, in which one purpose of the delay is, presumably, to give the newcomer time to assimilate. One of the more obscure clauses of the Constitution requires that naturalized citizens wait even longer—seven and nine years, respectively—before they are eligible to serve in the House of Representatives or the Senate. (They remain permanently ineligible to become president.)

Perhaps the success of the United States is sufficient to render irrelevant the fact that Publius was simply wrong about the actual composition of American society in 1787. So does this entail that his belief about the significance of homogeneity was completely without merit?

### FEDERALIST 3

#### *Federalism and Foreign Policy*

**I**N FEDERALIST 3, PUBLIUS STRESSES the degree to which a single united nation will be better equipped to participate in international affairs and contribute to what he deems the central task of any government:

“providing for [the] SAFETY” of the citizenry. Interestingly, he doesn’t argue that a larger nation will find it easier to raise armies and navies should war break out. Instead, he emphasizes the costs to a sound foreign policy—and thus the greater likelihood of war—should the thirteen states fragment into multiple nations, or even should they retain the Articles of Confederation and barriers to unity it imposed.

Distrust of states—and a fragmented polity—is a pervasive theme in *The Federalist*. Publius argues that “the prospect of present loss or advantage may often tempt the governing party in one or two States to swerve from good faith and justice,” a tendency that, if not controlled, could provoke discord and full-scale war with the young country’s many potential enemies. Fortunately, he says, “those temptations, not reaching the other States, and consequently having little or no influence on the national government, the temptation will be fruitless, and good faith and justice be preserved.” We can take comfort in the fact that “the national government, not being affected by those local circumstances, will neither be induced to commit the wrong themselves, nor want power or inclination to prevent or punish its commission by others.”

Publius draws a sharp distinction between local or state interests, whose impact should be minimized to whatever degree possible, and the truly national interests that will presumably be instantiated in the decisions of the government’s leaders under the Constitution. Creation of this government does not guarantee international peace and concord, but it makes it more likely, which is no small matter.

Federalism, even in the realm of foreign policy, which is Publius’s main concern, has scarcely disappeared as an important concern today. Even if a particular state’s decisions cannot, by themselves, spark war with another country, it is not at all unlikely that it could so antagonize a given country that it seriously complicates American foreign policy. Consider only two issues recently presented to the United States Supreme Court—both, as it happens, involving Mexico.

One case involved the clear violation by Texas of an international treaty, signed by the United States, promising that criminal defendants who are citizens of a foreign country have a right under international law to have their embassy notified of their being in legal peril. A Mexican national, José Ernesto Medellín, in 1997 was convicted and sentenced to death by the state of Texas for a brutal murder. The Mexican embassy was never in-

formed of Medellín's arrest. It is certainly possible that the embassy would have given him better legal counsel than he received on his road to death row. Mexico sued the United States in the International Court of Justice (sometimes called the World Court), which held that Mr. Medellín's rights had indeed been violated and that, at the very least, he should not be executed before having the opportunity to demonstrate that the clear violation of his treaty rights might have prevented his receiving an effective defense. Against the request by the Bush administration that Texas honor the verdict, the state laconically noted that the administration of criminal justice was *its* prerogative and not the prerogative of the national government, still less the World Court. It chose to ignore both the World Court and the entreaties of the Bush administration, which then sued, arguing that federal treaty obligations took precedence over state prerogatives. The Supreme Court disagreed, ruling in effect that Texas had a right to administer its criminal justice system as it saw fit, including executing a prisoner who everyone agreed had been denied his treaty rights and, in the process, antagonizing Mexico.

The second case is probably better known, inasmuch as Arizona led many states in passing onerous laws directed against unauthorized aliens, who, by definition, had violated American law either in their initial crossing into the United States or in remaining beyond the limited time authorized by a visa. It is estimated that there are well over 10 million such persons in the United States, many of them clustered in America's Southwest in border states with Mexico. Civil-liberties groups and the United States itself challenged the constitutionality of the Arizona laws that, for example, permitted police to demand that anyone arrested for any reason, including traffic stops, prove their citizenship. The national government argued that Arizona's policy, clearly directed against Mexican citizens who entered that state, generated tensions with Mexico to the detriment of American national interests. Arizona in effect argued that it was being forced to pay an inordinate price to safeguard these purported interests and that it had both the duty and the right to prefer the interests of Arizona's own citizens, who were increasingly antagonistic to the presence of unauthorized aliens in the state. (Similar laws, some of them even more draconian, were passed in Alabama and Georgia.) In a 5-3 decision, the Supreme Court struck down aspects of the Arizona law on the ground that they were indeed "pre-empted" by national laws, which is simply

lawyer-talk for granting the national government supremacy over conflicting state laws. But it left in place other parts of the law, including the police's ability to ask for identification.

Publius claims "that a cordial Union, under an efficient national government, affords them the best security that can be devised against **HOS- TILITIES** from abroad." Although we are properly conscious of the special importance of *armed* hostilities, there are, of course, many other forms of hostile action. The United States has been engaged for many years in attempts to stanch the traffic of drugs across its border with Mexico. American authorities have little direct power to control actions by Mexico and must rely on eliciting the cooperation of the Mexican government—and the Mexican people, which to at least some extent may depend on the perceptions that the United States is acting in "good faith and justice" rather than "swerv[ing]" from these paths or, more to the point, allowing its constituent states to swerve. The extent of the rights to autonomous action enjoyed by American states has been highly controversial from the beginning, with the capacity, as demonstrated most dramatically in 1861, to rend the nation and generate the most violent hostilities. And as Publius recognized, endorsing a strong notion of states' rights may have grave implications for American foreign policy.

#### FEDERALIST 4

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#### *"Concerning Dangers from Foreign Force"*

**I**N *FEDERALIST 4*, PUBLIUS CONTINUES to emphasize dangers posed by the fact that the United States lives within an international system of states. Here he presents the starkest vision of that order. "It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting anything by it. . . ." The United States, he continues, will inevitably appear to threaten the interests of several powerful countries: "With France and with Britain we are rivals in the [cod] fisheries," and further tensions would certainly be raised as the United States sought entry into trade with China and India. It therefore must always be watchful of countries that may believe they can "get something" by hindering the United States. What Publius called "inducements to war" were almost literally everywhere. Presumably

potential adversaries would begin with everyday diplomacy, but underlying serious diplomacy, as Clausewitz would so famously write, is often the threat of war. Although he was too tactful to say so, Publius may have viewed treaties with other nations as what he would describe in a later essay as “parchment barriers,” to be breached whenever it was thought advantageous to do so. Peace—and protection of vital American interests—required strength, which he believed could come only through union.

Publius noted, for example, the considerable advantages the United Kingdom enjoyed over a mere alliance among England, Wales, and Scotland. “What,” he asked, “would the militia of Britain be if the English militia obeyed the government of England, if the Scotch militia obeyed the government of Scotland, and if the Welsh militia obeyed the government of Wales?” If the Constitution were not ratified and America were ultimately divided into “three or four independent governments—what armies could they raise and pay—what fleets could they ever hope to have? If one was attacked, would the others fly to its succor, and spend their blood and money in its defense?” Even worse, perhaps, was the danger that one of these separate countries—perhaps called New England, Atlantica, and Dixie—would be “flattered into neutrality” should an attack by a European adversary occur, perhaps because of “specious promises or . . . by a too great fondness for peace,” which would lead them “to decline hazarding their tranquillity and present safety for the sake of neighbors, of whom perhaps they have been jealous, and whose importance they are content to see diminished?”

What does this have to do with us today? The answer is simple. If we put to one side the fact that Great Britain reentered American soil during the War of 1812, capturing part of Maine and burning down the national capital, we can say that the United States successfully staved off a foreign attack until December 7, 1941. Today, of course, the key date that “will live in infamy” for many Americans is September 11, 2001, a very different kind of attack by an equally different kind of enemy (who, among other things, was not organized into a standard-form state). One element that links both of those episodes, though, is America’s expansion well beyond the limited borders Publius assumed in 1787. Another linkage, even more obvious, is the development of modern technology, which makes the United States vulnerable to adversaries located far away. Those who, for example, describe Iran, especially should it produce nuclear weapons, as a major threat to American national security surely do not envision Iran’s

sending an army of warships into New York Harbor or even interdicting our ships as they ply the international oil trade. And we are increasingly aware that hackers working from thousands of miles away can do more potential harm to the American economy and generate more feelings of insecurity than even a “standard-model” terrorist armed with a firearm.

Not that the modern international system is altogether different from the one described by Publius. Those who describe themselves as unsentimental international-relations “realists” have little trouble agreeing with his statement that “nations in general will make war whenever they have a prospect of getting anything by it.” What makes our own world different is the increasing importance of nonstate groups like Al Qaeda to wreak havoc and, along the way, induce further degrees of paranoia by those adopting a Publian perspective.

The fall of the Berlin Wall and the liberation of Eastern Europe in 1989, followed by the collapse of the Soviet Union in 1991, generated a number of fantasies that, a quarter century later, can be described as “post-Cold War triumphalism.” The United States was viewed as the “new Rome,” a unique superpower capable of bending the entire world to its will through its economic and military might. That vision has been left in shreds, especially after the near-collapse of the international economy in 2008 and the realization that American military intervention (even when supported by “coalitions of the willing”) promised at best only temporary and uncertain success. We are, for better and worse, part of an international, globalized economic order, where the weakness of the euro or the diminishment of China’s willingness to buy bonds from the United States can have ominous effects on what we continue to describe as the “domestic” economy. And our military budget, larger than those of the next eight nations combined, turns out to be less dispositive than we thought. Modern presidents, of whatever political background, must cobble together complex and fragile alliance systems designed to forestall adverse behavior by common enemies, whether “nations” in a conventional sense, or modern movements that are fully capable of opportunistic relocation to whatever country will, voluntarily or not, give them havens.

The question is whether the international system that long ago compelled the transformation of the modest and aptly named Articles of Confederation into a far stronger entity called the *United States of America* now requires similar moves toward a wider, transnational political order.

One can think of the North American Free Trade Agreement, which created a free-trade zone among Canada, the United States, and Mexico, as a successor to the free-trade zone created in 1787 stretching from Massachusetts (which then included much of what is now Maine) to Georgia. Or one can look at some of the more utopian hopes for the United Nations or, more modestly, at the North Atlantic Treaty Organization, created in 1948 to stave off the menace of the Soviet Union (and, not at all coincidentally, to integrate what was then called “West Germany” into that particular alliance system).

Still, as Publius suggested, the problem with alliance systems is that they ultimately rely on the “parchment barriers” of treaties. Will a country really risk its death and destruction because allies are being attacked? But even when nations find compliance in their interest, they may resist putting their armed forces under foreign command, making integrated security efforts unwieldy and inefficient.

There is a paradox inherent in many of Publius’s arguments. His immediate concern was the fragmentation of the fledgling nation under the Articles of Confederation and the need, therefore, to exalt the benefits of union. But the argument for union may have no logical stopping point. If greater unity is needed to resist potential aggression by Great Britain or France, then why doesn’t it follow, in another historical period, that the United States, Great Britain, and France should join together in a genuinely common political enterprise in order to provide a unified response to China or some other common rival? The Atlantic and Pacific Oceans no longer provide automatic security. Almost everyone today recognizes the necessity of what George Washington dismissed as “entangling alliances.” Shouldn’t we at least consider the possibility that such alliances will—and *should*—ultimately lead to stronger forms of political unification that will, in their own way, replicate the vital transformation of 1787–1788?

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FEDERALIST 5

*In Union There Is Strength*

**I**N FEDERALIST 5, PUBLIUS CONTINUES the major theme enunciated in *Federalist 4*: the great advantages of union and the concomitant

dangers linked with the presence of multiple countries within the existing Confederation. He was particularly worried about the breakup of the Confederation into what he labeled “NORTHERN” and “SOUTHERN” (emphasis in original) confederacies. “Different commercial concerns” might generate different international as well as local interests. As we know, union was not enough to forestall the development of these different concerns. The United States was threatened with at least the theoretical possibility of terminal discord when South Carolina in 1828 tried to “nullify” what it labeled the “Tariff of Abominations,” which protected developing northern industry by placing significant tariffs on the importation of goods from Great Britain directed at southern markets. Partly because the putative states’ rights advocate Andrew Jackson threatened military intervention if South Carolina carried out its threat to defy national law, South Carolina basically capitulated, though the sense of grievance generated by this triumph of nationalism bore full and bitter fruit in 1861. It is clear, then, that union could not prevent war, whether we call it the Civil War or the War Between the States.

Publius’s dour vision is confirmed by American wars against Canada and Mexico. As we have seen, his almost Hobbesian vision of the international political system easily suggests that a would-be hegemon would not be deterred by international borders—“parchment barriers” of a different kind, perhaps, but ultimately just as symbolic and unreal. (Think of Vladimir Putin in 2014 vis-à-vis Ukraine.) And the United States, which lusted after Canada throughout the nineteenth century, invaded that country/colony of Great Britain not only during the American Revolution itself but also, more importantly, early in the War of 1812 (when we burned down the capital of “Upper Canada,” an action that some historians think explains the British burning of Washington, DC, later in the war). We also invaded later, but again unsuccessfully. Mexico, of course, was a different story. The Mexican War of 1847 was very clearly a “war of choice” initiated by Jackson’s successor, James K. Polk, as part of his expansionist agenda. Out of it came what we today call the “American Southwest,” including all or parts of Texas, New Mexico, Arizona, Nevada, Colorado, Utah, and California. Later in the century, the United States would gain Puerto Rico in the aftermath of the Spanish-American War. Multiple interventions in Central America would also be an important part of twentieth-century American foreign policy, though unaccompanied by formal integration as American territory.

Perhaps most interesting—even poignant—for the modern reader is the very beginning of the essay, where Publius quotes a July 1, 1706, letter from Queen Anne to the Scottish Parliament concerning the hoped-for acceptance of the Treaty of Union that would formally unite the still-independent countries of England (which had been joined by Wales in 1536) and Scotland. “An entire and perfect union,” wrote the Queen, “will be the solid foundation of lasting peace: It will secure your religion, liberty, and property; remove the animosities amongst yourselves, and the jealousies and differences betwixt our two kingdoms. It must increase your strength, riches, and trade; and by this union the whole island, being joined in affection and free from all apprehensions of different interest, will be **ENABLED TO RESIST ALL ITS ENEMIES.**” A truly United Kingdom, she argued, was “the only **EFFECTUAL** way to secure our present and future happiness, and disappoint the designs of our and your enemies, who will doubtless, on this occasion, **USE THEIR UTMOST ENDEAVORS TO PREVENT OR DELAY THIS UNION.**”

Queen Anne’s hopes were realized, of course. What lends poignancy to her letter is that the “affection” among the constituent parts of the United Kingdom has always kept the kingdom far short of perfection, and contemporary British politics has featured a variety of “devolutionist” movements by which significant powers have been translated to the Scottish Parliament and the National Assembly for Wales. A 2011 referendum in Wales, for instance, gave 63 percent support to the proposition that the Welsh Assembly should be able to make binding laws in some twenty policy domains without having to procure assent from the British Parliament in London. Even more interesting is the vote held in 2014 within Scotland, in which a significant minority supported withdrawing entirely from the United Kingdom and resuming full-scale Scottish independence.

Do any of Queen Anne’s arguments still have purchase in the twenty-first century? Can anyone seriously argue that Great Britain is threatened with the kinds of invasions that make union between England and Scotland necessary for defense? Does British membership in NATO not suffice? As the countries of Europe become more integrated into the European Union, however fitfully, will the United Kingdom have much ability to protect trade within its territory? After all, it is the great achievement of the European Union, originally conceived as a “free-trade zone,” that the United Kingdom can no longer discriminate against products (or even immigration) from any EU country, just as the 1787 Constitution prevented

New York from discriminating against goods imported from New Jersey or North Carolina.

Paradoxically or not, the integration of European countries into the European Union seems to have generated a variety of autonomy or even secessionist movements, as with Catalonia and the Basque regions of Spain, or Flanders within Belgium, not to mention the possibility of British secession from the EU itself as a result of the desire of many contemporary Britons to discriminate against immigration from the Continent. As the fear of external warfare diminishes, attention can return to the actual extent to which the countries organized around putative necessities of defense will necessarily maintain their unity in a radically different world. Threats to national security have not disappeared, but they take quite different forms today. Once again, the need for “reflection and choice” rears its head.

#### FEDERALIST 6

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### *Humankind as “Ambitious, Vindictive, and Rapacious”*

**I**N VIVID PROSE AND muscular argument, Publius makes even clearer his skepticism that a world of competing disunited states—here he is envisioning the collapse of the “United States” into separate entities—can provide a basis for anything other than endless war. “A man must be far gone in Utopian speculations,” he warns, “who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other.” To deny this is “to forget that men are ambitious, vindictive, and rapacious.” It therefore takes a willful ignorance of “the uniform course of human events” and “the accumulated experience of ages” to expect “harmony between a number of independent, unconnected sovereignties in the same neighborhood.”

It is worth noting that Publius, here as elsewhere, is making a universal statement about the nature of “men.” There is no notion of what has come to be called “American exceptionalism” with regard to basic human character. One must design institutions to try to alleviate the implications of that character—thus the emphasis in these essays on the importance of unity and the potentially catastrophic consequences of fragmentation—

but the underlying structure of human nature remains as a constant for Publius.

The universalist aspect of Publius's diagnosis of the human condition has significant implications if *Federalist 6*, or *The Federalist* more generally, is read by a foreign audience. We in the United States can easily read Publius to offer a rationale for our contemporary defense budget, under which, even with congressionally mandated "sequestration" and, therefore, automatic budget cuts, in 2014 the United States continued to spend "more on defense than the next eight countries combined."<sup>1</sup> It's a cruel world out there, and the United States should be willing to spend whatever is necessary to defend our national interests, or so many would argue. But foreign readers can also draw from Publius the identical message: They too need to fear predatory would-be hegemony and have the same interest in beefing up their own defenses against countries, including "neighbors," that could easily turn out to be threats. After all, as Lord Palmerston, the British foreign secretary memorably put it in an 1848 speech to Parliament, "We have no eternal allies, and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow."<sup>2</sup> To suggest that "friendship" can significantly trump "interests," he had said earlier in his speech, is a "romantic notion."<sup>3</sup> This has often been paraphrased as a maxim that states in the international system have no friends; they have only interests. One can only assume that Publius would agree.

So why should any other country trust American professions of "friendship" to take precedence over cold calculations of what is in the interest of the United States? In any event, it is readily understandable why the leaders of other countries, upon reading Publius, might believe that they too need to enhance their own national security, whether this involves threatening to build nuclear weapons or simply attempting, through alliances with other countries, to balance the power now perceived to be held by the United States or, increasingly, China.

Franklin Roosevelt famously declared that the "only thing we have to fear is fear itself," especially if the fear generated runs on banks lest one lose all of one's deposits. Putting to one side whether FDR's injunction was empirically accurate, it is clear that many political campaigns, including recent presidential elections in the United States and all too many abroad as well, are organized around various tropes of fear. Those exhibiting insufficient fear are often dismissed as naive utopians whose

callowness should disqualify them from holding political office. Perhaps Publius believed that the Constitution might contribute to the “pursuit of Happiness” or to maintaining the “Blessings of Liberty” that the new country’s Declaration of Independence and Preamble to the Constitution, respectively, announced as their founding aspirations. But the real foundation for his argument is his commitment to another part of the Preamble, providing for the “common defence,”<sup>4</sup> and his belief that anything short of a newly enlarged and vastly more powerful national government would fail in that aspiration.

There is no escape from Publius’s near-paranoia. Lest we rely on singular virtuous leaders, he takes care to discredit Pericles, whose ancient funeral oration to his fellow Athenians, with its invocation of “courage, sense of duty, and a keen feeling of honour,” is sometimes assigned even today to students as exemplifying the necessary character for maintaining a republican form of government. But Publius’s Pericles, because of “private pique” or fear that he might be prosecuted for theft of a statue, drives Athens into wars that ultimately destroy its democracy.

For Publius, it makes no difference how governments are structured or what the basis of their legitimacy is. He notes the presence of “visionary or designing men, who stand ready to advocate the paradox of perpetual peace between the States, though dismembered and alienated from each other.” Thus they suggest that “[c]ommercial republics, like ours, will never be disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord.” Were he more like Vice President Biden, Publius might simply dismiss such arguments as “malarkey.” He concludes his essay by citing the French philosopher l’Abbé de Mably, who wrote that “NEIGHBORING NATIONS . . . are naturally enemies of each other unless their common weakness forces them to league in a CONFEDERATE REPUBLIC, and their constitution prevents the differences that neighborhood occasions, extinguishing that secret jealousy which disposes all states to aggrandize themselves at the expense of their neighbors.” Absent a move to unity, one can expect only continued warfare, and even in times of “peace,” endless fear of renewed hostilities. Moreover, in the twenty-first century, we live, for better and worse, under a much broader notion of “neighborhood” than did de Mably or his American admirer.

Publius takes no refuge in what we today call “democratic peace.” As political scientist Sebastian Rosato has written, “the democratic peace

theory—the claim that democracies rarely fight one another because they share common norms of live-and-let-live and domestic institutions that constrain the recourse to war—is probably the most powerful liberal contribution to the debate on the causes of war and peace.”<sup>5</sup> Among other things, it “provides the intellectual justification for the belief that spreading democracy abroad will perform the dual task of enhancing American national security and promoting world peace.” This belief has undergirded American foreign policy from Woodrow Wilson’s time through Franklin Roosevelt to George W. Bush and Barack Obama. Rosato is among the political scientists who find the theory to be disconfirmed by what Publius called the “lessons of . . . experience” (though, to be sure, other political scientists disagree).

Publius provided a good reason to support the amalgamation of New York and North Carolina into a new and strengthened United States of America governed by the institutions established by the new Constitution. But he seems to provide no reason for anyone in our own time to rest secure in the belief that the “good old Constitution”—or even the strength of the United States in the twenty-first century—is enough to overcome this century’s pervasive fear.

Publius gives us no grounds for optimism. As Ronald Reagan famously said of dealing with the Soviet Union, “Trust, but verify.” Perhaps we should place Reagan in a distinctly Publian tradition that, at the end of the day, minimizes the value of trust in favor of endless vigilance. For Publius, then, a principal virtue of a constitution is that it lets us—and all other readers, wherever located—prepare for never-ending conflict, which can, of course, take a variety of forms, including economic as well as military.

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FEDERALIST 7

*Endless Sources of Conflict (and War),  
Even within the United States*

**I**N THE PREVIOUS ESSAY, Publius cited all of human history, from Pericles on, coupled with a universal theory of human nature—“ambitious, vindictive, and rapacious”—to support his argument that would-be autonomous states or countries could not escape the ravages of war. In

*Federalist 7* he turns more particularly to the thirteen states that initially joined together in the Articles of Confederation (and, of course, had earlier joined together to overthrow British rule) and are now being asked to recognize the deficiencies of the Articles and endorse the new, far more centralized, government proposed by the Philadelphians.

Once again, his theme is the threat of endless conflict and ultimately warfare in the absence of unity. If most historians of American political thought emphasize the influence of such political theorists as Locke, Hume, and Montesquieu on the generation of those who wrote and adopted the Constitution, this essay reminds us of the importance of Thomas Hobbes. It was Hobbes who depicted life in a state of nature as “nasty, brutish, and short,” because of the threat presented by one’s neighbors in the absence of a state that could guarantee security. As Hobbes noted, even the strongest individuals had to sleep, thus making them vulnerable to “rapacious” acts. The only protection, he argued, was the creation of an extraordinarily strong “Leviathan-state,” whose potentially absolute powers would guarantee at least the protection of life, whatever the attendant costs to liberty or pursuit of happiness.

What might go wrong, then, if the Constitution were rejected in favor of maintaining the Confederation or, more likely, the dissolution of the United States into several republics? Some of Publius’s answers seem safely locked into the circumstances of 1787. This is certainly true, for example, of his concern that failure to ratify the Constitution might lead to fatal discord among the states concerning the vast “western lands” to which they made conflicting claims. Most of these lands were in fact ceded to the national government; indeed, one of the last acts of the Congress established under the Articles was to pass the famous Northwest Ordinance, which ultimately generated the states of Ohio, Indiana, Illinois, Wisconsin, and Michigan. But what if the Union dissolved into constituent states or several “confederacies” of various states? “In the wide field of Western territory,” he wrote, “. . . we perceive an ample theatre for hostile pretensions. . . .” Even if he may have been right, what does that have to do with us today, at least within the United States?

We might ask the same question about another of his examples, the possibility of trade wars, particularly with regard to the ability of seaboard states like New York in effect to impose high import fees on the ultimate consumers living in states lacking similar deepwater ports. Many people

argue that a central purpose of the Constitution was the creation of a free-trade zone designed to prevent such trade disputes (and their escalation into violence); this explains, for example, the Constitution's prohibition of almost all import fees levied by states, as against those imposed by the new national government.

We will have occasion later to contemplate the fact that the national government under the Articles had no power of "direct taxation." All it could do was to issue "requisitions" against the states, basically a plea for voluntary payment of dues to remain in the Union. Many states behaved as the United States did for many years with regard to its dues to the United Nations. "Not this year, thank you," was often the response, and, like the UN, the Confederation government could do nothing other than complain. Since the Constitution solved this problem, only historians remain interested in the operation of the requisition system.

Perhaps we get closer to contemporary relevance with Publius's comment that "it is an observation as true, as it is trite, that there is nothing men differ so readily about as the payment of money." Trite or not, this observation applies whether one is paying out money or hoping to receive it. Our contemporary politics are dominated by an almost pathological opposition by some to the very idea of paying taxes. It turns out that "taxation with representation" is hardly more popular than "taxation without representation." The key point is to avoid taxation at all. Yet even as one resists the paying out of taxes, there is equal incentive to strive to maximize one's influx of money. To the extent that government tax policies, and consequent expenditures, almost inevitably have "redistributionist" tendencies, there is ample cause for discord. Some of this discord involves individuals or social classes—the "haves" against the "have-nots"—but some can involve states themselves.

The late New York Senator Daniel Patrick Moynihan often brought up the extent to which states like New York received far less in federal programs than did other, smaller states, which benefited mightily from disproportionate power granted them particularly in the Senate (and therefore to some degree in the Electoral College). As Moynihan pointed out, it is a mistake to think of New York as a "rich state," though it surely contains more than its share of rich persons. But in 1999, only New Mexico had a greater percentage of its citizens living in poverty than New York did. Still, one discovers that small, rural states receive substantially far more per

capita federal expenditures than do the large, urban states in which most Americans actually live.

Paradoxically or not, one finds that the greatest political opposition to federal spending and the concomitant support for a leaner, meaner national government comes from the states who are the *beneficiaries* of redistributive policies of “taxing and spending” rather than the states that might wish to describe themselves as benefactors (or, perhaps, *victims*). One need only contemplate the consequences for the Great Plains and Upper Midwest states if, for example, Congress changed federal agricultural programs to eliminate the government’s vast subsidies on wheat, soy, or corn.

But we should ask ourselves if adoption of the Constitution necessarily solved the structural problem Publius identified, which, simply put, is the propensity of “sovereign states” to use their powers to benefit their own citizens, whatever cost might be inflicted on “outsiders.” Consider in this context state “economic development commissions,” whose goal can often be described as recruiting companies from their present locations in some other state. The recruitment mechanisms often include the promise not only of “business-friendly” policies—including hostility to unions—but also tax abatements and other forms of what economists call “tax expenditures” that mean that the incoming companies will pay little, if any, taxes. The arrival of these companies creates new jobs in the receiving state, but only by eliminating existing jobs in another state. From a national perspective, it is not at all clear that such competition, however desirable from a certain business perspective, does anything to promote a healthy national economy. Many economists speak of a “race to the bottom” provoked by “beggar-thy-neighbor” competition among states. To be sure, this competition has its defenders, most notably George Mason Law School Professor Michael Greve, who sees it as a valuable way of minimizing both the regulatory and the tax burdens placed on business in general and, therefore, a way of “disciplining” states that might be too hostile to business interests.<sup>1</sup> Greve and others think the resulting “business-friendly” environment brings general prosperity. For Greve, the advantage of federalism is that it serves precisely to maintain the “hostile pretensions” that worried Publius, in part because they cut against the kind of national unity and subordination to a truly common enterprise effacing a feeling of membership as well in the state and its own particular commitments that might cut against the ostensible national goals.

Perhaps it is enough that we do not, in the twenty-first century, genuinely fear that war will break out among the states. Publius would count this as a great success of the new Constitution. But is it utopian to hope for more?

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FEDERALIST 8

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*On the Rise of a Militarized State*

PUBLIUS CONTINUES TO argue that a truly United States offers far better prospects for maintaining security and liberty than does adherence to the Confederation and the likelihood of ultimate dissolution into three separate countries along the Atlantic coast. He posits that “[s]afety from external danger is the most powerful director of national conduct,” which, as we saw, is little more than an extension of the central insights of both Hobbes and Locke, that people are motivated to live under organized government because it offers them security against threats by ill-motivated others. To provide adequate security against “external danger” requires establishing “standing armies” of military personnel always ready to defend the country against invasion. One of the most controversial features of the 1787 Constitution was its legitimation of such an army, as opposed to sole reliance on militias composed of sturdy yeomen who could be mustered when dangers presented themselves. Publius, like George Washington, had little faith in such militias, whatever their place in American myth. Both understood the virtues of a well-trained professional military.

Yet Publius, who is certainly politically sagacious enough to know that many of his readers will be wary of a standing army, offers as a central advantage of the new Constitution, and the attendant unity of the constituent states, that the threat of foreign invasion would be so remote that a *large* standing army would be basically unnecessary. Thus he reassures his readers that the highly advantageous geographical position of the United States, separated from Europe by an ocean, renders unnecessary “to our security” what he calls “[e]xtensive military establishments.” But “if we should be disunited, and the integral parts should either remain separated, or, which is most probable, should be thrown together into two or three

confederacies, we should be, in a short course of time, in the predicament of the continental powers of Europe—our liberties would be a prey to the means of defending ourselves against the ambition and jealousy of each other.” Such fragmentation would generate, “in a little time,” the establishment “in every part of this country the same engines of despotism which have been the scourge of the Old World.”

We need not revisit the sad tale of the disintegration of the United States into the bloodbath of 1861–1865 in order to see a continuing relevance for Publius’s arguments. Although for well over a century we were protected by the Atlantic Ocean and the even vaster reaches of the Pacific Ocean from most direct involvement with foreign powers—the War of 1812 to the contrary, and it was viewed, correctly or not, as a victory for the young nation—it is equally true today that we are enmeshed in hosts of alliances, entangling or not. Often these alliances are explained in terms of America’s purported commitment to help other countries achieve the blessings of democracy. But it would be foolish to deny the element of self-defense that undergirds alliance systems. To treat, as for example NATO does, an attack on one as an attack on all, with requisite response from all members of the alliance, is to try to preserve an inevitably uncertain peace by raising the stakes for those who might be tempted to invade a country deemed insufficiently strong to defend itself.

At least since the end of World War II, with the rise of NATO and other formal and informal alliances, the United States has maintained a strong standing army to guard against threats deemed contrary to vital American interests, whether or not they involve invasions of the homeland. The United Nations is, among other things, a mechanism for collective defense. The first American war after the UN was established, the action in Korea, occurred without a formal declaration of war by Congress. President Truman claimed that the United Nations Charter compelled the United States to defend South Korea against North Korean aggression, which was viewed as a proxy for a more fundamentally aggressive move by the forces of international communism led by the Soviet Union.

“The perpetual menacings of danger,” writes Publius, “oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated above the

civil.” This militarization of the political order leads, inevitably, to “frequent infringements” of the presumptive rights of the citizenry. “[B]y degrees the people are brought to consider the soldiery not only as their protectors, but as their superiors.”

How is this relevant to us in the twenty-first century? It is not enough simply to note that millions of Americans are employed by the military, and millions more serve the military as contractors. Nor is the percentage of the gross domestic product consumed by so-called defense spending necessarily telling. The current percentage is about one-third of the 14 percent that it was in 1953, at the conclusion of the Korean War. Rather, the relevance is that the military has become “valorized.” It is not only that ambitious politicians often use the mantra of “supporting our troops” to justify military spending and weapons systems whose primary virtue is that building them provides jobs for the politicians’ constituents. Those who serve in the military are automatically deemed “heroes,” even as the politicians who rhetorically embrace them often cast scorn on, say, public schoolteachers or express absolute indifference to budget cuts that might decimate those who serve the poor.

Diane Mazur, a former Air Force officer who now teaches at the University of Florida Law School, in her book *A More Perfect Military: How the Constitution Can Make Our Military Stronger*, bewails a number of cases decided by the Supreme Court that treat the military as an institution not only set apart, but also *better* than civilian institutions in important ways. Also worth noting is a 1992 article, “The Origins of the Military Coup of 2012,” written by Charles Dunlap, while still a colonel in the United States Air Force, that describes a fictional coup sparked by military officers disgusted by what they saw as the decadence of civilian life and institutions,<sup>1</sup> and having been trained to take seriously, as a central function of the modern military, the task of nation-building rather than simply fighting wars. In Dunlap’s fiction, the military leadership decides that it is the United States itself that needs rebuilding; the declaration of permanent martial law is upheld by a popular referendum.

A 2011 essay in the journal *Daedalus* described the “chasm” that has developed between the roughly 1 percent of the American population directly involved in the military and the 99 percent civilian population that leads a far different life. “The entire military,” writes Robert Goldrich, “has become a refuge for those who question the basic orientation of civilian

society and do not wish to live within many of its central boundaries,” including automatic subordination to civilian authority regardless of the personal identity of those imbued with the authority of office (such as president of the United States).<sup>2</sup>

Dunlap described his piece as “emphatically not a prediction,” and fortunately it wasn’t. He wrote it to express his skepticism about the shift in the military’s mission from war fighting to nation-building. But one can certainly wonder if Publius’s insights, coupled with Dunlap’s concerns, might not be worth very much taking into account today. Perhaps “standing armies” themselves are less the real danger than the development of a political culture that emphasizes the ubiquity of threats coupled with a loss of faith in civilian values and leaders in favor of the discipline and values of the military. What should we think, for example, of a 2014 Gallup Poll that found the military by far the most admired institution within American government, securing the “confidence” of 74 percent of the American people? This is especially alarming when we compare it to the approval levels of other national political institutions. Even the Supreme Court registered only a 30 percent confidence level, one point higher than the presidency and a full 23 points higher than Congress.<sup>3</sup> A greater percentage of Americans have confidence in the military than in the legislative, executive, and judiciary branches combined. It is hard to see this as good news for democracy.

Perhaps there is no cause for concern, and we can safely dismiss *Federalist 8* as an eighteenth-century relic or simply disregard it as a clever piece of propaganda designed to elicit support for the Constitution from those tempted to maintain the system established by the Articles of Confederation. But perhaps Publius’s arguments are very much worth attending to today. How, though, can we have a truly mature conversation about the dangers he points to if we regard the military as composed almost entirely of “heroes” and stand ever ready to accuse its critics of being insufficiently supportive of our troops, naively inattentive to the dangers facing the country, and, therefore, a presumed threat to national security?