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Alexander Hamilton, James Madison, and John Jay

The Federalist
with
The Letters of “Brutus”

The Federalist represents one side of one of the most momentous political debates ever conducted: whether to ratify, or to reject, the newly drafted American constitution. To understand the debate properly requires attention to opposing Antifederalist arguments against the newly drafted constitution, and this new and authoritative student-friendly edition presents in full all eighty-five Federalist papers written by the pseudonymous “Publius” (Hamilton, Madison, and Jay), along with the sixteen letters of “Brutus,” the prominent but still unknown New York Antifederalist who was Publius’s most formidable foe. Each is systematically cross-referenced to the other, and both to the appended Articles of Confederation and US Constitution, making the reader acutely aware of the cut and thrust of debate in progress. The distinguished political theorist Terence Ball provides all of the standard series editorial features, including brief biographies and notes for further reading, making this the most accessible edition ever of a classic of political thought in action.

Formerly Professor of Political Science at the University of Minnesota and visiting professor at UC San Diego and Oxford, TERENCE BALL now teaches political theory at Arizona State University. He is the author of numerous books and articles, and has edited the political writings of James Mill and (with Joyce Appleby) Thomas Jefferson for the **Cambridge Texts** series.

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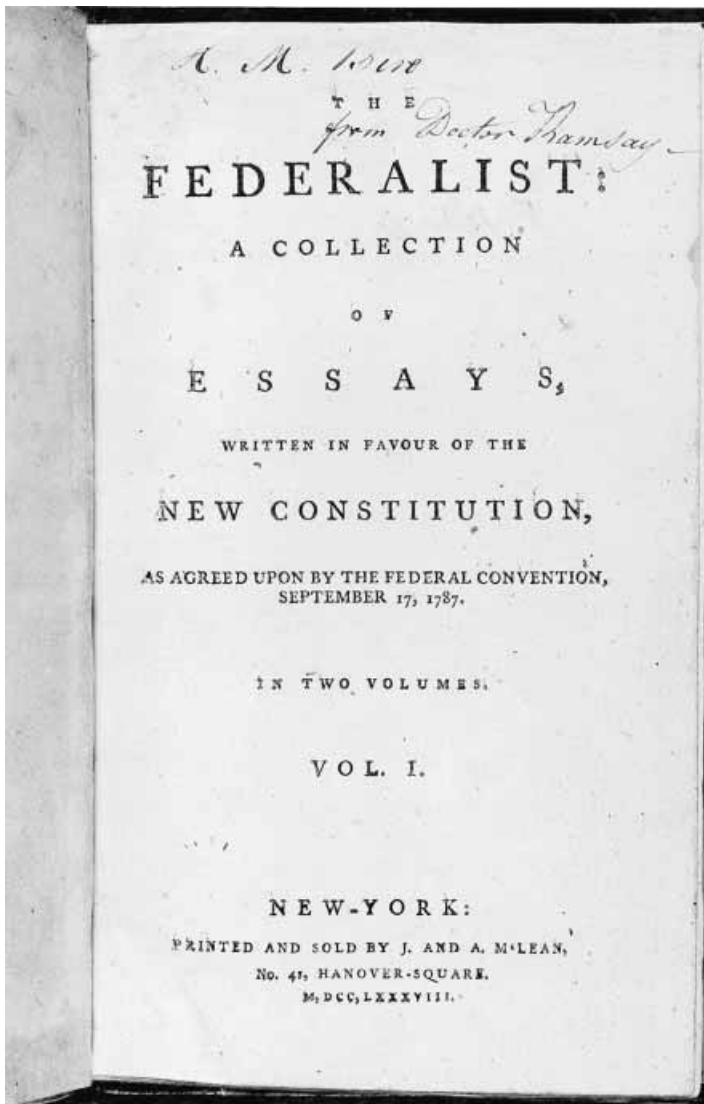
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PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge CB2 1RP, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge, CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa
<http://www.cambridge.org>

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First published 2003

Printed in the United Kingdom at the University Press, Cambridge

Typeface Ehrhardt 9.5/12 pt *System* L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

ISBN 0 521 80650 x hardback
ISBN 0 521 00121 8 paperback

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For John Schaar, Sheldon Wolin, Hanna Pitkin, and
Norman Jacobson
My teachers at Berkeley and beyond

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Preface

The first thing one is likely to notice when picking up *The Federalist* is its bulk. At nearly five hundred closely printed pages it is as long as Machiavelli's *Discourses* or Hobbes's *Leviathan*. But the appearance is deceptive, for *The Federalist* is not a systematic treatise in political theory. Nor are its authors armchair philosophers writing in lofty isolation from the rough-and-tumble of practical politics. *The Federalist* is a partisan tract. It represents one side of the first of the two most momentous debates ever conducted in America: the debate over whether to ratify or reject the newly drafted American constitution, which pitted its “Federalist” supporters against its “Antifederalist” foes, and culminated in the adoption of the Constitution of the United States. (The second great debate – over slavery and secession – divided the country and ended in civil war.) To understand the ratification debate, and indeed *The Federalist* itself, requires that we also attend to Antifederalist arguments against the proposed Constitution. My aim in this volume is to restate important parts of the Antifederalist case against, and *The Federalist*'s case for, the new Constitution. This I do by reprinting in full all eighty-five *Federalist* papers written by the pseudonymous “Publius” (Alexander Hamilton, James Madison, and John Jay), along with the sixteen letters of “Brutus,” the prominent but still unknown New York Antifederalist who was Publius's most formidable foe. Each is systematically cross-referenced with the other, and both to the appended Articles of Confederation and US Constitution. By these means I hope to restore the “dialogical” dimension of the ratification debate in which *The Federalist* played such a prominent part.

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Preface

My accumulated intellectual debts are extensive and payment is long overdue. I owe a great deal to my teachers at Berkeley. From Norman Jacobson, John Schaar, and Sheldon Wolin I learned to listen attentively to both sides in the ratification debate, and from Hanna Pitkin to pay close attention to "liberty," "representation," and other concepts on which that debate turned. I hope that my debt to them may in some small part be discharged by dedicating this volume to them. To my good friends and colleagues Richard Dagger, James Farr, Russell Hanson, and Robert W. T. Martin I am indebted for many years of delightful discussions about American political thought and, most recently, for commenting helpfully on my Introduction to the present volume. My son Stephen drew upon his considerable knowledge of the law to help me understand several arcane legal concepts and cases mentioned in *The Federalist*. For research and editorial assistance I am grateful to my undergraduate assistants in the Junior Fellows program at Arizona State University. Michael Patti, Karem Roitman, Nicole Nixen, Ruth Lindsay, Nicole Harris, Benjamin Updike, and Susan Puls have tirelessly tracked down sources, checked and double-checked names, dates, and other facts, and have helped ease my editorial burdens in sundry other ways. I thank Paul DiMaggio and Nicole Kayner and my wife Judith for helping me prepare the index and Jean Field for conscientious copy-editing. The librarians and staff at the Library of Congress and the British Library have, as always, been consistently courteous and helpful.

To Richard Fisher of the Cambridge University Press I can only say very many thanks, once again, for his tact, his patience with my many delays, and his editorial acumen. Finally, though not least, I am most grateful to the editors of the Cambridge Texts series. Quentin Skinner and Raymond Geuss have been unfailingly supportive and encouraging over many years. *The Federalist* is among the last works to appear in their now-monumental series, and I am happy to have had a small part in it.

T. B.
Madeline Island
in Lake Superior

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Introduction

The Federalist has long been regarded as a work of political theory at once profound and practical, and an American “classic.” Thomas Jefferson hailed it as “the best commentary on the principles of government which ever was written,” and compared it favorably to John Locke’s *Two Treatises of Government*. “Locke’s little book on government is perfect as far as it goes. Descending from theory to practice there is no better book than the Federalist.”¹ Half a century later Alexis de Tocqueville wrote in *Democracy in America* that

I shall often have occasion to quote *The Federalist* in this work. When the draft law, which has since become the Constitution of the United States, was still before the people and submitted for their adoption, three men, already famous and later to become even more celebrated – John Jay, Hamilton, and Madison – associated together with the object of pointing out to the nation the advantages of the plan submitted to it. With this intention they published in a journal a series of articles which together form a complete treatise . . . *The Federalist* is a fine book, and though it especially concerns America, it should be familiar to statesmen of all countries.²

Early in the twentieth century the muckraking Progressive historian Charles Beard excoriated the Constitution as an elitist and anti-democratic document even as he praised *The Federalist* as “this wonderful piece of

¹ Jefferson to Madison, Nov. 18, 1788, in *PTJ*, vol. xiv, p. 188; to Thomas Mann Randolph, May 30, 1790, in *JPW*, pp. 261–62.

² Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence, ed. J. P. Mayer and Max Lerner (New York: Harper & Row, 1966), p. 104, n. 8. Tocqueville subsequently refers to, and frequently quotes at length, more than fifty *Federalist* papers.

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argumentation by Hamilton, Madison, and Jay.”³ Half a century later Clinton Rossiter offered a no less laudatory assessment of *The Federalist* as “the one product of the American mind that is rightly counted among the classics of political theory.”⁴

And yet *The Federalist* is a curious classic. It is not a systematic treatise on political theory. It is instead a collection of eighty-five newspaper editorials written at white-hot speed over a seven-month period (October 1787–May 1788) in support of the newly drafted United States Constitution. Although its three authors held distinctly different political views (indeed Madison and Hamilton were soon to become bitter political enemies), all spoke with a single voice as they wrote under the pseudonym “Publius.”⁵ Publius’s single overriding aim was to persuade the citizens of New York state to ratify the new Constitution. Thus *The Federalist* was a *pièce d’occasion* that has long outlived the particular occasion for which it was written. If we are to understand its meaning as its authors intended, we must return to that troubled and exciting time – “a time when,” as John Adams put it, “the greatest lawgivers of antiquity would have wished to live.”⁶

I

During the American Revolution (1776–83) the thirteen former British colonies began to coalesce as a nation-in-the-making, bound together in a loose-knit association by the Articles of Confederation (drafted in 1779 and ratified in 1781). The Articles, which reflected a widespread distrust of concentrated power and centralized government, had worked well enough during the Revolution and in the heady days following the defeat of the British. By the mid-1780s, however, the political climate had altered appreciably, and the fabric of civility and cooperation had begun to fray. Shays’s Rebellion in western Massachusetts and other local protest

³ Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1913), p. 153.

⁴ Clinton Rossiter, Introduction to *The Federalist Papers* (New York: Mentor Books, 1961), p. vii.

⁵ Hamilton took the name from the legendary Roman consul Publius Valerius, a founder and hero of the early Roman republic. Grateful Romans added “Publicola” – meaning lover of the people – to Publius Valerius’s name in recognition of his service to the republic. Hamilton’s source was Plutarch’s chapter on “Poplicola [Publicola],” *Lives of the Noble Grecians and Romans*, trans. Dryden (1683; New York: Modern Library, n.d.), pp. 117–30.

⁶ John Adams, *Thoughts on Government* (Philadelphia, 1776) in *Papers of John Adams* (Cambridge: Harvard University Press, 1979), vol. 1v, p. 92.

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movements were seen by some as a series of interconnected conspiracies being hatched by debtors and democrats. It was in this climate of impending crisis that the Annapolis Convention was called in 1786 to consider revising the Articles of Confederation. The Convention recommended that Congress convene a meeting for this purpose. The Congress rather reluctantly agreed, and on May 25, 1787, delegates from twelve states met in Philadelphia (the radical and ever-suspicious Rhode Island refused to take part). A consensus soon emerged that the Articles were too defective to merit revision and should be replaced outright. Not everyone agreed, however. Several delegates went home in a huff, warning that treachery and treason were afoot in Philadelphia. “I smell a rat,” sneered Virginia’s Patrick Henry, who had refused even to attend the Philadelphia convention. Two of New York’s three delegates – John Lansing and Robert Yates (the third was Alexander Hamilton) – left in a fury, vowing to oppose the new constitution. It is probable (though we do not know for certain) that Yates became the feared “Brutus” – the most ardent and articulate Antifederalist pamphleteer in New York.

In the end, and contrary to their original instructions, the delegates scrapped the Articles of Confederation and during the sweltering summer of 1787 they drafted an entirely new constitution. That done, it was decided that the proposed constitution be ratified or rejected by conventions to be held in the thirteen states. Every state except Rhode Island agreed, and the ratification debate of 1787–88 was on.

Thus began the greatest non-violent verbal battle ever waged in America. (A second great debate – over slavery and secession – ended violently, in civil war.) To revisit that debate is to enter a world both different from and yet formative of that in which Americans now live. “Federalist” friends of the proposed constitution squared off against its “Antifederalist” foes.⁷ Or, as Antifederalist wags said, the contest was between “rats” who favored ratification and “anti-rats” who opposed it. The debate was to a surprising degree terminological, revolving around the meanings of the concepts constitutive of republican discourse – liberty, tyranny, virtue, corruption, representation, and even republic itself – and raising a host of questions. What is a republic? What is its optimal size and extent? How are republican liberties best preserved, and how can they be lost? What system of representation best suits a republic? How can the

⁷ The distinction between “federal” and “anti-federal” was coined by the American lexicographer Noah Webster in 1786. It was meant to distinguish between those who favored greater centralized or “federal” power and those who did not. See *DC*, vol. 1, p. 1049.

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corruption of the government and the citizenry be slowed or stopped altogether? By what constitutional means and mechanisms might a republic be maintained over many generations? Is a republic best protected by a professional standing army or by an all-volunteer citizen militia? Does government by and for the people require a bill of rights to protect the people from themselves and/or their own elected representatives?

It has been said, and with some justification, that the new American republic was the joint creation of Federalists and Antifederalists alike.⁸ It was a new political system created, not by the dictates of a lone legislator, but argued into existence and constituted collectively by means of an intense debate between partisans of different political persuasions and theoretical perspectives. During this debate Antifederalist criticism prompted Federalist defenses that not only clarified but helped to establish the meaning of, and theoretical justification for, the new Constitution.

The ratification debate produced an enormous outpouring of newspaper articles, pamphlets, sermons, and tracts, both for and against the new design. Of the former *The Federalist* is by far the most famous and certainly the most widely read in our day.⁹ The Antifederalist case against the Constitution, by contrast, is today rarely read or even remembered. Once described (and dismissed) as mere nay-sayers and "men of little faith," the Antifederalists are now more often regarded as "the other founders."¹⁰ Had there been no reasonable or plausible arguments against the proposed constitution there would have been no need for the concentrated firepower of *The Federalist*. And, had there been no *Federalist*, our understanding of the Constitution would today be greatly diminished. For the Constitution is a terse document, devoid of argument or explanation. *The Federalist* gives us a window into the minds of the Founders. As Madison remarked, *The Federalist* provides "the most authentic exposition of the text of the Federal Constitution, as understood by the Body which prepared and the authority which accepted it."¹¹ It explains why they found the Articles of Confederation unsatisfactory; why they sought to separate the

⁸ Storing, *CAF*, vol. 1 [*What the Anti-Federalists Were For* (Chicago: University of Chicago Press, 1981)], p. 3, and Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788–1828* (Chapel Hill: University of North Carolina Press, 1999).

⁹ See the essays by "other" Federalists in *FC*.

¹⁰ Cecilia M. Kenyon, "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *WMQ*, 3rd series, 12, no. 1 (1955), pp. 3–46, and her Introduction to *The Antifederalists* (Indianapolis: Bobbs-Merrill, 1966); Cornell, *The Other Founders*, *passim*.

¹¹ James Madison to Thomas Jefferson, Feb. 8, 1825, in *WJM*, ed. Hunt, 1X, p. 218.

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powers of the several branches of the government; why they subdivided the national legislature into two houses; why they believed a federal court of final appeal to be both desirable and necessary; why they outlawed titles of nobility; why they believed a bill of rights to be an unnecessary addition – and why many other prescriptions and proscriptions were written into the Constitution or omitted entirely. As a contribution to the ratification debate, *The Federalist* is an extended exercise in exposition, explanation, and persuasion. As a work of political theory, then, *The Federalist* flies fairly close to the ground, rarely soaring into the stratosphere of philosophical abstraction.

The series of eighty-five articles that we now know as *The Federalist* was conceived and planned by Alexander Hamilton, who quickly recruited his fellow New Yorker John Jay and Virginia’s James Madison who was in New York on other business. They formed a remarkable but unlikely trio. Hamilton, born in poverty in the West Indies to unmarried parents (“That bastard son of a Scots pedlar,” John Adams called him), was self-educated and self-made. By sheer will and force of intellect he emigrated to America, briefly attended the College of New Jersey (now Princeton) before leaving to study law at King’s College (now Columbia University) in New York. Hamilton took an early and active part in the pamphlet and military warfare of the American Revolution, and quickly came to the attention of General George Washington, who made him aide-de-camp and promoted him to Lieutenant Colonel in 1777. After the Revolution Hamilton practised law and became active in New York politics. He had been one of New York’s three delegates to the Philadelphia Convention and an ardent supporter of the proposed constitution. After ratification he would serve as Secretary of the Treasury in President Washington’s administration. He would later be killed in a duel with Aaron Burr, Jefferson’s Vice-President, in 1804.

James Madison, an eminent Virginia lawyer, planter, and politician, was short and sickly. What he lacked in physical stature and health, however, he more than made up for in hard work and dogged determination. His tireless work before, during, and after the Philadelphia convention earned him the sobriquet “Father of the Constitution.” After ratification Congressman Madison would write the Bill of Rights and later serve two terms as President.

John Jay was a prominent New York lawyer, politician, and diplomat. Jay, whose forte was foreign policy, contributed only four papers (Nos. 2–5) before becoming seriously ill, leaving to Hamilton and Madison

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the herculean task of completing the series (Hamilton contributed fifty-one papers and Madison twenty-nine). Jay returned toward the end to contribute one more paper (No. 64). After ratification he would serve as first Chief Justice of the US Supreme Court and later as Governor of New York.

The three authors faced a stiff challenge. Antifederalist sentiment ran high in New York State. Two of New York’s three delegates had bolted from the Philadelphia convention. Governor George Clinton was an ardent Antifederalist, as were most members of the state legislature and judiciary.¹² Federalists feared – and Antifederalists hoped – that, if New York refused to ratify the new constitution, other states would follow suit. The stakes could hardly have been higher.

Hamilton did not think the new constitution a perfect document – on the contrary, he thought that it did not take enough power away from the states or give enough to the central government – but he believed it to be the last best hope for his adopted country. It would preserve the liberties won during the American Revolution and serve as a bulwark against interstate anarchy and civil war, and hence against invasion, occupation, and subjugation by foreign powers.¹³ If America was to avoid this fate, the Articles of Confederation would have to be rescinded and replaced for reasons given in *The Federalist*. The first is that a loose confederation of thirteen sovereign states could not adequately defend itself against foreign assault or invasion (Nos. 3–8, 22–29). A second is that the confederation created by the Articles allowed states to erect tariffs and other barriers to trade and commerce, thereby endangering the prosperity of the parts and the whole (Nos. 11–13). Moreover, the Articles allowed for multiple sovereigns – thirteen contentious and quarrelsome states without a strong national government to adjust and adjudicate their differences (Nos. 15–17) or to tax them for the greater good of the nation (No. 21).

Despite their differences, Federalist friends and Antifederalist foes of the new constitution generally agreed that the Articles of Confederation

¹² On the ratification debate in New York state, see Cecil L. Eubanks, “New York,” in Michael Allen Gillespie and Michael Lienesch (eds.), *Ratifying the Constitution* (Lawrence: University Press of Kansas, 1989); see further E. Wilder Spaulding, *New York in the Critical Period, 1783–1789* (New York: Columbia University Press, 1932) and Linda Grant De Pauw, *The Eleventh Pillar: New York State and the Federal Constitution* (Ithaca: Cornell University Press, 1966).

¹³ See Hamilton, “Conjectures About the New Constitution” in *PAH*, vol. 1V, pp. 275–77, and Nos. 6–8.

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were unsatisfactory and needed changing. They differed, however, over the newly drafted alternative to the Articles. They agreed that the proposed constitution would, if adopted, reconstitute the American body politic in a radically new way. Specifically, it would take important powers away from the thirteen states and give them to the federal (or central) government. Federalists believed this change to be a necessary condition of the union’s survival. Antifederalist critics countered that the federal government would be too powerful and that states would be stripped of powers that were rightfully theirs. The newly drafted constitution would turn sovereign states into subservient pawns of an all-powerful “consolidated” national government. That government would ride roughshod over the rights and liberties of Americans, subjecting them to taxation without adequate representation, to being ruled by an unrepresentative House of Representatives, an aloof and aristocratic Senate, and a surrogate king called the president, tyrannized by an unelected federal judiciary, and threatened by a “standing army” of professional soldiers. So claimed the Antifederalists. And because Antifederalist sentiment was widespread, in New York as elsewhere, Publius faced an uphill struggle.

It is important to remember that neither side viewed this as a struggle for “democracy.”¹⁴ In the late eighteenth century democracy was still viewed as class rule – specifically, rule by the lower or working class in their own class’s political and economic interest. In Aristotle’s sixfold classification of constitutions, democracy was the bad or corrupt form of rule by the many. Its virtuous counterpart was the *politeia* (“polity”), which the Romans later rendered as *res publica* (“republic”). Republican political thought, revived during the Renaissance by Machiavelli and others, was later adapted by James Harrington in the mid-seventeenth century and by Bolingbroke, John Trenchard, and Thomas Gordon, and other English republican or “commonwealth” theorists in the early eighteenth century.¹⁵ Amongst the main features of “republican” theory and practice were the following: rule by (or on behalf of) the people, whose rulers’ or representatives’ powers are restricted by law so as to protect the rights

¹⁴ On the contested meaning of “democracy” during and after the Founding period, see Russell L. Hanson, *The Democratic Imagination in America* (Princeton: Princeton University Press, 1985).

¹⁵ See Zera S. Fink, *The Classical Republicans* (Evanston: Northwestern University Press, 1945); Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge: Harvard University Press, 1959).

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and liberties of the people. If this form of government was to survive and flourish, the people and their governors must have “virtue,” that is, they must exhibit the qualities of public-spiritedness, self-sacrifice, and devotion to the common good. If citizens lack or lose these qualities they become “corrupt” and are therefore in immediate and grave danger of losing their “liberty” – that is, their freedom to govern themselves – to princes or petty tyrants. Among the means of maintaining liberty was a prohibition on “standing armies” of paid professional soldiers, and, as an alternative, the formation and training of a “militia” of armed citizens. These are among the defining features of the Atlantic republican tradition of political thought.¹⁶

During and after the American Revolution “republic” was the watchword on every patriot’s lips. When Patrick Henry proclaimed “Give me liberty or give me death,” he was speaking specifically of republican (or public) liberty.¹⁷ It is therefore scarcely surprising that when the proposed Constitution was published on September 17, 1787, the first question to be asked – and asked repeatedly – was whether the form of government it created was in fact truly “republican.” Federalists claimed that the proposed constitution would create a republican government; Antifederalists denied it. As one Antifederalist writer, the pseudonymous Federal Farmer, put it, the issue was not so much between “Federalist” and “Antifederalist” as between “real republicans” like himself and “pretended” ones like Publius:

if any names are applicable to the parties, on account of their general politics, they are those of republicans and anti-republicans. The opposers are generally men who support the rights of the body of the people, and are properly republicans. The advocates are generally men not very friendly to those rights, and properly anti republicans.¹⁸

¹⁶ J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975). On the European background, see Paul A. Rahe, *Republics Ancient and Modern* (Chapel Hill: University of North Carolina Press, 1994), 3 vols.; and Martin Van Gelderen and Quentin Skinner (eds.), *Republicanism: A Shared European Heritage* (Cambridge: Cambridge University Press, 2002), 2 vols.

¹⁷ Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969), pp. 60–65; Michael Kammen, *Spheres of Liberty: Changing Perceptions of Liberty in American Culture* (Madison: University of Wisconsin Press, 1986). On pre-liberal republican views of liberty, see Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998).

¹⁸ The Federal Farmer [Richard Henry Lee?], Letter v1, in *AF*, pp. 67–8.

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Publius, by contrast, defended the new design as being fully in “conformity . . . to the true principles of republican government” (No. 1) as well as “republican in spirit” (No. 39) and “wholly and purely republican” (No. 73). But here was the rub: Publius and his fellow Federalists were defending a design for a new *kind* of republic, the likes of which had never previously existed – an “enlarged” or “extended republic.”

II

The question of size – how large can a republic be without ceasing to be a republic? – was raised early and often during the ratification debate. The American republic created by the Constitution was to take in a large, indeed empire-sized, territory and an ever-increasing population, with the prospect of further expansion to the west and south (still under French and Spanish control). Antifederalists were quick to seize upon what they regarded as a rank contradiction. An “extended republic,” they argued, is an oxymoron and not really a *republic* at all. One of the ablest Antifederalists, New York’s “Brutus,” held that if we consult “the greatest and wisest men who have ever thought or wrote on the science of government” we shall have to conclude that “a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States.” If you doubt it you need only turn to the past. “History,” he says, “furnishes no example of a free republic, anything like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans.” And when they “extended their conquests over large territories of country” they ceased to be republics, “their governments [having] changed from that of free governments to those of the most tyrannical that ever existed in the world” (Brutus 1, p. 443).

Among “the many illustrious authorities” cited by Brutus is Montesquieu, who had observed that “It is natural to a republic to have only a small territory, otherwise it cannot long subsist.”¹⁹ Large territories, having heterogeneous populations, widely differing interests, and immoderate men of large fortunes, are inherently incapable of self-government. They are, therefore, more naturally governed either by monarchs or despots. Brutus contends “that a consolidation of this extensive continent, under one government, for internal, as well as external

¹⁹ Montesquieu, *Spirit of the Laws*, vol. 1, Bk VIII, ch. 16; quoted in Brutus 1, 443.

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purposes . . . cannot succeed without a sacrifice of your liberties." Hence "the attempt [to create an extended republic] is not only preposterous, but extremely dangerous" (Brutus III, p. 453).

Brutus's and other Antifederalists' objections to a large or extended republic were also concerned with representation – specifically, with the conditions under which representative government can be said to be truly representative. They charged that the new constitution created two representative bodies that were so in name only. Brutus's harshest words were reserved for the House of Representatives, which he thought misnamed. "The more I reflect on this subject, the more firmly am I persuaded, that the representation is merely nominal – a mere burlesque . . ." (Brutus III, p. 458). Too few representatives will be expected to represent too many people. If an elective body is to represent the people adequately in all their variety and diversity, it must be both large and diverse in its composition (Brutus III, pp. 454–57). It must include farmers, mechanics, and artisans as well as lawyers and merchants. But, Brutus charges, the mode of election and system of representation prescribed by the new constitution are designed not only to thwart the representation of the various orders or ranks, but to exclude them entirely. Thus "in reality there will be no part of the people represented, but the rich, even in that branch of the legislature, which is called democratic." The Federalists' claim that those elected will disinterestedly serve all the people, including the "democratical part," is a bare-faced lie. "The well born, and highest orders in life, as they term themselves," warns Brutus, "will be ignorant of the sentiments of the midling class of citizens, strangers to their abilities, wants, and difficulties, and void of sympathy, and fellow feeling." Theirs "will literally be a government in the hands of the few to oppress and plunder the many" (Brutus III, pp. 457–58). And if the "democratical" House of Representatives be distant from the people, the "aristocratic" Senate is even more so (Brutus XVI).

Brutus's and other Antifederalists' charges that the new constitution was a design for disenfranchisement, oppression, and tyranny, struck deeply resonant republican chords. They therefore had to be met and countered as quickly as possible. Brutus's Letter III (November 15) was quickly countered in Federalist Nos. 9 and 10 (November 21 and 22, respectively). Not to be outdone by Brutus's reference to the "science of government," Publius (Hamilton) in No. 9 contends that Brutus's science is woefully out of date. It relies on the experience and the authority of the ancients. But since the glory days of Greece and Rome, Hamilton sniffs,

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the science of politics, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments – the introduction of legislative ballances and checks – the institution of courts composed of judges, holding their offices during good behaviour – the representation of the people in the legislature by deputies of their own election – these are either wholly new discoveries or have made their principal progress toward perfection in modern times. They are . . . powerful means, by which the excellencies of republican government may be retained and its imperfections lessened or avoided. (No. 9, p. 36)

Hamilton then confronts Brutus's criticism head-on by "ventur[ing], however novel it may appear to some, to add one more" truth to an ever-expanding body of scientific knowledge. Employing the language of astronomy, Hamilton explains: "I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve . . ." (No. 9, p. 36). Taking a larger and less localized view of the American political universe, Publius tries to undercut the force of any appeal to antiquity or to arguments from authority, including that of the illustrious (and decidedly modern) Montesquieu. "The opponents of the PLAN proposed have with great assiduity cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government," Hamilton says. But the Antifederalists cannot legitimately employ Montesquieu's arguments about the restricted size of republics because Montesquieu's very scale or standard of measurement is, in America, already outdated. "When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions, far short of the limits of almost every one of these States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia, can by any means be compared with the models, from which he reasoned and to which the terms of his description apply" (No. 9, p. 37). Thus the size and scale that Montesquieu recommends for republics is inapplicable in America, not only under the new Constitution as regards the federal government but even under the Articles of Confederation as regards the thirteen American states.

According to Hamilton, therefore, a new standard and a new scale are required for the modern republic envisioned in the proposed Constitution. Hamilton's rebuttal of the restricted-size argument in Federalist No. 9 prepares the way for Madison's redefinition of a republic in

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No. 10 – arguably the most famous of all the Federalist papers. Madison begins by decrying the evils of “faction” which can be avoided in either of two ways. The first is to eliminate their causes, the second, to control their effects. The first would require the equal division of property – since envy is a primary source of faction – and the elimination of “liberty, [which] is to faction what air is to fire, an aliment [i.e., nutrient] without which it instantly expires.” But this, says Madison, would be “folly,” for the “remedy [would be] worse than the disease” (No. 10, p. 41). The only reliable cure is to control the effects of faction. This is a remedy that only an *extended* republic can offer. A republic, as Madison redefines it, is characterized by two key features. The first is its system of delegation or representation; the second is its enlarged extent (or “orbit” in No. 9). A large republic would take in a wide variety of interests, thus encouraging the proliferation of factions and reducing the likelihood that any single faction will predominate. It would also enlarge the pool of “fit characters” from which representatives are to be chosen. And, by distancing representatives from direct influence by their constituents, a large republic would encourage representatives to develop an enlarged sensibility and to “distill” and “refine” their view of what the public interest is, and requires.²⁰

Whilst Brutus decries the actions of unrepresentative representatives, Madison decries the stratagems of “unworthy candidates” who are likely to triumph in a popular free-for-all. Bribery, bombast, demagoguery, and the various “vicious arts” would be their stock-in-trade. In other words, while Brutus and the Antifederalists focused on what representatives are likely to do after they are elected, Madison and his fellow Federalists focused largely on what candidates might do in order to be elected in the first place, and secondarily upon what “wicked or improper project[s]” they might pursue after their election (No. 10, p. 46).

This highlights a pervasive ambivalence among Federalists. On the one hand they favored popular sovereignty and majority rule; on the other they feared majority tyranny. The new constitution represented their ingenious and innovative attempt to secure the former while precluding

²⁰ Madison’s arguments against Brutus (and Montesquieu) and in defense of a large republic are almost certainly drawn from David Hume’s “Idea of a Perfect Commonwealth” in *Essays, Moral, Political, and Literary* (1758; Indianapolis: Liberty Fund, 1985), Essay XVI. See Douglass Adair, “‘That Politics May be Reduced to a Science’: David Hume, James Madison, and the Tenth Federalist,” in his *Fame and the Founding Fathers* (Indianapolis: Liberty Fund, 1998), ch. 4, esp. pp. 138–51; and Garry Wills, *Explaining America: The Federalist* (New York: Penguin, 1981), pp. 216–37.

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the latter. The Antifederalists, by contrast, saw a simple dichotomy: either majority rule or minority tyranny. Hence their hostility to the proposed constitution’s provisions for frustrating the will of the majority.

III

Another recurring Antifederalist charge was that the new constitution would lead inevitably to popular apathy, political corruption, and the loss of civic virtue. The concepts of corruption and virtue, as used by many Antifederalist writers, have deep republican roots. In classical republican discourse, “corruption” takes root when rulers and citizens cease to know or care about the common good, preferring instead to seek their own private (and especially economic) interests.²¹ The corruption of officials or representatives was one thing, but the corruption of the citizenry another and much more serious matter. In the Antifederalist view, these were linked in one of two ways. On the one hand, if the members of the “lower orders” should agree that “fit characters” not of their order were by nature or disposition better able to represent their interests, they might then be willing to consign their liberties to the doubtful safekeeping of their social superiors. On the other hand, should the citizens feel themselves powerless and voiceless, they will lose interest in public affairs. In either event they will concentrate on purely personal or private affairs and will cease to care about the common good. Either would result inevitably in the corruption of the citizenry and, ultimately, in the loss of liberty.

Antifederalists held that the new constitution embodied both defects. Suspecting a massive Federalist conspiracy against republican ideals and institutions, many Antifederalists believed that the new constitution was designed precisely for the dual purpose of making citizens trust their social superiors even as they themselves forgot the revolutionary Spirit of ’76 and became inward-looking and inattentive to matters of common concern. The new constitution could therefore be viewed, in the parlance of classical republicanism, as a medium or instrument of civic corruption and a danger to liberty.

²¹ The Antifederalist critique of the Constitution echoes many of the themes to be found in the earlier republican and radical Whig warnings of the dangers of corruption, especially those sounded by eighteenth-century English “country” party ideologists, notably Bolingbroke, against the “court” ideology of Sir Robert Walpole and the New Whigs. See Pocock, *Machiavellian Moment*, p. 509; and Hanson, *Democratic Imagination*, ch. 2.

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Publius’s (Madison’s) answer to such objections is that individual virtue is a weak reed, not to be relied upon for very long, if at all. Here he follows Hume’s advice to anyone who would draft a constitution:

Political writers have established it as a maxim, that, in contriving any system of government, and fixing the several checks and controuls of the constitution, every man ought to be supposed a *knave*, and to have no other end, in all his actions, than private interest. By this interest we must govern him, and, by means of it, make him, notwithstanding his insatiable avarice and ambition, co-operate to public good.²²

To restate Hume’s (and Madison’s) point in a more modern idiom: when writing a constitution it is wise to begin by assuming that men are not virtuous and public-spirited but, on the contrary, corrupt, ambitious, avaricious, and self-interested; then design a system that will pit the interests of individuals, factions, and government departments against one another. “This policy of supplying by opposite and rival interests, the defect of better motives” informs and undergirds the new constitution:

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place [i.e., office or department]. It may be a reflection on human nature, that such devices should be necessary to controul 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 controuls 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 controul the governed; and in the next place, oblige it to controul itself. (No. 51, p. 252)

The government to be created by the new constitution would not, indeed could not, run on the high-octane fuel of civic virtue but on low-octane factional and individual interest.²³

²² David Hume, “Of the Independency of Parliament” in *Essays, Moral, Political, and Literary*, p. 42; cf. Adair, *Fame*, pp. 144–48.

²³ Madison later came to believe that individual virtue was indispensable, and a necessary complement to the interest-based institutional arrangements prescribed by the Constitution. See Lance Banning, “Some Second Thoughts on Virtue and the Course of Revolutionary Thinking,” in Terence Ball and J. G. A. Pocock, eds., *Conceptual Change and the Constitution* (Lawrence: University Press of Kansas, 1988), ch. 10.

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That government would, moreover, have considerable "energy" – generally a term of abuse when used by Antifederalists, and of approbation when used by most (though not all) Federalists.²⁴ Antifederalists charged that the energy or power of the federal government would be well-nigh unlimited. As a particularly blatant example they pointed to the so-called "necessary and proper clause" of the new constitution which authorized the central government "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States" (Art. I, sect. 8). Brutus believed this to be a Trojan horse that would catch Americans unawares and steadily steal their liberties and livelihoods, reducing them to a state of utter servility (Brutus I, p. 442; V, pp. 465–72; XII, p. 510).

Publius (Hamilton) replied to these charges with a double-barrelled counter-attack. First, the Antifederalists contradict themselves. They admit that the national government under the Articles of Confederation is "destitute of energy; [yet] they contend against conferring upon it those powers which are requisite to supply that energy" (No. 15, p. 66). Second, Antifederalists are remiss in regarding "power" as a term of opprobrium. For, Hamilton asks, "What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing but the power of employing the *means* necessary to its execution?" (No. 33, p. 149). It is illogical to the point of contradiction to authorize government to do something but deny it the power to do that thing. And this logic extends to "provid[ing] for the common defence," as stated in the Preamble to the proposed constitution.

IV

An oft-repeated Antifederalist criticism of the new constitution concerned its provision for a professional army and navy (Art. I, sect. 8). Brutus and his fellow Antifederalists believed that a "standing army" was among the greatest dangers to liberty (Brutus I, pp. 445–46; VIII–X, pp. 487–501). Antifederalists agreed that, since the proposed constitution provided for a standing army and navy, the regime it would create could not really be republican in letter, and still less in spirit. This of course echoed

²⁴ Here again Jefferson is an apparent exception: "I own I am not a friend to a very energetic government. It is always oppressive." Jefferson to Madison, December 20, 1787, in *JPW*, p. 362. Later, as President (1801–08), Jefferson headed a remarkably "energetic" administration, as his 1803 Louisiana Purchase attests.

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the classical republican distrust of standing armies. Professional soldiers are accustomed to obeying unquestioningly ("Theirs not to reason why . . ."); their allegiance is to their commander; and military commanders from Julius Caesar through Cromwell have had their political ambitions backed by armed force. If republican liberties are to be safeguarded, standing armies must be outlawed and the republic defended by a militia made up of citizen-soldiers.

Once again Publius had to exhibit the Constitution's republican *bona fides* to a skeptical public, and once again his argument is ingenious. In No. 24 Hamilton observes that, whilst almost all state constitutions contain a warning about the danger of standing armies, only two – Pennsylvania and North Carolina – go so far as to say that "they ought not to be kept up" in peacetime. But this, says Hamilton, "is in truth rather a *caution* than a *prohibition*." And, he adds, the New York constitution "says not a word about the matter" (No. 24, pp. 111–12, n. a). Nor, significantly, do the Articles of Confederation contain any warning about, much less prohibition of, standing armies. Turning the tables on Antifederalist critics, Hamilton notes that the new constitution – unlike the Articles of Confederation and the several state constitutions – actually erects a safeguard against a standing army's potential threat to liberty. That safeguard is that the legislature is to authorize, arm – and pay – the soldiery:

the whole power of raising armies [is] lodged in the *legislature*, not in the *executive*; [and] this legislature [is] to be a popular body, consisting of the representatives of the people, periodically elected; and [Article I, sect. 8] forbids the appropriation of money for the support of an army for any longer than two years: a precaution which . . . will appear to be a great and real security against the keeping up of troops without evident necessity. (No. 24, p. 111)

In short, the armed forces will "stand" only as long as the legislature expressly permits them to do so. Hamilton candidly acknowledges that a "permanent corps in the pay of government amounts to a standing army"; but how large it is to be, and how long it is to stand, is best left "to the discretion and prudence of the legislature" (No. 24, p. 114). And what do the people have to fear from their own elected representatives?

Not content with this seemingly decisive allaying of Antifederalist fears, Hamilton offers a second set of arguments about the desirability of maintaining a standing army and navy. The first is concerned with technology, the second with training. The security of the thirteen American

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states has heretofore been helped by geography. But no longer. America's distance from Europe is decreasing with the increasing sophistication of ship design and navigational aids. Travel time between Europe and North America continues to be reduced, thereby making the prospect of surprise attack and invasion ever more likely. For reasons of national security and international commerce America therefore needs a professional navy composed of full-time sailors, well-trained and fully equipped, to patrol and protect its eastern coast. And on its western, southern, and northern frontiers it needs a full-time army of professional soldiers. Important though the several states' citizen-militias are, they have neither the training nor the resources to resist the military and maritime forces that the European powers could throw against them.

V

Most Antifederalists – and many strong supporters of the new constitution, including Thomas Jefferson – decried the absence of a bill of rights in the document drafted in Philadelphia.²⁵ Again and again the Antifederalists hammered the point home: without a bill of rights the new constitution created a system that is republican in name only. A bill of rights would serve as a reminder to rulers and citizens alike that the government's authority is limited by its citizens' inviolable liberties. Did not England's Glorious Revolution result in a Bill of Rights to which King William agreed to abide? Did not the still more glorious American Revolution of 1776 deserve no less a guarantee? For what was the Revolution fought, if not to preserve American rights and liberties? If they are to be properly protected, the nature and extent of those liberties must be fixed from the outset. The good will or solicitude of rulers or representatives was not to be relied upon for very long, if at all (Brutus III, p. 458). Unless checked by the law and an active and alert citizenry, those to whom power is entrusted will sooner or later abuse it. Without an explicit "declaration of rights" to protect "the democratical part" of the citizenry, "the plan is radically defective in a fundamental principle, which ought to be found in every free government" (Brutus III, pp. 453–54). Since the arguments in favor of such a declaration are so clear and compelling, its omission is an ominous portent, revealing the true colors of Publius and his fellow

²⁵ For Jefferson's reservations about the absence of a bill of rights, see his letters to Madison, written during the debate over ratification: *JPW*, pp. 360–61, 365–69.

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Federalists: "so clear a point is this, that I cannot help suspecting, that persons who attempt to persuade people, that such reservations were less necessary under this constitution, than under those of the states, are willfully endeavouring to deceive, and to lead you into an absolute state of vassalage" (Brutus II, p. 453).

Antifederalist objections to the absence of a bill of rights grew louder over the course of the ratification debate. Publius (Madison) at first derided these objections as confused and incoherent (No. 38, p. 177). Finally, in No. 84, he felt obliged to respond, albeit reluctantly and under the heading of "miscellaneous points" to be dealt with as though they were mere afterthoughts and scarcely on a par with the truly important issues discussed earlier. "The most considerable of these remaining objections," writes Hamilton, "is, that the plan of the convention contains no bill of rights." He replies by noting that several state constitutions, including New York's, are also without bills of rights. Acknowledging the force of the Antifederalists' answer to this objection – viz., that no separate bill of rights is needed because provisions for protecting those rights are incorporated into the texts of the state constitutions – Hamilton asserts that the same is true of the new federal constitution as well. "The truth is, after all the declamation we have heard, that the constitution is itself in every rational sense, and to every useful purpose, A BILL OF RIGHTS" (No. 84, p. 421). Yet the bill of rights that Hamilton teases out of the text is a motley assortment of legal guarantees, prohibitions, and definitions. The "privileges" of *habeas corpus* and jury trials are affirmed (although there is no requirement that the jury be composed of one's peers), and the prohibition of titles of nobility (Art. I, sect. 9) are offered as proof positive of the republican character of the new constitution. Hamilton then plays his trump card. The Antifederalists had often charged their opponents with attempting to alter the meanings of key concepts, including "republic" itself. Now Hamilton turns the tables by charging that the Antifederalists are attempting to alter the very meaning of the concept of a bill of rights – a concept as old as the Magna Carta and as recent as the Bill of Rights to which William of Orange had agreed. Because "bills of rights are in their origin, stipulations between kings and their subjects," says Hamilton, they have no place in a truly republican constitution.

As state after state ratified,²⁶ Publius and other Federalist friends of the new Constitution triumphed over its Antifederalist critics. The proposed

²⁶ See the Chronology for dates and details.

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Constitution was ratified by all thirteen states, although several did so on the condition that a bill of rights be added as soon as possible. The Bill of Rights – the first ten amendments to the new Constitution – drafted by Madison and adopted in 1791, explicitly enumerated the rights to freedom of speech, press, assembly, and other protections. Many other issues, however, remained unresolved. The most troubling of these were the questions of slavery and secession.

VI

The new constitution recognized the legality and legitimacy of slavery (although the word never appears in the text). For purposes of apportioning representatives in the House, each black slave was to count for three-fifths of a person, but was to be without the rights of a citizen (Art. I, sect. 2). The constitution also required that escaped slaves be returned to their masters (Art. IV, sect. 2). Although many northern (and some southern) supporters of the proposed constitution – including Hamilton and Jay²⁷ – abhorred the institution of slavery and looked forward to its abolition, they knew that the slave-holding southern states would never agree to ratify the new constitution unless they retained their rights as owners of human “property.” The recognition of slavery in the document drafted at the Philadelphia convention was seen by Federalists as an unfortunate political necessity (see Madison, No. 54) and by some (though by no means all) Antifederalists as an abomination (see *Brutus* III, pp. 454–55). As a concession to anti-slavery sentiment the new constitution specified that Congress could, if it chose, outlaw the importation of slaves after 1808 (Art. I, sect. 9) – which is of course a far cry from abolishing American slavery. About that possibility the Constitution remained utterly and ominously silent.

The Constitution was also silent on the question of whether any state might at its discretion “nullify” national legislation that adversely affected it, or even secede from the Union. The Founders hoped that the advantages of belonging to the United States would suffice to keep the states united. They were mistaken. The first half of the nineteenth century saw an ever-widening division between the agrarian and slave-holding South

²⁷ In 1785 Jay founded and served as first president of the New York Society for Promoting the Manumission of Slaves on whose board of directors Hamilton also sat. Later, as Governor of New York, Jay signed a bill (April 1799) to emancipate slaves. See *DC*, vol. 1, p. 1015.

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and the increasingly urban and industrial North. Matters came to a head in 1861, when eleven southern states seceded from the Union. The Confederate States of America drafted their own constitution, which they thought more truly “republican” than its earlier counterpart.²⁸ Their citizen-militias became the backbone and basis of the Confederate Army that fought Federal forces for five long years.

Thus the questions that were not resolved by force of argument in 1787 were resolved by force of arms some seventy years later in the American Civil War of 1861–65. Ironically, the bloodiest and costliest war ever waged by the United States was fought by Americans, on American soil, and against other Americans. The outcome that Hamilton had feared most came about not under the Articles of Confederation but under the Constitution. But Hamilton would surely have been pleased that the post-Civil War Reconstruction Amendments (13–15) to the Constitution furthered his hope for a stronger and more centralized federal government. Even so, that government is still regarded by latter-day Antifederalists as “a necessary evil” at best, and an unalloyed and unnecessary evil at worst.²⁹ In a very real sense, then, Publius’s victory over Brutus was, and remains, incomplete.

²⁸ See Marshall L. DeRosa, *The Confederate Constitution of 1861: An Inquiry into American Constitutionalism* (Columbia and London: University of Missouri Press, 1991).

²⁹ See Garry Wills, *A Necessary Evil: A History of American Distrust of Government* (New York: Simon & Schuster, 1999).

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