

## The Federalists Paper #51

There were no notes taken at the Constitutional Convention in 1787. The members thought it wise to not allow members to take notes and to meet in complete secrecy in order to allow individuals to freely express their opinions. However, after the convention there was a mighty struggle in the thirteen states over ratification of the Constitution. In the state of New York the struggle was intense. In a series of editorials or essays called **The Federalists Papers**, James Madison, Alexander Hamilton and John Jay (the most influential of the writers of the Constitution) outlined Constitution and the reasoning behind its structure in New York newspapers. Easily the most important and best known is the Federalist #51; in it Madison describes the philosophy behind the U.S. Constitution. Please note that this author (Tom Byrnes) put in the [brackets] and the words placed in **bold**. Those in brackets are synonyms; the words placed in bold are to make sure that you focus on these parts.

## The Federalists Paper #51

To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? **The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.** Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, **it is evident that each department [branch] should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others.** Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

**It is equally evident, that the members of each department [branch] should be as little dependent as possible on those of the others, for the emoluments [salaries] annexed to their offices.** Were the executive

magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. **But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.** The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack.

**Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.**

A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, **where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights.** These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.

An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it

would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view. First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. **In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.** Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified **in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the**

**society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.**

In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful.

It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter,

or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE. PUBLIUS.

## Explanation of Key Points in Federalist #51

Below you will find explanations of the key points in Federalist #51.

***"The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."***

The chief "exterior provision" that Madison is referring to here is democracy itself. The people, by paying attention to what is happening in government, will control those in power by their votes. This is perhaps the major check of any democratic system. If the people are dissatisfied with what their representatives do, they can vote these people out and put in new representatives who will do what the majority wishes. But Madison and the other writers of the Constitution had little faith in the knowledge or wisdom of the common man. Because of the communications systems of the day it was very difficult to follow what the government was doing, even if one was educated and observant. Because of this, the writers felt it necessary to create a government which would control itself. The "interior structure" that Madison refers to here is essentially the checks and balances system. As will be repeated later, the operating principle of the system is to use each part to control the other parts by seeing that it was in its self-interest to do so.

***"It is evident that each department [branch] should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others."***

Simply put, this means that if each branch was to be independent of the others it was necessary that no branch be selected by the others. If one branch selected another branch the two would essentially be the same. This happens in most democracies that have a parliamentary system such as Canada and the United Kingdom. In these countries whichever party controls the House of Commons selects the Prime Minister, who runs the executive branch of government. Thus, there are two separate branches, but the same people control both branches. In the United States, the President is elected independently of the Congress and thus is not beholden to it. Similarly, the House and Senate are elected separately, which means that they are not controlled either by the President or by each other. The exception to this is the judiciary, whose judges are nominated by the President and confirmed by the Senate. The judiciary, however, is given protection from the other branches by the fact that they have a life time term of office. They can be chosen by the President and the Senate, but it is very difficult to fire them (impeachment process).

Each branch is independent of the other two for its power and each branch **represents different interests**. The President should represent the country as a whole. Senators represent their states; members of the House of Representatives represent the people in their districts, and the federal courts represent the U.S. Constitution. So, what we have is different branches, representing different people and interests with different powers and terms of office. All of this is designed to break up power and insure that each branch would be serving different masters or constituencies, thus making it difficult for any group of people or any interest group to control the entire national government.

***"It is equally evident, that the members of each department [branch] should be as little dependent as possible on those of the others, for the emoluments [salaries] annexed to their offices."***

This means that each branch should be independent in regards to its salary. If one branch could control the salary of the other two it would have a great deal of power over them. Congress has the power to increase the salaries of all three branches, but the Constitution does not allow it to reduce the salaries of judges or presidents while they are in office.

***"But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others."***

The above statement goes to the heart of the philosophy behind the Constitution. Each branch is given the motivation to check the other two because if one branch became more powerful the other two would have relatively less. Thus, acting in its own self-interest, each branch tries to curb any attempt by the other branches to increase their power.

Each branch is given specific powers to check the other two. There are many, but a few of the major checks the three have are as follows. The President can check the Congress by his power of veto. He checks the Judiciary by nominating all judges. Congress can impeach and remove from power any president or judge. The courts have the power of judicial review which essentially means that they can declare any law passed by Congress or any act of the President to be unconstitutional.

***"Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."***

This passage is the most famous in all of the Federalist Papers. It contains the basic philosophy behind the Constitution. Underlying the Constitution is a philosophy of human nature. The men who wrote the Constitution were products of their times and of their religion. Christianity had taught that after the Garden of Eden all humans changed. They became weak and self-centered--capable of great love, but also of evil. To a large extent the Writers accepted this viewpoint. They saw humans as primarily motivated by self-interest. They were capable of great sacrifice and love for others, but this could not be counted on. The U.S. Constitution assumed that men in government would seek their own self-interest. They designed a system that would use this very quality to check itself and in the end serve the interests of the public. Thus, "ambition must be made to counteract ambition." Self-interest will be used to check self-interest. It is in the self-interest of all the branches to check the others, therefore we can count on them to do so. We are thus protected from the ambition of one branch by the ambition of the others.

***"where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights."***

This is really a restatement of the above principle. Public rights are protected from an abusive government because of the check and balance system. This system is based on the understanding that individuals in government would seek their own self-interest, but in doing so would check the self-interest of others. It is in the self-interest of every Congressperson to protect his or her house from the President, the Judiciary and the other house of Congress. Likewise it is in the self-interest of every president to not allow his office to lose power to the other two branches, thus he can be expected to act against them if they try to increase their power. Judges are motivated by the same desire to check increases in power by the other two.

***In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.***

Here we have the principle of federalism. The power of government is broken into two major **levels**, the national (federal) government and the state governments. It was expected that each level would be jealous of its powers and do its best to check the abuse of power by the other level. Lest we forget, this was the greatest struggle of all in the United States. We had a civil war primarily over this issue. The Southern states did not accept the authority of the federal government to abolish slavery and decided to secede from the union. We settled this argument in true American fashion-- we killed each other in very large numbers until one side won.

And thus we have the federal system, where power is broken into two levels of government, the national and the states and each level is further broken down into three different branches. All of this is part of the basic design of the Constitution of the United States.

It should be remembered that the major goal of the writers of the U.S. Constitution was not to create an efficient government that could do things quickly, but rather to create a government that would not grow to enslave its citizens. In this sense it has been at least modestly successful.