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The Federalist—A Split Personality

ALPHEUS THOMAS MASON*

IN his address of September 27, 1836, John Quincy Adams suggested that the line of demarcation separating the political thought of Madison from that of his collaborator, Hamilton, was easily discernible in the *Federalist* papers. "In examining closely the points selected by these great co-operators to a common cause and their course of argument for its support," Adams observed, "it is not difficult to perceive that diversity of genius and character which afterwards separated them so widely from each other on questions of public interest, affecting the construction of the Constitution which they so ably defended, and so strenuously urged their country to adopt."¹

But was this "diversity" as distinct as Adams would lead one to believe? Six years earlier, John Mercer viewed the *Federalist* in a somewhat different light, insisting that

He who studies it with attention, will perceive that it is not only argumentative, but that it addresses different arguments to different classes of the American public, in the spirit of an able and skillful disputant before a mixed assembly. Thus from different numbers of this work, and sometimes from the same numbers, may be derived authorities for opposite principles and opinions. For example, nothing is easier to demonstrate by the numbers of *Publius* than that the government . . . is, or is not a National Government; that the State Legislatures may arraign at their respective bars, the conduct of the Federal Government or that no state has any such power.²

Measured by the trouble editors and scholars have experienced in sorting out and identifying internal evidence of authorship of the eighty-five essays, Mercer's comment would appear to be more discerning than Adams'. Scholars are still not sure about the authorship of certain numbers.³

* In preparing this article for publication, I have had the assistance of Gordon E. Baker and Joseph G. La Palombara.

¹ John Quincy Adams, *An Eulogy on the Life and Character of James Madison* (Boston, 1836), pp. 31-32. See also *The Writings of James Madison*, ed. Gaillard Hunt (New York, 1900-10), V, 55.

² *Proceedings and Debates of the Virginia State Convention of 1829-1830* (Richmond, 1830), p. 187.

³ "There is still some doubt," Benjamin F. Wright observes in a recent article, "concerning the authorship of from six to twelve of the eighty-five essays." "The Federalist on the Nature of Man," *Ethics*, LIX (January, 1949), 3. See also Max Beloff, ed., *The Federalist, or the New Constitution* . . . (Oxford and New York, 1948), who, in this painstaking edition, continued the practice of labeling certain "disputed" numbers "Hamilton and/or Madison." Apparently the only recent edition of this classic which makes unqualified identification of authorship is that of Carl Van Doren, ed., *The Federalist* (New York, 1945). All quotations from the *Federalist* included herein are taken from this edition.

Apparently Madison's philosophy had not been precisely understood by Hamilton himself. In any event, the latter was taken aback in 1792 when Madison began "cooperating with Mr. Jefferson . . . at the head of a faction decidedly hostile to me [Hamilton] . . . and actuated by views . . . subversive to the principles of good government and dangerous to the Union, peace, and happiness of the country."⁴ Hamilton insisted that he "knew of a certainty, it was a primary article in his [Madison's] creed, that the real danger in our system was the subversion of the national authority by the preponderancy of the State governments."⁵ This not unwarranted assumption helps to explain why the arch Federalist was surprised and chagrined after 1790 to find Madison high "among those who are disposed to narrow the federal authority."⁶ Besides Madison's invaluable assistance with the *Federalist*, Hamilton may have been thinking of an earlier collaboration in the Continental Congress where the two men provided the leadership for those legislators who were sensitive to basic defects in the Articles of Confederation and bent on achieving strong federal union. In 1783 Madison had even disregarded specific instructions from Virginia and presented a set of resolutions firmly endorsing the federal import duties, previously passed by Congress and opposed by the states.⁷

As late as October 12, 1789, Hamilton apparently felt that Madison was firmly on his side. In a letter to his former collaborator Hamilton asked the Virginian to forward in writing his suggestions for the best methods of

⁴ Alexander Hamilton to Edward Carrington, May 26, 1792, *The Works of Alexander Hamilton*, ed. Henry Cabot Lodge (New York, 1904), IX, 513.

⁵ *Ibid.* For evidence of Hamilton's confidence, see Madison's preconvention essay, "The Vices of the Political System of the United States," April, 1787, *The Writings of James Madison*, ed. Gaillard Hunt (New York, 1900-10), II, 361. In a letter to Jefferson prior to the Constitutional Convention, Madison contended that the weaknesses of the Articles of Confederation could best be rectified by providing "the federal head with a negative in all cases whatsoever on the local legislatures." *Letters and Other Writings of James Madison*, published by order of Congress (4 vols., Philadelphia, 1865), I, 285. In reply Jefferson said: "*Prima facie* I do not like it. It fails in an essential character that the hole and the patch should be commensurate." Jefferson to Madison, June 20, 1787, *The Writings of Thomas Jefferson*, ed. Paul Leicester Ford (New York, 1892-99), IV, 390-91. Later, in *Federalist* no. 45, Madison reaffirmed his fear of the centrifugal tendencies of state legislatures: "The more I resolve the subject, the more fully I am persuaded that the balance is much more likely to be disturbed by the preponderancy of the last [state governments] than of the first scale."

⁶ Alexander Hamilton to Edward Carrington, *Works of Alexander Hamilton*, IX, 513. Henry Jones Ford, in his sympathetic biography of Hamilton, asserts that it was generally assumed at the time of the Constitutional Convention that Hamilton and Madison were philosophical bedmates: "Nobody," Ford observes, "then thought there was any important difference between Madison and Hamilton in their political principles. They were then working in close accord." *Alexander Hamilton* (New York, 1920), p. 198. The same view was held by another student of Madison, J. Mark Jacobson: "While he later became a follower of Jefferson, at this time he was an ardent nationalist and conservative." *The Development of American Political Thought* (New York, 1932), p. 171.

⁷ See Adrienne Koch, *Jefferson and Madison: The Great Collaboration* (New York, 1950), pp. 8-9. At this time Madison felt extremely confident of Jefferson's support. He assumed that the latter would work diligently in the Virginia legislature to promote enlargement of national power.

increasing the federal revenue and of modifying the structure of the public debt in the interest of both public and creditors.⁸ Further evidence of Hamilton's confident expectation of Madison's support is the pleasure he expressed on learning that Madison had been elected to the House of Representatives. Hamilton's faith that Madison would join him in pressing forward his nationalist program was not shaken, as his letter to Colonel Carrington shows, until some time after the Virginian had become an articulate member of the opposition in Congress.⁹

Hamilton's mistaken assumptions, as well as the uncertainty of scholars regarding the diverging political creeds of Hamilton and Madison, lay partly in the fact that, in the struggle over ratification, strategic considerations drove the contestants on both sides to minimize and to exaggerate. To quiet the fears of opponents, advocates of ratification said things which, in later years, proved embarrassing to themselves and misleading to scholars. On the other hand, certain of the Constitution's enemies turned alarmist, portraying the proposed national charter in the most extreme terms. This strategy obscured positions on all sides and made the Constitution's meaning less than crystal clear.

The Constitution itself was neither altogether satisfactory, nor free from ambiguity. To friends of "firm union" and energetic government, like Hamilton, it was bitterly disappointing; to defenders of the "sovereign" states, it made for a "consolidated" system, an "aristocratic" government calculated to be as obnoxious as that which the colonists had thrown off in 1776.¹⁰ Jefferson's position is distinguishable from that of both Federalists and anti-Federalists. Particular provisions of the document impressed him less than the Constitution as a gratifying demonstration of the power of reason to bring varying interests and divergent views into constructive accord. Jefferson cited the new instrument as a glorious example of "changing a constitution, by assembling the wise men of the State, instead of assembling armies. . . ." ¹¹ "I am captivated," he wrote James Madison, December 20,

⁸ *Works of Alexander Hamilton*, IX, 462-63. It may be significant that this letter, one of several which Hamilton wrote to his former colleague during this period, was apparently never answered.

⁹ Ford, *Hamilton*, pp. 211-12. From an analysis of the earlier co-operation between the two men, Ford draws the wholly unwarranted conclusion that Madison's antagonism toward Hamilton was not rooted in basic principles but stemmed primarily from regional political rivalry.

¹⁰ See my article, "The Nature of Our Federal Union Reconsidered," *Political Science Quarterly*, LXV (December, 1950), 503, 510.

¹¹ Jefferson to David Humphreys, Mar. 18, 1789, *Memoir, Correspondence, and Miscellanies from the Papers of Thomas Jefferson*, ed. Thomas Jefferson Randolph (Boston and New York, 1830), II, 449. Jefferson apparently never felt, as did Hamilton and other nationalists, that after 1783, the really crucial need was "firm Union." Far from considering Union, as did Hamilton, of "utmost moment to the peace and liberty of the States," he regarded "the State governments" as "the true barriers of liberty in this country." In explaining Jefferson's failure to appreciate the

1787, "by the compromise of the opposite claims of the great and little States, of the last to equal, and the former to proportional influence."¹²

But was not the accommodation Jefferson saw, or thought he saw, reflected in the Constitution more apparent than real? Do not Hamilton and Madison display a sharp theoretical split while at the same time making concessions to views they could not honestly support, and in language so equivocal as to disguise the Constitution's true import? Obviously the Constitution did not draw the boundary lines between general government and the states, nor "define" the powers of Congress, nor indicate the source of such powers, with enough distinctness to escape bitter disagreement, protracted controversy, and finally civil war. But, did not the *Federalist*, instead of elucidating and clarifying the points of contention within the fundamental law, actually gloss these over and thereby add to the confusion? This paper may help to answer these questions.

Though first public reaction to the proposed Constitution was favorable in most states, strong and dangerous opposition soon asserted itself. In scores of pamphlets and speeches its critics—notably Elbridge Gerry in Massachusetts, Luther Martin in Maryland, George Mason and Richard Henry Lee in Virginia, Robert Yates and John Lansing in New York—began an unorganized but effective opposition.¹³ This lack of organization, however, did not prevent them from agreeing that the Constitution established a most objectionable "system of consolidated government." In the vital state of New York, Governor Clinton's stubborn fight frightened friends and supporters of ratification, and with good reason. For even if enough states ratified (which seemed not unlikely), it was recognized on all hands that any system omitting New York State would be analagous to *Hamlet* without Hamlet.

need for strong union growing out of the weaknesses of the Articles of Confederation, Hamilton observed that Jefferson "left the country before we had experienced the imbecilities of the former." Hamilton to Carrington, May 26, 1792, *Works of Alexander Hamilton*, IX, 513. And, in pointing out a fundamental difference between Madison and Jefferson on this point, Adrienne Koch, pp. 44-45, indicates that Madison had witnessed rash acts of state legislatures, driving him to support the move for a strengthened general government. At this same time, Jefferson was in France watching powerful "wolves" in Europe devour the "sheep"—the people. In justice to Jefferson it should be pointed out that he did give consideration to strong union; indeed, he was a staunch advocate of union, but the ingredients he envisaged as contributing to its achievement were far different from those of Hamilton. See in this connection, Julian P. Boyd, "Thomas Jefferson's 'Empire of Liberty,'" *Virginia Quarterly Review*, XXIV (Autumn, 1948), 538-54.

¹² *Writings of Jefferson*, ed. Ford, II, 274.

¹³ See, for example, Luther Martin, "The Genuine Information," in Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven, 1911), III, 172 ff.; Elbridge Gerry, "Observations on the New Constitution and on the Federal and State Conventions," in Paul L. Ford, ed., *Pamphlets on the Constitution of the United States* (Brooklyn, 1888), pp. 8-14; Richard Henry Lee, "Letters from the Federal Farmer to the Republican," *ibid.*, p. 282; Robert Yates and John Lansing, "To the Governor of New York Containing their Reasons for not Subscribing to the Federal Constitution," *Senate Documents*, 60 Congress, 2 Session, Dec. 7, 1908-Mar. 4, 1909, p. 191.

It was this crucial situation in New York that prompted Hamilton to plan the now famous *Federalist* papers as ammunition for use there and in other states. That the essays literally constituted a debaters' handbook for Federalist delegates in the ratifying conventions of several states is an indication of the persuasiveness in these papers, if not the clarity of the arguments they contain.

In this enterprise—propaganda we might call it today—Hamilton joined with him John Jay, seasoned diplomat and expert in foreign affairs, and James Madison, Father of the Constitution. Jay was a key participant because of his extensive experience in and knowledge of external relations. Madison was indispensable not only because he was “the best informed Man of any point in debate”¹⁴ but also because, as the convention's semiofficial note-taker, he had gained unrivaled command of its proceedings.

These papers were published anonymously under the pseudonym “Publius,” and for many years following 1787 neither Hamilton nor Madison, for political reasons, was disposed to take the public into his confidence. During the writing of the essays they took special pains to guard the secrecy of authorship. When the two men corresponded with each other on matters concerning the papers, they frequently spoke of “Publius” as a third person, at times going so far in this deception as to speculate about the possible authorship of the essays.¹⁵

An interesting aspect of this period of “silence” has to do with Madison's relationship to Jefferson. The two friends had carried on a regular correspondence while the papers were in preparation, yet Madison, apparently, never divulged his share in the *Federalist* until a two-volume edition of the work had been in circulation for over two months. Madison, it is true, referred to the progress being made in the struggle over ratification but never alluded to the essays of “Publius” that figured so significantly in that contest. When, finally, Madison did take his friend into his confidence, he did so almost as an afterthought in a letter primarily concerned with other matters.

Col. Carrington tells me [he] has sent you the first volume of the *Federalist*, and adds the 2d by this conveyance. I believe I never have yet mentioned to you that publication. It was undertaken last fall by Jay, Hamilton, and myself. The proposal came from the two former. The execution was thrown, by the sickness of

¹⁴ “Notes of Major William Pierce on the Federal Convention of 1787,” *American Historical Review*, III (January, 1898), 331.

¹⁵ In a letter to Madison, written as the task was drawing to a close, Hamilton remarked: “I send you the *Federalist* from the beginning to the conclusion of the commentary on the Executive Branch. If our suspicions of the author be right, he must be too much engaged to make a rapid progress of what remains.” Hamilton to Madison, Apr. 3, 1788, *Works of Alexander Hamilton*, IX, 427. See also *ibid.*, p. 431.

Jay, mostly on the two others. Though carried on in concert, the writers are not mutually answerable for all the sides of each other, there being seldom time for even a perusal of the pieces by any but the writer before they were wanted at the press, and sometimes hardly by the writer himself.¹⁶

Adrienne Koch suggests that Madison was probably uneasy about revealing to Jefferson the nature of this collaboration with Hamilton. The Republican struggle against the New Yorker had not yet flared openly, but "Madison knew the tenor of Hamilton's contempt for democracy and democratic republicanism."¹⁷ And Madison went out of his way, as his letter to Jefferson makes clear, to point out that the authors were not "mutually answerable" for the other's arguments. Nor was Madison's silence due wholly to the desire to keep his authorship absolutely unknown, since he had strongly intimated his part in the essays to General Washington shortly after the project was begun and nine months before the "confession" to Jefferson.¹⁸

If Jefferson was surprised or chagrined at Madison's co-operation with Hamilton, he did not clearly divulge his feelings in reply: "With respect to the *Federalist*, the three authors had been named to me. I read it with care, pleasure and improvement, and was satisfied that there was nothing in it by one of those hands, and not a great deal by a second. It does the highest honor to the third, as being, in my opinion, the best commentary on the principles of government which ever was written." In addition to perceiving this distinction of talent and genius, all in Madison's favor, Jefferson evidently saw clearly, as did John Mercer, the concessions which Madison made to opposite viewpoints: "In some parts it is discoverable that the author means only to say what may be best said in defense of opinions in which he did not concur."¹⁹

So successful were the major authors of the *Federalist* in keeping their secret that one careful student has concluded that throughout the period in which the papers were written there were not more than a dozen individuals who could identify the three authors.²⁰ But two days before his fatal duel with Aaron Burr, Hamilton went to the law office of a friend, Egbert Benson, and "ostentatiously" concealed in the lawyer's bookcase a slip listing what was presumably an accurate accounting of the authorship of various numbers. As was not unusual under the circumstances, Hamilton claimed

¹⁶ Madison to Jefferson, Aug. 10, 1788, *Writings of James Madison*, ed. Hunt, V, 246.

¹⁷ Koch, p. 52.

¹⁸ Madison to Washington, Nov. 18, 1787, *Writings of James Madison*, ed. Hunt, V, 55.

¹⁹ Jefferson to Madison, Nov. 18, 1788, *Writings of Thomas Jefferson*, ed. Ford, V, 433-34.

²⁰ Douglass Adair, "The Authorship of the Disputed *Federalist* Papers," *William and Mary Quarterly*, 3d Ser., I (April and July, 1944).

numbers he did not write. In 1818, Madison counterattacked, being prepared to state under oath that he had written twenty-nine of the essays instead of the fourteen accredited to him by Hamilton. Because of this conflict of claims, editors of the *Federalist* have been wont to elude the issue, using the “and/or” formula for the “disputed” numbers. This is no longer necessary. Professor Douglass Adair makes it clear that of the eighty-five essays, Jay wrote only five (numbers 2–5 inclusive and 64); Hamilton did numbers 1, 6–9, 11–13, 15–17, 21–36, 59–61, and 65–85 inclusive. Numbers 18, 19, and 20 appear to have been the result of the combined effort of Hamilton and Madison.²¹ The remaining numbers were written by Madison, making the authenticated tally Hamilton 51, Madison 26.

In a joint literary endeavor of such dimensions, done under great pressure, a distribution of labor was as necessary as it was natural. It was reasonable, too, that the division made should represent the special interests of the authors. Hamilton had diagnosed “the fundamental defect” in the Articles of Confederation as early as 1780: “want of power in Congress.” “The first step must be,” he said, “to give Congress powers competent to the public exigencies.”²² As to the state constitutions he was less categorical: “Perhaps the evil is not very great . . . for, notwithstanding their imperfections . . . they seem to have, in themselves . . . the seeds of improvement.”²³ But later, in Philadelphia, behind closed doors, he urged the necessity of “a general government completely sovereign,” the annihilation of “State distinctions and State operations, . . . State governments reduced to corporations with very limited powers.”²⁴

Madison, on the other hand, though not ignoring the need for more power in Congress, had pointed especially to troubles growing out of flagrant abuses in state legislatures, especially the subversive effect of laws affecting vested rights of property and contract. He had dealt with these inadequacies at length in his preconvention essay, “The Vices of the Political System of the United States.”²⁵ These evils were still in the forefront of his mind at Philadelphia when, on June 6, he queried Roger Sherman’s statement of “the objects of Union” as primarily “defense against foreign danger,” “treaties with foreign nations,” “regulating foreign commerce and drawing

²¹ However, Carl Van Doren, *The Federalist*, p. vi, asserts: “As to 18, 19, 20 . . . both Madison’s manuscripts and his statement make it clear that, while Hamilton did turn over some notes on historic confederacies to Madison, it was Madison who wrote the three essays and sent them to the printer.” On the basis of this editor’s findings, Madison would be accredited with twenty-nine of the essays.

²² *Works of Alexander Hamilton*, I, 213, 223.

²³ *Ibid.*, I, 247.

²⁴ Farrand, ed., *Records of the Federal Convention of 1787*, I, 287, 323.

²⁵ See n. 5 above.

revenue from it," etc. All these objects were important, Madison agreed, but he "combined with them the necessity of providing more effectually for the securing of private rights, and the steady dispensation of justice." "Interferences with these," he maintained, "were evils which had, more perhaps than anything else, produced this convention."²⁶ Madison reinforced his convictions on June 26;²⁷ he gave the same ideas full-dress treatment in the *Federalist*, numbers 10 and 51. For him an important object of the Constitution was to limit state legislative power. Article I, Section 10, was therefore among its most important provisions. For Hamilton, on the other hand, the new Constitution was chiefly significant as a grant of power. The heart of it was the congressional authority enumerated in Article I, Section 8, paragraphs 1 to 18 inclusive, and in the supremacy clause, Article VI, paragraph 2.

That Hamilton and Madison co-operated effectively in this joint enterprise is a matter of history. One reason is that there were between them certain important areas of agreement. Both men entertained an extremely pessimistic view of human nature.²⁸ Government is necessary, they agreed, because men are not angels. "What is government itself," Madison queried in essay 51, "but the greatest of all reflections on human nature?" "Why has government been instituted at all?" Hamilton asked in essay 15. "Because the passions of men will not conform to the dictates of reason and justice, without constraint." This distrustful refrain (with exceptions to be hereafter noted) runs indistinguishable throughout the various numbers of the *Federalist*.

Human beings are seen as "timid and cautious" (no. 49). The essays stress the "caprice and wickedness of man" (no. 57), the "depravity of human nature," "the folly and wickedness of Mankind" (no. 78). In Madison's essays, no less than in Hamilton's, one notes the conviction that "men are ambitious, vindictive, and rapacious," that "momentary passions and immediate interests" (no. 6), "the infirmities and depravities of the human character" (no. 37), rather than "considerations of policy, utility, or justice" (no. 6), are dominant drives in politics. Here, at least, one supposes, is an element or factor that can be regarded as constant, giving politics whatever scientific criteria it may possess. The authors of the *Federalist*, like Montesquieu, the oracle to whom both Hamilton and Madison paid great

²⁶ Farrand, I, 131, 134.

²⁷ *Ibid.*, I, 421-23, 430-32. Madison reiterated this basic argument in the Virginia Constitutional Convention of 1829-30. *Proc. and Debates . . . Virginia State Convention of 1829-30*, pp. 538, 574.

²⁸ For a detailed discussion of this thesis, see B. F. Wright, "The Federalist on the Nature of Man" (see n. 3 above).

deference, were convinced that “virtue itself has need of limits.”²⁹

Nor did the *Federalist* collaborators look forward, eventually, as did Karl Marx in 1848, to some earthly paradise, emerging either from changed economic and social environment or spiritual regeneration. “Have we not already seen enough,” Hamilton observed with disdain, “of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, weaknesses, and evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?” (no. 6). Human nature being what it is, man must employ his feeble contrivance of reason in building institutional fences around unconquerable human avarice and greed.

Hamilton and Madison also agreed that the Articles of Confederation were inadequate to cope with “the variety of controversies” which grow out of the “caprice and wickedness of man” (no. 57). Hamilton called the Articles of Confederation “an odious engine of government,” so “radically vicious and unsound, as to admit not of amendment but by entire change in its leading feature” (no. 16). Madison’s language was somewhat less drastic, and his stand less unequivocal, as we shall see, but he concurred in holding that the Articles were based on “principles which are fallacious; that we must consequently change this first foundation, and with it the superstructure resting on it” (no. 37).

Finally, Hamilton and Madison agreed that in a free society, “inequality of property” is inevitable. For them it was axiomatic that “inequality will exist as long as liberty existed,” and the primary task of government is to protect “liberty,” i.e., “the different and unequal faculties of acquiring property,” from which the different degrees and kinds of property immediately result.”³⁰ Growing out of these inevitable inequalities, both men envisaged society as torn by strife and struggle, the major manifestation of discord being identified as “factions.”

These points of agreement should not, however, blind us to divergences so great as to prompt Professor Adair to speak of America’s illustrious

²⁹ Montesquieu, *The Spirit of the Laws*, trans. from the French by T. Nugent (4th ed., 1766), I, Book 11, p. 220.

³⁰ Madison, in *Federalist* no. 10. “It was certainly true,” Hamilton remarked on the floor of the Philadelphia Convention, June 26, 1787, “that nothing like an equality of property existed: that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself. This inequality of property constituted the great and fundamental distinction in Society.” Farrand, I, 424.

political classic as afflicted with a "split personality." At what points can this charge be documented?

Generally speaking, both men addressed themselves to the problem of finding a "republican" remedy for the evil to which popular government is peculiarly addicted. Madison described the disease as "faction." An ineradicable malady, the "factious spirit" will exist "as long as the reason of man continues fallible, and he is at liberty to exercise it." This phenomenon is present whenever "a number of citizens, whether amounting to a majority or a minority of the whole [is] united and actuated by some common impulse of passion, or of interest adverse to the rights of other citizens or to the permanent and aggregate interests of the community" (no. 10).

Madison is especially concerned with "factions" having "the superior force of an interested and overbearing majority," and therefore capable of sacrificing to "its ruling passion or interest both the public good and the rights of other citizens." A minority faction may, he admits, "clog the administration" or "convulse the society," but he concludes, too easily perhaps, that the Republican principle will enable "the majority to defeat its sinister views by regular vote" (no. 10). In the pre-convention essay, mentioned above, Madison had gone so far as to say that a luxuriance of "vicious legislation" had brought "into question the fundamental principle of republican Government, that the majority who rule in such governments are the safest Guardians both of the public Good and private rights."³¹

The "latent causes of faction are thus sown in the nature of man," Madison observed in essay 10. They are "everywhere brought into different degrees of activity according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity." Madison saw "the most frivolous and fanciful distinctions" exciting the "most violent conflicts." "Property" was "the most common and durable source of factions," not, as Harold Laski "quotes" him as saying, "the only" foundation.³²

For this many-faceted evil there was no easy remedy. Pure democracy was no cure because it is "incompatible with personal security or the rights of property." Two other possible remedies suggested themselves, but these

³¹ *Writings of James Madison*, ed. Hunt, II, 366.

³² Harold J. Laski, *A Grammar of Politics* (London, 1925), p. 162. See Wright, p. 22.

were also rejected. One would destroy liberty and create in the community a will “independent of the majority,” as in monarchy; the other would give all citizens the same interests, the same passions, the same opinion, as in, say, communism (no. 51). Neither of these authoritarian correctives was acceptable: the first was unthinkable, the second impracticable.

“A Republic,” “a well-constructed union,” opened for Madison “a different prospect,” for it comprehends society in many descriptions of parties, sects, interests, thus making an unjust combination of the whole very improbable, if not impossible. Madison’s thesis is that the evil of factions and the social chaos which they breed could be ameliorated, consistently with republican principles, by establishing a limited federal government, by a system of indirect election “to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.” Far from destroying the states, he would utilize them in the “refining” process, and as vital units of government. Furthermore, the vast size of the country, with its multiplicity of economic, geographic, social, religious, and sectional interests, was a blessing. “Extend the sphere,” Madison reasoned, “and you take in a greater variety of parties and interests; you make less probable that a majority of the whole will have a common motive to invade the rights of other citizens.” “The influence of factious leaders may kindle a flame within their particular states,” but will be unable to encompass the entire nation (no. 10). Madison would carry over this self-correcting remedy into the organization of government itself, “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 place” (no. 51).

Hamilton was as sensitive to the evil of “factions” as his collaborator, but whereas Madison saw them as multifarious, and “the various and unequal distribution of property” as only the “most common and durable source” thereof, Hamilton saw the social cleavage more exclusively grounded in economics. For him every community was divided “into a few and the many,” rich and poor, debtors and creditors. Hamilton’s cure in Philadelphia had been monarchical government similar to that of England. He queried whether a “good” executive “could be established on Republican principles.” “The aristocracy,” he had told the convention, “ought to be entirely separated; their power should be permanent. . . . They should be so circumstanced that they can have no interest in change. . . .” ’Tis essential there

should be a permanent will in the community.”³³ “A firm union,” a national government with “coercive” powers acting directly on individuals, were necessary “to repress domestic factions and insurrections,” he concluded in essay 9. John Quincy Adams did not take the trouble to spell it out, but he had hit upon a most significant aspect of the “diversity” in this great collaboration when he described Hamilton’s number 9 and Madison’s number 10 as “rival dissertations upon Faction and its remedy.”³⁴

Adams might have made the contrast even sharper by adding Madison’s number 51 and Hamilton’s numbers 70, 71, 76, and 78 in which the New Yorker elaborated his remedy for factions, stressing “the advantage of permanency in a wise system of administration,” of duration in office of “considerable extent,” of “independence” in government. “The republican principle,” he wrote in *Federalist* 71, “demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests.” “There is an idea, which is not without its advocates,” he observed, “that a vigorous Executive is inconsistent with the genius of republican government.” Hamilton rejected this categorically, saying that “energy in the Executive is a leading character in the definition of a good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.” The arch-Federalist went on to illustrate the point:

Every man the least conversant in Roman story knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome [no. 70].³⁵

Hamilton placed perhaps even greater reliance on the federal judiciary—especially because of the provision for indefinite tenure of judges—as a safe-

³³ Farrand, I, 288, 299, 304–10, *passim*. See also *Federalist* nos. 35 and 36.

³⁴ Adams, *Eulogy on . . . James Madison*, p. 32.

³⁵ Hamilton cited this example with evident approval. Years later Jefferson recalled his own unfavorable reaction to Hamilton’s remark that “the greatest man . . . that ever lived, was Julius Caesar.” *Writings of Jefferson*, ed. Ford, XI, 168.

guard against factions. "In a monarchy," he explained, holding office during good behavior "is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body." Nor did judicial review involve any violation of republican principles. "It is far more rational to suppose, that the Courts were designed to be an intermediate body between the people and the legislature, in order . . . to keep the latter within the limits assigned to their authority. . . . It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former" (no. 78). In addition to serving as guardian of the people against Congress and against themselves, Hamilton emphasized as of equal, if not greater, importance, judicial review of state legislation and of state court decisions (nos. 16 and 22). The judiciary thus became the symbol of "firm union," of national prestige and power. "The majesty of the national authority," he wrote in *Federalist* 16, "must be manifested through the medium of the courts of justice."

The authoritarian note is evident throughout Hamilton's discussion of executive and judicial power. In essay 71 one encounters Rousseau's sentiments, that though the "people commonly *intend* the PUBLIC GOOD," they do not "always *reason right* about the *means* of promoting it."³⁶ The exalted role carved out for the executive and judiciary, especially the latter, is faintly suggestive of Rousseau's "Legislator"—"a superior intelligence beholding all the passions of men without experiencing any of them."³⁷ Hamilton was naturally less outspoken in the *Federalist*, than he had been at the Philadelphia convention, but he made no less clear his conviction that an independent will in government, immune from fluctuating gusts of popular passion, is an essential safeguard against "domestic insurrection and factions." The effect, he tells us, is not to enthrone authoritarianism nor flout popular government, but rather to safeguard "the people" when their "interests are at variance with their inclinations," thus protecting them from the "arts of men, who flatter their prejudices to betray their interests," giving them "time and opportunity for more cool and sedate reflection" (no. 71).

But does not such executive and judicial pre-eminence call for considerable qualification of those unseemly qualities Hamilton elsewhere

³⁶ Rousseau put it this way: "Of itself, the people will always the good. The general will is always right, but the judgment which guides is not always enlightened." *The Social Contract*, Everyman's Library (New York, 1935), p. 34.

³⁷ *Ibid.*, p. 35.

attributed to the general run of mankind? It would seem so if he were to avoid the logical inconsistency we are accustomed to associate with Hobbes. Hamilton, considering himself in this connection "as a man disposed to view human nature as it is, without either flattering its virtues or exaggerating its vices," maintained: "The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. . . . This supposition of universal venality in human nature is little less an error in political reasoning, than the supposition of universal rectitude" (no. 76).³⁸

One discovers in Madison's essays no such confidence in the purifying effect of power.³⁹ "The truth is," he said on the floor of the Philadelphia convention, "all men having power ought to be distrusted to a certain degree."⁴⁰ In *Federalist* 51 he held that government must be obliged "to control itself" through a policy of supplying "by opposite and rival interests the defects of better motives." In number 48 he had observed: "It will not be denied that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it." Even when Madison spoke of energy and stability as being essential to security and good government he was wont to temper his stand with caution. In the achievement of his principal objective—"energy in government" combined "with the inviolable attention due to liberty and the republican form"—there is no suggestion of Hamilton's faith that "responsibility" and office-holding "during good behavior" will develop "impartiality" and the "requisite integrity" in government (nos. 76 and 78). "On comparing . . . these valuable ingredients [energy and stability] with the vital principles of liberty," Madison commented in essay 37, "we must perceive at once the difficulty of mingling them together in their due proportions." No such "difficulty" troubled Hamilton.

Madison's approach was consistently pluralistic. For him the states need

³⁸ Cf. Farrand, I, 82.

³⁹ In *Federalist* no. 55, Madison seems to qualify his earlier misgivings on human nature, but the context makes clear the contrast with Hamilton. "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. . . . Were the pictures which have been drawn by the politically jealous of some among us faithful likenesses of the human character, the inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another." In the Virginia Constitutional Convention of 1829-1830, Madison again cautioned that government means power and that the necessity of placing power in human hands means that it is liable to abuse. The danger of abuse is greatest when men act in a body, and since conscience alone is not a sufficient check, safeguards for minority rights must be found in the structure of government. Thus Madison conceded that the slavery interest would have to be incorporated into the government in order to guard against oppressive taxation which might result from the government falling into the hands of nonslave-owners, *Proc. and Debates . . . Virginia State Convention of 1829-30*, p. 538.

⁴⁰ Farrand, I, 584.

not be obliterated; they were adapted to a broad expanse of territory and helpful in serving the ends of a “well-constructed union,” of liberty and justice. “If they were abolished, the general government,” he wrote in number 14, “would be compelled by the principle of self-preservation, to reinstate them in their proper jurisdiction.” Hamilton, on the other hand, saw the great size of the country, torn by warring factions, as necessitating a consolidated system with “unconfined,” “coercive power,” poised at one center. If the states continued, as under the Articles of Confederation, as members of a “partial” union, “frequent and violent contests with each other” would be inevitable (no. 6). In contrast, Madison envisaged a counterpoised, confederate system, a “compound republic” with the power of the people divided between the states and the nation and national power “sub-divided among distinct and separate departments” (no. 51). Just as in a society, composed of sects, interests, classes, and parties, ambition checks ambition, vice checks vice, and interest is set against interest, so the governmental structure itself provided an institutional expression of social diversity, of action and counteraction.

Hamilton’s and Madison’s divergence is further reflected in their views on the Constitution and the government it established. For Hamilton the crucial infirmity of the existing system was congenital—“it never had ratification by the people.” To avoid the “gross heresy” that a “*party* to a *compact* has a right to revoke that *compact*,” “the fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE” (no. 22). The Constitution corrected “the great and radical vice . . . legislation for States . . . as contradistinguished from the individuals of which they consist.” “If we are unwilling,” Hamilton commented, going to the heart of his nationalist creed, “to be placed in this perilous situation; if we still adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate in our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the union to the persons of the citizens,—the only proper objects of government” (no. 15).

Hamilton, like the opponents of ratification, saw the proposed Constitution as designed to establish a “consolidated system,” “Union under one government,” “perfect subordination [of the states] to the general authority of the union” (no. 9).⁴¹ “If the federal system be not speedily renovated

⁴¹ However, Hamilton cautiously added: “It would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, far from implying an abolition of the State governments . . . leaves in their possession certain exclusive and very important portions of sovereign power.”

in a more substantial form," the "plain alternative" was "dissolution of the union" (no. 16). A critic of the proposed Constitution, Richard Henry Lee, had also identified "consolidation" as its objective, but had queried "whether such a change could ever be effected, in any manner; whether it can be effected without convulsions and civil wars."⁴² Madison was not so unequivocal as either his collaborator or those fighting ratification. "This assent and ratification is to be given by the people," he wrote in essay 39, "not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State,—the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a *national*, but a *federal* act."⁴³

The Madisonian distinction between *confederacy* and *consolidation*, so much labored in essay 39, Hamilton had brushed aside lightly in essay 9 as "a distinction more subtle than accurate," "in the main, arbitrary, . . . supported neither by principle nor precedent." In this he was in full accord with the Constitution's most rabid opponents, but not with his collaborator, Madison. In a word, Hamilton interpreted the Constitution as designed to correct "fundamental errors in the structure of the building." It was intended to slay "the political monster of an *imperium in imperio*" (no. 15). It may be that Hamilton's caveat thrown down to enemies of the Constitution—"let us not attempt to reconcile contradictions, but firmly embrace a rational alternative" (no. 23)—might have been more appropriately addressed to his colleague, Madison.

Nor were Hamilton and Madison fully agreed as to the nature and scope

⁴² Lee, "Letters . . ." (see n. 13 above), p. 283.

⁴³ It should be noted, however, that in the opening sentence of the paragraph in which this statement occurs, Madison says that "the Constitution is to be founded on the assent and ratification of the people of America. . . ." It is important also to recall Dr. Johnson's observation that in the Philadelphia Convention "states" were considered in two different senses: "as districts of people comprising one political society" and "as so many political societies." (Farrand, I, 461.) Madison endorsed Dr. Johnson's distinction, but "thought too much stress was laid on the rank of states as political societies." (*Ibid.*, 463–64.) The context in which this matter is discussed, both in essay 39 and in Madison's notes, makes it altogether clear that, in speaking of "assent and ratification" by the "several States," he is thinking of states as "districts of people comprising one political society"—that is, as "agents." On the floor of the Convention he had "considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty* and a *Constitution*." (Farrand, II, 93.) He "thought it indispensable that the new Constitution should be ratified . . . by the supreme authority of the people themselves." (Farrand, I, 123.) Many years later, Chief Justice Marshall had likewise considered the states as "districts of people comprising one political society." "It is true," Marshall agreed, "that they [the people who ratified the Constitution] assembled in their several states—and where else could they have assembled? No political dreamer was ever wild enough to think of breaking down state lines and of compounding the American people in one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments." (*McCulloch v. Maryland*, 4 Wheat. 316, 403; but compare *Writings of James Madison*, ed. Hunt, VI, 348–49.)

of the power granted to the national government. For Madison the task of the convention was not to abolish the Articles of Confederation, but to “reduce” them: “The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new than as an expansion of the principles which are found in the Articles of Confederation” (no. 40). “If the new Constitution be examined with accuracy and candor,” he wrote in essay 45, “it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS.” “The powers delegated by the proposed Constitution to the federal government,” he explained in number 45, “are few and defined.”

For Hamilton, on the other hand, the objects of the national government were general, and the powers granted for achieving them were undefined—indeed, undefinable. It would be, he declared, “both unwise and dangerous to deny the federal government an *unconfined authority* as to all those objects which are entrusted to its management. . . . Not to confer . . . a degree of power commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to the hands which are disabled from managing them with vigor and success” (no. 23). Thus the powers granted the national government differed not merely in degree, as Madison insisted, but in kind. In Hamilton’s mind Article I, Section 8, paragraphs 1 to 18 inclusive, combined with Article VI, paragraph 2, meant far more than “invigoration of original powers.” Here was a grant of power broad enough to meet any and all unforeseeable exigencies. Nor was the force of the new government to be applied so exclusively as Madison suggested in *Federalist* 45 to the field of foreign relations, or “in times of war and danger.” Hamilton conceived of the national government as dominant in domestic affairs, especially as a positive coercive force to suppress “factions and insurrections.”

How could men whose opinions took paths so widely separated co-operate effectually—indeed, work together at all? There are numerous possible answers. The particular division of labor served to preclude any head-on clash, or at least obscure a basic antagonism. For those unable to detect the seeds of future strife, the split rendered the Constitution more, rather than less, acceptable.

Nor can one always be certain in identifying the stand of either Hamilton or Madison. Their interpretations become less categorical when either author enters the province of the other. Thus Madison’s nationalism in *Federalist* 14 is qualified in essays 39 and 40. The diminutive scope of the

power he accorded Congress in essays 40 and 45 was lost sight of in essay 44: "No axiom is more clearly established in law, or in reason, than that whatever end is required, the means are authorized; whenever a general power to do a thing is given, every particular power necessary for doing it is included." In later years these words were easily fashioned into an effective instrument of national statesmanship.⁴⁴

Similarly, Hamilton's bold nationalist stand in numbers 9, 15, and 22, his inference that the proposed Constitution, as a logical necessity, eliminated every essential vestige of the old relationship of states as members of a "League," is toned down, even neutralized, elsewhere. "An entire consolidation," he remarked in *Federalist* 32, "of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not by that act, *exclusively* delegated to the United States." In case of conflict even in the crucial matter of taxation Hamilton suggested the desirability of "reciprocal forbearance" (no. 32). Anticipating the provisions of Amendment X, he declared "that the States will retain all *pre-existing* authorities which may not be exclusively delegated to the federal head" (no. 82). And in essay 26, he cast the states in the role of "jealous guardians of the rights of the citizens against the encroachments from the federal government."

Madison's balanced purpose—to combine "energy in government, with the inviolable attention due to liberty and the republican form"—made a certain degree of equivocation quite natural. And when, during Washington's administration, Madison began his retreat from the nationalist stronghold, Hamilton discerned the underlying ambiguity in the Virginian's statesmanship. Madison's "attachment to the government of the United States," Hamilton told Colonel Carrington in 1792, was "more an affair of the head than of the heart; more the result of a conviction of the necessity of Union than of cordiality to the thing itself."⁴⁵ Madison's essays in the *Federalist* bear this out.

On the surface Hamilton's motives were elusive. In the opening number of the *Federalist* he confessed mixed feelings toward the project he had

⁴⁴ Daniel Webster, in his brief submitted on behalf of the plaintiffs in the *Dartmouth College* case, cites number 44 in support of his contention that the Constitution was intended to impose severe curbs on the powers of the several states. *The Trustees of Dartmouth College v. Woodward*, 4 Wheaton, 589, 608. For other examples, see Adair, "Authorship of the Disputed Federalist Papers" (see n. 20 above), p. 103.

⁴⁵ *Works of Alexander Hamilton*, IX, 531.

launched: "The consciousness of good intentions disdains ambiguity," he said. "My arguments will be open to all, and may be judged of by all. . . . My motives must remain in the depository of my own breast." No such obscurity cloaked his attitude on September 17 when he signed the Constitution. Then it was "impossible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other."⁴⁶ He knew that even this chance would be lost unless a strong national authority could be immediately established. "A good administration will conciliate the confidence and affection of the people, and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise for so great a country. It may triumph altogether over the State governments, and reduce them to an entire subordination, dividing the larger States into smaller districts."⁴⁷

This Machiavellian twist in Hamilton's reasoning, foreshadowed in his letters to Duane and in the *Continentalist*, suggests what he had in mind—squeeze out by interpretation whatever power was necessary to achieve an adequately energetic government. "A statesman," he had remarked earlier, "ought to walk at the head of affairs and produce the event." This was a far easier job than even he dared hope, for the ambiguity lay far less in the language of the Constitution than in the "diversity of genius" John Quincy Adams noted in the *Federalist*.

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⁴⁶ Farrand, II, 646.

⁴⁷ *Works of Alexander Hamilton*, I, 423. Compare these sentiments with those expressed in the *Federalist*, nos. 26, 28, 32, 81, and 82.