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ABSTRACT

Studying ideas from the Federalist papers provides high school students with an opportunity to examine the first principles of U.S. civic culture. By increasing their knowledge and appreciation of the basic ideas in the Federalist papers, students develop civic literacy that is likely to enhance their participation in a free society. This volume contains teaching plans for ten lessons: (1) "Federalists versus Antifederalists"; (2) "What Is The Federalist?"; (3) "Limited Government and the Rule of Law in The Federalist, Numbers 23, 51, 53, 70"; (4) "Federalism and Republicanism in The Federalist, Numbers 9 and 39"; (5) "Separation of Powers with Checks and Balances in The Federalist, Numbers 47, 48, 51"; (6) "Judicial Review in The Federalist, Numbers 78, 80, 81"; (7) "National Security with Liberty in The Federalist, Numbers 4, 23, 41"; (8) "Popular Sovereignty and Free Government in The Federalist, Numbers 10, 39, 51"; (9) "Hamilton, Madison, and the Bill of Rights"; and (10) "Chronology of Main Events Associated with the Origin and Writing of The Federalist." The content and purposes of the lessons, their characteristics, and how to select and use them are thoroughly explained in the notes to teachers. Selected papers from The Federalist are included in the appendix. (KWL)

Lessons on the Federalist Papers:

Supplements to High School Courses in
American History, Government, and Civics

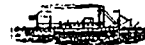
by
John J. Patrick
and
Clair W. Keller



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SUPPLEMENTS TO
HIGH SCHOOL COURSES
IN AMERICAN HISTORY,
GOVERNMENT, AND CIVICS**

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ABOUT THE AUTHORS

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INTRODUCTION

High school teachers of American history, government, and civics—like teachers in other disciplines—are asked to assume more and more educational responsibilities, which result from state mandates and community directives. In addition, teachers are advised continually by leaders of educational associations and curriculum experts about what should be added to the curriculum. Some of this advice comes with packaged learning materials for quick and easy infusion into the curriculum. However, new learning materials should not be thoughtlessly added to the curriculum, because other topics will have to be deleted to make room for them. Teachers who contemplate infusion of new ideas and lessons into their courses should deliberate about “content trade-offs” and decide whether or not infusion of new material is more valuable educationally than the content that it would replace. Furthermore, they should consider carefully the fit of new content and materials with the existing curriculum and their educational objectives. Why, for example, should *Lessons on the Federalist Papers* be infused into high school courses in American history, government, and civics? How can these learning materials be justified in terms of their fit with the existing curriculum, standard educational goals, and worthy new ideas about teaching and course content?

Teaching The Federalist Papers in High School

From 1776 to 1787, Americans were engaged extraordinarily in constitution-making. Never in human history had so many people in one country debated, written, and approved so many frames of government as did citizens of the thirteen United States of America, who created constitutions for their state governments and their nation. Never before were so many lofty theories of free government put into practice. It seemed as if no issue concerning the powers, procedures, and problems of republican government was overlooked. *The Federalist*, a collection of eighty-five essays on principles of republican government in the American Constitution (written by Alexander Hamilton, James Madison, and John Jay), can be viewed as the culmination of this surge of political thinking. To know *The Federalist* papers is, therefore, to know main ideas of Americans who created our nation through deliberation and made, according to John Adams, “thirteen clocks tick as one.”

To include ideas from *The Federalist* papers in the high school curriculum is to provide students with a grand opportunity to examine first principles of the American civic culture. More than 200 years ago, Thomas Paine commented on the value of reference to first principles. He said: “It is by tracing things to their origin, that we learn to understand them. . . . It is by keeping that line and the origin always in view that we never forget them.”¹ By examining first principles of constitutional government in *The Federalist*, young Americans can deepen their understanding and appreciation of popular sovereignty, liberty under law, federalism, republicanism, minority rights, national security, limited government, the rule of law, separation of powers with checks and balances—ideas embedded in the curriculum and educational goals of secondary school courses in American history, government, and civics.

From 1788 until today, leading Americans have recommended strongly that principles of *The Federalist* should be essential elements of civic education, because they represent common values of the American people—foundations of national unity in a pluralistic society. Furthermore, these principles are also practical instruments of popular and free government—means of conducting public affairs and maintaining security with liberty. Shortly after its completion, Thomas Jefferson proclaimed *The Federalist* to be “the best commentary on the principles of government which was ever written.”² He advised that teaching these principles “should be the creed of our political faith, the text of civic instruction. . . .”³ William Bennett, U.S. Secretary of Education, echoes the views of Jefferson by calling upon educators to emphasize principles and values of *The Federalist* in the curriculum: “A good exercise,” says Bennett, “would be to identify them [principles and values of *The Federalist*] and determine their current vitality.”⁴

Indeed, the principles and values of *The Federalist* are as vital and relevant today as they were during the debate over ratification of the Constitution, because the issues and problems discussed by Hamilton, Madison, and Jay are perennial concerns and challenges of people who value free government; that is, popular government with constitutional limits to protect the life, liberty, and property of individuals.⁵ However, *The Federalist* is more than a theoretical defense of a particular form of government. The authors connect ideas to practices in government and examine perennial issues associated with paradoxes of the American Constitution—how to have an energetic government that is also limited strictly by law; how to have government of the many that also prohibits majorities from oppressing individuals; how to have a national government with protection of states’ rights; how to have both separation and sharing of powers among three branches of government; how to maintain national security and order while also

protecting rights and liberties of individuals, including dissenters.

Teachers and students who undertake Secretary Bennett's exercise of determining the "current vitality" of principles and values of *The Federalist* will find that these ideas are applicable, in general if not in every detail, to government and politics in our contemporary society. Therefore, by increasing their knowledge and appreciation of basic ideas in *The Federalist*, students develop civic literacy that is likely to enhance their performance as citizens of a free society, an overriding goal of high school education in history, government, and civics.

The enduring relevance of *The Federalist* is revealed by its continuing circulation in many languages and in more than one hundred editions. Leaders of nations around the world, in the nineteenth and twentieth centuries, have "sought insights from the essays" in their attempts "to establish republican forms of government."⁶ However, *The Federalist* seems to be valued much less by high school curriculum developers and textbook authors. This classic work is mentioned only briefly, if at all, in widely used high school textbooks on American history, government, and civics. Current lack of coverage in textbooks is consistent with past practices. A study of the treatment of *The Federalist* in secondary school textbooks, conducted in 1959, reported that only three of seventeen civics textbooks mentioned *The Federalist*. In addition, "of seventeen history and government texts, twelve made only minimal reference to the essays."⁷

Teaching about *The Federalist* papers is justified by their importance in the American civic heritage, their enduring relevance to contemporary citizenship and government, their fit with standard educational goals, and their neglect in secondary school courses and textbooks. It seems that there is need for learning materials for high school students on principles and values in *The Federalist*. The bicentennial of the Constitution in 1987 is a suitable occasion to address the obvious need to teach *The Federalist* in high school courses in American history, government, and civics.

Content and Purpose of These Lessons on The Federalist

The teaching plans and learning materials in this volume, which treat various aspects of *The Federalist*, are designed to supplement high school courses in American history, government, and civics. There are ten original lessons (teaching plans and learning materials for students) that fit standard courses and educational goals.

These lessons enrich and extend standard course content, but do not duplicate it. *Permission is granted*

to teachers to make copies of these lessons for use with their students.

The lessons treat core concepts and values on government in *The Federalist*: limited government, the rule of law, energetic government, republicanism, federalism, separation of powers, checks and balances, judicial review, rights of individuals, liberty, national security, popular sovereignty, and free government. In these lessons, core ideas are defined and discussed briefly and simply to establish a context for the student's examination of excerpts from essays by Hamilton, Madison, or Jay, which pertain to the concepts. It is important to emphasize that these lessons are not intended to be a comprehensive treatment of ideas in *The Federalist*. Furthermore, the lessons are designed to be used singly, without reference to other lessons in this volume. The lessons should be viewed as a pool of resources that may be used variously by different teachers to improve instruction about American constitutional government in high school courses.

Main goals of the lessons in this book are to help students to:

- (1) Know the origins and purposes of *The Federalist*.
- (2) Comprehend principles and values of constitutional government discussed in *The Federalist*.
- (3) Know perennial issues of American constitutional government, which are discussed in *The Federalist*.
- (4) Identify and comprehend main ideas in primary sources, such as *The Federalist*.
- (5) Analyze constitutional issues and alternative positions on these issues.
- (6) Formulate and defend a position about constitutional issues raised in *The Federalist*.
- (7) Develop reasons for commitment to values of constitutional government, which are fundamental parts of the American civic culture.

These seven goals conform to curriculum guides and course content of secondary school courses in American history, government, and civics. They also are consistent with the long-standing overall purpose of the social studies in American schools—education for citizenship in a free society.

Distinctive Characteristics of These Lessons

The following statements describe distinctive characteristics of lessons in this volume. These statements are criteria that guided development of these lessons on *The Federalist* papers. These statements can be used to assist teachers in judging and using these lessons.

1. These lessons fit standard secondary school courses in American history, government, and civics. Each lesson is compatible with the standard high

school curriculum in the social studies. Furthermore, each lesson can be connected to specific parts of typical textbooks in American history, government, and civics. Therefore, use of these lessons can be justified in terms of standard goals and content of high school courses.

2. These lessons extend and enrich standard textbook treatments of topics on American constitutional government, but do not duplicate them. Each of these lessons enables teachers to provide detailed treatments of topics and ideas that are merely mentioned or discussed briefly in textbooks. In-depth study, involving primary sources, provides high school students with opportunities, rarely experienced, for reflection and deliberation about core concepts, values, and issues.

3. Each lesson has a clear statement of purposes and well-organized content that pertains to the purposes. Effective learning materials indicate clearly purposes or objectives of teaching and learning. Learning is enhanced when objectives of a lesson are presented clearly and perceived readily by students. Learning is also aided when content is structured logically in terms of the objectives.

4. Each lesson has learning activities that require students to demonstrate achievement of learning objectives or purposes. Students are required to use ideas and facts emphasized in the lesson to answer questions or complete exercises that fit the objectives of the lesson.

5. These lessons encourage application of knowledge to performance of various kinds of cognitive operations, from recall and comprehension to interpretation, analysis, synthesis, and evaluation. Students are challenged to identify and comprehend main ideas, to clarify and analyze alternative positions on issues, and to take a stand in favor of a position.

6. Each lesson pertains to one or more of the major goals of this volume, stated above. As indicated by the major goals, these lessons emphasize core concepts and values of American constitutional government, which are discussed in *The Federalist*. In line with major goals of this volume, these lessons also highlight enduring issues of American constitutional government, which are discussed in *The Federalist*. Finally, these lessons encourage commitment to core concepts and values of American constitutional government, while showing how these ideas require interpretation by citizens in response to specific questions and circumstances.

7. Each lesson includes a teaching plan and learning materials to be duplicated and distributed to students. The teaching plan indicates main points and objectives of each lesson, connections of the lesson to the high school curriculum, and suggestions for

opening, developing, and concluding the lesson. The learning materials include discussion of main ideas, excerpts from *The Federalist* papers that pertain to main ideas of the lesson, and activities that require use of main ideas and information in the lesson.

How To Select and Use These Lessons

These ten lessons on *The Federalist* papers are more than most teachers can use in a single course, given the need to cover various topics in a limited period of time. The lessons, therefore, should be viewed as a reservoir of teaching resources, which different teachers will draw upon variously. Many teachers will select only one or two of these lessons to supplement a single part of their textbook. Other teachers will decide to use several of the lessons. A few teachers may decide to use all of the lessons in a special unit of instruction on *The Federalist*.

Various choices about how to use the lessons are possible, because each lesson can be used singly, without reference to any other lesson in this volume. However, two or more of the lessons can be taught in combination, because the ideas in each lesson can be readily connected to every other lesson in this volume.

All materials needed to teach a lesson are provided in this volume. However, some teachers may decide to expand upon and improve these lessons by exposing students to related learning materials. Teachers are also encouraged to adapt these lessons to fit their style of teaching, their perception of student needs, or their classroom circumstances. Teaching plans are presented as general suggestions, not as prescriptions.

Little time is needed to prepare to use a lesson. To teach a lesson, follow these steps.

1. Read the materials for students and the lesson plan for teachers.
2. Make and distribute copies of the learning materials for students.
3. Follow or modify teaching suggestions for opening, developing, and concluding the lesson. It is likely that many teachers will modify teaching plans and adjust their use of student materials to make them more useful in particular situations.

These ten lessons on *The Federalist* papers are a mere sampler of the richness of content in the eighty-five essays by Hamilton, Madison, and Jay. These lessons are not meant to be a complete or comprehensive treatment of ideas in *The Federalist*. Rather, these lessons provide students with a brief introduction to a classic work on constitutional government.

Ten of *The Federalist* papers are included in the Appendix to this volume. Excerpts from the essays, included in these lessons, address core concepts such as limited government and the rule of law; republicanism and federalism; separation of powers with checks

and balances; judicial review; national security with liberty; majority rule and minority rights; popular sovereignty and free government. Lessons on these ideas are intended to stimulate thinking, and perhaps additional reading, in *The Federalist* and other works on constitutional government in American history and contemporary society. These lessons are *not* designed to encourage thoughtless acceptance of any point of view. Rather, our purpose is to spark reflection, deliberation, discourse, and interest in continuing inquiry about fundamental ideas in the American civic legacy.

NOTES

1. Quoted in *The Federalist Papers Re-Examined, Number 1: Past as Prologue* (Washington, DC: League of Women Voters of the United States Publication, 1977), 1
2. Quoted in Roy P. Fairfield, Editor, "Introduction," *The Federalist Papers* (Baltimore: The Johns Hopkins University Press, 1981), xii.
3. Quoted in *The Federalist Papers Re-Examined, Number 1: Past as Prologue* (Washington, DC: League of Women Voters of the United States Publication, 1977), 2.
4. William J. Bennett, "Celebrating the Bicentennial of the Constitution," *National Forum* LXIV (Fall 1984): 62.
5. Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government* (Baltimore: The Johns Hopkins University Press, 1960), 69.
6. Fairfield, "Introduction," *The Federalist Papers*, xix.
7. Fairfield, "Annotative Appendix," 283.

TEACHING PLAN FOR LESSON 1: FEDERALISTS VERSUS ANTIFEDERALISTS

Preview of Main Points

The purpose of this lesson is to establish a context for examination of ideas in *The Federalist* papers in subsequent lessons in this volume. Toward this end, this lesson introduces the contending forces—Federalists and Antifederalists—in the debate over ratification of the Constitution in 1787-1788. There is a brief, general, and incomplete discussion of differences between the Federalists and the Antifederalists in order to set the scene for other lessons in this volume. This lesson is *not* designed to teach comprehensively or in detail about the contending positions of Federalists and Antifederalists. Rather, the intention is to provide a brief overview of ideas that differentiated Federalists from Antifederalists.

Curriculum Connection

The struggle over ratification of the Constitution of 1787 is included in chapters on the writing and ratifying of the Constitution, which appear in standard high school textbooks in American history, government, and civics. Coverage of this topic is uneven, however, and ranges from as little as one page to four or five pages. This lesson can help teachers extend and enrich limited textbook descriptions of differences between Federalists and Antifederalists during the campaign over ratification of the Constitution.

Objectives

Students are expected to:

- (1) Know generally the position of the Federalists on ratification of the Constitution.
- (2) Know generally the position of the Antifederalists on ratification of the Constitution.
- (3) Distinguish examples of statements by Federalists from examples of statements by Antifederalists.
- (4) Compare and contrast ideas about government of Federalists and Antifederalists.
- (5) Write brief paragraphs that present positions of Federalists and Antifederalists on ratification of the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson. Establish a context for the debate between Federalists and Antifederalists by referring to an American history textbook to review social-political conditions in the United States of the 1780s. Review with students the circumstances and political issues, which led to the Constitutional Convention of 1787. Indicate that the main point of this lesson is to examine alternative positions of opposing forces in the debate over ratification of the Constitution, Federalists and Antifederalists.

Developing the Lesson. Have students read the first part of this lesson, about differences between the Federalists and Antifederalists. They are presented with definitions and examples of each position to help them learn how to distinguish Federalist from Antifederalist viewpoints about limited government and the rule of law, federalism and republicanism, popular sovereignty, and the Bill of Rights.

Require students to complete the first “application” exercise at the end of the lesson, which asks them to distinguish Federalist from Antifederalist statements in a list of unlabeled statements. Following are correct answers:

1. F—Alexander Hamilton, *The Federalist*, 23, 1788.
2. F—Alexander Hamilton, *The Federalist*, 23, 1788.
3. F—Alexander Hamilton, *The Federalist*, 70, 1788.
4. AF-Patrick Henry, Speech at the Virginia Ratifying Convention, 1788.
5. F—John Jay, *The Federalist*, 2, 1787.
6. F—James Madison, *The Federalist*, 51, 1788.
7. AF-Patrick Henry, Speech at the Virginia Ratifying Convention, 1788.
8. AF-A Pennsylvania Farmer, *Freeman's Journal*, 1788.
9. F—Representative James Jackson of Georgia, Speech at the First Session of Congress, 1789.
10. AF-Agrippa, pseudonym of an Antifederalist 1788.
11. AF-George Clinton, Governor of New York, 1787.
12. F—Alexander Hamilton, *The Federalist*, 1, 1787.

13. F—Alexander Hamilton, *The Federalist*, 15, 1787.

14. AF—*Letters From The Federalist Farmer*, 1787.

15. AF—*Letters From The Federalist Farmer*, 1787.

In discussions of the first “application exercise” require students to explain the main idea of statements that they identify as examples of the Federalist or Antifederalist position. In addition, require students to give reasons for their answers about which statements are examples of the Federalist and Antifederalist position. During this discussion, students should be reminded that they might refer to the opening discussion of contrasting positions of Federalists and Antifederalists to help them explain and give reasons for answers.

Have students complete the second “application” exercise on classification of statements by Federalists and Antifederalists. Following are correct answers:

1. #4, #7, #8, #11, #14.

2. #15.

3. #9

4. #1, #2, #3, #6, #12, #13.

Ask students to explain their classifications of statements as fitting into one of four categories: federalism, popular sovereignty, a bill of rights, and limited government and the rule of law. In addition, require them to compare and contrast Federalist and Antifederalist positions in these four categories.

Concluding the Lesson. Ask students to complete the learning activity at the end of this lesson, which involves a writing exercise. They are to construct two paragraphs about the positions of Federalists and Antifederalists on ratification of the Constitution. By following the directions for writing these paragraphs, students will be practicing skills in orderly and structured presentation of a main idea and reasons in support of it. In addition, they will be writing statements that represent a concluding summary of ideas treated in this lesson.

NOTE: We assume that the social and political context for this lesson, and subsequent lessons in this volume, will be established by high school teachers. For example, the lessons are designed to fit into standard courses and textbooks in American history, which include content and learning activities on social-economic-political conditions of various periods in the history of the United States.

LESSON 1: FEDERALISTS VERSUS ANTIFEDERALISTS

On **September 17, 1787** the Constitutional Convention ended. Thirty-nine delegates, representing twelve of the thirteen United States of America (all except Rhode Island) signed the Constitution, which they had created during a long, hot summer in Philadelphia. They sent the proposed frame of government to Congress, the governing body of the United States under the Articles of Confederation.

On **September 28**, Congress voted to send the proposed Constitution to the legislature of each state. Congress asked each state to convene a special convention, which would decide to approve (ratify) or reject the proposed Constitution. If nine states voted to ratify it, the Constitution of 1787 would become the supreme law of these United States.

On **September 27**, only ten days after the conclusion of the Constitutional Convention, a letter was printed in the *New York Journal* that sharply criticized the Constitution of 1787 and urged the people to reject it. The author used a pen name "Cato" to disguise his identity. Many New Yorkers, however, believed that their Governor, George Clinton, either wrote the "Cato" letter or influenced the person who did it.

On **October 1**, a reply to "Cato" was printed in the *New York Daily Advertiser* and signed "Caesar"—a pseudonym chosen by Alexander Hamilton, who had represented New York at the Constitutional Convention. He was disappointed in the Constitution created at Philadelphia, but Hamilton strongly preferred it to the existing alternative, the weak government of the United States under the Articles of Confederation.

The clash between "Cato" and "Caesar" in New York was an example of debates on the new nation's future that had been taking place throughout the United States during the 1780s. Americans argued about how to solve serious problems that threatened the survival of the United States. Would the Constitution of 1787 both strengthen the United States and preserve liberties of the people, which had been won through the recent War of Independence?

Supporters of the Constitution—such as "Caesar"—called themselves *Federalists*. Their opponents—"Cato" and others—were known as *Antifederalists*. What opinions on government divided the Federalists and Antifederalists?

What Ideas Separated the Federalists and Antifederalists?

Following is a brief and general discussion of a few main ideas of the Federalists and the Antifederalists.

Limited Government and the Rule of Law. Both Federalists and Antifederalists favored limited government and the rule of law; that is, they wanted a written constitution that restricted the powers of government officials—that indicated what they could and could not do under the law of the land. However, they disagreed about how much to limit the powers of government. Antifederalists tended to favor a weak government of the United States, such as Congress under the Articles of Confederation. They feared that a strong national government would threaten the rights of the people and their state governments. By contrast, Federalists wanted a national government that could act forcefully to maintain order, provide security, and guarantee liberty under law.

Republicanism and Federalism. Both Federalists and Antifederalists wanted a republic—government by representatives of the people acting for the people. Both groups also wanted federalism—a division of power between a central government and several state governments. However, the Antifederalists preferred the kind of federal republic established by the Articles of Confederation. In the Antifederalist definition of a federation (or confederation), the central government is only a creation of the states, who retain their sovereignty and independence of action. Antifederalists believed that state governments should have more powers and duties than the central government, because they are closer and more responsive to the people. By contrast, the Federalists favored a division and sharing of powers between state governments and a national government in which the national government is supreme within its own sphere of action. This means that state governments cannot defy or contradict laws or actions of the national government that are permitted by the Constitution. The Constitution of 1787 gave much more power to the government of the United States than it had under the Articles of Confederation. The Antifederalists favored states' rights and believed that the Constitution of 1787 gave too much power to the national government at the expense of the states. They believed that the Constitution of 1787 would create a consolidated government of the United States, in which the states would be greatly reduced in power and importance.

Popular Sovereignty. Both Federalists and Antifederalists wanted popular sovereignty—government by popular consent. However, Antifederalists believed that government by and for the people was best achieved by giving most powers of government to a legislature comprised of members elected by the people. Thus, they tended to support the Articles of Confederation,

in which the Congress (national legislature) dominated the government. By contrast, the Federalists believed that power in the national government should be shared by legislative, executive, and judicial branches. They also believed that the people (eligible voters) should directly elect only members of one part of the legislative branch—the House of Representatives. Antifederalists feared that the Constitution of 1787 gave too much power to the executive branch at the expense of the other branches of government.

A Bill of Rights. Antifederalists criticized the Constitution, because it lacked a Bill of Rights to guarantee civil liberties of the people (freedom of speech and assembly, and so forth) against the powers of government officials. Federalists argued that a Bill of Rights was unnecessary, because the national government had only those powers granted to it in the Constitution. Thus, the government would not be able to deprive individuals of their basic civil liberties.

Identifying Federalist and Antifederalist Ideas

Examine statements in the following list. Can you distinguish the Federalist from the Antifederalist statements? Write the letter “F” in the space next to each statement that fits the Federalist position. Write the letters “AF” in the space next to each statement that expresses the Antifederalist position. Be prepared to give reasons for your answers.

- ___ 1. . . . the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust to it the authorities which are indispensable to their proper and efficient management.
- ___ 2. . . . a federal government . . . ought to be clothed with all the powers requisite to complete execution of its trust.
- ___ 3. Energy in the Executive is a leading character in the definition of good government.
- ___ 4. We are now fixing a national consolidation.
- ___ 5. This country should never be split into a number of unsocial, jealous, and alien sovereignties.
- ___ 6. If a majority be united by a common interest, the rights of the minority will be insecure. . . . 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.
- ___ 7. States are the characteristics and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.
- ___ 8. The states should respectively have laws, courts, force, and revenues of their own sufficient for

their own security; they ought to be fit to keep house alone if necessary; if this be not the case, or so far as it ceases to be so it is a departure from a federal to a consolidated government.

___ 9. I am against inserting a declaration of rights in the Constitution. . . . If such an addition is not dangerous, it is at least unnecessary.

___ 10. A bill of rights . . . serves to secure the minority against the usurpation and tyranny of the majority.

___ 11. The . . . new form of government . . . declares a consolidation or union of all the thirteen parts, or states, into one great whole. . . . It is an intuitive truth that a consolidated republican form of government [will lead] . . . into a monarchy, either limited or despotic.

___ 12. The vigor of government is essential to the security of liberty.

___ 13. In our case, the concurrence of thirteen distinct sovereign wills is requisite under the Confederation to the complete execution of every important measure that precedes from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; and the delinquencies of the States have step by step matured themselves to an extreme, which has, at length, arrested all the wheels of the national government and brought them to an awful stand.

___ 14. . . . one government . . . never can extend equal benefits to all parts of the United States. Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded.

___ 15. The number of the representatives [called for in the Constitution of 1787] appears to be too few, either to communicate the requisite information of the wants, local circumstances, and sentiments of so extensive an empire, or to prevent corruption and undue influence in the exigencies of such great powers.

Classifying Ideas of Federalists and Antifederalists

Use the preceding statements by Federalists and Antifederalists to answer the questions below.

1. (a) What are five examples of the Antifederalist position on federalism—their views on how powers should or should not be divided between a central government and the states? (b) How did this position differ from that of the Federalists?
2. (a) What is one example of the Antifederalist position on popular sovereignty? (b) How did this position differ from that of the Federalists?
3. (a) What is one example of the Federalist position on a Bill of Rights? (b) How did this position differ from that of the Antifederalists?

4. (a) What are five examples of the Federalist position on limited government and the rule of law? (b) How did this position differ from that of the Antifederalists?

5. Write a paragraph according to the following directions. In the first sentence, state the Federalist position on ratification of the Constitution of 1787. In the second sentence, present one reason in support of the Federalist position. In the third sentence, write a second reason in support of the Federalist position. In the fourth sentence, write a third reason in support of the Federalist position.

6. Write a paragraph on the Antifederalist position on ratification of the Constitution of 1787. State the Antifederalist position in the opening sentence and present three reasons in support of the opening statement in three sentences that follow the lead sentence.

TEACHING PLAN FOR LESSON 2: WHAT IS THE FEDERALIST?

Preview of Main Points

The purpose of this lesson is to introduce *The Federalist* to students. Origins, purposes, authors, and significance of this publication are discussed. This lesson features an excerpt from the first of *The Federalist* papers written by Alexander Hamilton and printed initially in *The Independent Journal* of New York City on October 27, 1787.

Curriculum Connection

This lesson can be used with American history, government, and civics textbook chapters on the writing and ratification of the Constitution.

Objectives

Students are expected to:

- (1) Identify *The Federalist* as a collection of eighty-five essays written to influence ratification of the Constitution.
- (2) Know about Alexander Hamilton as conceiver and major organizer of the project to write *The Federalist*.
- (3) Know about Hamilton and James Madison as major authors of *The Federalist*, who were assisted by John Jay.
- (4) Explain purposes of the authors in writing *The Federalist*.
- (5) Know the short-term and long-term significance of *The Federalist* in American history and as an expression of the American civic heritage.
- (6) Interpret and appraise ideas in *The Federalist* 1.

Suggestions for Teaching the Lesson

Opening the Lesson. Bring a copy of *The Federalist* to class and show it to students. Suggested editions are (1) publication by the New American Library, Mentor Book, edited by Clinton Rossiter or (2) publication by Wesleyan University Press, edited by Jacob E. Cooke. The text of the Mentor Book edition of *The Federalist* is from the initial two volume publication by McLean and Company in May 1788. The text of the Wesleyan University Press edition is from the initial publication of the essays in New York City newspapers, beginning in October 27, 1787.

Use the book as a concrete prop to raise questions and arouse curiosity about origins, purposes, and significance of *The Federalist* and to introduce main points and objectives of this lesson.

Developing the Lesson. Have students read the first parts of the lesson on origins, authors, and common ideas of the authors of *The Federalist*. Assign the first series of activities and questions at the end of these parts of the lesson, "Reviewing and Using Main Ideas and Facts." Have students complete these exercises in preparation for classroom discussion.

Conduct a classroom discussion on the assignment. Call upon students to give their responses to item 1. Ask others in the class to respond critically to the responders. The correct statements in item 1 are "d" and "e". Ask students to read rewritten and corrected versions of statements a, b, c, and e, which are incorrect in the list at the end of the lesson. Have students listen carefully and react critically, as necessary, to the rewritten statements.

Ask students to read the next part of the lesson on the purposes of *The Federalist*. Assign the four items in the section on "Examining Ideas in *The Federalist* papers" and remind students to prepare to discuss their responses.

After students have completed this assignment, conduct a classroom discussion about the four items. Require students to provide reasons based on evidence from this lesson to support their answers. Direct the discussion from one student to another in order to have students appraise the responses of one another. Encourage students to ask their peers to justify answers with reasons based on evidence in this lesson. Correct answers to item 4 are: b, c, d, e.

Concluding the Lesson. Ask students to read the last part of the lesson about the significance of *The Federalist* and to complete the exercises that follow it. After students have completed the three items in the concluding exercises, conduct a classroom discussion about them. Begin by calling on one student to write his/her citation on the chalkboard, in response to item 1. Ask others in the class to evaluate the citation and make corrections as needed. Then have the student read his/her annotation and ask others to evaluate it or ask questions about the annotation. Repeat the procedure with reference to item 2.

Conduct a concluding discussion on item 3. Call upon one student to read his/her brief editorial. Assign three other students to serve as a formal reaction panel in response to the editorial read to the class. Allow the reader to respond to the reaction panel. Then call upon others in the class to address questions and comments to the first speaker and to the reaction panelists.

LESSON 2: WHAT IS THE FEDERALIST?

THE FEDERALIST is a collection of 85 essays in support of the Constitution of 1787. These *Federalist* papers were conceived and written from October 1787 until May 1788, when the final essays were published, to counter arguments of Antifederalists against ratification of the new Constitution. What was the origin of *The Federalist*? Who planned and wrote these “papers” or essays? What were the purposes of the authors? What was the effect of *The Federalist* papers on the campaign to ratify the Constitution? What has been the enduring significance of *The Federalist* as an example of American ideas on constitutional government?

Origins of The Federalist Papers

The Federalist was born during the debates on ratification of the Constitution, which began after Congress sent the proposed plan of government to the states on September 29, 1787. Congress acted in line with Article VII of the Constitution: “The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.” How would citizens and their elected representatives in each state judge this new plan for government, which had been drafted by delegates to the Constitutional Convention at Philadelphia in the summer of 1787? Would special conventions in each state ratify or reject it?

Opinion on the Constitution was sharply divided throughout the United States. Alexander Hamilton reported on his home state of New York in a letter to George Washington: “The event cannot yet be foreseen. The constitution proposed has in this state warm friends and warm enemies.” Hamilton had participated in the Constitutional Convention, where he was one of three delegates from New York. He had been disappointed, however, with ideas of the majority of delegates and had spoken in favor of a much stronger national government than had been approved by the Convention. Nonetheless, he strongly preferred the proposed Constitution of 1787 to the existing frame of government, the Articles of Confederation, and was among the 39 delegates who signed it on September 17. Hamilton also resolved to campaign vigorously for ratification against strong opposition to the new Constitution, which included his fellow delegates from New York to the Constitutional Convention, John Lansing and Robert Yates, and the powerful governor of his state, George Clinton.

On September 27, 1787, Clinton and his backers began their attack on the Constitution with an article in the *New York Journal*, which was signed with a pen name, “Cato.” It was common in those days for public

figures like Governor Clinton or Alexander Hamilton to mask their identities with pen names when writing published articles or letters on important political issues. Hamilton replied to “Cato” with two letters by “Caesar.” He also started to plan a lengthy series of essays to refute Antifederalist objections to the Constitution of 1787.

Authors of The Federalist Papers

Hamilton influenced John Jay and James Madison to join him as authors of essays that would become *The Federalist*. **John Jay**, at forty-two, was the oldest of the three authors. He had served his state and nation as (1) chief author of the New York state constitution, (2) negotiator, with Benjamin Franklin and John Adams, of the Treaty of Paris, which ended the American War of Independence in 1783, and (3) Secretary of Foreign Affairs under the Articles of Confederation. Later on, Jay would become the first Chief Justice of the United States Supreme Court under the Constitution.

James Madison of Montpelier, Virginia was thirty-six years old in 1787 and had been among the most prominent leaders at the Constitutional Convention. He kept the most complete records of the debates, and had the most influence on core ideas of the new frame of government. Later, he was called “The Father of the Constitution” because of the dominant role he played in shaping the Constitution. William Pierce, delegate to the Constitutional Convention from Georgia, wrote memorable “pen portraits” of the other delegates. “Mr. Madison . . . has long been in public life; and every . . . Person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar. In the management of every great question he evidently took the lead in the Convention, and tho’ he cannot be called an Orator, he is a most agreeable, eloquent, and convincing Speaker. From a spirit of industry and application . . . he always comes forward the best informed Man of any point in debate. . . .” Madison went on to become a Representative to Congress from Virginia in 1789. Later, he served as Secretary of State under President Thomas Jefferson and as fourth President of the United States, 1809-1817.

Alexander Hamilton, the originator of the project to write *The Federalist*, was the youngest member of the team, thirty-two years old in 1787. Hamilton was a genius with driving ambition. During the American Revolution, he was an aide of General Washington and rose to the rank of lieutenant colonel. After the war, he became a successful lawyer in New York City and a leader in bringing about the Constitutional Convention, where he represented New York. William Pierce described Hamilton as “deservedly celebrated for his tal-

ents. He is a practitioner of the law, and reputed to be a finished Scholar. . . . Hamilton . . . enquires into every part of his subject with the searchings of philosophy . . . there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on. . . . His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable." Hamilton became Secretary of the Treasury under President Washington and established solid financial foundations for the new government.

Alexander Hamilton was major author of *The Federalist* and wrote fifty-one of the eighty-five essays. James Madison wrote twenty-nine essays. Illness forced John Jay to withdraw from the project, and he wrote only five essays.

Common Ideas of the Authors

The authors agreed to have their essays printed first in major New York City newspapers, and seventy-seven were published initially this way. However, circulation of *The Federalist* papers did not depend entirely on New York newspapers and reprints elsewhere. Hamilton arranged with McLean and Company of New York City to have the essays published together as a book, which appeared in two volumes in May 1788 and included eight new essays, making a total of eighty-five.

Hamilton, Madison, and Jay agreed readily on other basic points, such as the name of their projected series of essays. By calling their work, *The Federalist*, they scored a public relations victory on their opponents, who considered themselves the real "federalists" (supporters of division of power between the states and a central government) and viewed Hamilton and his backers as nationalists (who would do away with the rights and powers of state governments). The opponents of Hamilton, Madison, and Jay were called Antifederalists, a negative label that implied only opposition, with no constructive ideas to improve the government.

There also was consensus on using "Publius" as the single pen name for all essays in this series. This pseudonym referred to Publius Valerius Publicola, a great defender of the Roman Republic. The identity of "Publius" was generally unknown until publication of a French language edition of *The Federalist* in 1792.

Most importantly, the three authors agreed on basic ideas of government in the Constitution of 1787, such as the rule of law and limited government in a federal republic. They were also united in opposition to the weak and ineffective government under the Articles of Confederation and in support of an "energetic and effective" government of the United States.

As chief architect of the new frame of government created at the Constitutional Convention, Madison was a ready and willing ally of Hamilton in the fight for rat-

ification. However, despite collaboration in the campaign to ratify the Constitution, the authors of *The Federalist* had varying and sometimes clashing ideas about government. Hamilton and Madison, for example, differed about the extent of power that a chief executive should have and on certain aspects of "federal-state" relationships. In 1788, Madison noted the variations in ideas of *The Federalist's* co-authors: "The writers are not mutually answerable for all the ideas of each other."

After ratification of the Constitution and establishment of the federal government, Madison joined Thomas Jefferson in political clashes with Hamilton that led to formation of rival political parties. These political clashes, however, lay in the future; in 1787-88, Madison and Hamilton were a formidable team in defense of the Constitution.

Reviewing And Using Main Ideas and Facts

1. Which of the following statements are correct? Make a checkmark in the space next to each correct statement in the list below. Be prepared to justify or give reasons for selection of each correct statement. Rewrite each incorrect statement to make it correct and be prepared to justify the rewritten statements.

a. "Caesar" was the pseudonym chosen by authors of *The Federalist*.

b. The main purpose of *The Federalist* was to convince delegates to the Constitutional Convention to support federalism.

c. Major author of *The Federalist* was John Jay.

d. Authors of *The Federalist* agreed that the United States needed a national government that would be stronger than the government under the Articles of Confederation.

e. Authors of *The Federalist* did not agree completely about the principles of constitutional government.

2. Write a brief description (no more than 200 words) of the three authors of *The Federalist*. Indicate the different levels of participation of the three authors in this project and discuss personal qualities and previous achievements of the authors that were relevant to this project.

Purposes of The Federalist Papers

The first objective of the authors of *The Federalist* was to persuade the people of New York to ratify the Constitution. Thus, each essay was addressed "To the People of the State of New York" and published first in a New York newspaper. A second objective was to influence Americans of all thirteen states to approve the Constitution. The authors hoped their essays would be widely reprinted, distributed, and read throughout

the United States. Toward this end, they agreed to a rapid pace of writing to meet newspaper schedules that might bring their ideas into contact with the greatest number of readers in time to influence decisions at the state ratification conventions.

These major objectives suggest that *The Federalist* was intended mainly as a work of advocacy. The authors were willing to submerge their political differences in the overall pursuit of a common goal—ratification of the Constitution. Madison and Jay also agreed with Hamilton that the Constitution of 1787 was “a compromise of . . . many dissimilar interests and inclinations.” It did not reflect exactly the political ideas of any one of the co-authors, but they agreed that it was the best frame of government achievable under the circumstances, and far superior to the Articles of Confederation.

Hamilton discussed purposes of *The Federalist* in the first essay of the series, published in *The Independent Journal* of New York City on October 27, 1787. Following is an excerpt from *The Federalist* 1.

NUMBER 1: HAMILTON

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked 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. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind. . . .

I propose, in a series of papers, to discuss the following interesting particulars:—*The utility of the UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least equally energetic with the one proposed to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own State constitution—and lastly, The additional security which its adoption will afford to the preservation*

of that species of government, to liberty, and to property. In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION. . . . But the fact is that we already hear it in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. . . . [but] nothing can be more evident to those who are able to take an enlarged view of the subject than the alternative of an adoption of the new Constitution or a dismemberment of the Union. . . . Publius

Examining Ideas in The Federalist Papers, Number 1

1. What was the “crisis at which we have arrived” that is mentioned in the first paragraph of this essay?

2. Why, according to “Publius”, would a “wrong election of [decision about] the part we shall act . . . [in response to the “crisis”] deserve to be considered as the general misfortune of mankind”?

3. What advice did “Publius” have for Americans about the decision that should be made in response to the crisis that they faced in the autumn of 1787?

4. Which of the following statements agree with essay 1? Make a checkmark in the space next to each statement that agrees with “Publius” and be prepared to give reasons for your judgments about each statement in the list below.

___ a. The government of the United States, under the Articles of Confederation, is tyrannical.

___ b. The Constitution of 1787 would contribute more to preservation of liberty than would the Articles of Confederation.

___ c. If the Constitution of 1787 is not ratified, then the Union will not endure.

___ d. Americans had a rare, if not unique, opportunity to decide for themselves upon the form of government they would have.

___ e. An important duty of government is protection of property rights.

Significance of The Federalist Papers

Were the purposes of “Publius” achieved? We might answer “yes”, because the Constitution was ratified in the thirteen original states of the United States; although the vote in some cases was very close—in New York, for example, the vote was 30-27. In North Carolina and Rhode Island, the Constitution—rejected at first—was ratified after the new government of the United

States was established. Thus, only in a general sense, did “Publius” achieve his goal.

Recent studies by historians have suggested that the direct influence of *The Federalist* on the outcome was slight, because of the limited circulation of the essays outside New York City before and during the conventions. Few voters who elected delegates to the conventions had read these essays, and few delegates at the conventions had read them. Indirect effects of *The Federalist* on the ratification debates may have been greater, if harder to pin down. James Madison used ideas in these essays during debates in the Virginia Convention; Hamilton and Jay also used the writings of “Publius” to justify points made at the New York Convention.

Although *The Federalist* did not fully satisfy the purposes of its authors, as a work of advocacy during the ratification campaign, it achieved lasting fame as a brilliant work on principles of constitutional government. Several American leaders recognized the importance of *The Federalist* soon after it was published. Thomas Jefferson, for example, wrote to James Madison and lauded *The Federalist* as “the best commentary on the principles of government which was ever written.” The great Chief Justice of the Supreme Court, John Marshall, used ideas in *The Federalist* to justify his landmark decisions. For example, in *Cohens v. Virginia* (1821) he wrote: “It is a complete commentary on our Constitution, and it is appealed to by all parties in the questions to which that instrument gave birth.” During the nineteenth and twentieth centuries, scholars and political leaders of many nations praised *The Federalist* as they used it to guide their thinking and practical work in governance. Thus, *The Federalist* has been acclaimed as the major contribution of Americans to the theory and practice of constitutional government.

Reviewing and Using Ideas and Facts

1. Construct a citation on the first *Federalist* paper and include the author, place of publication, publisher, and date of publication. Write an annotation of no more than thirty-five words to describe the content of the essay.

2. Construct a citation on the initial publication of the series of eighty-five essays that comprised the two volume book, *The Federalist*. Write an annotation of no more than one hundred words to describe the purposes, content, and significance of the two volumes.

3. Assume that you were publisher of a newspaper in New York in October 1787. After publication of essay number 1 of *The Federalist* in a rival newspaper, you decide that you should write an editorial about it for

publication in your newspaper. Your assignment is to write a brief editorial (no more than 250 words) in response to ideas in *The Federalist* 1. To what extent do you agree with these ideas? Why?

TEACHING PLAN FOR LESSON 3: LIMITED GOVERNMENT AND THE RULE OF LAW IN THE FEDERALIST, NUMBERS 23, 51, 53, 70

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the treatment of limited government and the rule of law in *The Federalist*. This lesson features excerpts from four *Federalist* papers—Numbers 23, 51, 53, 70. Students are challenged to think about the meaning and value of limited government and the rule of law as main ideas in the Constitution and the American civic heritage.

Curriculum Connection

This lesson can be used in combination with chapters on the introduction of government in civics and government textbooks. The lesson also fits the standard American history textbook treatment of the period when the Constitution was written and ratified.

Objectives

Students are expected to:

- (1) Identify and comprehend ideas on limited government and the rule of law in *The Federalist* 23, 51, 53, 70.
- (2) Examine and explain ideas on limited government and the rule of law in *The Federalist* 23, 51, 53, 70.
- (3) Find examples of the attempted balance between limited government and energetic government in the Constitution and explain how they fit ideas in *The Federalist*.
- (4) Appraise ideas about limited government and the rule of law presented by Hamilton and Madison in *The Federalist*.
- (5) State and justify a position on the value of limited and energetic government as presented in *The Federalist*.

Suggestions for Teaching the Lesson

Opening the Lesson. Inform students of the main points of the lesson. Have students read the introduction to the lesson, which presents the ideas of limited government and the rule of law. This introduction sets a context for reading about limited government and the rule of law in excerpts from four *Federalist* papers.

Developing the Lesson. Have students read the excerpt from *The Federalist* 23. Ask them to answer the questions at the end of the document, which is a means to check comprehension of main ideas and to stimulate interpretation of them in terms of the core concepts of this lesson—limited government and the rule of law.

After checking students' responses to questions about essay 23, ask them to read 51 by Madison. Have them answer the two questions at the end of the essay. Repeat this procedure with reference to essays 53 and 70.

As a comprehensive check of students' comprehension of main ideas in the four essays, require them to complete the exercise at the end of the lesson—"What Is Said About Limited Government and The Rule of Law in Essays 23, 51, 53, 70?" Correct answers are: 1. no, #23, #51, #70; 2. no, #70; 3. yes, #23, #51, #53, #70; 4. no, #53; 5. no, #53; 6. yes, #53.

Have students turn to the four exercises at the very end of the lesson. They should complete items 1-3 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-3. Require students to support or explain answers by referring to pertinent parts of essays 23, 51, 53, 70. In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justifications or support for answers.

Assign item 4 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Ask them to use at least these sources in preparing the essay: *Federalist* papers used in this lesson, The Constitution, textbooks in history, government, or civics.

Call upon several students to read their essays to the class and ask other students to respond with constructive criticisms or support of the ideas expressed in the essays.

Discussion of item four should emphasize that limited government and the rule of law are core values in the American heritage and that the Constitution embodies these values.

LESSON 3: LIMITED GOVERNMENT AND THE RULE OF LAW IN THE FEDERALIST, NUMBERS 23, 51, 53, 70

LIMITED GOVERNMENT and THE RULE OF LAW are principles of government and core civic values in the American heritage. Limited government means that officials cannot act arbitrarily when they make and enforce public decisions. In their roles as public officials, members of the government cannot simply do as they please. Rather, they are guided and limited by laws as they carry out the duties of their government offices. In the United States of America, the Constitution is the supreme law that guides and limits the exercise of power by government officials. Laws made in conformity with the Constitution also guide and limit the actions of government officials.

The rule of law means that neither government officials nor common citizens are supposed to break the law. Furthermore, persons accused of crime are supposed to be treated equally under the law and accorded due process in all official actions against them. Law governs the actions of all persons in the system, public officials and the citizenry, and from highest to lowest ranks in government and society.

Limited government and the rule of law are main characteristics of constitutional government in the United States. The rights and liberties of individuals are supposed to be protected by law against abuses of power by government officials. However, if constitutional limits on government are too strict, it will be too weak and duties will not be carried out effectively. A government that is too limited by law may not even be able to enforce laws and maintain public order and security. By contrast, if the government is too strong, or unlimited in its use of power, then the liberties of individuals may be lost and tyranny might prevail. An effective constitutional government is neither too powerful nor too weak. Legal powers are granted in the Constitution to enable the government to perform tasks the people expect of it. The Constitution places legal limits on the government's powers to protect liberties and rights of individuals against would-be tyrants or dictators. There is a workable balance between powers granted to government, in the name of the people, and limits on those powers on behalf of individual liberties and rights.

A workable balance is difficult to achieve between power sufficient to govern effectively and limits on power sufficient to protect liberties and rights of the people. On the eve of the Civil War, Abraham Lincoln asked despairingly: "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?" During the 1780s, Hamilton, Madison, Jay, and other Federalists believed that

government under the Articles of Confederation was too weak to maintain its own existence. However, Anti-federalists feared that the Constitution of 1787 might provide a government too strong for the liberties of the people. Authors of *The Federalist* argued that limited government and the rule of law—principles of government in the Constitution of 1787—would protect the rights and liberties of people from abuses of power by would-be tyrants. Hamilton and Madison discussed limited government and the rule of law in several essays of *The Federalist*. They argued that the best government is both "energetic" (strong enough to act decisively and effectively in the public interest) and "limited by law" to safeguard individual liberties and rights. Excerpts from four essays are presented below and on the following pages: 23 and 70 by Hamilton and 51 and 53 by Madison.

NUMBER 23: HAMILTON

THE necessity of a constitution, at least equally energetic with the one proposed . . . is the point. . . . Every view we may take of the subject . . . will serve to convince us that it is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are intrusted to its management [specific grants of power enumerated in the Constitution]. It will indeed deserve the . . . vigil and careful attention of the people to see that it be modeled [limited] in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration should not . . . be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the co-incident powers may safely accompany them. . . . The POWERS [of the Constitution] are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. . . .

Publius

Reviewing Main Ideas in Essay 23

1. What is the main point of this essay?

2. What are two reasons presented by Hamilton to support the main point of this essay?
3. Find one example in this essay of Hamilton's views on limited government.
4. Find one example in this essay of Hamilton's views on the rule of law.
5. How does Hamilton answer the charges of critics of the Constitution of 1787 that it grants too much power to the government of the United States and therefore is not sufficiently limited to protect the rights and liberties of individuals?

NUMBER 51: MADISON

... the great security against a gradual concentration of ... powers in [the government] ... consists in giving ... the necessary constitutional means and personal motives to resist encroachments. ... 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 provisions [limited government based on the supreme law of the written constitution]. ... Publius

Reviewing Main Ideas in Essay 51

1. What are Madison's views about how to achieve limited government and the rule of law?
2. What are the difficulties in creating a limited government that can also be an "energetic" government?

NUMBER 70: HAMILTON

... Energy in the executive is a leading character in the definition of 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 ...; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. ...

... A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety [provisions for limited government] in the republican sense [government in the name of the people by their elected representatives]? And how far does this combination [energetic government that is also limited by law] characterize the plan which has been reported by the convention? [In Hamilton's opinion, the Constitution of 1787 provided energetic government with sufficient limits on the powers of government to protect the rights and liberties of the people.]

The ingredients which constitute energy in the executive are unity [a single chief executive or President]; duration [a long enough term of office]; an adequate provision for its support; and competent powers. [Hamilton argued that these ingredients were included in the Constitution of 1787.]

The ingredients which constitute safety in the republican sense [provisions for limited government and the rule of law] are a due dependence on the people, and a due responsibility. ... Publius

Reviewing Main Ideas in Essay 70

1. What advice does Hamilton offer about the value of "energy and power" in government?
2. What is the role of a chief executive or President in providing "energy and power" in government?
3. What negative consequences, according to Hamilton, would follow from ignoring his advice about an "energetic and powerful" government?
4. What does Hamilton say about "ingredients which constitute safety" in government (limited government)?
5. Does Hamilton argue for a balance between "ingredients which constitute safety" and "ingredients which constitute energy" in government? Explain.

NUMBER 53: MADISON

... The important distinction so well understood in America between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government seems to have been little understood and less observed in any other country. Wherever the supreme power of legislation has resided, has been supposed to reside also a full power to change the form of the government. Even in Great Britain, where the principles of political and civil liberty have been most discussed, and where we hear most of the rights of the Constitution, it is maintained that the authority of the Parliament is transcendent and uncontrollable as well

with regard to the Constitution as the ordinary objects of legislative provision. They have accordingly, in several instances, actually changed, by legislative acts, some of the most fundamental articles of the government. . . . An attention to these dangerous practices has produced a very natural alarm in the votaries [supporters] of free government, of which frequency of elections is the cornerstone; and has led them to seek for some security to liberty, against the danger to which it is exposed. Where no Constitution, paramount to the government . . . existed . . . no constitutional security, similar to that established in the United States, was to be attempted. Some other security . . . was to be sought for; and what better security would the case admit than that of selecting and appealing to some simple and familiar portion of time as a standard? . . . The most simple and familiar portion of time applicable to the subject was that of a year; and hence the doctrine . . . to erect some barrier against . . . unlimited government, that the advance toward tyranny was to be calculated by the distance of departure from the fixed point of annual elections. But what necessity can there be of applying this expedient to a government limited, as the federal government will be, by the authority of a paramount Constitution? Or who will pretend that the liberties of the people of America will not be more secure under biennial elections, unalterably fixed by such a Constitution, than those of any other nation would be, where elections were annual, or even more frequent, but subject to alterations by the ordinary power of the government? . . .

Publius

Reviewing Main Ideas in Essay 53

Madison discusses: "The important distinction . . . between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government. . . ."

1. What is the distinction to which he refers?
2. Why is this idea a basic element of Madison's position on limited government and the rule of law?

What Is Said About Limited Government and The Rule of Law in The Federalist Papers—Numbers 23, 51, 53, 70?

Read each of the following statements (1-6) and decide whether or not each statement is a correct (accurate) description or interpretation of ideas about limited government and the rule of law as presented in *The Federalist* 23, 51, 53, 70. If so, answer YES. If not, answer NO. Identify the specific essay or essays by number (23, 51, 53, 70) with evidence to support your answer to each item, 1-6. Be prepared to indicate paragraphs or sentences that support each answer. If the

statement cannot be judged correct or incorrect, based on the content of *The Federalist*, numbers 23, 51, 53, 70, then answer UNCERTAIN.

1. It is NOT possible to have a government that is both "energetic" and limited in the exercise of power. YES___ NO___ UNCERTAIN___ ESSAY #___

2. A government with an energetic or powerful chief executive is a sure sign of tyranny or despotism. YES___ NO___ UNCERTAIN___ ESSAY #___

3. The Constitution of 1787 provides a practical balance between an energetic government and government limited by law sufficiently to protect the rights and liberties of individuals. YES___ NO___ UNCERTAIN___ ESSAY #___

4. A written Constitution created by a legislature and alterable by majority vote of the legislature, as the supreme representative of the people, is a certain guardian of individual liberties and provider of limited government. YES___ NO___ UNCERTAIN___ ESSAY #___

5. The best guarantee of individual rights and liberties and guardian against tyranny is annual elections of major government officials. YES___ NO___ UNCERTAIN___ ESSAY #___

6. A paramount written constitution is a means to enable the government to maintain order and security in a society and to protect individuals in the society against tyranny and oppression. YES___ NO___ UNCERTAIN___ ESSAY #___

Examining Ideas On Limited Government and The Rule of Law

Refer to the preceding excerpts from *The Federalist* 23, 51, 53, 70 to find ideas and information on which to base answers to the following questions. Be prepared to justify or give reasons for answers with references to specific parts of these essays.

1. a. According to Hamilton and Madison, what is limited government and the rule of law? (How does the idea of "energetic government" fit into their definitions of limited government?) b. How do Madison and Hamilton justify their ideas on limited government and the rule of law as superior to ideas of their opponents?

2. Compare Hamilton's ideas on how to achieve limited and effective government with the ideas of Madison on this subject. Refer to essays 51 and 53 by Madison and essays 23 and 70 by Hamilton. What are similarities and differences in the ideas of Madison and Hamilton on the role of the people and the uses of a written constitution as means to achieve limited government and the rule of law?

3. Refer to Articles I, II, III, and VI of the Constitution. a. Find at least five examples that show how the Constitution limits the government in order to provide protection against tyranny. b. Find at least five examples

that show how the Constitution provides for "energetic government" as called for by Hamilton in *The Federalist* 23 and 70. c. How does the Constitution of 1787 provide means for balancing powers needed for an "energetic" government and limitations on those powers needed to protect individual rights and liberties?

4. According to authors of *The Federalist*, an excellent constitution provides government that is both energetic and limited. a. What are characteristics of a government that fits this statement? b. What is the value of a frame of government that fits this statement? (Why is it to be desired or valued over alternatives?)

TEACHING PLAN FOR LESSON 4: FEDERALISM AND REPUBLICANISM IN THE FEDERALIST, NUMBERS 9 AND 39

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of how federalism and republicanism are treated in essays 9 and 39 of *The Federalist*. Students are challenged to think about the meaning and value of federalism and republicanism as basic principles of government in the Constitution of the United States.

Curriculum Connection

This lesson can be used in combination with treatments of federalism and of comparative forms of government in standard civics and government textbooks. The lesson also fits the standard American history textbook chapter on the writing and ratification of the Constitution.

Objectives

Students are expected to:

- (1) Identify and comprehend ideas on federalism and republicanism in *The Federalist* 9 and 39.
- (2) Examine and explain ideas on federalism and republicanism in *The Federalist* 9 and 39.
- (3) Find examples of federalism and republicanism in the Constitution and explain how they fit ideas expressed by Madison and Hamilton in *The Federalist* 9 and 39.
- (4) Appraise statements about federalism and republicanism in terms of ideas in *The Federalist*.
- (5) State and justify a position on the value of a federal republic as defined in *The Federalist*.

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students: What is a federal republic? Is the USA a federal republic? Discuss these questions briefly and have students read the introduction to the lesson to reinforce knowledge of federalism and republicanism that is brought to the lesson from other sources.

Go over the table, included in the lesson, which presents examples of the division of powers between the national government and state governments in the American system of federalism.

Developing the Lesson. Have students read the excerpts from *The Federalist*, 9 and 39, which are included in this lesson. Have them answer the questions at the end of each reading, as a check on their comprehension of main ideas.

Check students' comprehension of main ideas in the reading assignment by requiring them to complete the exercise at the end of the lesson, "What Is Said About Federalism and Republicanism in The Federalist Papers?" Following are numbers of statements in the list of this exercise that agree with *The Federalist*: 6, 8, 9, 10, 11, 12, 13, 14, 16, 19.

Have students turn to the exercises on the last page of the lesson. Require students to complete items 1-2 for a classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-2 in the exercises at the end of the lesson. Require students to support or explain their answers by referring to pertinent parts of *The Federalist* 9 and 39. In general, ask students to give reasons for their answers and encourage students to challenge the answers and reasons of their peers whenever they think that insufficient justification has been provided for an answer.

Assign item 3 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this activity. Advise students to use these sources in preparing their essays: essays 9 and 39 of *The Federalist*, the Constitution, and their textbooks in civics, government, and history. Select two or three students to read their essays to the class. Assign other students the responsibility of making a formal response to one of the essays. Use the formal responses as stimulators of broader class discussion of ideas presented in the essays. Emphasize that the responses to the essays might be affirmative or critical or some combination of the two; or the responses might mainly introduce additional or alternative ideas into the discussion.

Discussions of items 1-3 should emphasize the interrelated civic values of limited government, the rule of law, liberty under law, and social order as desired ends or goals of federalism and republicanism in government.

NOTE: Several other essays in *The Federalist* include discussions of federalism, in combination with other topics. Notable essays, which might be pointed out to students are numbers 10, 16, 37, 45, and 51.

LESSON 4: FEDERALISM AND REPUBLICANISM IN THE FEDERALIST, NUMBERS 9 and 39

The government of the United States of America is a federal republic. The authors of *The Federalist* and their Antifederalist critics agreed that federalism and republicanism are desirable attributes of a government. They disagreed about the merits of the Constitution of 1787 as a frame of government that would provide a workable federal republic. Alexander Hamilton and James Madison argued in several *Federalist* papers that the type of federalism and republicanism provided by the Constitution was far superior to the alternatives desired by their critics. What were the terms of this dispute? What is a federal republic? What are federalism and republicanism?

A republic is a type of government that functions through elected representatives of the people. A republic is distinguished from a pure democracy, a form of government in which the people govern directly instead of through representatives elected by them. In the world of 1787, aristocracies and monarchies were the predominant forms of government. In contrast to a republic, these other types of governments function without representation or participation by the common people. In an absolute monarchy, one person (king or queen) rules; and in an aristocracy, power is exercised by a small elite group of nobles or aristocrats. Power usually is based on heredity in a monarchy or aristocracy. Republicanism refers to beliefs and practices that support a republic instead of monarchy, aristocracy, or other non-republican forms of government.

In a federal republic, there is division of power between a central or national (federal) government and several state governments within the nation. In the United States of America, for example, power is divided between a national government, which is headquartered in Washington, D.C., and 50 state governments. Unitary government is the opposite of federalism. In a unitary government the central or national government has all power. Regional or local governments may be created to help the central government carry out laws. However, these lower levels of government do not share power with the central government. Rather, they are only parts of the central government and may be abolished by it. Japan, for example, has a unitary system of government. The central government is headquartered in Tokyo. There are several regional units of government and many local governments within each region. None of the regional or local governments has any power to act independently of the central government.

In the American federal system, the national (federal) government has certain powers that are granted only to it in the Constitution. The 50 state governments also have powers that the national government is not supposed to exercise. See the table at the end of the lesson for examples of powers that are supposed to be exercised by either the federal or state governments in the American federal system. The table also shows that some powers are shared by both the national and state governments. Notice in the table that some powers are denied strictly to the federal government, some are denied to the state governments, and some to both levels of government. In the American federal system, the powers of the national government are limited. However, within its field or range of powers, the national or federal government is supreme. The states can neither ignore nor contradict federal laws and the Constitution, which is the supreme law.

The core idea of American federalism is two levels of government (national and state) that exercise power separately and directly on the people at the same time. Thus, under federalism, the state of Indiana has authority over its residents, but so does the federal government in Washington, D.C. Indiana residents must obey the laws of their state government and their federal government.

Federalism is a central principle of the Constitution, but the balance of power between state and national governments was not defined exactly at the Convention of 1787. Since then, the rights and powers of states in relationship to the federal government have generated constitutional issues and debates.

Hamilton and Madison discussed the principles of federalism and republicanism in several essays of *The Federalist*. Excerpts from two essays, number 9 by Hamilton and number 39 by Madison, are presented below and on the following pages.

NUMBER 9: HAMILTON

. . . A distinction, more subtle than accurate, has been raised between a confederacy and a consolidation of the States. The essential characteristic of the first [confederacy] is said to be the restriction of its authority to the members in their collective capacities [the states], without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage [voting power in government] between the members [states]

has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened that governments of this kind have generally operated in the manner which the distinction . . . supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove . . . that there is no absolute rule on this subject. . . . as far as the principle contended for has prevailed [as in government under the Articles of Confederation], it has been the cause of incurable disorder and imbecility in the government. The definition of a confederate republic seems simply to be . . . an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members [states] be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union [federal government], it would still be, in fact and in theory, an association of states, or a confederacy. The proposed constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government. . . .

Publius

Reviewing Main Ideas in Essay 9

1. What is Hamilton's main point about the relationship of the government of the United States to the several state governments in the Constitution of 1787?
2. Identify at least two reasons that Hamilton presents in support of his main point.
3. What is Hamilton's argument against those who favored the system of government under the Articles of Confederation?
4. What is Hamilton's definition of a federal government?

NUMBER 39: MADISON

. . . we may define a republic to be . . . a government which derives all its powers directly or indirectly from the great body of the people and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of

tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified. . . .

On comparing the Constitution planned by the convention with the standard here fixed, we perceived at once that it is, in the most rigid sense, conformable to it. . . .

. . . In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other that this assent and ratification is to be given by the people, 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. . . .

The next relation is to the sources from which the . . . powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion and on the same principle as they are in the legislature of a particular State. So far the government is *national*, not *federal*. The Senate, on the other hand, will derive its powers from the States as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress [under the Articles of Confederation]. So far the government is *federal*, not *national*. . . . From this aspect of the government it appears to be of a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the operation of the government, is by the adversaries of the plan of the convention supposed to consist in this, that in the former, the powers operate on the political bodies composing the Confederacy [the states] in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the *national* not the *federal* character. . . .

But if the government be national with regard to the *operation* of its powers, it changes its aspect . . . in relation to the extent of its powers . . . a national government involves . . . an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. . . . In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution. . . . Some such tribunal is . . . essential to prevent an appeal to the sword and a dissolution of the compact. . . .

. . . the authority by which amendments [to the Constitution] are to be made, we find . . . neither wholly national nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union. . . . Were it wholly federal . . . the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and . . . in computing the proportion by *States*, not by *citizens*, it departs from the national and advances towards the federal character; in rendering the concurrence of less than the whole number of states sufficient, it loses again the *federal* and partakes of the *national*. . . .

The proposed Constitution . . . is, in strictness, neither a national nor a federal constitution, but a composition of both.

Publius

Reviewing Main Ideas in Essay 39

1. What is Madison's definition of a republic?
2. Explain Madison's definition of federalism, which is based on the idea that the Constitution of 1787 is "a composition of both" federal and national characteristics?

What is Said About Federalism and Republicanism in The Federalist Papers—Numbers 9 and 39?

Which of the following statements agree with ideas presented in *The Federalist* 9 and 39? Place a checkmark in the space next to each statement that agrees with ideas in essay 9 and essay 39. Be prepared to

support and explain your choices by referring to specific parts of essays 9 and 39.

___ 1. The Constitution establishes an alliance of sovereign states.

___ 2. Under the Constitution, the states give up all powers to act independently or separately from one supreme national government.

___ 3. The Constitution creates a federal system in which the state governments retain power to accept or reject laws of the federal government.

___ 4. The Constitution establishes a union of states in which the government of the United States is directly and wholly responsible to the several state governments.

___ 5. Republicanism is the same as pure democracy.

___ 6. In a federal republic, state governments within the nation have certain powers that they exercise independently of the national government.

___ 7. In a "true" federal republic, the national or federal government should have power to act directly on the several state governments, but NOT on the people of these states.

___ 8. The process used for ratification of the Constitution was a pure example of federalism.

___ 9. The procedures for amendment, in Article V of the Constitution, include both federal and national characteristics.

___ 10. The sources of power of members of Congress (House of Representatives and Senate) are examples of the mixed characteristics of the government, which includes both federal and national features.

___ 11. A unitary system of government is wholly national in character.

___ 12. A government based purely on rule by the majority of the people of a nation is wholly national in character.

___ 13. A government that is totally responsive to the several states within the nation is wholly or purely federal in character.

___ 14. The federal republic of the United States is NOT an example of pure or unmixed federalism.

___ 15. A republican form of government is always a federal form of government.

___ 16. The government of the United States under the Articles of Confederation fits Madison's definition of a republic.

___ 17. The government of the United States under the Articles of Confederation fits Madison's and Hamilton's definition of a federal republic.

___ 18. The government of Great Britain in the 1780s fits Madison's definition of a federal republic.

___ 19. The several state governments of the United States, in the 1780s and today, fit Madison's and Hamilton's definition of a republic.

____ 20. The government of the United States under the Constitution of 1787 is a national consolidation.

Examining Ideas About Federalism and Republicanism

Refer to the preceding excerpts from *The Federalist* 9 and 39 to find information and ideas on which to base answers to the following questions. Be prepared to justify or support answers with references to specific parts of these essays.

1. Refer to Articles IV and VI of the Constitution. Find at least five examples that show how government under the Constitution of 1787 conformed to the definition of federal republic of *The Federalist*.

2. Compare and contrast the views of Madison and Hamilton on federalism, as indicated by essay 9 and essay 39. Identify at least one similarity and one difference in their ideas on federalism.

3. a. How are the civic values of limited government, the rule of law, liberty, and social order associated with ideas on federalism and republicanism expressed in *The Federalist*, numbers 9 and 39? (How does a federal republic contribute to achieving these civic values or desired goals of government?)

TABLE 1
Examples of How the Constitution Divides Powers

	TO NATIONAL GOVERNMENT	TO STATE GOVERNMENTS	TO BOTH LEVELS OF GOVERNMENT
POWERS GRANTED	<p>To coin money To conduct foreign relations To regulate commerce with foreign nations & among states To provide an army and a navy To declare war To establish courts inferior to the Supreme Court To establish post offices To make laws necessary and proper to carry out the foregoing powers</p>	<p>To establish local governments To regulate commerce within a state To conduct elections To ratify amendments to the federal Constitution To take measures for public health, safety, & morals To exert powers the Constitution does not delegate to the national government or prohibit the states from using</p>	<p>To tax To borrow money To establish courts To make and enforce laws To charter banks and corporations To spend money for the general welfare To take private property for public purposes, with just compensation</p>
POWERS DENIED	<p>To tax articles exported from one state to another To violate the Bill of Rights To change state boundaries</p>	<p>To tax imports or exports To coin money To enter into treaties To impair obligations of contracts To abridge the privileges or immunities of citizens</p>	<p>To grant titles of nobility To permit slavery To deny citizens the right to vote because of race, color, or previous servitude To deny citizens the right to vote because of sex</p>

TEACHING PLAN FOR LESSON 5: SEPARATION OF POWERS WITH CHECKS AND BALANCES IN THE FEDERALIST, NUMBERS 47, 48, 51

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the concept of separation of powers and a related concept, checks and balances, as expressed in *The Federalist*. The lesson features excerpts from three papers of *The Federalist*, 47, 48, and 51. Students are asked to reflect upon the meaning and value of separation of powers and checks and balances as basic principles of government in the Constitution of the United States.

Curriculum Connection

This lesson can be used in combination with treatments of separation of powers and checks and balances in civics and government textbooks. It can be used to supplement the standard American history textbook chapter on the writing and ratification of the Constitution.

Objectives

Students are expected to:

- (1) Identify and comprehend ideas on separation of powers in *The Federalist* 47, 48, 51.
- (2) Examine and explain ideas on separation of powers in *The Federalist* 47, 48, 51.
- (3) Find examples of separation of powers in the Constitution and explain how they fit ideas expressed by Madison in *The Federalist*.
- (4) Evaluate ideas on separation of powers in terms of criteria in *The Federalist*.
- (5) State and justify a position about the value of separation of powers as a basic principle of government in the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students: What is separation of powers in government? What are checks and balances in government? Have students read the first part of the lesson to follow up on the opening discussion and to reinforce knowledge of separation of powers that they bring to the lesson from other sources.

Take a few moments to go over the diagram at the end of the lesson, which illustrates the related concepts of separation of powers and checks and balances. Discuss this diagram to make certain that students have a rudimentary knowledge of separation of powers and checks and balances.

Developing the Lesson. Have students read the excerpts from *The Federalist*, numbers 47, 48. Check students' comprehension of main ideas in the reading assignment by requiring them to complete the exercise at the end of the two documents. Statements in item 3 that agree with Madison are: b and e.

Assign the excerpt from essay 51 as the next reading assignment.

Require students to complete the exercises at the end of this document as a check on their comprehension of main ideas in the reading.

Have students turn to the five exercises on the final pages of the lesson. Have students complete items 1-4 in preparation for a classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-4 in the set of exercises at the end of the lesson. Require students to support or explain their answers by referring to pertinent parts of *The Federalist* 47, 48, and 51. In general, ask students to give reasons for their answers and encourage students to challenge the answers and reasons of their peers whenever they think that insufficient justification has been provided for an answer.

Assign item 5 as the final activity of this lesson. Ask students to write a brief (no more than 500 words), cogent essay in response to this activity. Advise students to use these sources, at least, in writing this essay: *The Federalist*, the Constitution, and their textbooks in civics, government, and history.

Select two or three students to read their essays to the class. Assign other students the responsibility of making a formal response to one of the essays. Use the formal responses as stimulators of broader class discussion of ideas presented in the essays. Emphasize that the responses to the essays might be affirmative or critical or some combination of the two; or the responses might mainly introduce additional or alternative ideas into the discussion.

Discussions of items 1-5 should emphasize the interrelated civic values of limited government, the rule of law, and liberty under law as desired ends or goals of separation of powers as a basic principle of government in the Constitution.

NOTE: Other essays in *The Federalist* that include discussion of separation of powers, in combination with other topics, are numbers 9, 37, 49, 66, 75, and 78. Interested students might be referred to one or more of these essays.

LESSON 5: SEPARATION OF POWERS WITH CHECKS AND BALANCES IN THE FEDERALIST, NUMBERS 47, 48, 51

Separation of powers, a major principle of the Constitution, is the distribution of power among three branches of government: (1) the legislative, (2) the executive, and (3) the judicial. The legislative branch (Congress) has power, according to Article I of the Constitution, to make certain kinds of laws. In Article II, the Constitution says that the executive branch (headed by the President) has power to enforce or carry out laws. The judicial branch (headed by the Supreme Court) is established in Article III of the Constitution to interpret and apply the law in federal court cases.

The separation of power to make law, enforce law, and interpret law, among three branches of government, is a means to limited government. It prevents any person or group in the government from having enough power to become a tyrant and oppress the people.

However, Antifederalists criticized the Constitution, because it does not completely separate powers of government among the three branches. They pointed out, for example, that the President takes part in law-making through the veto, the chief executive's power to reject a law passed by Congress. Furthermore, the legislative branch is involved in the exercise of executive power through its power to approve the President's appointments of executive officials. These are merely two examples, of many, to show that the Constitution permits sharing of power among the three branches, which the critics said was a weakness.

James Madison responded to the critics by pointing to another principle of government in the Constitution, checks and balances, whereby each branch of the government has power to limit or check the actions of the others. In this manner, the primary goal of limited government is served. For example, the President can check the power of Congress with the veto. But the President's veto can be overturned by a subsequent 2/3 vote of Congress. This is one of several checks exercised by one branch over the others to keep the power of government balanced and limited. (See the Diagram at the end of the lesson that illustrates the related principles of separation of powers and checks and balances.) In combination, the principles of separation of powers and checks and balances provide a government of separated branches that share power. Thus, each separate branch of the government has some influence over the actions of the others, and no branch can exercise its duties without some cooperation from the others.

Hamilton and Madison replied in several essays of *The Federalist* to criticisms of the Constitution's provisions for separation of powers. Excerpts from three essays by Madison, numbers 47, 48, 51, are presented in this lesson. What is Madison's definition of separation of powers? How does Madison justify his definition?

NUMBER 47: MADISON

... One of the principal objections ... to the Constitution is its supposed violation of the political maxim that the legislative, executive, and judiciary departments ought to be separate and distinct. ...

No political truth is certainly of greater intrinsic value. ... The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. ...

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. ... [He] did not mean that these departments [three branches of government] ought to have no partial agency in, or no control over [checks of one branch on another] the acts of each other. His meaning ... can amount to no more than this, that where the whole power of one department is exercised by the same hand, which possess the whole power of another department, the fundamental principles of a free constitution are subverted. ...

[Montesquieu says] ... "When the legislative and executive powers are united in the same person or body, there can be no liberty, because ... the same monarch or senate ... [might] enact tyrannical laws to execute them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of the oppressor." Some of these reasons are more fully explained in other passages; but briefly stated ... they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author [establish separation of powers among three branches of government, but also some sharing of powers to enable each branch to stop the others from having too much power].

If we look into the constitutions of the several States we find ... there is not a single instance in which the

several departments of power have been kept absolutely separate and distinct. . . . [State constitutions follow the principle of separation of powers with checks and balances; each branch has some part in the duties and powers of the other branches].

. . . What I have wished to evince is that the charge brought against the proposed Constitution of violating the sacred maxim of free government is warranted neither by the real meaning annexed to that maxim by its author [Montesquieu], nor by the sense in which it has hitherto been understood in America [as exemplified in the constitutions of the several states of the United States]. This interesting subject will be resumed in the ensuing paper. Publius

NUMBER 48: MADISON

. . . unless these departments [three branches of government] be so far connected and blended as to give to each a constitutional control over the others [checks and balances], the degree of separation . . . essential to a free government . . . can never in practice be duly maintained.

It is agreed . . . that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that none of them ought to possess . . . an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature and that it ought to be effectively restrained from passing the limits assigned to it. . . .

Will it be sufficient to mark, with precision, the boundaries of these departments in the constitution of the government, and to trust to the parchment barriers against the encroaching spirit of power?

. . . a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands. Publius

Reviewing Ideas in Essays 47 and 48

1. What is Madison's definition of separation of powers? (How is the related idea of checks and balances linked to separation of powers in Madison's definition?)

2. How is separation of powers with checks and balances connected to limited government and protection of individual rights and liberties?

3. Examine the following statements and decide which items agree or disagree with Madison's ideas. Make a checkmark next to each statement that agrees with Madison. Refer to essays 47 and 48 to explain and support your answers.

___ a. Separation of powers in the Constitution means that each branch of government is detached totally from the other branches in exercise of powers and duties.

___ b. Separation of powers in the Constitution involves sharing of duties and powers in government as a means to limited government.

___ c. The system of checks and balances in the Constitution interferes with and undermines separation of powers as a means to limited government.

___ d. Madison disagrees with the ideas of Montesquieu on separation of powers.

___ e. State governments in the United States practiced the principle of separation of powers as defined by Madison.

NUMBER 51: MADISON

To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments [branches of government] as laid down in the Constitution? The only answer . . . is . . . by so contriving the interior structure of the government [designing a system of checks and balances] as that its several constituent parts may, by their mutual relations, be the means of keeping each other in the proper places. . . .

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 [checks and balances] and personal motives to resist encroachments of the others. The provision for defense must . . . be [suited] . . . 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 [design of a constitutional system of checks and balances].

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 . . . is to divide the legislature into different branches [Senate and House of Representatives] and to render them, by different modes of election and different principles of action, as little connected with each other as [possible]. 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 . . . that it should be fortified. An absolute negative [veto power] on the legislature appears . . . to be the natural defense with which the executive magistrate should be armed. [But this veto power could be misused if not checked in turn by the legislature.]

. . . in a single republic [unitary government] all the power . . . is submitted to . . . 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 [federal system of government], the power . . . is first divided between two distinct governments [federal and state], and then the portion allotted to each subdivided among distinct and separate departments [three separate branches of government with checks and balances]. 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. . . . Publius

Reviewing Ideas in Essay 51

Would Madison have agreed with the statements below? Refer to essay 51 (and ideas in 47, 48) to explain answers.

1. Government officials elected freely by a majority vote of the people should be trusted to have all powers of government, unseparated and unchecked.

2. The main check or control on the power of government is active and intelligent participation of the people.

Examining Ideas on Separation of Powers

Refer to the preceding excerpts from *The Federalist* 47, 48, 51 to find ideas and information on which to base answers to the following questions. Be prepared

to support answers with references to specific parts of these essays.

1. In *The Federalist* 47, Madison says: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." What does this statement say about the value of separation of powers? Do you agree with this statement? Explain

2. Refer to Articles I, II, and III of the Constitution of the United States. a. Find at least three examples that show how the powers of government are separated among three distinct branches of government. b. Find at least three examples of sharing of powers among the three branches of government that show how the powers of the federal government are not completely separated. c. Does the structure of government in Articles I, II, and III of the Constitution fit Madison's definition of separation of powers? Explain.

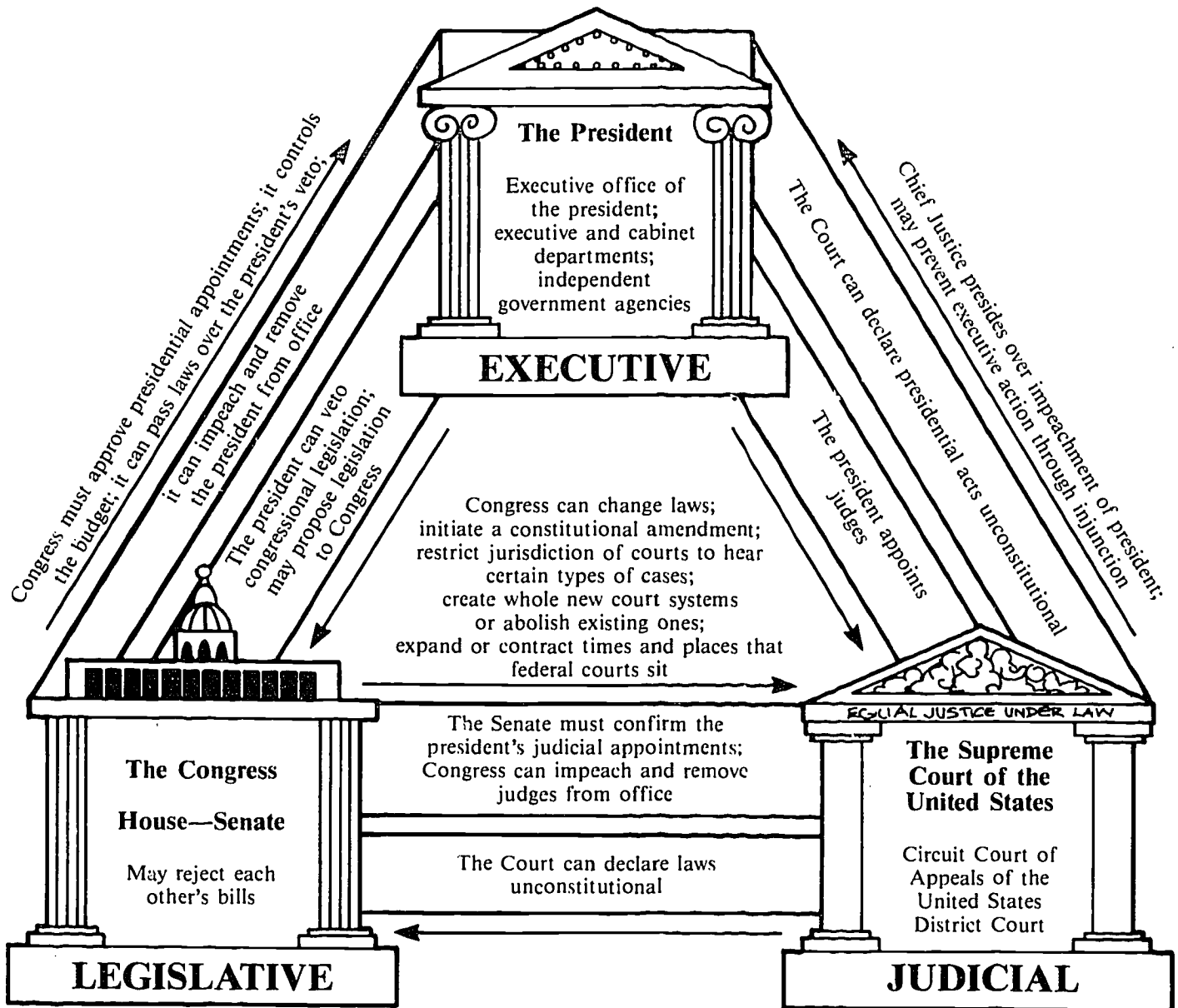
3. In 1952 (*Youngstown Company v. Sawyer*), Supreme Court Justice Robert Jackson said: "While the Constitution diffuses power the better to secure liberty, it also contemplates that the practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." Does this statement by Justice Jackson agree with Madison's view of separation of powers expressed in *The Federalist*? Explain

4. In 1789, at the first session of Congress, several members wanted to add the following amendment to the Constitution: "The powers delegated by this constitution are appropriated to the departments to which they are respectively distributed so that the legislative department shall never exercise the powers vested in the executive or judicial, nor the executive exercise the powers vested in the legislative or judicial, nor the judicial exercise the powers vested in the legislative or executive departments." This proposed amendment to the Constitution was voted down in Congress. Does this proposed amendment agree with ideas on separation of powers favored by authors of *The Federalist*?

5. a. According to authors of *The Federalist*, what is the value of separation of powers as a principle of government in the Constitution of the United States? (What desirable or valued ends or goals are likely to be gained through separation of powers in government? What undesirable or negative ends or consequences are likely to be avoided through separation of powers in government?) b. Do you agree with the position of Madison in *The Federalist* about the definition and value of separation of powers as a basic principle of government in the Constitution?

DIAGRAM 1

Separation of Powers and Checks and Balances



TEACHING PLAN FOR LESSON 6: JUDICIAL REVIEW IN THE FEDERALIST, NUMBERS 78, 80, 81

Preview of Main Points

The purpose of this lessons is to increase students' knowledge of the treatment of judicial review in *The Federalist*. This lesson features excerpts from three essays, numbers 78, 80, and 81. Students are challenged to think about the meaning and value of judicial review and an independent judiciary as main ideas in the Constitution and the American civic heritage.

Curriculum Connection

This lesson can be used in combination with chapters on the judicial branch of government in civics and government textbooks. The lesson also fits standard American history textbook chapters on the period when the Constitution was written and ratified.

Objectives

Students are expected to:

- (1) Identify and comprehend ideas on judicial review and an independent judiciary in *The Federalist* 78, 80, and 81.
- (2) Examine and explain ideas on judicial review and an independent judiciary in *The Federalist* 78, 80, and 81.
- (3) Find and interpret examples of duties and powers of the judicial branch in Articles III and VI of the Constitution.
- (4) Examine the interaction of the judicial branch with the other two branches of federal government in the system of checks and balances.
- (5) Appraise statements about judicial review in terms of ideas in *The Federalist*.
- (6) State and justify a position on the value of judicial review and an independent judiciary presented in *The Federalist*.

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students: What is judicial review? How is judicial review related to limited government and the rule of law? Have students read the introduction to the lesson which presents the meaning of judicial review. This introduction sets a context for reading about judicial review and an independent judiciary in excerpts from three *Federalist* essays.

Developing the Lesson. Have students read the excerpts from *The Federalist* 78, 80, 81 in this lesson.

Check students' comprehension of main ideas in the reading assignment by requiring them to complete the first exercise at the end of the lesson. Following are correct answers to this exercise: 1. no, #78 and #81; 2. uncertain; 3. yes, #78 and #81; 4. no, #80; 5. yes, #81.

Have students turn to the seven exercises at the end of the lesson. Have students complete items 1-6 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion of items 1-6 in the set of exercises at the end of the lesson. Require students to support or explain answers by referring to pertinent parts of *The Federalist*. In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justifications or support for answers.

Assign item 7 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Advise students to use these sources, at least, in writing this essay: *The Federalist*, the Constitution, and their textbooks in civics, government, and history.

Call upon several students to read their essays to the class and ask other students to respond with constructive criticisms or support of the ideas expressed in the essays.

LESSON 6: JUDICIAL REVIEW IN THE FEDERALIST, NUMBERS 78, 80, 81

JUDICIAL REVIEW is the practice by judges in courts of law of appraising acts of the legislative and executive branches of government to decide whether they are in conflict with the Constitution. If so, the judges have power to declare them unconstitutional or null and void. All courts, federal and state, may practice judicial review. The Supreme Court of the United States, however, has final say on whether laws or actions violate or fit the U. S. Constitution.

Judicial review is based on three ideas: (1) the Constitution is the supreme law, (2) acts contrary to the Constitution are null and void, and (3) judges in courts of law are responsible for determining if acts violate or agree with the Constitution. The diagram at the end of the lesson shows how a court case may proceed to the Supreme Court.

Judicial review, one of the most important ideas of government in the United States, is not mentioned in the Constitution. However, before 1787, judicial review was practiced by courts in several of the American states to overturn laws that conflicted with the state constitution. Furthermore, when the Founders wrote the Constitution, few doubted that they intended the federal courts to have authority to declare state laws unconstitutional. However, the Constitution did not indicate clearly that the Founders intended the Supreme Court to have the same power to review acts of Congress or the President.

During debate over ratification of the Constitution, Federalists argued that the Constitution implicitly gave the Supreme Court the power of judicial review, even if it did not state the delegation of this power explicitly. Antifederalists disagreed with the Federalist position on judicial review. They feared that the practice of judicial review would give the federal courts too much power. They argued that there would be no sufficient checks or limits on this power. One Antifederalist, using the pen name of Brutus, wrote: "I question whether the world ever saw, in any period of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible."

Thomas Jefferson argued against extending the practice of judicial review to the executive and legislative branches of the federal government. He wanted each branch of government to interpret the meaning of the Constitution independently. Thus, Congress would decide for itself whether its actions conflicted with the Constitution.

Alexander Hamilton argued strongly for judicial review in *The Federalist*. He wanted judicial review to be

applied to actions of the states and to the executive and legislative branches of the federal government. He argued that judicial review of state and local acts was necessary to uphold the Constitution as the supreme law of the land and to maintain national unity. He also argued that the system of checks and balances among the three branches of government could not work properly without the practice of judicial review. Hamilton's views on judicial review are presented in *The Federalist* 78, 80, and 81.

NUMBER 78: HAMILTON

WE PROCEED now to an examination of the judiciary department of the proposed government. . . .

. . . The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through . . . courts of justice, whose duty it must be to declare all acts contrary to . . . the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. . . .

. . . No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that . . . men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid. . . .

. . . The interpretation of the laws is the proper and peculiar province of the courts. A constitution is . . . a fundamental law. It therefore belongs to them [judges] to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. [In cases of conflict] . . . the constitution ought to be preferred to the statute. . . . Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. 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. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental. . . .

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong

argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

The independence of the judges is equally requisite to guard the Constitution and the rights of individuals from [tyranny contrived by an individual or imposed by the majority of the people] . . . against the minor party in the community. [A] fundamental principle of republican government . . . admits the right of the people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness; yet [this does not mean] . . . that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provision in the existing Constitution would, on that account, be justifiable in a violation of those provisions. . . . Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves. . . .

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. . . . Here also the firmness of the judicial magistracy . . . operates as a check upon the legislative body. . . .

. . . The inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice can certainly not be expected from judges who hold their office by a temporary commission. . . .

. . . Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established good behavior as the tenure of their judicial offices. . . .

Publius

NUMBER 80: HAMILTON

. . . It seems scarcely to admit of controversy that the judiciary authority of the Union ought to extend to . . . all those [cases] which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation. . . . [This point] depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of State legislatures, without some constitutional mode of enforcing the observance of them? The States, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union and others with the principles of good government. The imposition of duties [taxes] on imported articles and the emission of paper money are speci-

mens of each kind. No man of sense will believe that such prohibitions would be scrupulously regarded without some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the state laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union [the Constitution]. . . .

Publius

NUMBER 81: HAMILTON

. . . That there ought to be one court of supreme and final jurisdiction . . . has not been, and is not likely to be contested. . . . The only question that seems to have been raised concerning it is whether it ought to be a distinct body or a branch of the legislature. . . .

The arguments . . . upon which this charge is founded are to this effect: "The authority of the proposed Supreme Court of the United States, which is to be a separate and independent body, will be superior to that of the legislature. The power of construing the laws according to the spirit of the Constitution will enable that court to mould them into whatever shape it may think proper; especially as its decisions will not be in any manner subject to the revision or correction of the legislative body. This is as unprecedented as it is dangerous. . . ." This, upon examination, will be found to be made up altogether of false reasoning upon misconceived fact.

In the first place, there is not a syllable in the plan under consideration [Constitution] which directly empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every State. I admit, however, that the Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of convention, but form the general theory of a limited Constitution. . . .

It may . . . be observed that the supposed danger of judiciary encroachments on the legislative authority . . . is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive, as to . . . affect the order of the political system. This may be inferred . . . from the general nature of the judicial power . . . from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the . . . important constitutional check which the power of instituting impeachments in one part of the legislative body [House of Representatives], and of determining upon them in the other [Senate] would give to that body

[Congress] upon the members of the judicial department. This is alone a great security [against usurping power]. . . .
Publius

What Is Said About Judicial Review in The Federalist Papers—Numbers 78, 80, 81?

Read each of the following statements (1-5) and decide whether or not each statement is a correct (accurate) description or interpretation of ideas about judicial review as presented in *The Federalist* 78, 80, 81. If so, answer YES. If not, answer NO. Identify the specific essay or essays by number, which have evidence to support your answer to each item. Be prepared to indicate paragraphs or sentences that support each answer. If the statement cannot be judged correct or incorrect, based on the content of *The Federalist*, numbers 78, 80, 81, then answer UNCERTAIN.

1. A legislature should be the sole determiner of whether or not its actions are constitutional

YES___ NO___ UNCERTAIN___ ESSAY #___

2. The Constitution implies that the Supreme Court of the United States has power to judge the constitutionality of actions of the President.

YES___ NO___ UNCERTAIN___ ESSAY #___

3. The judicial branch should be separate from and independent of the legislative and executive branches of government in order to check and limit the power of these two branches.

YES___ NO___ UNCERTAIN___ ESSAY #___

4. State governments should have the power to determine whether federal laws are constitutional.

YES___ NO___ UNCERTAIN___ ESSAY #___

5. Congress can check and limit the power of federal judges through the power to impeach and remove them from office for violation of their responsibilities and obligations under the Constitution.

YES___ NO___ UNCERTAIN___ ESSAY #___

Examining Ideas About Judicial Review

Refer to the preceding excerpts from *The Federalist* 78, 80, and 81 to find ideas and information on which to base answers to the following questions. Be prepared to justify or give reasons for answers with references to specific parts of these *Federalist* papers.

1. a. What is judicial review? b. How is judicial review practiced with reference to state governments? c. How is judicial review practiced with reference to the legislative and executive branches of the federal government?

2. How does judicial review contribute to the practice of limited government and the rule of law?

3. How is judicial review a part of separation of powers and checks and balances in the federal government?

4. How is judicial review a part of federalism as practiced in the USA?

5. a. Refer to Article III of the Constitution. Identify at least five duties or powers of the Supreme Court. b. Refer to Article VI, Clauses 2 and 3 of the Constitution. How does this part of the Constitution support judicial review of actions of state governments?

6. Thomas Jefferson said: "My construction of the Constitution is . . . that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action most especially where it is to act ultimately and without appeal. . . . Each of the three departments has equally the right to decide for itself what is its duty under the Constitution, without any regard to what the others may have decided for themselves under a similar question." a. To what extent does this statement agree with the ideas of Hamilton in *The Federalist*? b. What is your view of Jefferson's statement? To what extent do you agree or disagree with it? Why?

7. a. According to Alexander Hamilton, why are judicial review and an independent judicial branch essential to the practice of constitutional government (limited government and the rule of law) and protection of the rights and liberties of individuals? b. Does the federal judiciary, as conceived by Hamilton, pose any threats to individual rights and liberties and a free society? c. To what extent do you agree with Hamilton's ideas about the powers and duties of the federal judiciary in American constitutional government?

STATE ROUTE

↓
A party to a case loses in
State trial court.

↓
He takes case to State
appeals court.

↓
State supreme court rules
on case.

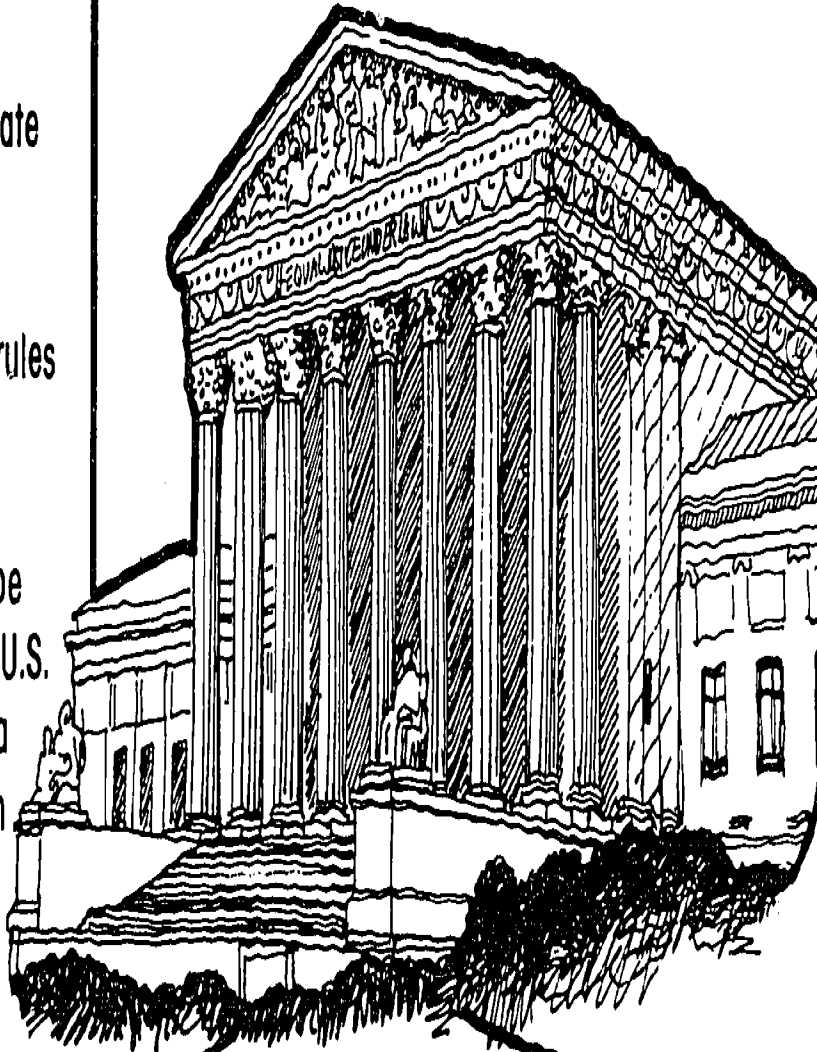
↓
Decision can now be
appealed directly to U.S.
Supreme Court if a
constitutional question
is involved.

FEDERAL ROUTE

↓
Case involving federal law
is tried in a U.S. district court.

↓
Loser takes case to a U.S.
circuit court of appeals.

↓
Court of appeals ruling can
be submitted to U.S.
Supreme Court for review.



Two Main Roads to the Supreme Court

TEACHING PLAN FOR LESSON 7: NATIONAL SECURITY WITH LIBERTY IN THE FEDERALIST, NUMBERS 4, 23, 41

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the treatment of national security with liberty in *The Federalist* 4, 23, and 41. Students are challenged to think about the meaning and value of national security and constitutional limitations on the power of military forces in order to protect liberties of the people.

Curriculum Connection

This lesson can be used with chapters on the introduction of government in civics and government textbooks and with the standard American history textbook chapter on the period of the writing and ratifying of the Constitution. It also fits typical civics and government textbook treatments of issues about civil liberties.

Objectives

Students are expected to:

- (1) Identify and comprehend ideas on national security with liberty.
- (2) Examine, explain, and appraise ideas on national security with liberty.
- (3) Appraise statements about main ideas on national security with liberty in *The Federalist* 4, 23, and 41.
- (4) State and justify a position on the relationships of national security with liberty and issues of freedom raised by tensions between security and liberty.

Suggestions for Teaching the Lesson

Opening the Lesson. Place the following diagram on the chalkboard.

Security _____ / _____ Liberty
(Point 1) (Point 2)

Tell students that this diagram represents a continuum between the extremes of national security and liberty. Both national security and liberty are important ends of a free government. Indicate that the mark at the midpoint of the continuum represents a balance between Points 1 and 2 on the diagram. Tell students that Federalists and Antifederalists did not argue for extreme emphasis on either national security or liberty. Rather, both sides debated about where to draw the line between the extreme positions represented by Point 1 and Point 2.

A free society needs both national security and liberty, but these goals are often in conflict. Ask why? During this discussion, point out that too much emphasis on liberty, for example, could threaten national security and conversely, too much emphasis on national security could destroy liberty and rights of individuals. Ask students to think of examples of negative consequences associated with too much emphasis on either side of the midpoint in the diagram. Indicate that too much emphasis on national security could lead to tyranny by the government over the people with a consequent loss of individual rights and freedoms. Too much emphasis on liberty could lead to disorder and fragmentation of society (anarchy), with the consequent loss of security and safety for property and liberty of individuals. End this discussion by telling students that a free society is always challenged by the need to find a workable balance between the extremes of unlimited liberty of the people and unlimited power by government to provide national security.

Have students read the introduction to the lesson to review ideas about national security with liberty and the relationships between these values in a free society. This introduction sets a context for reading about national security with liberty in excerpts from *The Federalist* 4, 23, and 41.

Developing the Lesson. Have students read the excerpt from essay 4 and respond to the questions at the end of the document. Repeat this procedure with respect to essays 23 and 41. Emphasize general agreement among Jay, Hamilton, and Madison about purposes of a national government with regard to national security. However, the questions at the end of the essays are also designed to draw students' attention to differences between the authors about where to draw the line between extreme emphasis on national security and liberty. Ask: which author's argument would be closer to the national security side of the diagram used in the opening of the lesson? Ask: which author seems to be most concerned with limiting power to provide national security in order to protect the rights and liberties of individuals?

Check students' comprehension of main ideas in all three essays by requiring them to complete the exercise at the end of the lesson, "What Is Said About National Security With Liberty in The Federalist Papers—Numbers 4, 23, 41?" Following are numbers of statements on this list that agree with *The Federalist*: 1, 2, 4, 5, 6, 7, 10, 12, 13, 14. Require students to provide justifications for their answers with references to essays 4, 23, 41.

You might wish to select three or four provocative statements from this exercise as foils for discussion about civic values. For example, you might ask students to agree or disagree with statements 4, 7, and 13.

Have students turn to the five exercises on the last page of the lesson. Ask them to complete items 1-4 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-4 in the set of exercises at the end of the lesson. Require students to support or justify answers by referring to pertinent parts of *The Federalist*. In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justification or support for answers.

Assign item 5 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Tell students to use at least the following sources of information and ideas: *The Federalist*, the Constitution, and their textbooks on American government, civics, and history.

Use the essays of one or two students to initiate discussion of item 5. In this discussion, highlight the inevitable tension between the concerns for security and liberty in a free society. Identify and discuss issues raised by these tensions. Point out that the tensions and issues associated with civic values are distinguishing characteristics of a free society.

LESSON 7: NATIONAL SECURITY WITH LIBERTY IN THE FEDERALIST, NUMBERS 4, 23, 41

The preamble to the Constitution of the United States says: "We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Framers of the Constitution established national defense, security, justice, liberty, and general welfare of the people as purposes of the federal government.

The framers of the Constitution of 1787 agreed that a national government has the fundamental responsibility of defending the nation and maintaining security. National security involves the ability of a nation to protect its borders and territory against invasion or control by foreign powers. In 1787, for example, the framers of the Constitution were concerned about the need to defend their new nation from conquest or domination by powerful European nations, such as Britain, France, and Spain, which held territory in the Western Hemisphere.

National security also involves a nation's ability to maintain law, order, and stability ("insure domestic tranquility"). Harold Brown, Secretary of Defense under President Carter, defines national security as "the ability to preserve the nation's physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to protect its nature, institutions, and governance from disruption from outside; and to control its borders."

The authors of *The Federalist* argued that the Constitution of 1787 would be a bulwark of national defense and security by providing for an energetic and effective federal government, which would have enough power to maintain order internally and protect the nation against external threats. They also argued that the Constitution would limit the powers of government sufficiently to protect individual rights and liberties against officials who might otherwise try to undermine them. The authors of *The Federalist* pointed to constitutional limits on powers of the legislative and executive branches of government, which were designed to secure civil liberties and rights and prevent tyranny. In particular, they stressed the civilian control of military forces provided by the Constitution. For example, the President, a civilian, is the commander in chief of the armed forces, and the Congress decides how much money should be provided to support the nation's army. Nonetheless, critics of the Constitution feared basic freedoms might

be lost or unduly limited by leaders more concerned with national defense and security than with civil liberties and rights. The critics preferred the more limited government of the Articles of Confederation to the more powerful government of the Constitution of 1787.

Hamilton, Madison, and Jay discussed national defense and security with liberty in *The Federalist* 4, 23, and 41. They argued that the Constitution of 1787 provided government strong enough for national defense and security and limited enough for a free society.

NUMBER 4: JAY

. . . the safety of the people of America against dangers from foreign force depends not only on their forbearing to give just causes of war to other nations, but also on their placing and continuing themselves in such a situation as not to invite hostility or insult. . . .

. . . Wisely, therefore, do they consider union and a good national government as necessary to put and keep them in such a situation as, instead of inviting war, will tend to repress and discourage it. That situation consists in the best possible state of defense, and necessarily depends on the government, the arms, and the resources of the country.

But whatever may be our situation, whether firmly united under one national government, or split into a number of confederacies, certain it is that foreign nations will know and view it exactly as it is; and they will act towards us accordingly. If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us . . . destitute of an effectual government . . . what a poor, pitiful figure will America make in their eyes! How liable would she become not only to their contempt, but to their outrage, and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves. Publius

Reviewing Ideas in Essay 4

1. What is Jay's main point about how America can maintain national security against threats from foreign nations? Write a topic sentence that states this main idea.

2. How does Jay support or justify his main point about maintaining national security against foreign powers? Write two statements in support of your topic sentence.

3. What is your opinion of Jay's main point about national security? (Judge his idea with reference to the situation of the United States in 1787. Judge his idea also with reference to the situation of the United States today.) Write one paragraph, in response to this question, that pertains to 1787. Write a second paragraph that pertains to the United States today.

NUMBER 23: HAMILTON

... The principal purposes to be answered by union are these—the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils [executive branch of the national government] which are appointed to preside over the common defense. . . .

... there can be no limitation of that authority which is to provide for the defense and protection of the community in any matter essential to its efficacy—that is, in any matter essential to the *formation, direction, or support* of the NATIONAL FORCES. . . .

... the Union [United States of America] ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced by other governments. . . .

Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. . . . Publius

Reviewing Ideas in Essay 23

1. According to Hamilton, what are purposes of a national government with regard to national security?

2. What does Hamilton say about limitations on a national government in carrying out its responsibilities for national security?

3. Do Hamilton's ideas on powers needed by government to provide national security pose any dangers to the rights and liberties of individuals?

4. What dangers to rights and liberties of individuals might result from having a national government too weak to exercise powers needed to provide national security?

NUMBER 41: MADISON

... Is the aggregate power of the general government greater than ought to have been vested in it? . . .

... in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers.

The powers falling within the first class are those of declaring war . . . of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils [national government]. . . .

... With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set bounds to the exertions of all other nations, then indeed might it prudently chain the

discretion of its own government and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will . . . be ever determined by these rules and by no others. 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. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions. . . .

A standing force . . . is a dangerous, at the same time that it may be a necessary, provision. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops . . . exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. . . .

Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added [the provision in Article I that Congress has power, during a two year period, to provide or withhold funds for the army].

. . . the Constitution has provided the most effectual guards against danger from [a standing army or permanent military establishment that might destroy a free government and a free society].

. . . nothing short of a Constitution fully adequate to the national defense and the preservation of the Union can save America from as many standing armies as it may be split into States or Confederacies, and from such a progressive augmentation of these establishments in each as will render them as burdensome to the properties and ominous to the liberties of the people as any establishment that can become necessary under a united and efficient government must be tolerable

to the former and safe to the latter [the liberties of the people]. . . .

Publius

Reviewing Ideas in Essay 41

1. According to Madison, what are the responsibilities of a national government in providing national security?
2. Why is national security an inescapable duty of a national government?
3. What does Madison say about limiting the power of government in regard to national security?
4. What are Madison's ideas about dangers to the rights and liberties of individuals from the exercise of power by government to provide national security?
5. According to Madison, how would government under the Constitution of 1787 provide both national security and protection of the rights and liberties of individuals?

What Is Said About National Security With Liberty in The Federalist Papers—Numbers 4, 23, 41?

Which of the following statements agree with ideas presented in *The Federalist* 4, 23, and 41? Place a checkmark in the space next to each statement that agrees with ideas in essays 4, 23, and 41 on national security with liberty. Be prepared to support and explain your choices by referring to specific parts of essays 4, 23, and 41.

- 1. National unity and strength are deterrents to attack by a foreign nation.
- 2. A fundamental purpose of any national government is providing security for the nation against threats from foreign powers.
- 3. Tyranny is acceptable if it is imposed in order to defend the nation and provide national security.
- 4. A military establishment is both necessary and dangerous to the protection of civil liberties and rights.
- 5. There should be constitutional limits upon power exercised by military leaders.
- 6. The Constitution provides for civilian control of military forces as a means to control abuses of power by military leaders.
- 7. A nation without an effective military establishment is in danger of losing its security and freedom.
- 8. A nation without a standing army will have more freedom than a nation with a strong military establishment.
- 9. The more limited a national government is, the freer the people will be who live under the government.
- 10. A national government should have sufficient authority to maintain armed forces and regulate

them on behalf of the people in order to achieve goals or interests of the community.

___ 11. National defense and security are more important than liberty as fundamental purposes of a national government.

___ 12. The "power of the purse" is an effective means for controlling the power of the military on behalf of the people, which is granted to Congress in the Constitution.

___ 13. Constitutional government in a free society is designed to balance power needed for national defense and security with limits on power needed to protect liberties and rights of the people.

___ 14. A fundamental purpose of national government in a free society is to seek both security and liberty for the people it serves.

Examining Ideas About National Security With Liberty

Refer to the preceding excerpts from *The Federalist* 4, 23, and 41 to find ideas and information on which to base answers to the following questions. Be prepared to give reasons for answers with references to parts of these essays.

1. What are characteristics of a national government and society that contribute to national security?

2. Madison says in *The Federalist* 41: "A standing force . . . is a dangerous, at the same time it may be a necessary, provision. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties." a. What is the main idea of this quotation? b. What is the relationship of Madison's main idea in this quotation and the main purposes of government stated in the Preamble to the Constitution? c. To what extent do you agree with this statement of Madison?

3. Refer to Article I, Sections 7, 8, 9; Article II, Sections 1 and 2; and Amendments II and III of the Constitution. a. Identify powers and duties of the national government to provide national defense and security. b. Identify limitations on military power that are designed to maintain civilian control of the military and to protect civil liberties and rights against abuses of power by military leaders.

4. Compare and contrast the ideas of Hamilton and Madison on national security as expressed in *The Federalist* 23 and 41. a. To what extent do they agree or disagree? b. To what extent do Hamilton and Madison have different ideas about the relationship of national

security to liberty? c. To what extent do you agree with the positions on national security of Hamilton, Madison, or both of them?

5. a. How are national defense and security related to civil liberty as values of government and citizenship in a free society? b. How might strong emphasis on national defense and security threaten civil liberties? c. How might lack of concern for national defense and security threaten civil liberties? d. What are characteristics of a constitutional government that is designed to achieve security with liberty?

TEACHING PLAN FOR LESSON 8: POPULAR SOVEREIGNTY AND FREE GOVERNMENT IN THE FEDERALIST, NUMBERS 10, 39, 51

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the treatment of popular sovereignty and free government in *The Federalist* 10, 39, and 51. Students are also challenged to think about the meaning and value of majority rule and minority rights in order to secure a free and just society. Majority rule and minority rights are presented as basic and conflicting values in the American heritage, which raise continuing issues for citizens of a free society.

Curriculum Connection

This lesson can be used with chapters on the introduction of government in civics and government textbooks and with the standard American history textbook chapter on the period of the writing and ratifying of the Constitution. It also fits typical civics and government textbook treatments of civil liberties and rights.

Objectives

Students are expected to:

- (1) Identify and comprehend ideas on popular sovereignty, free government, majority rule, minority rights, republicanism, and pure democracy.
- (2) Examine, explain, and appraise ideas on popular sovereignty, free government, majority rule, minority rights, republicanism, and pure democracy.
- (3) Appraise statements about popular sovereignty, free government, majority rule, and minority rights in *The Federalist* 10, 39, and 51.
- (4) Examine and appraise positions on the value of majority rule with minority rights and the necessity of limiting majority rule and minority rights to achieve a free government.
- (5) State and justify a position on the significance and practice of majority rule with protection of minority rights in contemporary American society and in American history.

Suggestions for Teaching the Lesson

Opening the Lesson. Have students read the introduction to the lesson to examine the core concepts of popular sovereignty and free government. Emphasize that Madison and other supporters of the Constitution argued for limited popular government and wanted to restrict the power of majorities in order to protect the rights and liberties of individuals. This introduction sets a context for study of excerpts from essays 39, 10, and 51 of *The Federalist*.

Developing the Lesson. Have students read the excerpt from essay 39. Check students' comprehension of main ideas by requiring them to answer the questions following the excerpt from essay 39. Repeat this procedure with reference to excerpts from essays 10 and 51.

Have students turn to the exercises at the end of the lesson. Assign the exercise, "What Is Said About Popular Sovereignty and Free Government. . . ?" Following are numbers of statements on this list that agree with *The Federalist*: 2, 3, 4, 5, 11, 14, 15. You might wish to select two or three provocative statements from this exercise as foils for discussion about civic values. For example, you might ask students to agree or disagree with Madison's position on statements 6 and 7.

Have students turn to the exercises at the very end of the lesson. Ask them to complete items 1-4 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-4 in the set of exercises at the end of the lesson. Require students to support or justify answers by referring to pertinent parts of *The Federalist*. In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justification or support for answers.

Assign item 5 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Use the essays of one or two students to initiate discussion of item 5. Advise students to use at least three sources in writing their essays: *The Federalist*, the Constitution, and their history, government, and civics textbooks.

Civic values that should be highlighted in this lesson, in addition to majority rule and minority rights, are social diversity, social unity, common good, liberty, limited government, and the rule of law. Emphasize potential conflicts between values such as majority rule and minority rights and social diversity and unity and the basic issues of a free society that are raised by these value conflicts. In addition, emphasize that in a free government, balances are sought and maintained between such values as majority rule and minority rights. Citizens must think in terms of "more or less" and not in terms of "either-or" to achieve and sustain workable balances between core values that may lead to conflicts and issues.

As an extra assignment, you might ask students to read essay 9 of *The Federalist* by Alexander Hamilton. Ask them to compare and contrast Hamilton's ideas on free government with Madison's ideas expressed in essay 10.

NOTE: The concept of free government is a fundamental idea in *The Federalist*. This concept is discussed in detail in an excellent book by Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government*. Here is Dietze's definition of free government.

"Free government could thus be defined as a popular government where the majority is, for the sake of individual and minority rights, bound by a constitution and where popular participation in government, while generally accepted, is only a means for the protection of the individual's life, liberty, and property."

LESSON 8: POPULAR SOVEREIGNTY AND FREE GOVERNMENT IN THE FEDERALIST, NUMBERS 10, 39, 51

Constitutional government in the United States is based on *popular sovereignty*; that is, government is established by free choice of the people and is expected to serve the people, who have sovereignty, or supreme power. The American Constitution, for example, establishes government in the name of the people. The Preamble says: "We the people of the United States . . . do ordain and establish this Constitution for the United States of America."

Popular sovereignty was exercised through Article VII of the Constitution, which required that nine states approve the proposed frame of government before it could become the supreme law of the United States. The people chose representatives to ratification conventions, who freely decided to approve the Constitution, in the name of those who elected them. Popular sovereignty was also recognized in Article V of the Constitution, which provides for amendments to the Constitution through decisions by elected representatives of the people. Finally, popular sovereignty is reflected in Article I, which requires that Representatives to Congress be elected by the people.

Popular sovereignty, or government by the people, implies majority rule. In a popular government, people elect representatives in government by majority vote, and these representatives of the people make laws by majority vote. However, popular government can pose dangers to the rights and freedoms of individuals. Majorities might oppress minorities or individuals who disagree with them. Thus, James Madison and other supporters of the Constitution of 1787 believed that popular sovereignty and majority rule should be limited to protect the rights and liberties of individuals.

The writers and defenders of the Constitution of 1787 feared three kinds of tyranny. First, they feared the tyranny of a monarch or dictator (tyranny of unlimited rule by one individual over the majority). Second, they feared the tyranny of an aristocracy or oligarchy (tyranny of unlimited rule by a few over the majority of the people). Third, they feared greatly the tyranny of the majority of the people over minority groups or individuals (tyranny of unlimited majority rule). John Adams' name for unlimited rule of the majority was "democratic despotism." Alexander Hamilton warned us about unfettered power in government, whether exercised by an individual, minority groups, or the majority of the people. Hamilton wrote: "Men love power. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many."

According to Madison, the Constitution of 1787 limited the power of majorities by establishing a *free government*; that is, popular government where the majority is limited by law in order to protect the rights and liberties of individuals and minorities. In a free government, there should be a workable balance between majority rule and minority rights. There should be limits on the power of majorities to protect the rights of minorities and individuals, who may disagree with, or in some significant way be different from, the majority of the people. Likewise, there should be limits on the power of minorities, so that the spirit and practice of majority rule is not violated. At what point, and under what circumstances, does rule by the majority violate the legitimate rights of minority groups or individuals? Likewise, when and how do the rights of minorities and individuals violate or undermine the will of the majority?

It is difficult to achieve and maintain a workable balance between the conflicting claims of majority rule and minority rights. Important issues of a free society pertain to these claims. Citizens of a free government must continually make decisions about the limits of majority rule and the limits of minority rights and the balance between these two ideas.

Madison discussed majorities, minorities, popular sovereignty, and free government in essays number 10, 39, 51 of *The Federalist*.

Read the following excerpt from *The Federalist* 39 by James Madison. Answer the questions below the excerpt and be prepared to defend your responses in class.

NUMBER 39: MADISON

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the peo-

worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarring of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the executive which are the most necessary ingredients in its composition—vigor and expedition, and this without any counter-balancing good. In the conduct of war, in which the energy of the executive is the bulwark of the national security, everything would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed—that is, to a plurality of magistrates of equal dignity and authority, a scheme, the advocates for which are not likely to form a numerous sect: but they apply, though not with equal yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to triture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the executive, and which lies as much against the last as the first plan is that it tends to conceal faults and destroy responsi-

bility. Responsibility is of two kinds—to censure and to punishment. The first is the more important of the two, especially in an elective office. Men in public trust will much oftener act in such a manner as to render them unworthy of being any longer trusted, than in such a manner as to make them obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that where there are a number of actors who may be charged with different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

"I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happened to be a collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity as to render it uncertain what was the precise conduct of any of those parties.

In the single instance in which the governor of this State is coupled with a council—that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations that the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, *first*, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number as on account of the uncertainty on whom it ought to fall; and *second*, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without

this, there would be no responsibility whatever in the executive department—an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office and may observe or disregard the counsel given to him at his sole discretion.

But in a republic where every magistrate ought to be personally responsible for his behavior in office, the reason which in the British Constitution dictates the propriety of a council not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the Chief Magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the executive, which has so generally obtained in the State institutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is one";* that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us that the species of security sought for in the multiplication of the executive is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man, who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The decemvirs of Rome, whose name denotes their number,** were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers is not too great for an easy combination; and from such a combination America would have more to fear than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions,

* De Lolme

** Ten

are often the instruments and accomplices of his bad, and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility.

I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our Constitution. PUBLIUS

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We proceed now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2nd. The tenure by which they are to hold their places. 3rd. The partition of the judiciary authority between different courts and their relations to each other.

First. As to the mode of appointing the judges: this is the same with that of appointing the officers of the Union in general and has been so fully discussed in the two last numbers that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places: this chiefly concerns their duration in office, the provisions for their support, the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices *during good behavior*; which is conformable to the most approved of the State constitutions, and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objection which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it 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. And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political

rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power;* that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the executive. For I agree that "there is no liberty if the power of judging be not separated from the legislative and executive powers."** And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great im-

portance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers and that the construction they put upon them is conclusive upon the other departments it may be answered that this cannot be the natural presumption where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. 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, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. 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. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental.

This exercise of judicial discretion in determining between two contradictory laws is exemplified in a familiar instance. It not uncommonly happens that there are two statutes existing at one time, clashing in whole or in part with each other and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the

* The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the JUDICIARY is next to nothing."—*Spirit of Laws*, Vol. I, page 186.

** *Idem*, page 181.

law. They thought it reasonable that between the interfering acts of an *equal* authority that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved anything, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies*** in questioning that fundamental principle of republican government which admits the right of the people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing Constitution would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it prior to such an act. But it is easy to see that it would require an uncommon portion

*** *Vide Protest of the Minority of the Convention of Pennsylvania*, Martin's speech, etc.

of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of an iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and dis-interested. Considerate men of every description ought to prize whatever will tend to beget or fortify that temper in the courts; as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature there would be danger of an improper complaisance to the body which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weighty reason for the permanency of the judicial offices which is deducible from the nature of the qualifications they require. It has been frequently remarked with great propriety that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind that the records of those precedents must unavoidably swell to a very considerable bulk and must demand long and laborious study to acquire a competent

knowledge of them. Hence it is that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us that the government can have no great option between fit characters; and that a temporary duration in office which would necessarily discourage such characters from quitting a lucrative course of practice to accept a seat on the bench would have a tendency to throw the administration of justice into hands less able and less well qualified to conduct it with utility and equity. In the present circumstances of this country and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established good behavior as the tenure of their judicial offices in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

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