

RULE BY THE FEW IN THE FEDERALIST PAPERS:
AN EXAMINATION OF THE ARISTOCRATIC
PREFERENCE OF PUBLIUS

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ABSTRACT

The Federalist Papers are a set of eighty-five essays written by Alexander Hamilton, James Madison, and John Jay during the founding era of the United States, with the purpose of persuading the states to adopt the Constitution as the replacement for the Articles of Confederation. The Papers were some of the most impressive political writings of the time, and are still cited frequently today by the United States Supreme Court. The arguments set forth in the Papers attempted to defend the Constitution's aristocratic characteristics against its opponents, the Anti-Federalists, while also attempting to normalize an anti-democratic, representative form of government in the minds of the American people. The clever advocacy and skillful rhetoric employed by Hamilton, Madison, and Jay led to the eventual ratification of the Constitution, and consequently the creation of the most powerful and prosperous nation on the planet. This paper examines the differences between the traditional forms of government, the political philosophies of the Papers' authors, the anti-democratic, aristocratic nature of the government proposed by the Constitution, and the arguments for and against its adoption, as articulated in the Papers and various other writings.

KEYWORDS

Federalist Papers, James Madison, Alexander Hamilton, Aristocracy, Constitution

CONTENTS

I. INTRODUCTION	219
II. CLASSIC CONCEPTIONS OF GOVERNMENT	219
<i>A. Government as Conceived by Aristotle</i>	<i>219</i>
<i>B. Government as Conceived by Montesquieu</i>	<i>222</i>
III. VIEWS ON GOVERNMENT: JAMES MADISON AND ALEXANDER HAMILTON..	223
IV. THE FEDERALIST PAPERS: PASSAGES THAT POINT TO AN ARISTOCRATIC PREFERENCE IN PUBLIUS AND THE ARISTOCRATIC NATURE OF THE CONSTITUTION	226

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V. ANTI-FEDERALIST WRITINGS AND SCHOLARLY ARTICLES EXPOSING THE ANTI-DEMOCRATIC, ARISTOCRATIC BIASES OF THE FEDERALISTS AND THE ARISTOCRATIC NATURE OF THE CONSTITUTION	232
<i>A. Anti-Federalist Writings</i>	232
<i>B. Scholarly Articles</i>	237
VI. CONCLUSION.....	243

I. INTRODUCTION

In the post-revolutionary era, good government was of the utmost concern to the people of the newly formed United States. Seeking to prevent the type of tyranny from which the colonies had successfully broken free, the Articles of Confederation were adopted as the country's first form of government. The Articles soon proved to be ineffective, however, which, in the summer of 1787, led to the creation of the Constitution we know today. While the new Constitution seemed like a good solution to some, it also had its opponents. The group known as the Federalists, who favored adopting the new Constitution, were opposed by the Anti-Federalists, who viewed the new Constitution as nothing more than an instrument tailored by and for aristocrats prone to corruption and tyranny. The Anti-Federalists, a group which included the likes of Thomas Jefferson, Patrick Henry, and George Mason, warned of the dangers of the new Constitution, consistently claiming that, if adopted, it would lead to the concentration of power in a few hands, resulting in rule by a small number of elites. The *Federalist Papers*, eighty-five essays written by James Madison, Alexander Hamilton, and John Jay under the pseudonym "Publius" were the Federalists' means of counteracting the Anti-Federalists' claims. These essays were written to discredit the claims of the Anti-Federalists and to persuade the states to ratify the new Constitution. While the *Papers* may have ultimately achieved these goals, an examination of the authors' political philosophy and rhetoric reveals that the Anti-Federalist claims may not have been all that far off. What one finds through such an examination is the preference of Hamilton, Madison, and Jay for an aristocratic form of government, featuring rule by few elites and the suppression of the people's influence. It follows, then, that the implicit aim of the Federalists was to adopt a form of government that resembled a balanced, "middle" state, but that operated as an aristocracy—a form of government in which the masses are ruled by the elite part of society, i.e., "the few," and which concentrates all of the supreme governmental and decision-making power into the hands of those few. This essay will examine these points in greater detail.

II. CLASSIC CONCEPTIONS OF GOVERNMENT

To understand what is meant by "aristocracy," and the Federalists' preference for it as opposed to other forms of government, a discussion of the fundamental forms of government, as conceived by prominent philosophers, is necessary. First, government will be examined through the lens of the prominent Greek philosopher, Aristotle. Second, the views of the French philosopher Montesquieu, which heavily influenced the Federalists and Anti-Federalists alike, will be discussed.

A. GOVERNMENT AS CONCEIVED BY ARISTOTLE

Aristotle viewed government as a division of power between men; "true" forms of government were those that were primarily concerned with the common interest, or in other words, the collective good of the people.¹ In contrast, governments

¹ 1 ARISTOTLE, THE POLITICS 144 (Benjamin Jowett, trans. Oxford: Clarendon Press, 1885), <https://oll.libertyfund.org/titles/579>.

primarily concerned with the private interests of rulers were perversions.² According to Aristotle, the classification of a government depends on how its power is distributed: “[t]he supreme power must always be exercised either by one, or by a few, or by many.”³ When a government is chiefly concerned with the collective good (“true” government), the power in the hands of one is called “royalty”; in the hands of a few, “aristocracy”; and in the hands of many, “polity” or “constitutional government.”⁴ When a government is only concerned with the private interests of a single person or class (“perverted” government), power in the hands of one is called “tyranny”; in the hands of a few, “oligarchy”; and in the hands of many, “democracy.”⁵ In other words, tyranny, oligarchy, and democracy are the perversions of royalty, aristocracy, and polity, respectively. Governance by the one, the few, or the many becomes perverted when the government begins to administer itself primarily in the interest of one person or class, whether it be the rich or the poor.

As to the question of how the supreme governmental power should ideally be distributed, Aristotle believed that rule by the many was the best solution: “[t]he people, taken collectively, though composed of ordinary individuals, have more virtue and wisdom than any single man among them.”⁶ Even so, Aristotle recognized that this might not always be practical; indeed, while some individuals are wise, others are nothing more than “brutes,” making rule by a public body containing the latter dangerous to good government.⁷ Because of this risk, Aristotle did not see “the many” as fit “to hold great offices of state.”⁸ A solution to this, therefore, was to give “the many” a judicial and deliberative function—such as electing magistrates to state offices and holding them accountable for their official actions—so as to prevent the exclusion of the masses from the administration of government entirely, which would surely give rise to disdain and revolt.⁹

Aristotle’s vision, therefore, was to harness the collective wisdom and virtue of the masses by allowing them to select qualified and intelligent men to fill state offices. Those elected would then hold the supreme governmental and decision-making power, eliminating the risk of poor governance and mob rule by the “brutes” to which Aristotle referred. Notwithstanding their lack of governmental power, the masses would still be satisfied by having the ability to hold the elected men accountable for their conduct, giving them some sense of involvement in the government. This type of government ultimately constitutes what Aristotle referred to as “polity,” or “constitutional government.”¹⁰

Aristotle viewed a true aristocracy (rule by the few in the interest of the collective good), or, in other words, “the government of the best,” as the theoretical “ideal state.”¹¹ If a true aristocracy were practically attainable, it would be the best form

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* ¶ 149.

⁷ *Id.*

⁸ *Id.* ¶ 150.

⁹ *Id.*

¹⁰ *Id.* ¶ 144.

¹¹ *Id.* ¶ 188.

of government; however, this form of government would likely be impracticable, requiring of the ruling class “a standard of virtue which is too high.”¹² Indeed, it is hard to imagine an elite ruling class that would voluntarily govern in the interest of the masses rather than their own. Thus, for Aristotle, the best that a society could do, in terms of practicality, was to adopt a “middle state,” or “polity.”¹³

A “polity” is a fusion of democracy (rule by the many in the interest of the masses) and oligarchy (rule by the few in the interest of the elites); it “seeks to unite the freedom of the poor majority with the wealth of the rich minority.”¹⁴ Such a form of government “is usually called polity when inclining towards democracy, and aristocracy when approaching more nearly to oligarchy.”¹⁵ A polity is attained by borrowing concepts from both an oligarchy and democracy; Aristotle gave the example of public magistrates being elected by vote as in an oligarchy, but without any property qualifications as in a democracy.¹⁶ He also gave the historical example of the Lacedaemonian state, which featured democratic characteristics such as the election of few officials by the masses out of the masses, the common education of all citizens, and common meals and dress. In addition to these democratic characteristics, the Lacedaemonian state also featured the oligarchical characteristic of vesting the power of banishment and inflicting death (law-making and decision-making power) in the hands of the few elected officials.¹⁷

Both democratic and oligarchic principles should be present in a polity, but neither should be so prevalent as to be ascertainable from the other; the key to a successful polity is the virtue and good will of the citizenry.¹⁸ Aristotle’s polity bears the closest resemblance to the United States government (relatively few officials are entrusted with governmental power, but are elected by and out of the masses). Of note in this respect, however, is Aristotle’s warning that

in distinguishing different kinds of government, it must also be remembered that a constitution framed in one spirit may be administered in another, e.g., an oligarchy may be administered in a popular, a democracy in an exclusive spirit. This frequently happens after a revolution; old habits linger although the government is changed. The laws remain, but the victorious party keep the power in their own hands.¹⁹

Thus, while a polity may be the best form of government to Aristotle, a government instituted as a polity, like that of the United States, can easily be transformed into an oligarchy or aristocracy through its administration.

¹² *Id.* ¶ 198.

¹³ *Id.*

¹⁴ *Id.* ¶ 190.

¹⁵ *Id.* ¶ 189.

¹⁶ *Id.* ¶ 190.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* ¶ 187.

B. GOVERNMENT AS CONCEIVED BY MONTESQUIEU

The governmental philosophy of Montesquieu has similarities to that of Aristotle, but with fewer distinctions as to the different forms of government. Of focus here is Montesquieu's philosophy with respect to rule by the few and rule by the many. Instead of breaking down different schemes into true governments and perverted governments, Montesquieu maintained a simpler approach: "[w]hen the body of the people is possessed of the supreme power, this is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy."²⁰ In other words, rule by the many, or the masses, is simply a democracy, and rule by the few is simply referred to as "aristocracy."

Like Aristotle, Montesquieu believed that the collective wisdom of the masses should be utilized to the greatest extent possible in the administration of government. For a democracy to constitute good government, "[t]he people, in whom the supreme power resides, ought to have the management of every thing within their reach."²¹ Like Aristotle, however, Montesquieu also recognized that the people are not fit to handle every government matter. For example, the people are not "capable of conducting an intricate affair, [or] of seizing and improving the opportunity and critical moment of action."²² Therefore, Montesquieu believed, "what exceeds [the people's] abilities must be conducted by their ministers," and it is "a fundamental maxim, in this [type of] government, that the people should choose their ministers; that is, their magistrates."²³ Thus, what Montesquieu views as a well-administered and properly-constituted democracy is essentially the same form of government that Aristotle calls a polity—power vested in the hands of few officials that are chosen by the masses.

In contrast, an aristocracy—according to Montesquieu—is a form of government where "the supreme power is lodged in the hands of a certain number of persons," and these persons "are invested both with the legislative and executive authority."²⁴ The great remainder of the people, relative to these few, are "the same as the subjects of a monarchy in regard to the sovereign," meaning they have little, if any, power with respect to the administration of the government.²⁵ Montesquieu notes that "[i]t would be a very happy thing, in an aristocracy, if the people, in some measure, could be raised from their state of annihilation."²⁶ Indeed, "[t]he more an aristocracy borders on democracy, the nearer it approaches to perfection; and, in proportion as it draws towards monarchy, the more it is imperfect."²⁷ Thus, some substantial involvement of the people in the administration of government is necessary for an aristocracy to constitute good government.

From the teachings of Aristotle and Montesquieu, it is generally gleaned that "aristocracy" denotes a form of government in which most, if not all, of the

²⁰ Charles Louis de Secondat, Baron de Montesquieu, *The Complete Works of M. de Montesquieu* ¶ 453 (trans., London 1st vol. 1777), <https://oll.libertyfund.org/titles/837>.

²¹ *Id.* ¶ 458.

²² *Id.* ¶ 461.

²³ *Id.* ¶¶ 458-59.

²⁴ *Id.* ¶ 480.

²⁵ *Id.*

²⁶ *Id.* ¶ 483.

²⁷ *Id.* ¶ 489.

governmental and decision-making power is vested into the hands of a few, or a small part of society. These few then administer the government exclusive of the influence of the people. In contrast, a “democracy” denotes a form of government where a substantial portion of the governmental and decision-making power is vested in the people, or the masses. The government is then administered by officials who are chosen by the people, and who are heavily influenced by them. Accordingly, the best form of government appears to be a combination of both aristocracy and democracy, but that leans more toward democracy. The people must be utilized properly for either scheme to work.

III. VIEWS ON GOVERNMENT: JAMES MADISON AND ALEXANDER HAMILTON

Keeping in mind that an “aristocracy” generally refers to rule by the few, or, in other words, a form of government in which most, if not all, governmental power is concentrated in the hands of relatively few rulers, the focus will now shift to an examination of the political philosophies of James Madison and Alexander Hamilton. Both men were responsible for authoring the overwhelming majority of the Federalist Papers; therefore, a baseline understanding of their views on government is a prerequisite to fleshing out those views in the text of the Papers themselves. To obtain such an understanding, this section will look to materials outside of the Federalist Papers, authored by both men, during the founding era.

Beginning with Alexander Hamilton, his personal notes from the Philadelphia Convention of 1787 reveal an implicit bias in favor of aristocratic principles, while also displaying a desire to suppress the influence of the masses. To be fair, the notes reference both a democratic and aristocratic arm of the government, which shows that what Hamilton may have been trying to achieve for the United States was a mixture of both, akin to Aristotle’s polity and Montesquieu’s properly-constituted democracy: “[the government] ought to be in the hands of both [the few and the many]; and they should be separated . . . The democracy must be derived immediately from the people. The aristocracy ought to be *entirely separated*; [and] their power should be *permanent*.”²⁸

While both Aristotle and Montesquieu believed that the best form of any mixture of aristocracy and democracy would lean more towards a democracy (and therefore allocate more power to the people), Hamilton seems to have departed from this principle, favoring a mixture in which the aristocracy would have the majority of the power. For example, in addition to the above quotation, which reveals Hamilton’s desire for the power of the aristocratic arm of the government to be exclusive and permanent, his notes also mention the “unreasonableness of the people” with respect to the “[s]ource of government.”²⁹ Moreover, the notes mention “[p]opular assemblies governed by *a few* individuals,” and espouse a preference for “a principle in government capable of *resisting the popular current*.”³⁰

²⁸ 4 ALEXANDER HAMILTON, THE PAPERS OF ALEXANDER HAMILTON 178-187 (Harold C. Syrett ed., Columbia Univ. P. 1962), <https://founders.archives.gov/documents/Hamilton/01-04-02-0098-0002> (emphasis added).

²⁹ *Id.*

³⁰ *Id.* (emphasis added).

The anti-democratic bias of Hamilton is also displayed in a speech he gave during the New York Ratifying Convention of 1788. In response to an adversary's statement that a pure democracy—a form of government in which all governmental power is vested in the people—is the most perfect form of government, Hamilton asserted that “no position in politics is more false.”³¹ Hamilton argued that all historical examples of pure democracies, “in which the people themselves deliberated, never possessed one feature of good government.”³² He referred to these democracies as deformed, and as “ungovernable mob[s], not only incapable of deliberation, but prepared for every enormity.”³³

Further, in arguing against a large number of congressional representatives, Hamilton asserted that “[n]o idea is more erroneous” than the premise “that all the interests of all parts of the community must be represented” in the national government.³⁴ Rather, he argued, only the interests that fall under the purview of the general powers of the federal government needed to be represented, and “these interests come *completely* under the observation of *one, or a few men*.”³⁵

Thus, Hamilton sought to bar the influence of the masses through the imposition of a small number of congressional members who would represent relatively few interests. He believed that one man, or a few men, were much more capable of handling the government's affairs and determining what was in the best interest of the country. In other words, the country would be better served if the influence of the masses was kept at bay and relatively few officials handled all governmental decision making and administration.

James Madison, in a speech given during the 1787 Philadelphia Convention, demonstrated that he held a conception of good government similar to Hamilton's. In this speech, Madison focused on the subject of the Senate, specifically arguing for long senatorial terms in office. He argued that the House of Representatives, the democratic arm of the government most closely tied to the will of the people, would be susceptible to the “passion[s]” and “fickleness” of the masses, despite being a numerous, elected body.³⁶ This, in turn, would lead to irrational and dangerous legislative decisions by the House. “A necessary [de]fence [against] th[e] danger” of the people's improper passions invading the federal legislature,” Madison argued, “would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose [against] impetuous counsels.”³⁷

Madison thus envisioned the Senate as an aristocratic body of a few, “enlightened” individuals who would prevent the unreasonable will of the people from exerting too much influence on the federal legislature. While the House's relatively small number of representatives, as Hamilton hoped, would make it difficult for the influence of the masses to invade the federal legislature, there would still be a risk that at least some of the people's influence would push its way

³¹ Hamilton, *supra* note 28, 5:36–45.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ JAMES MADISON, 10 THE PAPERS OF JAMES MADISON 76–78 (Robert A. Rutland, et al. eds. Chicago: Univ. Chi. P., 1977), <https://founders.archives.gov/documents/Madison/01-10-02-0044>.

³⁷ *Id.*

through. Madison's solution to this problem was the Senate, which would act as a sort of filtering mechanism, and prevent any remaining influence of the people residing in the House from influencing legislation. This construction would ensure that the few, "enlightened" Senate aristocrats would retain control of the federal legislature, undeterred by any remnants of the popular will.

Madison again displayed these sentiments in a 1788 letter to Thomas Jefferson. While the topic of the letter was Jefferson's draft of the Virginia state constitution, the principles Madison evinced are the same. In discussing a Virginia state senate, Madison stated that "[a] Senate is to withstand the occasional impetuosities of the more numerous branch," and "[b]y *correcting the infirmities of popular Government*, [a senate] will prevent that disgust [associated with] that form which may otherwise produce a sudden transition to some very different one."³⁸ By "that form," Madison meant a "mistaken zeal for too much liberty,"³⁹ implying that too much liberty, which would be the probable result of a strictly popular (or purely democratic) form of government, was dangerous to good government, and would produce a form of government detrimental to the collective interests of society (in this case, the State of Virginia).

Madison's letter to Jefferson also advocated for stringent property qualifications to determine who could vote for senators: "[a] freehold or equivalent of a certain value may be annexed to the right of [voting] for Senators, & the right left more at large in the election of the other House."⁴⁰ This statement represents a desire to further limit the influence of the masses by implementing a substantial property-ownership requirement as a prerequisite to electing the "enlightened," aristocratic senators. In other words, the common folk would not be able to vote for senators; rather, this right would be reserved to wealthier citizens who possessed a substantial amount of property. The rich would elect the rich. Thus, Madison seemingly wanted the great majority of the people to have a very limited influence on not only the federal legislature, but on the Virginia state legislature as well.

A review of the above materials necessitates the conclusion that while both Hamilton and Madison agreed that the United States government should be a mixture of a democracy and an aristocracy, both men also sought a form of government in which the majority, if not all, of the legislative and decision-making power would be in the hands of the aristocrats, or "the few." They viewed the popular will as exceedingly dangerous, and therefore wanted to institute a system in which that will would be suppressed to the greatest extent possible. Stated differently, both men wanted the masses to have little influence on the federal legislature; any substantial portion of governmental power in the hands of the masses would be detrimental. By arguing for a relatively small number of congressional representatives, and an aristocratic senate that would act as a filtering mechanism, they hoped to achieve these goals.

³⁸ James Madison, *The Papers of James Madison*, ed. Robert A. Rutland and Charles F. Hobson (Charlottesville: University Press of Virginia, 1977), 11: 281–95, <https://founders.archives.gov/documents/Madison/01-11-02-0216> (emphasis added).

³⁹ *Id.* 282 n.1.

⁴⁰ Madison, *supra* n.38.

IV. THE FEDERALIST PAPERS: PASSAGES THAT POINT TO AN ARISTOCRATIC PREFERENCE IN PUBLIUS AND THE ARISTOCRATIC NATURE OF THE CONSTITUTION

This section will examine specific passages in the *Federalist Papers* themselves that display the aristocratic philosophies of Alexander Hamilton and James Madison. Writing under the pen name “Publius,” Hamilton and Madison (and, sparingly, John Jay) hoped to persuade the people of the United States to adopt an aristocratic constitution. While much of the *Papers* focus on the benefits of an aristocratic federal legislature and the detriments of a democratic one, aristocratic principles also make their way into the discussion of the federal judiciary, which Madison and Hamilton envisioned, to an even greater extent, as an aristocratic body. In essence, these two branches of the federal government (the legislature and the judiciary) would institutionalize the concept of an aristocracy—rule by the few—in the United States. An overwhelming majority of governmental power was to be vested in these bodies under the new constitution, which would effectively reduce the influence and power of the people to almost nothing. Publius’s explanation and defense of these aristocratic bodies is explored below.

Starting with *Federalist* 10, Publius (here, Madison) addresses the danger of “factions” with respect to government. He defines a “faction” as “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common *impulse of passion*, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”⁴¹ This statement is consistent with the philosophy of Hamilton and Madison, explored in the previous section, which views the passions of the masses as exceedingly dangerous to the proper governance of society.

Madison suggests that if government were left to strictly democratic means, there would be constant clashing of different factions, motivated by different passions. Factions constituting a majority would triumph in these contests, and inevitably pass laws that would serve their own interests, rather than those of the public as a whole.⁴² Indeed, “a pure democracy . . . can admit of no cure for the mischiefs of faction.”⁴³ “[D]emocracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.”⁴⁴ Good government and pure democracy were simply not compatible. A democracy would not be able to control the influence of the passions of the people.

Concluding that a democratic form of government would be detrimental to society, Madison offers an aristocratic solution: rule by representatives, or “the few,” which he refers to as a “republic.” He writes that “[a] republic, by which I mean a government in which the scheme of representation takes place . . . promises the cure for which we are seeking.”⁴⁵ Stated differently, a defense against the influence of passions and factions on government is an aristocratic form of

⁴¹ THE FEDERALIST No. 72 (Alexander Hamilton) (emphasis added).

⁴² *Id.* at 73–75.

⁴³ *Id.* at 76.

⁴⁴ *Id.*

⁴⁵ *Id.*

representation. A “republic” would feature “the delegation of the government . . . to a small number of citizens elected by the rest.”⁴⁶ Such a form of government would “refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the *true interest* of their country.”⁴⁷ Here, Madison describes the federal legislature as a mechanism through which the people’s influence would be filtered out. He continues: “the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves.”⁴⁸ In Madison’s view, the people could not be trusted with government power and did not know what was best for the country as a whole. Instead, governmental power must be entrusted to a small number of elected representatives, who would ignore the improper passions of the people and rule according to the “true interest” of the country in its entirety. The masses could not hope to accomplish such a feat.

With respect to the issue of disproportionality (i.e., the number of representatives being extremely small when compared to the number of citizens they would be governing), Madison argued that a large republic would be the “most favorable to the election of proper guardians of the public weal.”⁴⁹ He suggested that in any society only a limited number of persons would be qualified to hold the offices of state, and therefore a large population would create “a greater probability of a fit choice.” He gave several reasons.⁵⁰ A large constituency would increase the chances that an enlightened individual would be elected by weakening the ability of unfit candidates to capture the public eye. Indeed, it would be hard for any single faction to control such a large constituency and influence the election of an unfit candidate. Additionally, because a large constituency would naturally put forward a greater number of options from which to choose, the constituents would be more drawn to, and more likely to select, meritorious candidates.⁵¹

In sum, *Federalist* 10 argues that popular democracy is the adversary of civilized society, and an aristocratic form of representation, which Madison calls a “republic,” is needed to prevent the passions of the people, through factions, from influencing the administration of the government. Therefore, a small number of enlightened rulers, called “representatives,” would be entrusted with the governmental power and govern a large number of citizens. This is the essence of an aristocracy.

In *Federalist* 27, Publius (here, Hamilton), in the midst of a discussion of the federal legislature, briefly touches upon the construction of the Senate. He states that because senators will be chosen by the state legislatures,⁵² “there is reason to expect that [the Senate] will generally be composed with peculiar care and judgment.”⁵³ The appointment of senators by the State legislatures “promise[s] greater knowledge and

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 77.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 77–78.

⁵² The ratification of the Seventeenth Amendment in 1913 changed the method by which federal senators are elected; senators are now directly elected by voters from their states.

⁵³ FEDERALIST No. 27 (Alexander Hamilton), at 171.

more comprehensive information in the national councils.”⁵⁴ Hamilton’s point here is that because the state legislatures would naturally be composed of educated, upper-class individuals, they would in turn select individuals of the same character to hold office in the national Senate. In effect, the people would be totally removed from the selection process; the elites in the state legislatures would select elites to fill the seats of the national Senate. This process, Hamilton argued, would result in the appointment of senators who would “be less apt to be tainted by the spirit of faction, and more out of the reach of those occasional ill humors, or temporary prejudices and propensities, which . . . frequently contaminate the public deliberations.”⁵⁵ In other words, the unreasonable will of the people will not be able to reach the national Senate, and, on the off chance that it does, the senators will be intelligent enough to ignore it.

A few brief remarks in *Federalist* 49 also show flashes of an aristocratic bias. In this paper, Madison notes that the members of the federal judiciary are few in number and “are too far removed from the people to share much in their prepossessions.”⁵⁶ He also notes, consistent with his philosophy, that “[t]he passions [of the public] ought to be controlled and regulated by the government.”⁵⁷ These remarks fall in line with the theme of the new government: to filter out the improper influence of the masses and allow a small number of distant officials to rule. Madison continues this theme in *Federalist* 58, where he again addresses the number of congressional representatives relative to the general population of the country. Here, Madison claims that “the more numerous any [legislative] assembly may be, of whatever characters composed, the greater is known to be the ascendancy of passion over reason.”⁵⁸ Thus, he defends the disproportionate number of representatives, relative to the number of citizens, by stating that if this number is increased, the passions of the people will be more likely to overcome the House of Representatives. Additionally, he states that a larger number of representatives would pave the way for the election of a greater number of “members of limited information and of weak capacities,” or, in other words, uneducated and unqualified individuals.⁵⁹ A small number of representatives was key to limiting the dangerous influence of the masses.

Madison takes up the topic of the Senate in *Federalist* 62, where he begins by defending its more stringent requirements—relative to those of the House—for holding office. These requirements include a more advanced age and a longer period of citizenship. Madison justifies these more stringent requirements by invoking “the nature of the senatorial trust, which, requiring a greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages.”⁶⁰ In essence, these requirements were necessary to produce the type of high-class, elite individuals that the Federalists imagined for the institution of the Senate.

Madison also touts the Senate as a necessity for defending against the propensity of the House, the more numerous and democratic assembly of the federal

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ FEDERALIST No. 49, (James Madison), at 313.

⁵⁷ *Id.* at 314.

⁵⁸ FEDERALIST No. 58, (James Madison), at 358.

⁵⁹ *Id.*

⁶⁰ *Id.* at 374.

legislature, “to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.”⁶¹ The Senate would act as the federal legislature’s last line of defense against the unreasonable popular will, constituting “a body which is to correct [the House’s infirmities].”⁶² Thus, while Madison’s defense of the small number of representatives in the House included the notion that a larger number would make it easier for the influence of the masses to penetrate the legislature, he also recognizes, as a practical matter, that the House’s democratic nature is nonetheless more susceptible to that influence and, consequently, to making irrational or dangerous decisions. Therefore, the Senate would exist as a filtering mechanism to prevent any passions surviving in the House from ultimately affecting legislative decisions.

In sum, the Senate, the consent of which would be needed before all legislative and some executive decisions could take effect, would constitute an exceedingly small number of educated, upper-class, elite officials who would be appointed by individuals of the same character in the state legislatures. This appointment process would entirely remove the influence of the people, to whom the Senate would have no accountability. The Senate, in many ways having the final say over a large number of federal government actions, would act as the legislature’s last-resort filtering mechanism and prevent the unreasonable popular will from invading deliberation and affecting final legislation. In effect, this body would constitute almost a textbook example of an aristocracy—rule by a small number of powerful elites, far-removed from the people, over a large population.

Madison builds up the Senate even further in *Federalist* 63, claiming that, in addition to keeping the House in check, this body “may be sometimes necessary as a defense to the people against their own temporary errors and delusions.”⁶³ He continues: “there are particular moments in public affairs, when the people, stimulated by some irregular passion, or some illicit advantage . . . may call for measures which they themselves will afterwards be the most ready to lament and condemn.”⁶⁴ These statements reveal an anti-democratic bias, and perhaps a superior understanding of human discourse, in Madison: the masses must be ousted from the administration of the federal government, for they are too susceptible to irrational thought and have the ability to cause chaos. Only the elites can be trusted with this duty, and, as such, a “temperate and respectable body of citizens” comprised of these elites—the Senate—is necessary “in order to check the misguided career and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind.”⁶⁵ The Senate, then, was necessary to defend the people against themselves and their own irrationality, in addition to preventing the unreasonable will of the people from invading the federal legislature. Madison unequivocally wanted the people to stay out of federal government affairs, and he saw only the upper-class elites as fit to rule.

In *Federalist* 64, John Jay, making one of his only five appearances in the Papers, picks up where Madison left off in discussing the Senate. Jay’s commentary, however, focuses on defending the propriety of the senatorial consent that is needed

⁶¹ *Id.* at 377.

⁶² FEDERALIST No. 62, (James Madison).

⁶³ FEDERALIST No. 63, (James Madison) at 382.

⁶⁴ *Id.*

⁶⁵ *Id.* at 382–83.

in many non-legislative areas of the Constitution (e.g., consent for executive and judicial appointments, consent to international treaties, removal of impeached officers, etc.). This senatorial consent would function as a means by which the Senate would retain even more governmental power than simply that of making domestic law, which many viewed as too much power. Jay states that because the State legislatures, who will appoint the senators, “will in general be composed of the most enlightened and respectable citizens, there is reason to presume that their attention and votes will be directed to those men only who have become the most distinguished by their abilities and virtue.”⁶⁶ Because those appointed to the Senate will be the most enlightened, educated, and virtuous, it is only proper that the Constitution should grant them the aforementioned powers. The senators “will always be of the number of those who best understand [the] national interests,” and “who are best able to promote those interests.”⁶⁷

Jay also comments on the propriety of six-year senatorial terms, which many viewed as too long, and consequently, a roadmap for tyranny. Jay states that “the duration prescribed is such as will give [senators] an opportunity of greatly extending their political informations, and of rendering their accumulating experience more and more beneficial to their country.”⁶⁸ Furthermore, “by leaving a considerable [number of veteran senators] in place, uniformity and order, as well as a constant succession of official information, will be preserved.”⁶⁹ Thus, what many viewed as a concentration of considerable power prone to tyranny, Jay viewed as a necessity. Not only was it necessary for the elites to be far-removed from the people and possess a great amount of governmental power, but it was also necessary for them to remain in their posts for six-year terms. This was a sure-fire way to ensure that the Senate, the aristocratic body of elites, would have the most power and remain in control of the national government.

Considerable discussion of the federal judiciary, which was established as another aristocracy within the federal government, takes place in Federalist 78, which is authored by Hamilton. Much of the commentary in this number centers around the life tenure of judges and their total independence from the people, the latter of which is established through their appointment to office by the executive, as opposed to any popular election. Hamilton states that, like the far-removed Senate, “the 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.”⁷⁰ These “ill humors” have the ability to “occasion dangerous innovations in the government,” and “serious oppressions” of the community.⁷¹ Here, Hamilton is referring to the same factions and passions discussed in earlier numbers, which, according to those numbers, pose a serious threat to government, and, by extension, to society. Thus, the judiciary was constructed to be another, perhaps even stronger, filtering mechanism to prevent these factious ideas from contaminating American society.

⁶⁶ FEDERALIST No. 49 (John Jay), at 389.

⁶⁷ *Id.*

⁶⁸ *Id.* at 390.

⁶⁹ *Id.*

⁷⁰ FEDERALIST No. 78, (Alexander Hamilton), at 468 (emphasis added).

⁷¹ *Id.*

The independence of the judiciary would not only serve the purpose of preventing the spread of those factious, passion-driven ideas, but would also be “of vast importance in mitigating the severity and confining the operation of [unjust and partial] laws” that may have been influenced by those passions despite being run through the Senate.⁷² The judiciary would operate as “a check upon the legislative body in passing [unjust and partial laws].”⁷³ Thus, if a passionate, factious idea was somehow able to bypass both the House and the Senate, and consequently generate the enactment of a law expressing that idea in a legal fashion, the judiciary would act as the final gatekeeper of the federal government, and prevent such a factious law from governing society as a whole by striking it down. The judiciary would constitute the most powerful aristocracy in the national government, and would eliminate any remnants of the unreasonable popular will that may have found their way into legislation.

Because of this important duty, life tenure was necessary to ensure that men “who unite the requisite integrity with the requisite knowledge” would fill the seats of the federal judiciary.⁷⁴ “[A] temporary duration in office . . . would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench.”⁷⁵ Consistent with the theme of rule by the few, the federal judiciary was also to consist of a small number of educated, upper-class elites—especially at the level of the Supreme Court. These were, in Hamilton’s view, the only types of persons that could fulfill the important duty of preventing the passionate popular will, which would have already overcome the legislature, from governing society. In the hands of these few elites would rest the ultimate governmental power; the decisions of *six (now nine)* Supreme Court justices could bind the entire population of the United States: an aristocracy in its truest form.

Thus, what is discovered upon a deeper look into many of the passages of the Federalist Papers is the aristocratic bias of their authors—Hamilton, Madison, and to a lesser extent, Jay. These men believed it was necessary to prevent the unreasonable will of the people from penetrating the confines of the federal government. To accomplish this goal, an aristocratic form of government was necessary—one in which the people would have little opportunity to interfere with the administration and decision-making of the national government. Aristocracies would be institutionalized in the federal legislature as well as the federal judiciary. A small number of elite, upper-class men would be chosen to lead these two departments, and in their hands an overwhelming majority of government power would be vested. Through the use of this power, these institutions would rule over an exceedingly large population, consisting mostly of common folk who would, in essence, be barred from exerting any meaningful influence on the national government. Rule by a relatively small number of upper-class elites is indeed what was planned for in the minds of the Federalists, and in the construction of the Constitution.

⁷² *Id.* at 469.

⁷³ *Id.*

⁷⁴ *Id.* at 470.

⁷⁵ *Id.*

V. ANTI-FEDERALIST WRITINGS AND SCHOLARLY ARTICLES EXPOSING THE ANTI-DEMOCRATIC, ARISTOCRATIC BIASES OF THE FEDERALISTS AND THE ARISTOCRATIC NATURE OF THE CONSTITUTION

This concluding section examines the writings of several Anti-Federalist authors, the opponents of the Federalists and of the new Constitution. Much of these writings draw attention to the aristocratic construction of the Constitution, and its tendency to give a large amount of power to a small number of government actors, while also keeping the masses at bay. Because of these realities, many of the Anti-Federalists viewed the Constitution as a blueprint for tyranny, and believed that some form of governmental oppression was inevitable. In addition to the writings of Anti-Federalists, two scholarly articles will also be examined. These articles address the anti-democratic rhetoric used by Publius, as well as the aristocratic biases of the men behind the pseudonym.

A. ANTI-FEDERALIST WRITINGS

In a letter written in October of 1787, the Anti-Federalist writer known as the “Federal Farmer” discussed how the delegates appointed to the Philadelphia Convention, during which the new Constitution was drafted, had exceeded their authority. The Federal Farmer asserts that the purpose of the Philadelphia Convention was simply to revise the then-existing Articles of Confederation, not to discard the Articles entirely and draft a new Constitution.⁷⁶ However, the Farmer claims, most of the delegates present at the Philadelphia Convention were “esteemed [and] aristocratical,” and while the Convention’s explicit purpose was to revise the Articles of Confederation, “the favourite moment for changing the government was evidently discerned by a few men, who seized it with address.”⁷⁷ In other words, the upper-class aristocrats selected as delegates for the Philadelphia Convention saw the Convention as an opportunity to totally re-construct the government of the United States, which is why the result of that convention was the drafting of a new constitution rather than a revision of the Articles.

The Farmer explicitly notes that not all of the selected delegates from every state had attended the Philadelphia Convention and implies that these missing delegates were not of the elite, aristocratic rank. He states that “[h]ad [these missing delegates] attended, I am pretty clear, that the result of the convention would not have had the strong tendency to aristocracy now discernable in every part of the plan,” the “plan” being the Constitution.⁷⁸ He continues: “[t]here would not have been so great an accumulation of powers, especially as to the internal police of the country, in a few hands, as the constitution reported proposes to vest in them.”⁷⁹ Thus, to the Federal Farmer, what was supposed to be a revised version of the Articles of Confederation ended up being an aristocratic constitution, which gave a large amount of power to only a few individuals. This all occurred, according to the

⁷⁶ THE ANTI-FEDERALIST PAPERS AND THE CONSTITUTIONAL CONVENTION DEBATES 272 (Ralph Ketcham ed., N.Y.: Signet Classics, 2003),.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

Farmer, because of “how disproportionably the democratic and aristocratic parts of the community were represented” at the Philadelphia Convention.⁸⁰ If the masses were better represented at the Convention, then “the young visionary men, and the consolidating aristocracy, would have been more restrained than they have been.”⁸¹

Also in October of 1787, the Anti-Federalist writer known as “Brutus” wrote the first of his essays criticizing the new Constitution. In this first essay, Brutus warns that careful examination should be given to the Constitution before recklessly adopting it, noting that “when the people once part with power, they can seldom or never resume it again but by force.”⁸² Stated differently, because of the immense power the Constitution gives to a small number of government officials, the people should be cautious in adopting it; indeed, these officials may never give up their power.

Brutus then transitions to a discussion of the federal legislature, in which he states that “[i]n every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they agree upon; the latter by the will of one, or a few.”⁸³ He continues: “if [the representatives of the people] do not know, or are not disposed to speak the sentiments of the people, [then] *the people do not govern, but the sovereignty is in a few.*”⁸⁴ Brutus predicts that this will be the case in the United States: “in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people.”⁸⁵ Because so few representatives would be governing an extremely large population, it would be impossible, Brutus argued, for these representatives to govern in the interests of the people; rather, these representatives would govern in their own interests and remain detached from the masses.

Brutus concludes his first essay by stating that “[i]n a republic of such vast extent as the United States, the legislature cannot attend to the various wants and concerns of its different parts.”⁸⁶ He maintains that “[i]n so extensive a republic, the great officers of government [will] soon become above the control of the people, and abuse their power [for] the purpose of aggrandizing themselves, and oppressing [the people].”⁸⁷ In this first essay, Brutus interprets the federal legislature as an aristocratic body that will inevitably become detached from the masses; he believed that its construction would lead the representatives to govern in their own interests rather than those of the people, which would surely result in oppression.

Brutus’s sixteenth essay addresses the Senate, which, in his view “represent[s] the aristocracy of the country.”⁸⁸ While Brutus acknowledged that senatorial terms should be longer than the two-year terms of the representatives, he nonetheless argued that the senators “should not be so long in office as to be likely to forget the

⁸⁰ *Id.* at 273.

⁸¹ *Id.*

⁸² *Id.* at 283.

⁸³ *Id.* at 289.

⁸⁴ *Id.* at 290 (emphasis added).

⁸⁵ *Id.*

⁸⁶ *Id.* at 292.

⁸⁷ *Id.*

⁸⁸ *Id.* at 355.

hand that formed them, or be insensible of their interests.”⁸⁹ Brutus believed that a six-year term was too long for any senator to hold office: “[m]en long in office are very apt to feel themselves independent and to form and pursue interests separate from those who appointed them.”⁹⁰ “This is more likely to be the case,” Brutus argued, “with the senate, as they will for the most part of the time be absent from the state they represent, and associate with such company as will possess very little of the feelings of the middl[e] class of people.”⁹¹ Because the Senate would already be far removed from the people, a long, six-year term would only be conducive to abuses of power. The longer the senators are away from their states, the more distant the voices of the masses will become and, consequently, the more likely the senators will be to govern in their own interests.

For these reasons, Brutus favored a four-year senatorial term, as well as a mandated rotation of senators, or, in other words, a term limit. The lack of any term limit plus the general construction of the Senate, according to Brutus, would make it “probable that senators once chosen for a state will . . . continue in office for life.”⁹² Indeed, “the office [of senator] will be honorable if not lucrative. The persons who occupy it will probably wish to continue in it, and therefore use all their influence *and that of their friends* to continue in office.”⁹³ He continues: “[the senators’] friends will be numerous and powerful, for they will have it in their power to confer great favors.”⁹⁴ What Brutus seems to be predicting here is what, generally, the relationship between senators and private elites has come to be in the present day. Today, a large number of legislators are mostly tied to wealthy campaign donors and special interest groups, and the majority of legislation (and, by extension, oversight of the executive bureaucracy) favors these groups rather than the general public. These “friends” then use their resources and influence to support re-election of the same senators who conferred legislative favors to them.

Another prediction in Brutus’s sixteenth essay seems to have been correct as well. Brutus wrote that “it will before long be considered as disgraceful not to be re-elected” to the office of senator.⁹⁵ He continues: “[i]t will therefore be considered as a matter of delicacy to the character of the senator not to return him again.”⁹⁶ “Every body acquainted with public affairs knows how difficult it is to remove from office a person who [has] long been in it. It is seldom done except in cases of gross misconduct. It is rare that want of competent ability procures it.”⁹⁷ Without any kind of mandated term limit, Brutus claimed, senators would continue to get re-elected, and would entrench themselves in office to the detriment of the masses, but to the benefit of the senators themselves and their powerful “friends.” This practice would make it inherently difficult to remove incompetent legislators. Brutus’s claims in this respect prove to have some merit in the present day, as many modern senators remain in office for several decades.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 355–56.

⁹² *Id.* at 356.

⁹³ *Id.* (emphasis added).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

With respect to the federal judiciary, Brutus warns in his eleventh essay that the power of this body will become insurmountable. He asserts that the Supreme Court, due to (1) its nature as the court of absolute last resort, and (2) the absence of any “power provided in the constitution to correct [its] errors, or control [its] adjudications,” will not “confine [itself] to any fixed or established rules [in its decision-making],” but instead will make decisions based on what its justices believe to be “the reason and spirit of the constitution.”⁹⁸ Brutus perceived that the concept of “equity” would give the Supreme Court an improper amount of discretion, which would allow its justices to craft their decisions based on what *they thought* was proper in light of the Constitution, rather than any established precedent or other rules. Because any decision of the Supreme Court would operate as binding national law, Brutus viewed this discretion as a pathway to oppression.

Based on this analysis, Brutus concludes that “[t]he [federal] judicial power will operate to effect, in the most certain, but yet silent and imperceptible manner . . . an entire subversion of the legislative, executive, and judicial powers of the individual states.”⁹⁹ “Every adjudication of the supreme court . . . will affect the limits of . . . state jurisdiction. In proportion as the former enlarge the exercise of their powers, will that of the latter be restricted.”¹⁰⁰ In other words, any decision made by the Supreme Court, on whatever topic comes before it, will bind the entire country and will consequently prevent local and state governments (and by extension, the masses) from making decisions for themselves.

It is hard to disagree with Brutus on these points in the present day. Indeed, Supreme Court decisions in cases like *Brown v. Board of Education*,¹⁰¹ *Roe v. Wade*,¹⁰² and *Obergefell v. Hodges*¹⁰³—irrespective of their merits—completely transformed society while simultaneously taking political decisions away from the state governments and the masses. In effect, these cases weakened the power of the state governments (and by extension, the voice of the people) in areas traditionally regulated by state police powers and legislative decision making. What *nine* justices thought was proper at the time of their deliberation in these cases now governs an entire nation of over 300 million people. Brutus indeed may have been correct in his warnings about the power of the federal judiciary.

Stepping away from Brutus, another Anti-Federalist writer known as “Centinel” published several letters of his own in October of 1787, which, like the other writers, criticized the new Constitution and the form of government it proposed to establish. In his first letter, Centinel claimed that the government proposed by the Constitution “has none of the essential requisites of a free government”; rather, he argued, “it is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed.”¹⁰⁴ Continuing with his aggressive writing style, Centinel, in agreement with the other Anti-Federalist writers, argued that “[t]he number of the representatives . . . appears to be too few, either to communicate the requisite

⁹⁸ *Id.* at 311–12.

⁹⁹ *Id.* at 312.

¹⁰⁰ *Id.*

¹⁰¹ 347 U.S. 483 (1954).

¹⁰² 410 U.S. 113 (1973).

¹⁰³ 576 U.S. 644 (2015).

¹⁰⁴ THE COMPLETE ANTI-FEDERALIST 2:136–43 (Herbert J. Storing, Chicago: Univ. of Chi. P., 1981), <https://teachingamericanhistory.org/library/document/centinel-i>.

information of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers.”¹⁰⁵ As for the Senate, Centinel claimed that it was “constituted on the most unequal principles,” and he echoed the arguments of Brutus with respect to it.¹⁰⁶ “The senate, besides its legislative functions, has a very considerable share in the executive; none of the principal appointments of office can be made without its advice and consent.”¹⁰⁷ Here, Centinel draws attention to the substantial portion of non-legislative power vested in the Senate by the Constitution, an issue that concerned most of the Anti-Federalists.

With respect to the six-year terms of senators and the absence of term limits, Centinel agreed with Brutus, and argued that “[t]he term and mode of [the senators’] appointment will lead to permanency. The members are chosen for six years . . . and as there is no exclusion by rotation, they may be continued for life, which, from their extensive means of influence, would follow of course.”¹⁰⁸ Like Brutus, Centinel predicted that senators would become entrenched in office due to the absence of any term limit and due to “their extensive means of influence,” which coincides with the concept of the influential “friends” to which Brutus referred. As discussed above, these predictions seem to have been largely correct in light of modern affairs.

Centinel goes a step further than Brutus, however, and claimed that “[t]he President . . . [will] either become the head of the aristocratic junto in that body, or its minion, besides, [the senators’] influence being the most predominant, could best secure his re-election to office.”¹⁰⁹ Centinel believed that the Senate would become so powerful and independent that it would not only become deaf to the voice of the people, but it would also control the president, who would become subordinate to it and do its bidding. There was a very real fear of the Senate amongst the Anti-Federalists, who truly believed that it would become the dominant ruling power—and an oppressive one at that. In line with these themes, Centinel concludes his discussion of the Senate in his first number with the following: “[the Constitution’s government is] devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, *it would be in practice a permanent aristocracy*.”¹¹⁰ While Centinel’s style may have been a bit intense, the merit behind some of his points cannot be ignored. As discussed above, the Senate today has an immense amount of power and influence, and some senators remain in office for several decades. Moreover, the president must be able to secure the loyalty of the Senate to pass critical legislation needed to fulfill his or her campaign promises. In a way, Centinel’s prediction about the Senate’s power may not have been that far off.

Centinel’s second letter puts forward many of the same arguments with respect to the Senate and accordingly merits only a brief mention. In this second letter, Centinel maintains that the Senate will “become a permanent aristocracy, and

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (emphasis added).

swallow up the other orders in the government.”¹¹¹ He repeats his prediction of the relationship that will form between the Senate and the president, asserting that “it will be in [the president’s] best interest to coincide with the views of the senate, and thus become the head of the aristocratic junto.”¹¹² Finally, Centinel again warns against the immense power that will be concentrated in the Senate, claiming that the “mixture of the legislative and executive [power] . . . highly tends to corruption.”¹¹³ To support this point, he quotes Montesquieu, who wrote that when the legislative and executive powers are united in the same body of officials, there can be no liberty.¹¹⁴

Although the various Anti-Federalist writers had different styles in presenting their arguments, much of their substance centered on the same points. These men saw the new government proposed by the Constitution as a means of achieving rule by the rich elites rather than of serving as the guardian of liberty and the rights of the people. The Anti-Federalists predicted, rather accurately, that the federal legislature—especially the Senate—would become a powerful aristocracy. In other words, it would constitute a body comprised of a small number of wealthy, educated, and distant elites who would hold immense governmental power and govern in their own interests, while also suppressing the popular will. The federal judiciary was also to be feared, as the unrestrained power of the Supreme Court could bind the entire country and transform society. To the Anti-Federalists, the system proposed and pushed through by the Federalists was conducive to only one end: the suppression of the masses and the advancement of elite interests at their expense. Modern public affairs and recent history conspire to suggest that the Anti-Federalist camp may have been largely correct in making these predictions.

B. SCHOLARLY ARTICLES

In addition to the Anti-Federalist writers of the founding era, modern scholars have also uncovered aristocratic biases in writings by Hamilton, Madison, and Jay, as well as their desire to establish a government featuring rule by elites. One such scholar is Alan Gibson, who focuses specifically on *Federalist* 10 in his 1991 article “Impartial Representation and the Extended Republic: Towards a Comprehensive and Balanced Reading of the Tenth ‘Federalist’ Paper.” In discussing the scheme of congressional representation laid out by James Madison in *Federalist* 10, Gibson notes that “Madison and his Federalist colleagues sought to secure the election of the members of a *natural aristocracy* through the *procedure* of electing representatives from large electoral districts.”¹¹⁵ “This procedure,” Gibson asserts, “served as an alternative to trying to secure the election of elite representatives by writing formal qualifications into the Constitution.”¹¹⁶ A link can be made between

¹¹¹ THE COMPLETE ANTI-FEDERALIST, *supra* note 104, <https://teachingamericanhistory.org/library/document/centinel-ii>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Alan Gibson, *Impartial Representation and the Extended Republic: Towards a Comprehensive and Balanced Reading of the Tenth “Federalist” Paper*, 12 HISTORY OF POLITICAL THOUGHT 263, 272 (1991).

¹¹⁶ *Id.*

this premise and some of Madison's comments in his letter to Thomas Jefferson, which is discussed in a previous section above. In that letter, Madison suggested implementing substantial property qualifications in order to control who could vote for Virginia's senators, who would naturally be the wealthy, property-owning elites. It appears, based on the premise that Gibson advances, that Madison's scheme of representation was an alternative to imposing similar property requirements on the electorate relative to the *federal* legislature—perhaps done so to give the appearance of propriety to the masses and the opponents of the Constitution, who would have surely been outraged if a substantial portion of the population were to be expressly barred from electing legislators.

In line with this same premise, Gibson also asserts that “Madison and his Federalist colleagues assumed that the nation's elite would be at least somewhat evenly distributed across the sixty-five electoral districts.”¹¹⁷ Moreover, the hope of the Federalists “was that together open access [to the House of Representatives through the imposition of easily-met qualifications] and fewer offices would cause greater competition and consequently the election of better representatives.”¹¹⁸ By utilizing this scheme, “the republican concern for formal equality and openness of opportunity was not sacrificed in order to meet the republican commitment to rule by the natural elite.”¹¹⁹ Put differently, the Federalists disguised their plan for elite rule by proposing a scheme of representation that, at least on its face, would appear proper to the masses and would harmonize with American principles such as equality, liberty, and the rights of the people. In practice, however, this scheme would reach the same result as the express qualification alternative: the wealthy, educated, elite would be in control.

Citing Jack Rakove's “The Madisonian Moment” and language from several *Federalist Papers*, Gibson puts forward the following proposition, which supports the notion that Madison, Hamilton, and other Federalists viewed the masses as unreasonable and unruly and that elite and educated representatives were therefore needed to defend against their influence. “Madison sometimes defended [his scheme] of representation as a means of educating the citizenry about what was in their ‘true’ or ‘permanent’ interests. [He] drew upon the set of assumptions about ‘the people’ that was present in the eighteenth-century understanding of mixed government.”¹²⁰ One of these “assumptions” to which Gibson refers was the notion that the people were “easily fooled, misled or mistaken about their interests.”¹²¹ However, this problem could be eliminated if the “representatives temporarily blocked the passions of the people,” in which case “‘reason, justice, and truth’ would have a chance to ‘regain their authority over the public mind’ and the reason, the ‘cool and deliberate sense’ of the people would be heeded.”¹²² Thus, in effect, this scheme of representation was a way to ensure that the influence of the people was kept to a minimum, in favor of elite control.

As noted previously, Madison recognized that his scheme of representation was not foolproof; the democratic House of Representatives would still be prone

¹¹⁷ *Id.* at 272, n. 28.

¹¹⁸ *Id.* at 273–74.

¹¹⁹ *Id.* at 274.

¹²⁰ *Id.* at 281 (citing Jack N. Rakove, *The Madisonian Moment*, 55 *U. Chi. L. Rev.* 55 (1988)).

¹²¹ *Id.*

¹²² *Id.*

to invasion by the passions and factions of the masses. Accordingly, Gibson notes that “Madison and his allies viewed the House of Representatives as passionate, powerful and ever encroaching. The qualified executive veto, life tenure for judges, and *especially bicameralism*, were therefore necessary as defensive powers.”¹²³ Here we see Gibson’s recognition of the notion that the Senate (implied by the word “bicameralism”) was constructed, in part, to be a filtering mechanism to guard against encroachments by the House, which was the body most likely to be overcome by the passions of the people.

A few other points made by Gibson support the themes of this essay. First, Gibson asserts that “Madison and other Federalists fought *against* constitutional reforms which were designed to tie representatives *directly to their constituents*.”¹²⁴ These reforms included “annual elections, unduly increasing the number of representatives, and binding representatives to the instructions and petitions of their constituents.”¹²⁵ The fact that Federalists fought against these reforms reinforces the idea that they did not want the national government to be controlled by the people.¹²⁶ “Unlike populists,” Gibson continues, “Madison and his colleagues sought to minimize rule by popular majorities which, they believed, were most often tyrannical and irrational.”¹²⁷ Instead of a government controlled by the people, the Federalists desired one in which the people were mostly shut out. Moreover, instead of government officials obliging themselves to the popular will, and responding to the needs and interests of the masses, the Federalists envisioned a government controlled by autonomous elites. “[T]he concept of popular sovereignty, which had been used by the colonists during the Revolution as a justification for opposition to England,” became something quite different in the hands of the Federalists.¹²⁸ As Gibson notes, “[i]f democracy is defined as the immediate participation of the citizenry in the formation of public policies, then the Federalists were not democratic.”¹²⁹

Another modern scholar in agreement with the themes of this essay is Jeremy David Engels, who, in his 2015 article, *The Trouble with “Public Bodies”*: *On the Anti-Democratic Rhetoric of the Federalist*, discusses how Publius used clever language to discredit democracy and to normalize the Constitution’s aristocracy. In describing how the Constitution was constructed to suppress the people, Engels suggests that it “was the outcome of a counterrevolution in the middle 1780s determined to curtail popular uprisings in the states and, more generally, to ensure that, while the citizenry still possessed political power in the most abstract terms, nevertheless *the actual control over governance was placed in the hands of educated and impartial representatives* capable of making good decisions.”¹³⁰ Citing Woody Holton’s *Unruly Americans and the Origins of the Constitution*, Engels metaphorically describes the Constitution as an “invisible fence”: an instrument

¹²³ *Id.* at 299 (emphasis added).

¹²⁴ *Id.* (emphasis added).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Jeremy David Engels, *The Trouble with “Public Bodies”*: *On the Anti-Democratic Rhetoric of the Federalist*, 18 RHETORIC & PUBLIC AFFAIRS 505, 506 (2015) (emphasis added).

that “encourage[es] self-government but frustrat[es] its actualization.”¹³¹ Thus, the Federalists had the hefty task of defending “an anti-democratic document to an American audience that valued democracy as a means for the majority of poor citizens to check the influence of rich elites.”¹³² The type of popular, democratic system that most Americans desired, however, is not what the Constitution represented, nor what the Federalists envisioned.

Instead of blatantly arguing that an aristocratic form of government, like that of the Constitution, was superior to a democracy—the form of government that most Americans at the time favored—the Federalists, especially those behind the guise of Publius, instead decided to attack democracy and thereby weaken its popular perception. “Publius found it necessary to discuss democracy not because of the goading of anti-federalists but instead because in the 1780s Americans expressed widespread cultural support for more direct popular control over government and the economy.”¹³³ Engels continues: “[w]hen these post-Revolutionary democratic desires were frustrated, especially by economic policies designed to favor the rich at the expense of the poor, Americans rose up in a series of rebellions that rocked nearly all of the newly independent states, of which Shays’ Rebellion in Massachusetts in 1786–87 was the most prominent and terrifying to elites.”¹³⁴ Because of these uprisings, which resulted from the widespread desire for popular control and the disdain for elite rule, Publius set out to defend “the Constitution by demeaning democracy.”¹³⁵ Portraying democracy as the enemy of the people was a logical way to persuade the masses to accept a form of government featuring rule by elites.

To effectively persuade the masses to adopt the Constitution, Madison and Hamilton applied the late eighteenth-century understanding of what constituted civilized humanity to the concept of government. “For many Enlightenment writers, the civilizing process involved learning how to resist passionate impulses and to counter such impulses with reason.”¹³⁶ Accordingly, “[t]o be a fully realized human was to learn to exercise self-government. One of the moral lessons of this particular culture of the self was for people to tame their irrational impulses.”¹³⁷ Madison and Hamilton took this moral philosophy and applied it to government in the Federalist Papers, urging that a civilized form of government was one in which the irrational impulses—or passions—of man were kept at bay. When the passions of man spread throughout a community, factions were the result, which, in Madison’s view, “stood counter to the common good and the permanent, aggregate interests of the community.”¹³⁸

To the Federalists, Engels asserts, “factions were the product of ‘impulse.’”¹³⁹ “In faculty psychology, ‘impulse’ . . . signified the [influence] of passion directly

¹³¹ *Id.* (citing WOODY HOLTON, UNRULY AMERICANS AND THE ORIGINS OF THE CONSTITUTION (2007)).

¹³² Engels, *supra* note 130, at 506–7.

¹³³ *Id.* at 508.

¹³⁴ *Id.* at 509.

¹³⁵ *Id.*

¹³⁶ *Id.* at 513.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

upon the [human] will outside of the control of reason.”¹⁴⁰ It is clear, then, that in the *Federalist Papers*, “‘impulse’ was shorthand for the irrational part of the human organism overwhelming the rational part.”¹⁴¹ Therefore, “[w]hen Madison discussed factions as the product of a common impulse [in the *Federalist Papers*] he was describing not just a nefarious political entity but also the complete short-circuiting of the type of rational civic judgment th[at] [Publius] demanded of Americans.”¹⁴² In other words, factions were to government what irrational impulses were to humans: dangerous, uncivilized, and immoral. Thus, of paramount importance to the Federalists was the implementation of a form of government that could control factions, similar to how human reason controls man’s animal instincts. Only by suppressing factions and, by extension, the passions of man, would a civilized society be constructed.

Democracy was not sufficient to control the effects of passions and factions. Indeed, as Engels describes, “[f]or Madison, democracy was destructive of government, for it could not control, but in fact worked to intensify, factions.”¹⁴³ “Democracy was unable to contain factions because it created the necessary and sufficient condition for their emergence: democracy required people to gather together in public to deliberate, and in such gatherings impulses of passion and interest were communicated from person to person, becoming common.”¹⁴⁴ Through democracy, the “disease” of faction was spread among the people, causing the impulses and passions of man, rather than his reason, to control public debate.¹⁴⁵ “A grave danger to the health of the United States, according to Publius, was popular participation in politics.”¹⁴⁶

Taking a rather cynical view, Publius “imagined people to be self-interested animals whose rational faculties were insufficiently developed to protect them from the impulses of passion and interest.”¹⁴⁷ Stated differently, the masses were nothing more than unreasonable, uncivilized people dominated by their animal instincts; they could not be expected to reach sensible conclusions. Thus, a government centered on their debate and control was doomed; the masses needed an entity that would play the role of human reason relative to governance and policy-making. As Engels points out, for the Federalists, “[i]t was the job of government to restrain people who responded more readily to passion than to reason.”¹⁴⁸

To Federalists like Madison and Hamilton, the only form of government that could successfully play the role of reason was a system featuring elite rule, where elite officials would ultimately regulate and control passions and factions. As Engels notes, the Federalists longed for “social hierarchy, discipline, and order” akin to that of the old Roman republics, and shared the Greek philosopher Plato’s “desire for elite control over government.”¹⁴⁹ Thus, the Constitution “had to do more than

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 514.

¹⁴⁴ *Id.* at 516.

¹⁴⁵ *Id.* at 518.

¹⁴⁶ *Id.* at 519.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 521.

institute a system of representation; it had to keep the number of representatives relatively small, so that passion could be kept in check.”¹⁵⁰ Madison advanced this point in *Federalist* 58, discussed above, by “trumpet[ing] a counterintuitive calculus: as a public body grew more democratic, so too did the danger to the people grow.”¹⁵¹

Another central theme of American discourse during the late eighteenth century was “the conflicting interests between the rich and the poor.”¹⁵² Engels asserts that while classical democracy “was designed to protect the poor from the influence of the rich,” Federalists like Hamilton and Madison were interested in increasing the power of the rich.¹⁵³ Quoting from a 1787 speech by Hamilton, Engels exposes just how much he and other Federalists supported rich elites ruling the poor masses: “Hamilton [wanted] to balance out the pernicious influence of the poor by increasing the power of the rich, specifically by giving them a ‘permanent’ interest in government (via an aristocratic senate with long terms in office). He hoped that the new Constitution would place its faith in the rich rather than the people.”¹⁵⁴ In the passage of the speech quoted by Engels, Hamilton asserts that, contrary to the common proverb, the voice of the people is not the voice of God; rather, “[t]he people are turbulent and changing; they seldom judge or determine right.”¹⁵⁵ The aim of the Federalists, therefore, was to implement an aristocratic Constitution that would materialize their goal of rule by the rich elite.

Despite the Federalists’ widespread influence, arguing in favor of the rich at the expense of the poor was not a winning strategy. Indeed, as Engels notes, “[m] any anti-federalists ridiculed the Constitution as an instrument the rich devised to dominate the poor.”¹⁵⁶ Aware of the futility of framing their argument in terms of the rich and the poor, Hamilton and Madison, under the guise of Publius, “attempted to shift the terms in which Americans discussed democracy away from economics.”¹⁵⁷ “Rather than talking about rich and poor, Madison and Hamilton medicalized political discourse, encouraging Americans to talk about diseases and cures. By doing this they attempted to negate a traditional rallying cry for democratic revolution: that the many must mobilize to protect themselves from the few.”¹⁵⁸

Engels cites several examples of this “diseases and cures” language within the *Federalist Papers*. For example, “Madison began *Federalist* No. 10 by noting his desire to find ‘a proper cure’ for popular government’s ‘propensity to dangerous vice.’ While democracy offered no way of healing the ‘disease’ of faction—and, in fact, only amplified the sickness—a republic like that established by the Constitution ‘promises the cure for which we are seeking.’”¹⁵⁹ Through the use of such clever rhetoric, Engels claims, “Madison redescribed government as therapy for civic disease. By shifting registers and troping government in medical terms,

¹⁵⁰ *Id.* at 524.

¹⁵¹ *Id.*

¹⁵² *Id.* at 526.

¹⁵³ *Id.* at 527.

¹⁵⁴ *Id.* at 526.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 527.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

Madison was better able to redescribe democracy as illegitimate, destructive, and wicked.”¹⁶⁰ As a result of the medical rhetoric used by Publius, a paradigm shift took place in early America. As Engels asserts, “government was [no longer] about protecting the many from the outsized influence of the few; nor was it concerned about achieving equality or about promoting economic justice, as it had been for the ancient Greeks. Now government was about curing civic disease.”¹⁶¹

Engels thus concludes that “[i]n [the *Federalist Papers*], we see the medicalization of the republican gaze as it viewed the mass of the people as diseased and infectious. The [*Papers*] troped government as a response to diseased bodies: government became about curing disease, about the protection, purification, and immunization of populations, [and] about the management of public bodies.”¹⁶² Through the use of medical rhetoric and eighteenth century moral philosophy, Publius was able to demean democracy—the form of government most popular in American thought—by persuading the masses that it was a disease in need of a cure. By discrediting democracy in this way, and by avoiding discussion of the relationship between the rich and the poor that would inevitably materialize in the new system, the Federalists were able to push an aristocratic Constitution—which gave power to rich elites at the expense of the poor masses—through to ratification. Publius successfully persuaded a majority of Americans to adopt a form of government in which the overwhelming majority of governmental power was vested in a relatively small number of rich, educated elites—a concept that was the polar opposite of popular political thought at the time.

VI. CONCLUSION

While the common perception of the Constitution holds that the document is a democratic instrument, an examination of the *Federalist Papers* and other early writings indicate that the Constitution was intended to be more of an aristocratic instrument than anything else. The aristocratic character of the Constitution was effectively disguised by Publius through the use of rhetoric and clever advocacy, leading to the ratification of an aristocratic form of government that Federalists purported to be “republican.” While “republic” derives from the Latin *respublica*, “entity or concern of the people or public,” the government that the Constitution created put most governmental power and influence in the hands of the “few”—the goal of Federalists like Alexander Hamilton and James Madison. Through the operation of the House, Senate, and federal judiciary, the influence of the masses is filtered out and suppressed, leaving the supreme decision-making powers of the government in the hands of the educated elite. Indeed, rather than an entity or concern of the people, the Constitution’s government is more accurately described as the concern of the few. While the addition of the Bill of Rights and other amendments seemingly increased the power of the people by securing their various rights, the modern operation of the federal government—heavily influenced by private, societal elites—suggests that the aristocracy envisioned by the Federalists has indeed come to fruition. Nevertheless, the scheme of Hamilton, Madison, and

¹⁶⁰ *Id.* at 527–28.

¹⁶¹ *Id.* at 528.

¹⁶² *Id.*

their Federalist counterparts has produced the most powerful and prosperous nation on the planet, which begs the question: What truly is the best form of government?