

POLITICS: A PRESIDENT'S BUSINESS
The *Federalist Papers*' View of Executive Power

by

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A familiar but misleading conception of American politics holds that it consists primarily in the familiar horse-trading of competing interests in society. The theory is that the interests compete so as to gain control over the instrumentalities of the state and then to use those great powers specifically to feather the interests' own nests. I think I've wrung metaphors enough from this brief description, without exhausting the possibilities, which should make clear that I speak about the view of politics sometimes called log-rolling or pork barrel, and which President Eisenhower had in mind when he warned of the "military-industrial complex."

In short, this view holds that most, if not all political conflict is but an elaborate preface to the serious work of splitting up the booty once one or another interest has prevailed.

This view accounts for the further common opinion that politicians—practitioners of the art of politics—are uniformly dishonest. For it is generally reasoned that they subordinate every consideration—including integrity—to the goal of acquisition.

Something like this is the understanding the Riverside, California barber had in mind, when he wrote to H. L. Mencken to complain of the satire in which Mencken likened politicians to barbers and bartenders for their lying. The Riverside barber retorted, "I know *some*, honest barbers."

Now this interest theory of politics is not merely a common view. Sophisticated and highly elaborate academic and philosophical arguments have been produced to demonstrate it. Marxism is only the most obvious of these. But I will stick to the American context for now. There we find scholars such as Gordon Wood (in *The Creation of the American Republic*), who hold that politics consists *essentially* of class struggle. That, of course, is to say that politicians reason most of all about relative class advantages—about interests. Others have maintained that the American founders themselves were of this view. Accordingly, these latter day historians have turned the discussion of factions in the tenth *Federalist* into the quintessential discussion of politics [while making *Federalist* #10 the most famous of all those essays]! Faction, which that essay calls the bane of decent politics, is mistaken to be the entirety of American politics!

Further, these arguments—with which we are all familiar—insist that the deliberative process—the process whereby binding rules or laws are produced—is precisely the arena in which the interests fight it out, and thus the heart of our political life. Indeed, to consider the foremost of these historians, James McGregor Burns, the founders were so sure of this reading that they aimed their whole effort at preventing any *one* interest from prevailing finally over others. Thus, they introduced mechanical obstructions—checks and balances—solely to avoid total dominance by the democratic class. A consequence of this move was to inspire deadlock and inefficiency in the political process, at the same time as rendering real politics (understood as inter-

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ests) highly conspicuous.

I believe that the view of politics as consisting of interested competitions is entirely incorrect and in fact inverts the understanding of the framers, at least as expressed in the *Federalist Papers*.

The description of the deliberative process offered in *Federalist* seventy-three [p. 495] makes clear the distance between Publius and latter day historians:

The oftener a measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from contagion of some common passion or interest.

This process, that is called deadlock by some, is defended by Publius as allowing the reason (#49)—the deliberate sense (#s 63 & 71)—and not the passions of the public (#49) to prevail. Or, as he went on to add, “the power of preventing bad laws includes that of preventing good ones. . . [but] the injury which may possibly be done by defeating a few good laws [deadlock!] will be amply compensated by the advantage of preventing a number of bad laws.”

Of greatest interest, no doubt, is the fact that the process for “preventing bad laws” by no means relies exclusively on the filtered deliberative process and, more importantly, the prospect for generating good laws, certainly does not. The key to understanding this is found in those essays in which Publius defends primarily the constitution of the executive, but also those touching upon the Senate. Indeed, the much defended and valued unity of the executive acquires a characterization, in *Federalist* seventy-six, that shows it to be quite the opposite of the legislative chambers:

A single well directed man by a single understanding, cannot be distracted and warped by that diversity of views, feelings, and interests, which frequently distract and warp the resolutions of a collective body. . . in every exercise of the power of appointing to offices by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. [p. 511]

The framers, of course, never designed for the Congress any substantial appointing power, but rather relied upon the “sole and undivided responsibility of one man.” Thus, the deliberative process ought not to be understood as determining the characteristic exercise of this power. There are other powers of like nature, reminding us of the need to distinguish those powers subject to the deliberative process from those that are not, in order to judge properly whether the system is designed for deadlock or, alternatively, efficient politics.

In the same essay seventy-six (p. 510) Publius makes clear that the extended republic, whatever problems it brings, does not in itself create the problem of party, because it is virtually impossible for the people to receive “that systematic spirit of cabal and intrigue” needed to regulate their movements in such a case. That phenomenon applies more specifically to an assembly or body of men, not the people generally. Thus, in pursuing the questions of the unity, duration, and powers of the executive, Publius is at pains to distinguish that office from the legislative function. The distinction he developed, at length, was one that leads us to conclude that politics, properly speaking, is largely concentrated in the hands of the executive.

In essay seventy-one Publius insisted that an executive must be independent of the legislature, even if he were complaisant before the people. The separation of powers exists more specifically to accomplish this independence than for any other reason. For the “republican principle demands, that the deliberate sense of the community should govern the conduct” of

representatives. The executive, no less than members of the Senate (#63), is expected to realize this deliberate sense by providing opportunity for “cool and sedate reflection.” Still, it is not merely the qualified veto, and the executive’s participation in legislation, that distinguish him. In those he contributes to deliberation not much differently than does the Senate. What truly distinguishes the president from those officers is that he has been provided means to “serve (the people) at the peril of their displeasure,” like Pericles leading the Athenians sometimes against their inclinations. The executive, unlike the Senate, is “in a situation to dare to act his own opinion with vigor and decision.” [p. 483] The consequence of this design is that, in America, politics is the drama of executive energy and agency, advancing a settled view about the conditions of political prosperity and happiness, and on a human scale at that.

To see why these consequences flow from the design of the executive office, as well as to discover why the design demonstrates a view of politics as independent of interested competition, one needs to pay patient attention to Publius’ discussion of the executive as an agent. One aspect of that discussion is Publius’ emphasis of the “administration” of the government, which shall fall to the executive. It is far from accident that Americans speak characteristically about their respective administrations, such as the “Reagan Administration,” while peoples elsewhere speak more characteristically about their “cabinets,” “regimes,” “governments,” “secretariats,” etc. Nowhere else is the term “administration” so characteristically used as here in the United States, and no other term is given so precise and extended emphasis in the pages of the *Federalist*.

In defending the union of the Senate with the president in the forming of treaties Publius, in *Federalist* 64, introduced in justification a conception other than the expected safety (#75). Going beyond the exceptional qualifications of the men who would make such decisions (which he had already introduced in essay number two), he referred to the importance “in national affairs” of “system in the conduct of any business.” The aim, he reasoned, was to allow for the “attainment of those great objects which require to be steadily contemplated in all their relations and circumstances...” Accordingly, the national purpose demanded not only “able and honest men” but also those “perfectly acquainted with our national concerns” and able “to form and introduce a system for the management of them.”² System, then, is the key, every bit as much as the “energy, secrecy, and dispatch” that otherwise characterize defenses of the Senate (#64) and the executive (#75). Indeed, by the conclusion of the defense in essay seventy-five, Publius acknowledged for the first time throughout these essays that he was aware of the effect of *per capita* voting in the Senate, which attenuates the federal aspect of the constitution of the Senate. (p.508) The system that is urged, therefore, will be less a consequence of the relative interests of the different regions or different interests than the emergence of a “national character” in such a way that “the good of the whole [will] be more and more an object of attention.” A system of management aiming at the public good—that is the key to understanding the term “administration” in the *Federalist Papers*.

In essay sixty-eight, which properly begins the defense of the constitution of the executive, Publius praises the electoral device that minimized the intrusion of interest and influence in the selection of a “magistrate who was to have so important an agency in the administration of the government...” And respecting that administration, he added this:

And this will be thought no inconsiderable recommendation of the constitution, by those, who are able to estimate the share, which the executive in every government must neces-

² It is difficult to resist adding the reflection, that this offers no less the key to understanding Hamilton’s administration of the Treasury Department and his role in the Washington Administration in the 1790s. This relation has only partially been set forth by scholars, and a full explanation is badly needed, knitting together the 1780s and 1790s.

sarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says—

“For forms of government let fools contest—
That which is best administered is best.”

—yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration. (p. 461)

As among the forms, democracy, monarchy, oligarchy, it remains the conviction that democracy is superior. But Publius has added the caveat—which was already spelled out in *Federalist* ten—that even good forms of government depend upon good administration for their success. How important is this reflection?

As if to avert misconstruction, Publius took the extraordinary step of quoting himself in *Federalist* seventy-six, where the conclusion of the argument from essay sixty-eight is repeated, in quotation marks:

It has been observed in a former paper, “that the true test of a good government is its aptitude and tendency to produce a good administration.” (p. 509)

At no other time throughout the eighty-five essays is Publius thus particular. While he constantly references other essays, and frequently paraphrases previous statements (most famously in #49's “legitimate fountain of power” reference to #22's “fountain of all legitimate authority,” which recurs in 51's “same fountain of authority”), he does not otherwise quote himself. Accordingly, we are justly minded to pay due heed to the present expression. This quotation in essay seventy-six occurs in the context, then, of the argument we have already noted, namely, that unity in the executive supports the idea of a single man, above party, moved by a single understanding. It bears further remark that one expects from the president a “livelier sense of duty and a more exact regard to reputation.”³

It is, then, chiefly these latter virtues which remain to be explored, and which were in fact developed in the essays intervening between sixty-eight and seventy-six. In essay sixty-nine it is observed that the absence of due responsibility in the government of Britain produced an executive of great power but one who had to rely upon “substituting influence to authority” in order to govern effectively. Ultimately, of course, the pursuit of this option led to the complete cannibalization of the executive by the legislative body in England, absorbing administration into the deliberative process. The comparison between the monarch and the president produces the nominal conclusion of a weaker executive in the president. In reality, however, it is rather the monarch who in the end loses by the comparison, for he loses the opportunity to form a system of administration within his single hands.

To strengthen this conclusion, Publius opened essay seventy by refuting the presumption that “a vigorous executive is inconsistent with the genius of republican government.” Indeed, he insisted, “energy in the executive” defines “good government.” What is relevant at this point is that the executive's strength is defended for its contribution to the community, and not for its relative role in the balance of forces between or among the branches of government. There is an

³ This addresses, let us not forget, the “magistrate possessing only a common share of firmness. There are men, who under any circumstances will have the courage to do their duty at every hazard,” no doubt including the hazard of reputation. In proportion as the statesman of “common firmness” can take his story to the people in “a very plain case,” he need not fear their misconstruction. And in every other case, the more daring statesman may be comforted by the knowledge that he or she cannot otherwise save his reputation. Cf. # 73, p. 497.

independent and intrinsic value to be achieved from a “vigorous executive.”

It is essential to the protection of the community against foreign attacks: It is not less essential to the steady administration of the laws, to the protection of property against those irregular and high handed combinations, which sometimes interrupt the ordinary course of justice, to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy.

Accordingly, over and above the multiplicity of interests in the extended republic, and in addition to the auxiliary balances and checks provided in company with the separation of powers, the executive must provide additional guarantees for the attainment of the public good. “A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution: And a government ill executed, whatever it may be in theory, must be in practice a bad government.” (pp. 471-472)

We see in this formulation the negative statement of the highlighted quotation above. This negative statement is the prelude to a detailed examination of the leading elements of executive power, energy and safety, analyzed in terms of their components, unity, duration, adequate support, and competent powers, on the one hand, and dependence and responsibility on the other. In the course of the analysis, we distinguish the executive, who has energy, from the legislature, that is “best adapted to deliberation and wisdom.” Now, unity in the executive is favored for several reasons, but above all for avoiding the “danger of difference of opinion.” Such developments are expected of legislatures, where, besides, “promptitude of decision is oftener an evil than a benefit.”

The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection; and serve to check excesses in the majority. (p. 474)

This benefit from deliberation, however, is constantly imperiled by the likelihood that such dissensions might “lessen the respectability, weaken the authority, and distract the plans and operations of those whom they divide.” Further, they “might split the community into the most violent and irreconcilable factions.” Those consequences are avoided in the extended republic only partly due to the multiplicity of interests; they are perhaps still more avoided by agency of the single voice of the executive, which is meant to obscure the diversity of interests and sentiments.

A further consequence of unity in the executive is absolute and unambiguous responsibility, respecting the administration of the government. Thus, a president's responsibility is exactly opposite to that of a legislator, being heightened in proportion as his term is lengthened because his authority is unique. The liability to public censure, according to Publius operates more powerfully over such an executive, and indeed more powerfully than the prospect of punishment. Thus, the executive's performance will be the object of general appraisal and the subject of continued reflection.

Unlike the British monarch, who is unaccountable in his administration (“the king can do no wrong”), such an executive will then, through his very own and very personal perils, constitute the focus of politics properly so-called—i.e., a systematic pursuit of a common good. For this reason, Publius urges “personal firmness” in the executive and “the stability of the system of administration” adopted at his command. (#71)

... a man acting in the capacity of Chief Magistrate, under a consciousness, that in a very short time he *must* lay down his office, will be apt to feel himself too little interested in it, to hazard any material censure or perplexity, from the independent exertion of his powers, or from encountering the ill-humors, however transient, which may happen to prevail either in a considerable part of the society itself, or even in a predominant faction in the

legislative body.

It is to avoid a “feeble execution” of the laws that Publius urges an executive eligible for re-election and constituted so as to set the agenda for the society. That characteristic results not from evolution, but from the settled design at the founding. Nor does the executive set the agenda in the merely abstract sense that, it being set, then politics begins in the effort to tear it apart, or, as it was said recently of a certain President's budget proposals to Congress, they were “dead on arrival” in the face of interest politics. Publius rather designed to make the political discussion properly turn on systematic directions imparted by the executive, which themselves would address the

. . . purposes for which government was instituted, [...] the true means by which the public happiness may be promoted. The republican principle demands, that the deliberate sense of the community should govern the conduct of those to whom they entrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. It is a just observation, that the people commonly *intend* the PUBLIC GOOD. This often applies to their very errors. But their good sense would despise the adulator, who should pretend that they always *reason right* about the *means* of promoting it. (p. 482)

It would be a mistake to conclude from this analysis that the chief focus of Publius' concern is an executive acting so as to save the people from themselves. He aims rather at the systematic pursuit of the public good, and contemplates resisting the people only insofar as their inclinations depart from the public good. The “administration” question, then, is primarily a question about the systematic pursuit of the public good.

The seventy-second essay opens with a broad declaration:

The ADMINISTRATION of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary, but in its most usual and perhaps in its most precise signification, it is limited to executive details, and falls peculiarly within the province of the executive department.

In this essay Publius develops a complete view of the conception of the Administration, covering all of its activities from the most mundane to the most elevated. Here, also, Publius introduces the chief inducement to good behavior in the executive, namely, the love of fame, “the ruling passion of the noblest minds.” The correct estimate of the operation of these principles and passions is one that inclines the office-holder to seek “the positive merit of doing good.” The “settled administration” that results places the “system” or project of the executive in the central position *vis-à-vis* the politics of this regime.

That central position is identified in essay seventy-three, while defending the qualified veto, as guarding “the community against the effects of faction.” Nor does it hinge upon “superior wisdom or virtue in the executive.” After acknowledging the primary reason that he needs to be able to defend himself, “the secondary one is to increase the chances in favor of the community...” (p. 495] Now, the tendency toward faction in the legislature is, in some measure, closely connected with the legislative tendency to absorb all the powers of the government (#71, p. 483; #73, p.494). It is not possible to protect against the evil of faction in the legislature without at the same time mitigating the evil of legislative aggrandizement. Nor is it possible to mitigate the evil of legislative absorption of all powers without at the same time displacing from the legislature to elsewhere the power to define the public good. The combination of frequent change in the legislature, plus the effect of interest, operates precisely to undermine any serious

defining of the public good through the legislature.⁴ That same effect operates most powerfully to secure to an independent and energetic executive all the opportunity he requires to define the public good, which is, in any regime and not just in the American, the heart of all politics.

⁴ Some would doubtless challenge this analysis on the basis of the six-year term for senators. I would remind readers, however, that the senate experiences a turn-over of one-third every two years, and that the *possibility* of a complete renewal of one-third of the membership of a deliberative body signifies no insignificant change in its direction.