

## FEDERALIST No. 51

### **The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments**

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[Alexander Hamilton](#) or [James Madison](#)

To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments [House, Senate, President, Judiciary], as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments [salaries] annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no

doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.<sup>[1]</sup>

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public.<sup>[2]</sup> We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates.<sup>[3]</sup> The remedy for this inconveniency is to divide the legislature into different branches [the House and the Senate]; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative [veto] on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? <sup>[4]</sup>

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

In a single republic [unitary form of government], all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America [federal form of government], the power surrendered by the people is first divided between two distinct governments [the central government and the state governments], and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

## **PUBLIUS.**

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<sup>[1]</sup> Re-read this paragraph. It is one of the most well known and celebrated in the Federalist essays. Madison states that, since government will inevitably be composed of flawed men, it is necessary to provide each of them with the ability to protect their own institutions against the lust for power of those who occupy the other branches.

<sup>[2]</sup> Laissez-faire capitalism is built upon the principle that the greed of an individual in society is kept in check by the greed of others. For example, if a greedy business owner wants to overcharge you for a particular stereo you wish to buy, you simply go to another store where another greedy owner is willing to sell you the same stereo for a lower price.

<sup>[3]</sup> If the legislature is not the most powerful branch of government, then the government, by definition, is not republican. If the people legislate directly, it is a democracy. If the President is the dominant actor, then the government is a monarchy.

<sup>[4]</sup> The connection here is the confirmation process where the advisers to the President – his cabinet, his ambassadors – must be approved by the Senate. If the Senate approves of the advice that the President is being given, it follows logically that, as an institution, it will be more sympathetic to actions undertaken by the President.