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Federalist No. 47

James Madison

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In *Federalist No. 47*, Madison examines the structure of the new national government and tries to convince those people who were suspicious of a stronger national government that the creation of separate and distinct legislative, executive, and judicial departments will distribute national power to the satisfaction of most. Power checks power in the new government in order to avoid the tyranny of any one branch or person so feared by the citizenry.

TO THE PEOPLE OF THE STATE OF NEW YORK: ...

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

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu....

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry....

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other....

From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates." ... His meaning ... can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted....

... [S]ays he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner."

If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other *as the nature of a free government will admit; or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity*" [*sic*]. Her constitution accordingly mixes these departments in several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department....

According to the constitution of Pennsylvania, the president, who is the head of the executive department, is annually elected by a vote in which the legislative department predominates. In conjunction with an executive council, he appoints the members of the judiciary department, and forms a court of impeachment for trial of all officers, judiciary as well as executive. The judges of the Supreme Court and justices of the peace seem also to be removable by the legislature; and the executive power of pardoning in certain cases, to be referred to the same department. The members of the executive council are made EX-OFFICIO justices of peace through the State....

In South Carolina, the constitution makes the executive magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the members of the judiciary department, including even justices of the peace and sheriffs; and the appointment of officers in the executive department, down to captains in the army and navy of the State.

In the constitution of Georgia, where it is declared "that the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other," we find that the executive department is to be filled by appointments of the legislature; and the executive prerogative of pardon to be finally exercised by the same authority. Even justices of the peace are to be appointed by the legislature.

In citing these cases in which the legislative, executive, and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of the several State governments.... 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, nor by the sense in which it has hitherto been understood in America.

Toward Critical Thinking

1. Why did the drafters of the Constitution believe it wise to create three independent branches of government? Was this idea original to them?
2. Why was it a good idea for Madison to note examples from the states to support the Framers' adoption of a system of checks and balances?

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Federalist No. 17

Alexander Hamilton

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In *Federalist No. 17* Alexander Hamilton argues earnestly for a strong national government while recognizing and heralding the closeness of state governments to the people. He believed that the kinds of issues that states were best concerned with were not "desirable" objects of national legislation. Nor did Hamilton believe that the police powers reserved to the states would ever offer any "temptation" to "persons entrusted with the administration of the general [national] government."

To the People of the State of New York:

... It may be said that it would tend to render the government of the Union too powerful, and to enable it to absorb those residuary authorities which it might be judged proper to leave with the States for local purposes. Allowing the utmost latitude to the love of power which any reasonable man can require, I confess I am at a loss to discover what temptation the persons intrusted with the administration of the general government could ever feel to divest the States of the authorities of that description. The regulation of the mere domestic police of a State appears to me to hold out slender allurement to ambition. Commerce, finance, negotiation, and war seem to comprehend all the objects which have charms for minds governed by that passion; and all the power necessary to those objects ought, in the first instance, to be lodged in the national depository. The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers with which they are connected; because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government.

... It will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the State authorities....

... Upon the same principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at large, the people of each State would be apt to feel a stronger bias towards their local governments than towards the government of the Union; unless the force of that principle should be destroyed by a much better administration of the latter.

Toward Critical Thinking

1. What kind of "local" activities did Hamilton envision to be within the proper scope of state police powers? How many of these activities are still considered "local" in nature today?
2. What support did Hamilton offer to prove his assertions that it would be much easier for states to encroach on the powers of the central government? Hamilton is often described as brilliant. How could he have been so wrong?