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LANGUAGE, POLITICS, AND "THE FEDERALIST": A LINGUISTIC APPROACH TO INTERPRETATION

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LANGUAGE, POLITICS, AND THE FEDERALIST:

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by

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ABSTRACT

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In this study, we examine the linguistic uses in The Federalist Papers as a source of political meaning in the text. We seek to exhibit the structures of use embedded in the text and to show the informal relationship between these structures. Further, we examine uses to understand the rules governing how words can and cannot be used. We are looking at word-use as a source of meaning. By understanding the kinds of uses embedded in the text we can understand how the Federalists talk about government and society. This approach to the text depends on the work of Ludwig Wittgenstein in his Philosophical Investigations.

Thus, we study the uses of "passion," "interest," "experience," "ends and means," "reason," and "confederate and republican government." We exhibit the particular linguistic contexts for use of these terms. In some instances certain words are part of the critical contexts of use. In the Federalists' structures of use, certain terms such as "passion"

and "interest" are not usually used to speak favorably of actions.

The structure of use which is most evident in The Federalist Papers is in the terms "moderation" "reason," "reflection," "calmness," "experience," etc. These terms bespeak the common sense of the community. The Federalists in their use of these terms appeal to the linguistic practices of the community. Their work depends on the rules of use for "propriety" and "prudence."

In contrast to this informal structure of "reason" is the Federalists' uses bespeaking the extremes of behavior. In this language-game there are such terms as "momentary," "impulsive," "immediate," "factions," "violent," "bitter," "passions," and "interests," etc. These are the extremes of behavior which, to the Federalists, are dangerous to the stability and order of the society.

Because of the language-game of extremes of behavior, the Federalists use also a vocabulary of "checks and balances" and "separation of powers." Such checks are necessary to allow the return to moderation and calm which are essential to any stable political order.

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INTRODUCTION

This is a study of the linguistic structure and the meaning of The Federalist Papers. Our approach to this study depends on the later work of Ludwig Wittgenstein, especially on his Philosophical Investigations. Wittgenstein, in his later work, critically analyzed particular theories of meaning, including the one he advanced in his Tractatus Logico-Philosophicus. He showed how he and other philosophers were mistaken in their claim that words have meaning because they name things. He summarized this view of language as follows: "the individual words in language name objects--sentences are combinations of such names.--In this picture of language we find the roots of the following idea: Every word has a meaning. This meaning is correlated with the word. It is the object for which the word stands."[1] Wittgenstein offers numerous linguistic examples to show that this picture of language and meaning is appropriate for only a very narrow region of language.

Wittgenstein's point is that we use language to do many different things and we confuse ourselves if we become too entranced with one picture of how words have meaning. Here, he draws on one of his most recurrent examples: games.

Just as there is not one set of rules which is the essence of all games, neither is there one picture which describes the workings of all language. Rather, different games have different rules: the use of pieces in board games is different from the use of those in field games. Likewise, different languages or language-games, as Wittgenstein calls them, do not have the same rules and thus have different "kinds of word." We can put the point this way. The use of "Fire!" depends on the kind of language-game being played. If it were to be used in a crowded theater there would be an entirely different meaning than if it were used while we were witnessing an execution.

The use of a word depends on the past training which language users have received. Wittgenstein writes: "The children are brought up to perform these actions, to use <u>these</u> words as they do so, and to react in <u>this</u> way to the words of others."[2] He elaborates on this point of the weave of language and action:

> "Don't you understand the call 'Slab!' if you act upon it in such-and-such a way?--Doubtless the ostensive teaching helped to bring this about; but only together with a particular training. With different training the same ostensive teaching of these words would have effected a quite different understanding. 'I set the brake up by connecting up rod and lever.'--Yes, given the whole of the rest of the mechanism. Only in conjunction with that is it a brake-lever, and separated from its support it is not even a lever; it may be anything, or nothing."3

For Wittgenstein, it is not enough to think of the meaning of the word as simply pointing to something and uttering

the word. There must be training in what one is to do after hearing the definition. Children are trained to react in certain ways to certain words. And such training depends upon the practice: on the play of certain language-games.

Wittgenstein's view is that children learn the meaning of a word when they understand the rules of use; they learn the meaning when they understand what to do. Wittgenstein offers examples of simple language-games to show the different rules which may govern how words are used. Some words may be used as numbers, others as commands, others as color words, etc. He then describes the training in the use of number words and what actions of the child would tell us if he had mastered the meaning of these words.

Wittgenstein emphasizes the importance of knowing the kind of language-game being played in order to understand the meaning of a word or sentence. As Wittgenstein writes: "So one might say: the ostensive definition explains the use--the meaning--of the word when the overall role of the word in language is clear. Thus if I know that someone means to explain a color-word to me the ostensive definition 'That is called "sepia"' will help me to understand the word."[4] It is because we understand the language-game of colour-words that we can learn something from the ostensive definition. It is because we already know this language-game that we know also what is being explained. Wittgenstein's example may help: "When one shows someone the king in chess and

says: 'This is the king,' this does not tell him the use of this piece--unless he already knows the rules of the game up to this last point: the shape of the king."[5] There is a further point: only someone who is master of a language can ask a name; only he understands the language-games and the role of the word in the language. Most of what we know is assumed in any understanding of ostensive definitions. Wittgenstein writes that, "We may say: only someone who already knows how to do something with it can signficantly ask a name."[6]

All this emphasizes the significance of use of the technique which gives meaning to the words and sentences. We understand a word because we know what kind of word it is, that is, what sort of language-game we play with it. These are the language-games we are trained to play as children. And in our teaching of a language-game to a child, we teach nothing more or less than we know ourselves. We offer ostensive definitions, examples, and correction of the child's attempts to follow our examples. And it is the circumstances which tell us if the child has understood. Wittgenstein offers several explanations of circumstances. He writes: "Just as a move in chess doesn't consist simply in moving a piece in such-and-such a way on the board--nor yet in one's thoughts and feelings as one makes the move: but in the circumstances that we call 'playing a game of chess', 'solving a chess problem', and so on."[7] Or, he gives a simpler defini-

tion: "that is, on what happened before and after the pointing. . . ."[8] A move in a game and a definition in a language depend upon particular circumstances for their meaning or use. Whether a student understands a use depends on what he does. What he does must be in accord with the rules of a game or the rules of a language-game. His understanding may include experiences such as a particular feeling, a sudden "Ah-hah!" but for us, "it is the circumstances under which he had such an experience that justify him in saying in such a case that he understands, that he knows how to go on."[9] It is the moves he makes or it is the words he uses which show whether he has understood the rules and can play correctly.

Wittgenstein's point is to emphasize the sense that playing a game or following a definition involve the notion of a rule. Understanding a definition does not depend on grasping the intention of the speaker. It depends on being able to follow the rule. Whether someone has understood a definition depends on the use which is part of the practice of the community. Wittgenstein describes it as follows:

> "Let me ask this: what has the expression of a rule--say a sign-post--got to do with my actions? What sort of connexion is there here?--Well, perhaps this one: I have been trained to react to this sign in a particular way, and now I do so react to it. But that is only to give a causal connexion; to tell how it has come about that we now go by the sign-post; not what this going-by-the-sign really consists in. On the contrary, I have further indicated that a person goes by a sign-post only in so far as there exists a regular use of sign-posts, a custom."10

Following a rule is not an act of interpretation; understanding a rule is not a judgment. Just as we do not decide how to follow a rule, neither do we decide how we shall follow an ostensive definition. It is the practice which determines whether we have followed the rule--not our interpretation. It is not we who decide to play a game of chess and in our intention include all the rules of the game. Wittgenstein comments on the impossibility of only one man obeying a rule only once in his life: "It is not possible that there should have been only one occasion on which a report was made, an order given or understood; and so on.--To obey a rule, to make a report, to give an order, to play a game of chess, are customs (uses, institutions). To understand a sentence means to understand a language. To understand a language means to be master of a technique."[11] For Wittgenstein the rules of a game are in its practice and children are trained to move certain pieces as they have been shown. They are corrected when they make mistakes and praised when they follow the rules correctly.

Knowing a language-game, in Wittgenstein's view, means being the master of a technique. He offers many examples to show how we teach, train and learn these techniques. Our language-games are embedded in our actions; we use words as we move pieces, shake our fists, shake hands, etc., etc. It is the use or the custom which connects an intention with playing a game. It is what we have been trained to do which

gives a sign-post meaning for us. Wittgenstein speaks of someone learning to read: "The change when the pupil began to read was a change in his behaviour; and it makes no sense here to speak of 'a first word in his new state.'"[12] Our saying that he can read is justified in what he does. Possessing a skill, knowing or being able to do something is shown in what the student does. And for Wittgenstein, the use of "know" is woven into the language-game of "I am able to do something."

Wittgenstein's approach emphasizes the language-game for understanding a word, definition, sentence, or explanation. A command and obedience to that command are connected in language; it is the rules of language which govern what action would be obedience to an order. It is not the superior's intention which the soldier hears; it is the superior's order within a particular set of circumstances. He has learned what is appropriate in this context. The soldier may not follow the order and his superior may react according to the soldier's response. The superior may repeat the order if he thinks the soldier did not hear; he may ask for an explanation if the soldier still does not follow the order; he may finally threaten the soldier if he continues to disobey.

There are norms in language-games and it is the deviation from those norms which demands explanations, excuses, or justifications.[13] Wittgenstein calls these "forms of life." He writes:

> "It is only in normal cases that the use of a word is clearly prescribed; we know, are in no doubt, what to say in this or that case. The more abnormal the case, the more doubtful it becomes what we are to say. And if things were quite different from what they actually are--if there were for instance no characteristic expression of pain, of fear, of joy; if rule became exception and exception rule; or if both became phenomena of roughly equal frequency--this would make our normal language-games lose their point.--The procedure of putting a lump of cheese on a balance and fixing the price by the turn of the scale would lose its point if it frequently happened for such lumps to suddenly grow or shrink for no obvious reason."14

It is this notion of the normal and the extreme which is important in our approach to The Federalist. We shall examine those language-games which the Federalists depend upon in their discussions of the existing Confederacy and the new federal government. We shall see the importance of a language-game such as "ends and means" and the criteria embedded in such games when they are used to describe, evaluate, and justify governments. But we shall leave this discussion until later in the chapter. For the moment, let us look at other approaches to history and the social sciences which are drawn from the later work of Ludwig Wittgenstein.

Peter Winch, in his Idea of a Social Science, employs Wittgenstein's descriptions of rules to offer an understanding of human action. Winch, following Wittgenstein, offers an example of an ostensive definition and a detailed analysis of its workings. He asks:

> "What is it to 'follow' a definition? Again there is a superficially obvious answer to this: the definition lays down the meaning and to use a word in its correct meaning is to use it in the same way as that laid down

> in the definition. And in a sense, of course, that answer is perfectly correct and unexceptionable; its only defect is that it does not remove the philosophical puzzlement. For what is it to use the word in the same way as that laid down in the definition? How do I decide whether a given proposed use is the same as or different from that laid down in the definition?"15

Winch's answer is that whether two things are the same "depends on the context in which the question arises."[16] And here Winch is at pains to emphasize the importance of the social setting in the determination of sameness. There must be some instance of rule-following if we are to know a definition is being followed. This depends on others being able to understand the rule and follow it themselves. Winch writes: "It suggests that one has to take account not only of the actions of the person whose behavior is in question as a candidate for the category of rule-following, but also the reactions of other people to what he does. More specifically, it is only in a situation in which it makes sense to suppose that somebody else could in principle discover the rule which I am following that I can intelligently be said to follow a rule at all."[17]

Winch then proceeds to show the importance of making a mistake in the concept of following a rule. He emphasizes the social context of any standard. For him:

> "A mistake is a contravention of what is established as correct; as such, it must be recognisable as such a contravention. That is, if I make a mistake in, say, my use of a word, other people must be able to point it out to me. If this is not so, I can do what I like and then there is no external check on what I do; that is, nothing is established. Establishing a standard

> is not an activity which it makes sense to ascribe to any individual in complete isolation from other individuals. For it is contact with other individuals which alone makes possible the external check on one's action which is inseparable from an established standard."18

Winch's position is that rules are public and it must be possible for others to follow them: they must be able to master them. These are the criteria which Winch draws from Wittgenstein and applies to the public nature of social rules in order to understand human actions.

Winch next examines the nature of meaningful behavior in light of his previous discussion of rule-following and the importance of a social context. A meaningful action is symbolic; it "goes together with certain other actions in the sense that it commits the agent to behaving in one way rather than another in the future."[19] Winch immediately shows how this position is tied to his previous argument about rule-following and understanding the meaning of a definition. Winch writes:

> "The notion of being committed by what I do now to doing something else in the future is identical in form with the connection between a definition and the subsequent use of the word defined, which I discussed in the last chapter. It follows that I can only be committed in the future by what I do now if my present act is the application of a rule. Now according to the argument of the last chapter, this is possible only where the act in question has a relation to a social context: this must be true even of the most private acts, if, that is, they are meaningful."20

Winch's point will be clearer if we emphasize that meaningful actions are embedded in forms of life or in structures of activity. Just as a definition depends on circumstances

for its meaning, that is, the kind of word, the use of a word, the listener's past training, the examples given, the corrections offered, and the uses of others, so an action depends on the kind of society, the explanations available, the practices of a society, etc.

Winch offers the example of someone who marks a piece of paper to cast a vote. Now the meaning of this action is its use or its place within a set of circumstances. Its significance as casting a vote depends, in Winch's view, on the political institutions of the society and the voter's familiarity with those institutions. On the latter criteria Winch elaborates: "His act must be a participation in the political life of the country, which presupposes that he must be aware of the symbolic relation between what he is doing now and the government which comes into power after the election."[21] Thus, Winch puts particular emphasis on the necessity of the citizen having his own concepts of explanation or his understanding those offered by others. Winch's example is a society in which inhabitants have democratic institutions imposed by alien administrators. "The inhabitants," writes Winch, "of such a country may perhaps be cajoled into going through the motions of marking slips of paper and dropping them into boxes, but, if words are to retain any meaning, they cannot be said to be 'voting' unless they have some conception of the significance of what they are doing."[22]

We must take a moment to comment on Hanna Pitkin's argument that Winch's position moves in directions which are fundamentally adverse to Wittgenstein's. It is her contention that Winch is moving away from the Wittgenstentian emphasis on the social context--the surrounding circumstances of an action. She contends that for Winch, "an action is to be defined and identified by the action or intention, awareness, and conception of what he is doing. The notion of action is tied to those of intention, motive, purpose; and the identification of action is thus dependent on an actor's understanding."[23] Pitkin argues that Winch moves to internal criteria of meaning, just the reverse of Wittgenstein's own work in the Philosophical Investigations.

However, Pitkin's criticism of Winch is based on too narrow a reading. Winch's point does not depend on the intention of the actor but on the concepts which permeate "a man's social relations with his fellows."[24] Or, the point can be stronger: "social relations are expressions of ideas about reality."[25] It is words and their use with human actions which is the context of meaning. Winch's example will help: "Again, a monk has certain characteristic social relations with his fellow monks and with people outside the monastery; but it would be impossible to give more than a superficial account of those relations without taking into account the religious ideas around which the monk's life revolves."[26]

It is the context of ideas and words and their uses which are embedded in meaningful actions. What is rule-governed behavior depends on the practices of the community. In the case of Christian religious communities, it is the language-games of prayer, of communion, of absolution, of redemption, etc., which are woven into the actions. Understanding these uses of language means understanding the rules and the context of their use. It is this context of ideas which Winch emphasizes--not simply the intentions of the actor. Those intentions are connected to actions by the language and the practice of the community.

Let us now look at another approach derived from Wittgenstein. We shall look at J.G.A. Pocock's work and specifically examine his introductory essay in Politics, Language, and Time. Pocock's relation to Wittgenstein is evident in the following passage:

> "The distinction between first-order and second-order statements, evoked the image of a world in which some men employed language--or languages, or language structures, or language-"games" possessing "rules" by which they might be "played"--to make statements, including political statements and statements about politics, while other men employed language (the concept could be similarly refined at this level) to explore the statements which had been made and the vocabulary, structures or rules by which they had been made. It needed only the step--which a historian should take instinctively--of viewing "language" as a product of history and as possessing history of its own, to reach the point where it could be seen, first, that the exploration of language might yield historical results, might produce second-order statements about language used which would be historical statements; second,

> that this activity could be considered a historical agent, helping to produce changes in linguistic consciousness and so in the history of language-use itself."27

Pocock explores the concept of second-order statements using Thomas Kuhn's concept of paradigm. The history of linguistic paradigms may exhibit many different uses and Pocock ties those paradigms to uses in a particular political dimension. Paradigms may be used to support the existing authority, to explore existing paradigms, and to criticize existing paradigms. Pocock describes these paradigms as follows: "At this stage we are considering the possibility of a politics of language: a series of devices for envisaging the varieties of the political functions which language can perform and of the types of political utterance that can be made, and the ways in which these utterances may transform one another as they interact under the stress of political conversation and dialectic."[28]

Pocock has introduced a new set of uses for language-games. This raises certain problems in relation to the criteria of use and to the play of a language-game in Wittgenstein's sense. For Pocock has eliminated the aspect of Wittgenstein's thought which Winch argued was paramount, that is, how language is related to reality. Pocock's approach has the danger of making all political languages into purely ideological uses.

Language-games become mainly manipulative in character. By concentrating on introducing a third order of discourse

about first- and second-order statements, Pocock obscures the primary function of language and the importance attached to being believed. As we shall see in The Federalist, Hamilton, Madison, and Jay are intent on establishing the conditions for wise and judicious speech, and further, they are intent on adhering to their own criteria.

We can see some of the difficulties created by this notion of paradigm if we look at another aspect of it. Pocock appears to follow Wittgenstein when he emphasizes the public nature of a paradigm and its precedence over a writer's intention. Thus, "the paradigms with which the author operates take precedence over questions of his 'intentions' or the 'elocutionary force' of his utterance, for only after we have understood what means he had of saying anything can we understand what he meant to say, what he succeeded in saying, what he was taken to have said, or what effects his utterance had in modifying or transforming the existing paradigm structures."[29] And these paradigms set the first problem for the historian. He must "identify the 'language' or 'vocabulary' with and within which the author operated, and to show how it functioned paradigmatically to prescribe what he might say and how he might say it."[30] What is unfortunate in Pocock's choice of "paradigm" is that it does not concentrate on the actual language and make its study the chief task of the historian.

Language as paradigm loses its openness for the researcher. What Wittgenstein saw as an exploratory activity is, in Pocock's hands, one of identifying paradigms. One may object to the view that Pocock sees the historian's work as an empirical task. Pocock writes: "If at this stage we are asked how we know the languages adumbrated really existed, or how we recognize them when we see them, we should be able to reply empirically: that the languages in question are simply there, that they form individually recognizable patterns and styles, and that we get to know them by learning to speak them, to think in their patterns and styles until we know that we are speaking them and can predict in what directions speaking them is carrying us."[31]

But Pocock does not even mention the use of the language. His sense of the empirical is to discover patterns of language. He does not mention the tasks of description, explanation, justification, etc. Pocock declares that we must discover the historical language-game, but as we have said this leaves the question of context to be decided upon not by careful study of a text but by attempting to discover in history a language similar to that of a text.

Another approach we may examine is that of Quentin Skinner. Skinner has written a number of methodological and philosophical articles developing an approach to the study of the history of political thought. He has attacked two prevailing assumptions regarding the study of the classic texts of political

thought. One such assumption claims that the classic texts can be adequately understood in their own terms and that the commentator does not need to consider the historical context. "The other," writes Skinner, "was the belief that a satisfactory history can be constructed out of the 'unit ideas' contained in such texts, or else out of linking such texts together in a chain of alleged influences."[32] The weaknesses of these assumptions, in Skinner's view, lies in their isolation from the ideological context of a historical period and has resulted in interpretations which are plausible but indefensible in the historical context.

Skinner's attack on these assumptions rests on his contention that in studying the conventions of a historical period we may recapture what the writer of a classic text might have intended. Thus, Skinner focuses "on the concept of a convention, and especially the conventions surrounding the performance of complex linguistic acts, in an attempt to provide a more effective though closely related means of 'closing the context' on the historical meanings of texts. I (Skinner) have sought in particular to ask questions about what a given writer may have been <u>doing</u>, and to answer them be appealing to the extent to which his intentions must necessarily have been conventional if they included the intention to communicate and be understood."[33] For Skinner, an understanding of a classic text must depend on the recovery of its historical meaning and this "can never be achieved by studying the text itself."[34]

Skinner's approach emphasizes studying the ideologies of a historical period or the conventions of political argument of a period. He offers a specific example of the use of his approach in a number of articles which comment on Hobbes's Leviathan and the conventions of political debate of the period. Skinner concludes: "Unless we are prepared to ask questions about what Hobbes is doing in Leviathan, and to seek the answers by relating his work to the prevailing conventions of political argument at the time, we can never hope to elucidate the precise character of his counter-revolutionary theory of political obligation, nor can we hope to understand the precise role of his epistemology in relation to his political thought."[35] Thus, it is the political traditions of a historical period and the uses of these traditions which ought, in Skinner's view, to be the context for understanding the meaning of a classic text.

We need not pursue Skinner's argument further for we have raised the question which needs our comment. His emphasis on the ideological context raises significant questions about our emphasis on the language-games of The Federalist. Is it impossible for us to offer any understanding of the meanings of The Federalist unless we present the text within the conventions of political argument of the period? We think not.

We may begin by pointing out that Skinner himself is not totally averse to the study of the classic texts. He writes: "I assumed throughout that the classic texts were

worthy of study in themselves, and that the attempt to understand them ought to be treated as one of the leading aims in any history of political thought."[36] Classic texts are worthy of study but not in isolation. On this point we do not disagree with Skinner. We do not deny that any interpretation drawn from a classic text must be historically defensible given the conventions of the period. But may we not understand those conventions by studying them in the uses of a particular text?

The understanding of the conventions of political argument in a historical period is still a question for study. It is possible to look at the uses within a text to understand the conventions of a period. By studying the examples of a text, what it praises or blames, its definitions, its descriptions, etc., etc., we may understand some of the practices of an age. But we may also learn something of the text itself. We shall understand these practices in their particular circumstances. We shall see how words are used, the rules of their use, and the structures of their uses, that is, we shall examine language-games. We can study the complexities of uses in many linguistic contexts rather than reducing them to an instance of an ideology.

In our approach to The Federalist we are interested in the use of words and the structures of use in the text. Here we follow Wittgenstein in his emphasis on uses, rules,

and language-games. We do not begin with questions as to the intentions of the Federalists, nor do we, as in Pocock's approach, begin with the historical search for a paradigm similar to the language of the text. Our primary interest is to look at the text and try to learn just how the authors used words.

A use involves more than one instance of something being done; it involves a practice, a custom, or a rule. It involves the possibility that we can master a technique and thus understand a language. Thus, we are not intent on learning the meaning of a word in isolation; nor are we interested in describing the characteristics of something. Rather, we are interested in the kinds of ways a word can and cannot be used. We are trying to learn the criteria or the rules of use. But we shall discuss this point later.

Our primary point of departure, as we said, is the rule-aspect of any language. We can learn a language because it is governed by rules. Uses can be learned or mastered because they are regular. Thus, in using "passion," Hamilton speaks of "momentary passions" and "impulses of rage, resentment, jealousy, avarice, and other irregular and violent propensities" (6, 9).* Madison, in defining a faction, speaks of "some common impulses of passion. . . ." (10, 2). Here,

*To make my references to The Federalist Papers independent of any particular edition, I shall give citations by number and paragraph.

we can begin to feel the tug of rules. This example exhibits a kind of use which is made of the word "passion." Certain behaviors may be described by this term while others may not. We can cite another example. Hamilton writes that, "A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and by the bitterness of their invectives" (1, 5). This example increases our understanding of the rules which are embedded in the use of "passion." It is in this way, by carefully studying the language of the text, that we can begin to understand the rules of use. It is the particular structures of language, examples of use, and implicit restrictions on use which are part of our approach to understanding rules.

But this raises another use which is important in the text. There are rules for what may be called the conditions for rational language. Madison offers an example of such a criteria when he speaks of security from foreign danger. He writes, "Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils. Is the power of declaring war necessary? No man

will answer this question in the negative" (41, 7). Here, Madison offers a rule which governs what can be said reasonably. It is always possible for someone to answer that the power of declaring war is unnecessary in the federal or state councils, but Madison would be confused by such a reply. Such a reply so violates the rules governing talk of government as to make rational conversation impossible. Madison is appealing to the rules of political conversation or the terms in which the issues of government are discussed. Such a negative reply would so disrupt the rules of normal talk about government that communication would be confused or cease for the moment.

We are attempting to call attention to the rules which are implicit in The Federalist and which constitute the context of rational deliberation. And we can describe these rules by knowing how they work in the text. This brings us to the word "propriety" and its use. We can begin with an example drawn from Jay. He writes: "When the people of America reflect that they are now called upon to decide a question, which in its consequences must prove one of the most important that ever engaged their attention, the propriety of their taking a very comprehensive, as well as a very serious view of it will be evident" (2, 1). In his use of "propriety" Jay is invoking a set of rules for understanding. He is setting the context and the kind of language and behavior which is appropriate. He is calling for calm, sedate consideration by those separated from the heat of passion.

Throughout The Federalist there is continued emphasis on the proper or "ordinary rules of calculation." As Hamilton says: "And as to those mortal feuds which in certain conjunctures spread a conflagration through a whole nation, or through a very large proportion of it, proceeding either from weighty causes of discontent given by the government or from the contagion of some popular paroxysm, they do not fall within any ordinary rules of calculation" (16, 11). The Federalists consistently emphasize these shared rules for deliberating important issues of government. And further, the structure of the new federal government is such as to enhance the possibility that these rules of common sense will operate. This does not mean that all men who deliberate calmly and quietly will agree. For as Madison writes: "When men exercise their reason coolly and freely on a variety of distinct questions, they inevitably fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are so to be called, will be the same" (50, 6). Men may disagree but they will be able to reach agreement if they deliberate coolly and freely. This is the context of rules for the republicanism of The Federalist. And we may hasten to add that it is this context which explains the easy acceptance of the method in the new Constitution for selecting the President.

We now need to deal with some objections to our approach. One may ask how it is that we have chosen the word "passion"

as a subject of our study. Might we not have chosen other terms. We have chosen "propriety" and "prudence" even though others rarely, if ever, mention these terms. Our defense in examining "passion" begins with the fact that no matter where a study of The Federalist begins, "passion" will appear again and again. A description of the language-games of the text cannot avoid a discussion of the Federalists' use of "passion." This is a requirement set by the Federalists themselves; they use the term in structures of explanation and condemnation in the text.

Further, some may challenge the "limited" context of our study and argue that only within a broader, historical context can The Federalist be adequately understood. We do not deny the importance of studying other texts of this period for understanding the language of The Federalist. Certainly, Bernard Bailyn's study of the broadsheets, tracts, and pamphlets of the Revolutionary Period adds to our understanding of the text.[37] Further, Douglass Adair and his disciple, Gary Wills, enhance our understanding by emphasizing the influence of the Scottish Enlightenment on the language of The Federalist.[38,39] Such studies do provide us with rules which may help to understand the language-games of the text. But they are aids and not the primary source of rules. It is to The Federalist that we must turn because it is here that these rules are evident in use. It is possible to draw from Hume complex sets of rules for using "experience,"

but this does not tell us how the Federalists use "experience." Nor does it mean that Hume's complex rules of use are in any way appropriate to a text such as The Federalist.

Our Wittgensteinian approach concentrates on the rules of The Federalist. We shall try to understand the uses of words in the text by looking at what the words can and cannot say. From such a working-out of the criteria of the text, there emerges an emphasis on the "ordinary rules of calculation" and the language of disorder and irrationality, that is, the language-games of "passion" and "interest." We shall seek to understand the practices and the customs which are embedded in the language of The Federalist.

FOOTNOTES

[1]Ludwig Wittgenstein, Philosophical Investigations, trans. G.E.M. Anscombe (New York: Macmillan, 1953), par. 1.

[2]Ibid., par. 6.

[3]Ibid.

[4]Ibid., par. 30.

[5]Ibid., par. 31.

[6]Ibid.

[7]Ibid., par. 33.

[8]Ibid., par. 35.

[9]Ibid., par. 155.

[10]ibid., par. 198.

[11]Ibid., par. 199.

[12]Ibid., par. 157.

[13]See J.L. Austin, "A Plea for Excuses," in Philosophical Papers, by J.L. Austin, eds. J.O. Urmson and G.J. Warnock, 2nd ed. (New York: Oxford University Press, 1970), for a detailed discussion of excuses.

[14]Wittgenstein, par. 142.

[15]Peter Winch, The Idea of a Social Science (New York: Humanities Press, 1958), p. 26.

[16]Ibid., p. 27.

[17]Ibid., p. 30.

[18]Ibid., p. 32.

[19]Ibid., p. 50.

[20]Ibid.

[21]Ibid., p. 51.

[22]Ibid.

[23]Hanna Pitkin, Wittgenstein and Justice (Berkeley: University of California Press, 1972), p. 245.

[24]Winch, p. 23.

[25]Ibid.

[26]Ibid.

[27]J.G.A. Pocock, Politics, Language and Time (New York: Atheneum, 1971), p. 12.

[28]Ibid., p. 19.

[29]Ibid., p. 25.

[30]Ibid.

[31]Ibid., p. 26.

[32]Quentin Skinner, "Some Problems in the Analysis of Political Thought and Action," Political Theory, 2 (1974), 279.

[33]Ibid., pp. 284-285.

[34]Ibid.

[35]Ibid., pp. 285-286.

[36]Ibid., p. 279.

[37]Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge: Harvard University press, 1967).

[38]Douglass Adair, "'That Politics May Be Reduced to a Science': David Hume, James Madison, and the Tenth Federalist, reprinted in The American Past, 2 vols., 2nd ed., eds. Sidney Fine and Gerald S. Brown (New York: Macmillan, 1965).

[39]Gary Wills, Explaining America (New York: Doubleday & Co., 1981), passim.

CHAPTER TWO

THE INTERPRETATION OF PASSION WORDS

For many interpreters of The Federalist, it is best to approach Hamilton, Madison, and Jay as political thinkers whose thought forms a consistent, coherent whole. The interpreter reads the written works of these authors to discover the fundamental principles from which they derive their diverse written statements. Because of these basic principles, it is possible to show the coherence and consistency of the statements about current events.

Such an approach emphasizes the rational elements in Hamilton, Madison, and Jay's thoughts. They are best interpreted as thinkers, as rational men trying to understand politics, and as men acting in the most reasonable manner. Their statements and their actions are interrelated, all being derived from the same general principles. Understanding The Federalist depends on understanding the principles which are the basis of this work. In effect, the task of the interpreter is to understand the logical structure of their thought. Implicit in this approach is the assumption that these thinkers are not attempting to behave irrationally: to understand

their statements the interpreter must look for the inner logic.

As an example of this approach in understanding The Federalist and its authors, let us look at Vernon Louis Parrington. In his first volume of Main Currents in American Thought, Parrington sees The Federalist as part of a great debate, the participants on each side as political thinkers. In his discussion of Hamilton as political thinker, Parrington argues that, "Throughout his career Hamilton was surprisingly consistent. His mind hardened early as it matured early, and he never saw cause to challenge the principles which he first espoused."[1] Following Parrington, the interpreter must find the basic principles of Hamilton's thought, then it is possible to explain his various statements throughout his lifetime. What Hamilton said was derived from a few general principles. "At the basis of Hamilton's political philosophy," writes Parrington, "was the traditional Tory psychology. Failure to understand human nature he believed, was the fatal weakness of all democratic theorists; they put into men's breeches altruistic beings fitted only for a utopian existence. But when we consider men as they are, we discover that they are little other than beasts, who if unconstrained will turn every garden into a pigsty. Everywhere men are impelled by the primitive lust of aggression, and the political philosopher must adjust his system to this unhappy fact."[2] To support his claim that a "Tory psychology"

grounds Hamilton's thought, Parrington cites passages written at seventeen, eighteen, and twenty-seven years of age. All the passages speak of motives of self-interest in explaining human conduct. This understanding of self-interest as a motive for political conduct must temper the structure of any government in Hamilton's view.

Parrington adds another basic principle to his list of the fundamentals of Hamilton's thoughts. "Accepting self-interest as the mainspring of human ambition," writes Parrington, "Hamilton accepted equally the principles of class domination."[3] Government ought to reflect the wishes of the propertied classes. With these basic principles it is possible to understand Hamilton's thought. In Parrington's view, it is possible to draw Hamilton's statement from these two fundamental principles.

This particular approach raises questions about the study of political philosophy. Is the study of a particular text the attempt to discover a few basic principles which will explain the entire text? Is it possible to reduce the complexity of a text to fundamental principles? In this chapter we will endeavor to show the weaknesses of such a rationalist view of The Federalist. Our concern will be the claims of consistency, and especially the claims that Hamilton is a political thinker and that his thought ought to be studied as a political philosophy. The danger in Parrington's approach is the denial of the linguistic context for any understanding of statements. Thus, if we focus on

the passion statements in The Federalist, they are understood only in terms of general statements about self-interest as the source of human conduct. However, is the use of "jealousy" in The Federalist understood only in terms of human nature?

If we look closely at The Federalist, we observe that statements about the behavior of human beings are embedded in language-games, and their meaning is in their use. Let us look at some statements in The Federalist and see what Parrington's approach tells us about them. Hamilton speaks of the causes of hostility, either foreign or domestic; he asks, "Has it not, on the contrary, invariably been found that momentary passions, and immediate interests, have a more active and imperious control over human conduct than general or remote considerations of policy, utility, or justice? . . . Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities?" (6, 9). Does Parrington's portrait of Hamilton as political thinker, one who sees human conduct as self-interested, help us to explain these statements? Are the passions, such as ambition, jealousy, avarice, etc., to be reduced to self-interest? Or, do the passion words such as "ambition," "jealousy," "avarice," etc., depend on "self-interest" to understand their use. If, in The Federalist we know that someone's conduct is described as "self-interested" do the same rules govern the use of "ambition," "jealousy," or "avarice?" The best approach

is, as Wittgenstein tells us, to look and see, and if we look carefully it is quickly evident that the rules governing each of these terms differs significantly, depending on the circumstances of use in The Federalist. There are resemblances, but it is not possible to reduce such words to one set of characteristics, such as self-interest which governs all uses.

We can show this most effectively if we look closely at the use of one particular passion word, in this particular case, "jealousy." Passion words are used in The Federalist, and those uses are their meaning. To understand the use of a word, we must look to see what can and cannot be done with the word. Such rules or criteria of use depend on the practice, the customary use of a word. Sentences such as, "Men are jealous," are meaningless unless we know what is being done with the sentence. If it is a sample sentence showing the use of an adjective, then the use of "jealous" is different from the use of the sentence as a lament. If a friend says the sentence "out of the blue" we would be at a loss to know what he was saying and we might pointedly ask, "What do you mean?" Or, we might guess at a context and ask, "What's wrong?" Our second query is an attempt to put the sentence into a context: it is an attempt to give the sentence a use; to establish a possible previous set of circumstances and to plot an appropriate set of responses for ourselves. If our friend then spoke of another's critical

comments about his new car, we could understand his possible lament and commiserate with him. However, if our friend refused all our attempts to ascertain his use, if he shook his head to each of our queries as to his meaning, then we might throw up our hands in disgust and exclaim, "What are you trying to say?"

This example points out the importance of context in interpreting the meaning of sentences in The Federalist. If we want to understand the use of "jealousy" in the text, we need to look at the kind of things which can and cannot be done with the word. We need to know the kinds of contexts which will or will not accept "jealousy." Wittgenstein's analogy is to the play of games, whether chess, draughts, or ring-a-ring-a-rosies. A game of chess is embedded in the rules for the use of the pieces rather than in the particular size, shape, or material of the piece. A king is such because of its moves and the rules which are woven into those moves. A chess player is not one who has memorized the rules of chess or knows a piece of just this shape and size is the queen. His ability to play chess is shown in the moves he makes. Likewise, understanding the use which Hamilton, Madison, and Jay make of "jealousy" depends on knowing the particular circumstances surrounding the word, and knowing the kinds of moves which can and cannot be made with the word. In the case of "jealousy" in The Federalist, it is woven into the language-game of "human nature." "Human nature"

has a peculiar role in that it is used much like "chess." "Human nature" depends on "jealousy," "ambition," or "avarice" for its use, just as a chess game cannot be divorced from the pieces, moves, board, and rules of the game. What we mean by "human nature" cannot be separated from the ways we use "jealousy." For Hamilton to say we know "human nature," but know nothing of jealousy, ambition, avarice, or envy, is absurd.

The important point when interpreting The Federalist, is to again contrast this approach with the philosophical approach of Parrington. Here, we are intent on examining the actual use of the term within The Federalist. But in Parrington's approach, there are only two explanations possible: "jealousy" must be explained as either a manifestation of self-interest, or of class domination. All interpretation must be consistent with these two basic principles. The meaning of "jealousy" is derived from the principle of self-interest. In this approach, Hamilton has a consistent, coherent political philosophy founded on two general principles.

But such a limited view of Hamilton's use of language gives us little guidance in understanding the diversity of uses which he makes of passion words. Many times Hamilton warns, explains, describes, judges, predicts, advises, etc., etc., and it is because of his assurance that his readers know these games, that he writes with such confidence.

We need to speak of a little more about the meaning of situation or setting. Obviously, settings are linguistic in the text of The Federalist. In conversation, the clues we seek in our search for setting are found in the gestures, expressions, and physical setting of speech. Speech is always a part of tone of voice, rhythm, expression, gesture, and behavior, all of which are part of the language-games. But in the written text these settings are gone; therefore, we must look at the grammar of speech to understand the use, and likewise, the meaning. This, of course, cannot be divorced from the guessing which is a part of any attempt to learn a game and the rules of play. Whether we know how to play as Hamilton, Madison, and Jay intended, is always limited because they are not here to correct us. But this ought not to leave us hopeless because we have enough uses, examples, and situations to know something of their use. This rests on the simple truth from Wittgenstein, that speech is not strictly limited to the intention of the writer. A writer must share some language-games with his readers. At least, it must be possible to follow the rule of his use, otherwise communication will stop. In The Federalist, for both authors and readers, whether they live in 1787 or in 1978, it is the shared usage which is the basis for disagreement, deliberation, and attempts to influence. Some uses may be odd but the great bulk of uses must be ordinary. And such use can be learned from looking at the text. Whether someone speaks

a different English in terms of dialect, or writes in a distinctive prose style, or refers to other experiences in English, is not so important as the fact that he knows and gives explanations in English, gives warnings, makes judgements, and gives descriptions. He is the master of a skill, and it is this shared practice which makes the understanding of The Federalist possible.

Let us now look at the rules which are embedded in the use of "jealousy" in The Federalist. Our first guide to the use of "jealousy" is Hamilton's time limitation; he writes, "Has it not, on the contrary, invariably been found that momentary passions and immediate interests, have a more active and imperious control over human conduct than general or remote considerations of policy, utility, or justice? (6, 9). If we look and see someone who meditates, talks to his friends, reads, and then acts in accordance with the results of his meditations and consultations, then this behavior does not belong within Hamilton's use of "jealousy." Rather, "jealousy" is a much more violent passion. Hamilton again asks, "Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? (6, 9). Our rules increase in complexity: to say an assembly acted "from jealousy," means that the members must have been unsettled and greatly disturbed before they acted.

Let me pause to raise a possible objection. Why could not all this internal disturbance in the minds of members occur without any outward signs of disturbance? This could happen but it would be difficult to describe it by our word, "jealousy." The use of "jealousy" does not depend on internal, private criteria but on the shared uses of public life which are woven into our speech. This is one of the possible sources of confusion in The Federalist. It is the view that the use of words can be separated into independent events. Thus, in Hamilton's last quote, he considers the impulse as an event separate from any action. For him, assemblies are frequently subject to impulses of rage, resentment, jealousy, avarice, and of other irregular propensities. And that they can be so described is found by appealing to experience, "the least fallible guide of human opinions" (6, 9). But how can we know if an assembly is agitated by impulses of rage, resentment, jealousy, or avarice, if we are restricted to the private "impulses" of the members? How do we know this is an impulse of jealousy, that an impulse of rage, or that an impulse of avarice? Furthermore, what can experience do for us when what we need are criteria for saying that this is rage, that is jealousy, or that is avarice.

This problem raises the further question about the meaning of "jealousy" and its particular use. Can we separate the use of "jealousy" from the events either prior to, or subsequent to the occurrence of the passion. Is the relationship of

prior and subsequent events to a particular passion a causal one of constant conjunction? Let us look at Madison's definition of faction. 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" (10, 2). It is clear in this definition that Madison has excluded prior events as necessary to the definition of a faction. Furthermore, the subsequent acts must only be "adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." Neither of the criteria for the subsequent acts says anything specific which could guide us to using the word, "faction." At the center of the definition is the common impulse of passion, and we are at the same problem of the relationship of prior and subsequent events to the passion. The definition puts its main criterion on passion as uniting and actuating, but it leaves unanswered the rules for the use of passion words.

The difficulty with The Federalist, at this point, is the attempt by Hamilton and Madison to isolate the use of "jealousy" and other passion words from any real relationship to prior and subsequent events. They seek to reduce the use of "jealousy" to a strictly internal event which occurs in the minds of the members of the assembly, the minds of leading nations, or the minds of part of the citizens of

a nation. "Jealousy" is a propensity of human beings, part of their human nature, which any particular event may arouse. We learn from observation those events which precede jealousy; we learn also the events which follow jealousy. As Madison writes in Number Ten: "The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society" (10, 7). But Madison does not tell us what distinguishes "jealousy" from "ambition." He hints at the degree of activity caused by passions, but again we have no criteria for distinguishing between passions.

The single point that we shall argue is that the use of "jealousy" cannot be separated from prior and subsequent events. And such uses depend on public events or occurrences of just this kind. Furthermore, this relationship is not empirical, rather it is linguistic. The rules which govern the use of "jealousy" are learned as a child and are part of a language-game. "Jealousy" is not a causal term; it offers reasons for events. If a child breaks another's new toy, we may scold the child and say to a friend, "He's jealous." But there are rules for such a use: the child must not have broken the toy accidentally; the toy must not have been an old one they have played with many times before; the child must not have been smiling, playful, and happy as he smashed the toy. These are but a few of the complex criteria which

are woven into our use of "jealousy." Such an explanation is not dependent on some complex psychology about the inner working of children's minds. Our use of "jealousy" depends on the actions of the child who owns the toy, the countenance of the child as he breaks the toy, etc., etc., but these are all part of the public criteria of use.

The problem in The Federalist is Hamilton and Madison's attempt to adhere to a causal use of "jealousy." There is then an attempt to separate the events which comprise the surroundings of "jealousy," and to make their relationship a strictly empirical one which can be known through experience. But the result of such an attempt is that the distinctions in the use of "jealousy," "ambition," "avarice," are all flattened in the service of a causal view of politics.

But despite this attempt in their more theoretical statements to separate the passions from circumstances, even Hamilton and Madison must yield to the demands of communication. This brings us back to our original study in the use of "jealousy" in The Federalist.

When we see a real use of "jealousy," the criteria for the term's use in an explanatory context reasserts itself. Jay uses "jealousy" in several instances. We can examine these instances for further clarification of the use of "jealousy" to explain political behavior, or in this instance, to predict political behavior. Jay speaks of the consequences of the dissolution of the Union into thirteen or three or four independent governments. He writes:

> "Leave America divided into thirteen or, if you please, into three or four independent governments--what armies could they raise and pay--what fleet could they ever hope to have? If one was attacked, would the others fly to its succor and spend their blood and money in its defense? Would there be no danger of their being flattered into neutrality by specious promises, or reduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for the sake of neighbors of whom perhaps they have been jealous, and whose importance they are content to see diminished. Although such conduct would not be wise, it would, nevertheless, be natural" (4, 15).

Immediately, we can note the absence of any mention of "momentary impulses" or "irregular violent propensities" in this quote. Rather, the government may have been jealous for some period of time. Furthermore, they are jealous <u>of</u> someone, or in Jay's awkward phrase, "of whom perhaps they have been jealous." In the use of "jealousy," nations, assemblies, or citizens are jealous of another.

This simple phrase shows part of the internal connections of the language-game. "Jealousy" is woven into a language-game for description of the antagonistic relations of nations. Such a language-game includes the rivalry of neighboring nations, the jealousy of some toward the success of others, the unfriendly behavior of the jealous nation toward the others. And also, the criterion that such behavior, though natural, results in general distress. This is the rule of irrationality and injustice which unites all the uses of the passion words of Hamilton, Madison, and Jay. Passion behavior cannot be described as rational because of the criteria for reason words and for passion words. Also, the meaning

of "jealousy" cannot be flattened to some violent or irregular agitations of the conscious even by the Federalists themselves. Or, such narrow uses of "jealousy" can be extracted from the language-game but it always depends on the use in a real context, i.e., in predictions, descriptions, or judgements.

Jay shows the rules governing the use of "jealousy" more clearly in a further discussion of consequences of dissolution of the Union into three or four confederacies. He predicts:

> "Whenever, and from whatever causes it might happen, and happen it would, that anyone of these nations or confederacies should rise on the scale of political importance much above the degree of her neighbors, that moment would those neighbors behold her with envy and with fear. Both those passions would lead them to countenance, if not to promote, whatever might promise to diminish her importance; and would also restrain them from measures calculated to advance or even secure her prosperity. Much time would not be necessary to enable her to discern these unfriendly dispositions. She would soon begin, not only to lose confidence in her neighbors, but also to feel a disposition equally unfavorable to them. Distrust naturally creates distrust, and by nothing is good will and kind conduct more speedily changed than by invidious jealousies and uncandid imputations, whether expressed or implied" (5, 6).

We can begin by noting that Jay uses "envy" here rather than "jealousy." There are distinctions in use but rather than looking at them here, we shall assume their use is synonymous. First, we can see that there are no strong indications that jealousy is an aspect of self-interest, contrary to Parrington's interpretation. There is the use of fear but it is not specifically tied to the interests of the neighbors. Rather, "envy" is the passion that begrudges another's success; it is a

passion which reflects meanness and unhappiness in another's good fortune. It also gives us something of the expansiveness of all three of the Federalists' points of view. It is this meanness of spirit, this narrow jealousy and envy which limit the perspectives of the participants in politics and destroys all attempts to achieve the public good. And again, we need to separate this passion or these passions (if envy is considered a separate passion) from the interpretation of Parrington: he attempts to explain the passions in terms of the general principles of human self-interest.

Secondly, it is important to note the context of the use of "envy." There is a gain in power in one of the confederacies and this arouses envy and fear in the other confederacies. The use of "envy" depends on the place where it "fits" in English. If there were no gains by others or there were not things which Jay describes as, "increased power in one part," "effects of superior policy and good management which would probably distinguish the government of one above the rest," then it is problematic. Just what is the use of "envy" in these circumstances (5, 5). Jay may speak of situations as "relative equality in strength," but only as a momentary event which cannot last. The context of "jealousy" is one of differences, of some nations who gain and others who seek to reduce, eliminate, or make insecure those gains. Equality is always just a momentary situation for the Federalists; the actions of governments soon result in differences. And jealousy is the response of nations to the success of others.

It is also important that Jay's use of "jealousy" does not depend on calculation for its use. "Jealousy" does not depend on internal or written calculations which then result in the jealousy. In the use of the Federalists, it is a quick or momentary reaction which does not depend on signs of musings, written assessments, or mathematical calculations. It is then, the situation and the response which are vital to this use of "jealousy" or "envy." Firstly, the disturbances in the consciousness may be reflected in the countenance of the citizens, assembly, or bodies. Secondly, it may be seen in the phrasing of diplomatic correspondences, the unwillingness to co-operate, the denial of access to markets, etc., etc., all may lead us to conclude that this nation may be "jealous" in its behavior. And there are differences which would lead Hamilton, Madison, and Jay to separate such action from those that they would describe as "protecting one's interests." This brings us back to our original criterion for the use of "jealousy," "ambition," and "avarice," as momentary, violent, and irregular passions.

It is the amount of violence, the amount of irregularity, the amount of passion which distinguishes this sort of behavior as passion behavior. But it still does not distinguish different kinds of passion behavior. If discussions are held in a calm, deliberate atmosphere they cannot be spoken of in terms of "jealousy," "ambition," etc. It is the language-game which weaves together the descriptions of the increasing

power of one confederacy, the effect on the neighbors, the short-sighted reaction of neighbors, and their desire only to belittle their neighbor and not to co-operate for their mutual gain. These and many other criteria are embedded in the Federalists' use of "jealousy" to describe one nation's behavior toward another.

This brings us again to the use of "natural" for such behavior. For each of the authors the passions are natural. Passion words are used within the language-game of "human nature." If there are a set of circumstances as those suggested by Jay, then the behavior which follows is best explained, described, etc., as "jealousy." The way Jay uses "human nature" is woven into the rules for using passion words. In this use, the Federalists find nothing particularly praise-worthy about the natural behavior. It is usually short-sighted, narrow, and in the case of "jealousy," mean. Even ambition and avarice are not used in independent situations. To seek a political office because of ambition does not immediately mean we are talking about the self-interest of the office seeker, especially if he has been seeking this same office time and time again. What the Federalists mean by "human nature," cannot be understood outside the uses of "jealousy," "ambition," and "avarice." And, as we have seen, these terms cannot be used outside a set of rules, a language-game governing their use. To know how to use "human nature" means knowing how to use "jealousy," "ambition," "avarice," etc.

A further rule governing the use of "jealousy" is to refer to this passion as a "disposition," "propensity," or "inclination." As Jay remarks in the most recent example, "Much time would not be necessary to enable her (the nation gaining in power) to discern these unfriendly dispositions" (5, 6). The rise of one government disposes her neighbors to jealous behavior; such behavior, as we have mentioned, might be unfriendly diplomatic exchanges, denial of markets, denial of use of waterways, etc., etc. But there is a stronger use in this sense of the situation. It means that a situation has been created which will sustain the jealous disposition. Jay again makes this point as he writes:

> "It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting anything by it; nay, that absolute monarchs will often make war when their nations are to get nothing by it, but for purposes and objects merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people. But, independent of these inducements to war, which are most prevalent in absolute monarchies, but which well deserve our attention, there are others which affect nations as often as kings; and some of them will on examination be found to grow out of our relative situation and circumstances" (4, 3).

Jay continues by speaking of the United States' rivals in fisheries, in navigation, and carrying trade, and trade to China and India. From such rivalries, "it is easy to see that jealousies and uneasiness may gradually slide into the

minds and cabinets of other nations, and that we are not to expect that they should regard our advancement in union, in power and consequence by land and by sea, with an eye of indifference and composure" (4, 9). In effect, Jay is describing a different use of "jealousy," or at least a different set of rules for using "jealousy." Here, "jealousy" is much more than a momentary or irregular passion. In Jay's use, it is more deeply embedded in the circumstances. Indeed, "jealousy" is tied to the rivalry, to the conflicts of nations. Jay is moving the criteria for using "jealousy" into a much broader context. "Jealousy" has moved from describing a purely individual motive of the king to a distinctly political one.

Finally, we need to examine one last feature of the use of "jealousy." This is its relationship to "reason." Jay spoke of jealous behavior as unwise, and this is one of the key criteria for the use of "jealousy." It does not fit into situations which exhibit the signs of deliberation, consultation, or reasoning. "Jealousy" is sometimes used in contexts of faction and democratic assemblies. Jay does not find "jealousy" such a spontaneous passion in relations between states. Jealousy is a more extended passion in foreign affairs, as one nation's increase in strength may arouse jealous behavior which lasts for several months. Certainly, "jealousy's" use in this situation is not without momentary turbulences, heats, or rages, but is a more sustained disposition.

But Hamilton and Madison are more intent on the use of "jealousy" to speak of the behavior of legislatures and factions. Hamilton makes the points when he compares the advantages of the Senate of the Constitution because of its method of selection and greater lattitude of selection. He writes: "they will 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 in smaller societies frequently contaminate the public deliberations, beget injustice and oppression of a part of the community, and engender schemes which, though they gratify a momentary inclination or desire, terminate in general distress, dissatisfaction, and disgust" (27, 2). Most of the failings of the passions are exhibited here. Momentary passions may be satisfied (notice that self-interest is not the motive) but the general result is injustice and general distress. It is only through the calm, candid, moderate deliberations of reason that it is possible to encompass the general good and justice. "Jealousy" is not part of the deliberate situations of reason.

Let us now summarize some of the points of this chapter. We have argued against Parrington's interpretation that the authors of The Federalist are political thinkers whose thought depends on a few basic principles. Rather, we must look at the use of "jealousy" in its many situations, seeing its relation to "human nature," "prosperity," and "reason."

From this examination we concluded that "jealousy" is not explained by self-interest but that it depends on its own criteria for explanation. A nation may satisfy its jealousy and result in a general deterioration of the security of itself and others.

FOOTNOTES

[1]Vernon Louis Parrington, Main Currents in American Thought (New York: Harcourt, Brace and Company, 1930), p. 297.

[2]Ibid., p. 298.

[3]Ibid., p. 299.

CHAPTER THREE

THE USE OF "INTEREST" IN THE FEDERALIST

In this chapter we shall examine the language of "interest," looking at the use of the term and the differing criteria of its use. We shall begin by examining Charles Beard's economic interpretation of the Constitution in which the governmental structure is explained by the class or economic interest of the Founders. He justifies part of this interpretation by his reading of Federalist Number Ten. Here, he claims Madison has offered a masterly statement of economic determinism as an explanation for the actions and motives of men in politics. We shall look carefully at the use of "interests" in The Federalist to see if it supports such a reading. We shall find that it does not. But let us look at Beard's view of The Federalist.

Beard paraphrases Madison's Number Ten as follows: "Different degrees and kinds of property inevitably exist in modern society; party doctrine and 'principles' originate in the sentiments and views which the possession of various kinds of property creates in the minds of the possessors; class and group divisions based on property lie at the basis of modern government; and politics and constitutional law

are inevitably a reflex of these contending interests."[1] For Beard, Madison explains political behavior in terms of the amount and kind of property which exist in society. The cohesion of different individuals with similar views and opinions derives from possession of similar kinds and amounts of property. Those who are large landowners have different interests from those who are small property holders. And those who are manufacturers have different interests from those who are farmers. Further, the property divisions are fundamental to the conflicts in modern government. The conflict of various propertied interests in society are also found in government. Those who are large property holders seek to control the government or to influence the decisions of government in favor of their own interests. Those who are small property holders may also seek government decisions in their own favor. All differences can be traced to this fundamental source: the explanation of the actions, arguments, and sentiments of these propertied classes is but a reflex from this fundamental division.

Thus, the conflicts in society are class conflicts. The arguments, the claims, the opinions, the actions, etc., are all motivated by the interests of property. Or, it is the propertied versus those with little property. Government reflects the class relations in society. Those who control property will likewise control government. Indeed, for Beard the Constitution can be explained as the attempt of men of

property (the members of the Constitutional Convention) to limit the possible control of government by those without property or those who are debtors. Checks and balances, the separation of power, and the extent of territory are all endeavors to decrease the possibility of those without property gaining control of government. There would always be conflict but such conflict would never result in a victory for the landless and debtors. Were they to gain control, large property holders, creditors and merchants would be threatened.

Such an economic base of politics has other implications also. The doctrine and principles of party politics are reflexes of these various kinds of property. To understand speech we must look to the property of the speaker: what he says will be understood if we know the class or the particular type and size of the property he possesses. What men say and the positions they defend in politics can be understood only as reflections of their class position. Our task in interpreting the words of any spokesman in politics is not to accept his speech but to look beyond words to his economic situation. Once we have discovered his economic situation, the meaning of his words becomes clear. Speech is only to be understood by one who looks beyond the words to the economic context. Men use speech to advance their economic position: the debates in government are attempts of various economic interest groups to convince others of their superiority in

governing and in the superiority of the wisdom of the policies they advance. Thus, appeals to justice, the general good etc., ought always to be seen as appeals of one class to govern because of the superiority of its policies or abilities. But even such claims of superiority are specious because one economic group always uses government for its own interests: it only claims to govern in the public interest to gain power. As Madison says: "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgement, and not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes they determine?" (10, 8). The arguments of legislators can only be adequately interpreted in terms of the kind and size of property which they possess.

This is Beard's interpretation of Madison and the other authors of The Federalist. Indeed, Beard speaks of Madison as a political scientist who provides a realistic analysis of the basis of politics. Madison, in Beard's view, gives us, "a masterly statement of the theory of economic determinism in politics."[2] The sense of Madison as a political scientist

depends on several points. First, Madison's economic determinism is the basis for a causal explanation of politics and the actions and speech of the participants. If we isolate the kind and size of property and study men's actions in experience then we shall discover a constant connection. This can give an empirical base to the study of politics which allows the political scientist's statements to be outside the ideology of ordinary politics. The political scientist does not depend on the language of the speakers or their explanations to explain their behavior. Their words are only the claims of a point of view which is class inspired. They are, in Madison's words, biased and not to be used as honest guides to their motives. These are the fundamentals of Beard's interpretation of Madison as a scientist.

Our main interest in this chapter is to examine Beard's reading of The Federalist. Is Madison a political scientist who offers a masterly statement of the theory of economic determinism? Are the statements of Madison those of a scientist, one who sees the conjunction of events as the basis of politics? Are all statements to be interpreted in terms of the property of the speakers; is this Madison, Hamilton, or Jay's view? These are some of the questions we shall examine. We shall look at the use of "interest," its rules of use, context, and language-game. We shall examine the various instances of "interest" in the text to see the circumstances in which the Federalists use this term. Just what are the criteria of its use?

Such uses of "interest" range from speaking of immediate interests to true interests within a society. It is this diversity of use which makes the concept of interest so difficult. But we need not despair because the Federalists' uses have common elements which can be understood. The approach has been to look at the differing use and to see the actual context of use. It is important to see that the most recurrent context of "interest" is motivational. It is because things concern, matter, or make a difference[3] that the Federalists can speak of interests. It is this rule which governs many uses in the text. The use of "interest" is embedded in people's opinions, their feelings for a particular activity, in their actions to protect that activity etc., etc. But let us look at specific uses to make the rules and context clearer.

We may begin with a simple passage from Jay. He writes: "Different commercial concerns must create different interests, and of course different degrees of political attachment to and connection with different foreign nations" (5, 10). Here is an excellent place to begin because it shows one of the main criteria governing the use of "interest" in The Federalist. For the Federalists, there is a relationship based in experience between the opinions and actions of individuals, groups, States, and nations. In order to understand individual behavior, the individual's material situation must be considered.

For Jay, there is a relationship between commercial concerns and the opinions and actions of those who are part

of these concerns. If you look at a person's conduct, what he says and does, there is a clear relationship between the substance of opinions and actions and the benefits likely to be gained from them. Hamilton makes the point in a rhetorical question; he asks, "Has it not, on the contrary, invariably been found that momentary passions, and immediate interests, have a more active and imperious control over human conduct then general or remote considerations of policy, utility, or justice?" (6, 9). And for those who question his claim, Hamilton replies, "let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries. . . ." (6, 9). There is a relationship between those things which are immediate to us and to our conduct. Here, "immediate" has both a physical (those things which are close) and a property use. We may speak of our interest in our community in contrast to other parts of the earth which do not concern us. But "interest" can also be used to describe or explain our actions in terms of prosperity and the protection of our property. Thus, our interest is motivational in what we do and say. Otherwise, how would we know what the meaning and purpose of our actions are? For the Federalists, it is not accidental that the conduct of some just happens to result in the well-being and security of their commercial concerns. Nor is it pure accident that some States have ties with certain nations. In seeking an explanation of conduct we must look to the kinds of property

one owns, the State offices one holds, or the county or district within a State in which one resides. The ends of action are not divorced from the interests of the individuals.

These are truths which to Hamilton, Madison, and Jay are understood in experience. Hamilton offers the clearest example of how to proceed. He discusses the opposition of some States to New York's claims on the district of Vermont. For him, "Two motives preponderated in that opposition: one, a jealousy entertained of our future power; and the other, the interest of certain individuals of influence in the neighboring states, who had obtained grants of land under the actual government of that district" (7, 4). Hamilton's explanation of the opposition is in terms of who would gain if New York's claims were thwarted. Those in the opposition were interested because they would be adversely affected by New York's success. "Interest" here is used to explain the reasons, the motives for the opposition to New York. This concern has its origins in the protection of their title to that property.

There is a different use of "interest" which speaks not of the particular acts of one individual with regard to those things near and dear to him, but rather, a use which speaks of the general characteristics of certain groups in society. Here, the Federalists speak of a "moneyed interest," "a manufacturing interest," "a landed interest," and "a mercantile interest." From this use we ought not to forget the

motivational context and assume that this use is just a name. Rather, it speaks of the attachment which develops between individuals who have like concerns, who are engaged in the same kinds of commercial concerns. Thus, Madison speaks of these parties or classes. He writes, "From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties" (10, 6). Madison's concern is to explain the origin of certain classes or interests in society. They derive from the different forms of property and speak for the interests of those different kinds of property. Because there are constant forms of property there will be constant motives toward certain opinions and actions. Experience then is not always necessary to explain conduct; rather, conduct can be explained in terms of class.

The claim is that motives arise from different kinds of property ownership. In effect, to say a man is from a certain propertied group is to speak of his sentiments; it is to say that he is disposed to certain conduct. In this use of interest it is not a description of the specific motives for a party's action but is to speak of a dispositional use. Thus, a "landed interest" is a group which has a certain disposition and not necessarily a momentary interest. To talk of a "landed interest" is to talk of the possible motives

and the ends the group would pursue. To describe a group is to indicate a way of explaining conduct.

We need now to see how this particular view of interest fits with Beard's interpretation of the Federalists as economic determinists. Certainly, on the surface, there are grounds for supposing that the Federalists believed they explained the actions and opinions of groups as reflecting their property interest. Indeed, the Federalists sometimes are at pains to show there are no reasons for actions. Thus, any sort of "irritation" may cause a violent response. For example, Jay explains the quarrels between the Spanish and British territories and the border States as follows: "The bordering States, if any, will be those who under the impulse of sudden irritation, and a quick sense of apparent interest or injury, will be most likely, by direct violence, to excite war with those nations; and nothing can so effectively obviate that danger as a national government, whose wisdom and prudence will not be diminished by the passions which actuate the parties immediately interested" (3, 15). The cause of the resort to violence is in Jay's words, "the impulses of sudden irritation." The clear impression of such a use is that the actions have no purposes; they are outside the context of reason; they are things that happen to people rather than something people do. Madison gives the same impression when he defines factions as citizens, "who are united and actuated by some common impulse of passion, or of interest" (10, 2).

Men are not the actors here; they are only the vehicles of movement. Men are actuated; they are moved by an impulse. It is neither thought nor purpose nor advantage which motivates individual or group actions; rather, it is impulse or momentary flashes of direction. The Federalists at times seem at great pains to exclude any indication of reason from passionate or interested conduct. In fact, they go so far as to explain some interested behavior in almost animalistic terms. It is doubtful if even Beard would want to go this far with them in their explanations.

However, the Federalists' less extreme formulations, especially Hamilton's explanation of opposition to New York's claims on the district of Vermont, would clearly meet with Beard's approval. Explanations show the connections between property and the opinions and actions of individuals and groups. Individual or group opinions reflect their economic interest. But we need to stop a moment to look at the political context and this will tell us more about the Federalists' use of "impulse of interest" and "sudden irritation." Their problems are political ones and not scientific ones. The decisions they make about uses reflect both the tradition of explanations in politics and the needs of their own political situation. Therefore, Hume's claim that reason was the slave of the passions, was equally applicable to the interests as well. This is enough of the tradition to indicate their exclusion of reason from explanation of conduct. But there

is a stronger explanation for their denial of reason in interested conduct. For if the pursuit of private interests was reasonable, on what grounds could there be claims made for the larger, national interests? If it were perfectly rational to pursue one's interest then the claims of the whole could be safely ignored. This explains why "reason" is always embedded in talk of the larger interest and is always woven into the grounds for criticism of immediate interest. The concerns of the Federalists are not scientific as Beard claims but are distinctly political. They need reason as part of the national interest to reject the claims of the States and various propertied interests.

But there are other grounds for denying the claims of Beard. We may suggest that the explanations do not depend on scientific laws connecting property to conduct but on the practice of a society and the advantages of those practices. Thus, to explain why someone did something may be to speak of the end which the person seeks, but it is also to appeal to the social customs or practices of a given activity. It is to appeal to given ends but also it is to appeal to the customary ways of achieving these ends. As we mentioned previously, to explain all moves in a game of chess as seeking to win tells very little. Part of what it means to win is embedded in the rules for moving the pieces. Likewise, a part of what we mean by economic interest is in the customary practices of pursuing it. An example will make this clearer.

Jay speaks of the European and American rivalry for carrying trade; he writes, "With them (Britain and France) and with most other European nations we are rivals in navigation and the carrying trade; and we shall deceive ourselves if we suppose that any of them will rejoice to see it flourish; for, as our carrying trade cannot increase without in some degree diminishing theirs, it is more their interest, and will be more their policy, to restrain than to promote it" (4, 5). Jay's description of the rivalry between Europe and the United States speaks of the advantages to Europe in monopolizing the carrying trade and the detriment to that trade of a rising American fleet. Jay does not describe the motives for British and French acts in terms of "irritation" or "impulses of interest." Here, the explanations of motives are clearly in ends, in terms of interests. The acts of the British are to restrain America's commerce to her own vessels. The explanation does not depend on laws connecting property and opinion or actions. Jay does not mention any kind of inductive or deductive law, nor is one embedded in the explanation. Rather, Jay makes the opposite point himself. And though we quoted this passage in the last chapter we need to cite it again because of its importance. Jay writes, "But, independent of these <u>inducements</u> to war, which are most prevalent in absolute monarchies, but which will deserve our attention, there are others which affect nations as often as kings, and some of them will on examination be found to

grow out of our relative situation and circumstances" (4, 3). (Emphasis added) Explanations must be made in terms of circumstances and this is the recurrent method of explanation throughout The Federalist. Explanations of actions depend not only on descriptions of the ends of actions but also on the rules which govern the way the activity is done. Trading is a social practice which is carried on in certain accepted ways, and these customary ways of doing business are a part of any explanation. Further, as Jay points out, the ends or the inducements to action, whether war or trade, are embedded in situations, that is, in customary ways of doing things. Here, there is no resort to abstract laws but to the rules which govern a particular activity. The ends which are pursued are embedded in this activity. To say that they acted to enhance their pleasure tells us little about what they do or why they act as they do. Thus, in Jay's example, if someone asked why the United States closed its ports to British or French ships, the explanation would be in terms of practices of the carrying trade and the advantages and disadvantages gained.

The explanations given in The Federalist are usually of this kind. They depend not on general laws of a scientific nature but on the common practices of individuals and groups in society, and the rules of behavior are embedded in these activities. To explain the behavior of interests in the society, the Federalists usually resort to the particular

activity and its customary practices. What in more theoretical passages appears to be a causal explanation, in application is an explanation dependent on the practices of a society. Thus, Beard's interpretation of the Federeralists as political scientists ignores the extent to which their explanations depend on the actual practices of society. Property does affect motives but property is more than just a piece of land. Property is a set of practices with goals and purposes, advantages and disadvantages, interests and injuries. In effect, "interests" is context-dependent in its use. While it is possible to talk of "interests" in the abstract it always depends on some activity for its use. With this evaluation of Beard's interpretation we shall return to our previous discussion of such uses of "interest" as "landed interest" or "moneyed interest."

These uses describe groups in society united by common motives derived from a certain kind of property. These motives are part of the customary activity of pursuing and securing property. And this particular way of looking at property as a set of practices is needed to explain just how those who have no property or those who owe money are so important in Madison's use of "interests." Madison writes, "But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those

who are debtors, fall under a like discrimination" (10, 7). But how can those without property or those who owe money have interests if it is "possession of different degrees and kinds of property . . . and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties" (10, 6)? Different forms of property shape not only the views of the proprietors but those whose lives are dependent on such property. It is in terms of the practices of land use that we can explain how those who are without property form a distinct interest in society. It is within the system of land use that we explain what their motives are and what they seek.

Beyond the problem of commercial concerns acting in their own interest is the rivalry of different interests within a society. In their pursuit of their own security and advantage, interests clash. It is primarily as factions or parties, representatives or spokesmen of commercial concerns, that such groups contend for advantage. Thus, Madison asks, "Shall domestic manufacturers be encouraged, and in what degree, by restrictions on foreign manufacturers? are questions which would be differently decided by the landed and manufacturing classes, and probably by neither with a sole regard to justice and public good" (10, 8). What is advantageous to one class may be disadvantageous for another. This clash is always a confrontation of parties who look to their concerns

only. And, as is evident from Madison's quote, interested parties act only for their own advantage. Their opinions are all reflections of their interests. They have no concern for justice or the public good; they would not try to judiciously weigh the claims of each party. They have none of the attributes of reason in their conduct; they do not look to a larger context; they seek only private good.

Indeed, the most significant danger in popular governments is that interested parties would be involved in the decisions which affect them. Madison asks, "And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or in other words, the most powerful faction must be expected to prevail" (10, 8). This sets one of the most difficult problems for anyone forming a government. Interested parties, by their motives and concerns, cannot care for the public good. The best government in their view is one which exists only to protect and advance their commercial concern. But such a government is always short-sighted and eventually collapses because of its own injustice. How then, do the Federalists propose that this problem be solved, and how is it solved by Union and the Constitution? That is a problem

which will receive a fuller treatment later but for now we shall discuss it only in terms of interest. And this brings us to questions of such uses as "true interests," "general interests, " "public interests," and "national interests."

Such phrases are particularly confusing in The Federalist. It is difficult to see contexts which would create such interests. In the case of particular interests there are different kinds and sizes of property which create different concerns. Individuals are naturally interested in those things which are immediate to them. Such interests become motives for actions as citizens, groups, or States act to protect or secure their property. It is possible to explain a person's action by showing how it is connected with his property. This also requires knowing the rules governing how property is best secured or enhanced.

But if we look at the uses of "national," "general," or "common interests" it is not clear what kinds of situations create such interests. How can citizens have any strong concern with the security of the nation from foreign attack? Will not all such concerns be weak and passing as compared to the strong concerns of citizens, groups, or States as to their own property and its security and free pursuit? What possible motives can citizens have for being interested in the national question? How could such weak and passing interest be the source of actions? How do the Federalists explain the interest of citizens in national issues? How

can they be sure that their appeals to Union will make any difference to citizens intent on private pursuits? How can there be a public interest?

These are the questions which confront our understanding of the Federalists' many uses of such terms as "national," "common," "general," "true," or "public interests." The specific concerns are not, themselves, a problem. Hamilton, Madison, and Jay speak of the same concerns as those which are national in nature. Madison describes them as follows: "We have seen the necessity of the Union as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the old world, and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own" (14, 1). Security from foreign attack, domestic peace, regulation of commerce, and other common interests are the concerns which exist at the national level. But whose concerns are these? Who is motivated by these concerns? These are the questions which arise in trying to understand the origins of these concerns in human nature. In the context of human nature, so prominent in The Federalist, where is there a source for these concerns?

We may begin our search for an answer to these questions with a simple fact which is mentioned again and again in The Federalist. Regardless of the sources of such concerns, it is evident that the Federalists offer many descriptions of such interests in national questions. Hamilton offers one highly colored description: "We have already sufficient indications that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and by the bitterness of their invectives" (1, 5). If we leave aside Hamilton's description of the sources of such conduct we can at least accept the fact that these national questions are not matters which evoke a weak or indifferent response. From whatever source, national questions evoke the strongest reactions. And this is just the problem.

For the Federalists, such national interests do not have their origins in the passions or property interests of citizens, groups, or States. Rather, they arise in the reason of citizens. Concern for the national is a speculative concern which comes to those who are interested in the public good. Hamilton makes this point in speaking of the attachment to the national government. He writes, "The operation of

the national government, on the other hand, falling less immediately under the observation of the mass of citizens, the benefits derived from it will chiefly be perceived and attended to by speculative men. Relating to more general interests, they will be less apt to come home to the feelings of the people; and, in proportion, less likely to inspire an habitual sense of obligation and an active sentiment of attachment" (17, 8). Only men who can take a comprehensive, candid and sedate view of questions will be interested in the general. The Federalists admit that the concern for the general is a concern of reason and that it is a quiet concern. But for them, wise judgements can only be made in a quiet context. As Hamilton declares: "Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good" (1, 2). The intrusion of passion and interest distorts judgement. Only by controlling the influence of private interest can public decisions be made in the interest of the national. The Federalists see all men as more or less capable of this disinterested judgement. But some social and economic positions foster it more than others.

Only the judgement of citizens can weigh and balance the demands of different interests to achieve the general interests. So, for Hamilton, the zeal for energy and efficiency in government and the concern for the liberties of the people

must both enter "in the contemplation of a sound and well-informed judgement, (as) their interests can never be separated" (1, 5).

However, the Federalists are also conscious of the weakness of reason when compared to the strength of immediate interest. They see the need for particular forms and structures of government to thwart the rages of passion until more quiet times ensue. Checks and balances, separation of powers, and the principle of representation are all means to control the rages of faction until reason can reassert itself. But most significant in Madison's view is the large size of the United States with its many interests which will be the strongest guard against dangers of an oppressive faction. These checks are all necesary because reason is such a quiet faculty. There will be more on this point later, but let us now return to the national interests and reason.

It is only the reflection on experience which exposes the limitations of the sole pursuit of private interest. Without the faculty of judgement it is difficult to see how the Federalists could criticize private interests so strongly. There is a faculty in the mind which looks to the general and that faculty is reason. Reason has an interest in the general and it can understand the limitations of private interest. National interests are the concerns of reason because only reason can reflect on experience and see the failings of others who have sought only their private security.

It is in reflection on experience that an interest in the national emerges. It is for this reason that the Federalists are so intent on showing the failings of the existing Confederation and the harmful consequences should the Union be dissolved. Only in a Union under a strong government can the national interests have any chance of security.

In summary, we can suggest that the Federalists are concerned with the sources of both private and public interests and the consequences of each for government. Private interests originate in the property of citizens or groups of citizens while national interests arise in reason's reflection on experience. We have also tried to show that Beard's view of Madison as a political scientist is inappropriate: the rules which govern Madison's explanations are those embedded in the practices of the society rather than in regularities. The Federalists' explanations appeal to rules of behavior.

FOOTNOTES

[1]Charles A. Beard, An Economic Interpretation of the Constitution (New York: Macmillan, 1913), pp. 15-16.

[2]Ibid., p. 15.

[3]In the Oxford English Dictionary, "interest" is a substantive form of the Latin interest meaning: it makes a difference, concerns, matters, is of importance.

CHAPTER FOUR

THE LANGUAGE OF "EXPERIENCE"

One of the most common omissions in interpretations of The Federalist is any discussion of the rules of knowing. In The Federalist, the use of such terms as "experience," "human nature," "judgment," "opinion," and "knowledge" forms an essential part of the structure of the text. The criteria which govern the use of these terms are the implicit rules which give structure to the text. To talk of "experience" is to talk of a rule-governed activity. "Experience" in The Federalist is not recounting events; it is not story-telling for entertainment. "Experience" is a word which has a definite context of use. It is embedded in the rules of action and knowledge. In language we have the rules which govern what can and cannot be called "experience." Therefore, if we study the form of "experience," if we understand the rules which govern the use of this word, if we learn how "experience" is related to such words as "teaches," "uniform," "appeals to," etc., then we can begin to understand the concept of experience in The Federalist.

But it is difficult, as we said, to find interpreters who give any critical attention to this set of terms and the rules which govern their use. Certainly, most interpreters are aware of these terms but they do not analyze them, except in brief introductory statements. Marvin Meyers offers a good example in his introduction to a book of Madison's writings. He makes only passing reference to experience and argues that the urgent task of the Founders is not "to pierce to the roots of political truth for its own sake but to build upon plainly good foundations. . . .Given a set of axioms, the practical reasons of politics informed by reading and experience turned to the business of politics. And the business of the Founders was the high enterprise of translating worthy principles into working laws and institutions with the materials imposed by history."[1] For Myers, "experience" has a secondary role to the business of translating principles into institutions. While he aims at avoiding a concentration on "intellectual genealogies," Meyers has given a very intellectual reading of the Founders' work. For what is the translation of principles into institutions but an intellectual activity. In such a reading there is little place for experience; all is given in the past and the current work is translation. Such an intellectual reading denies the Federalists' emphasis on experience and their concern for the consequences of principles in practice.

Such a reading of the Federalists as theorists, working on practical questions, is even more obvious in the interpretation of Martin Diamond. Experience is not even mentioned in his analysis of The Federalist. His concentration, like Meyers, is on theoretical teachings as they intrude on practical questions. For Diamond:

> "The Federalist is remarkable for the conjunction it achieves between discussion of the most urgent political matters and of theoretical matters. This is nowhere more evident that in the treatment of republican union. The right arrangement of union was the first political problem of the day; but what The Federalist has to say on this practical question is based on its most novel and important theoretical teaching. The opposition to the Constitution also rested upon a theoretical view. Indeed, one of the remarkable features of the debate over the Constitution was the extraordinary intrusion of theoretical considerations into the settlement of the practical question."2

Diamond elevates The Federalist to the highest level of theoretical discourse and in so doing excludes any intrusion of experience, history, or judgement. What Diamond means by "theoretical" is evident in his statement that The Federalist "presents itself as the work of one Publius who claims to supply a consistent, comprehensive, and true account of the Constitution and the regime it was calculated to engender."[3] This interpretation makes consistency and comprehensiveness the foremost concerns in the minds of the Federalists. Little attention is given to the warrant which these principles have in experience. But it seems odd to understand the work of the Federalists without paying attention to their concern that the Constitution be grounded in experience. What the

Federalists mean by "experience" will be discussed in greater detail later. Now, we need to look at another approach to The Federalist which does claim that the concerns for a social science and the rules of such a science are part of the grounds for a new Constitution.

Douglass Adair's essay, "That Politics May Be Reduced to a Science: David Hume, James Madison, and the Tenth Federalist," offers evidence that a concern for scientific knowledge about government was very much on the minds of the men who wrote and defended the Constitution. Adair's evidence for this statement derives from the fact that the works of Scottish philosophers, the most developed researchers in social science, were the standard college textbooks of the late colonial period. This Scottish system, in Adair's view, rested on a basic assumption, one which he finds in David Hume's An Enquiry Concerning Human Understanding. Hume declares "that there is a great uniformity among the actions of men, in all nations and ages, and that human nature remains still the same, in its principles and operations. The same motives always produce the same actions; the same events follow from the same causes. . . .Would you know the sentiments, inclinations, and course of life of the Greeks and Romans? Study well the temper and actions of the French and English. . . ."[4] It is important to remember that in Hume's view this is not an assumption. These were the results of his experimental methods of reasoning. In A Treatise of Human Nature, Hume

writes: "And as the science of man is the only solid foundation for the other sciences, so the only solid foundation we can give to this science itself must be laid on experience and observation."[5] And Hume is equally explicit about his method: "For me," he writes, "it seems evident, that the essence of the mind being equally unknown to us with that of external bodies, it must be equally impossible to form any notion of its powers and qualities than from careful and exact experiments, and the observation of those particular effects, which result from its different circumstances and situations."[6] And such experiments must be drawn from the observation of human life. Hume continues: "We must therefore glean up our experiments in this science from a cautious observation of human life, and take them as they appear in the common course of the world, by men's behavior in company, in affairs, and in their pleasures."[7]

Adair extends his claim that science and experience were the concerns of the men who wrote and defended the Constitution. He declares, "It can be shown, though not in this short paper, that the use of history in the debates both in the Philadelphia Convention and in the state ratifying conventions is not mere rhetorical-historical window-dressing, concealing substantially greedy motives of class and property. The speakers were making a genuinely 'scientific' attempt to discover the 'constant and universal principles' of any republican government in regard to liberty, justice, and

stability."[8] What Adair does endeavor to show is that Madison, in his Tenth Federalist, is using the "behavioral science techniques of the eighteenth century" and the writings of David Hume to offer a prediction -- a prediction that the size of the United States and its variety of interests would guarantee stability and justice under the new Constitution. Such a prediction of Madison's is based partly in experience. As Adair writes: "Madison's greatness as a statesman rests in part on his ability quite deliberately to set his limited personal experience in the context of the experience of men in other ages and times, thus giving extra reaches of insight to his political formulations."[9] The Scottish method of social science is significant in the formulations of the Federalists; they wish to ground their new Constitution in experience. Their rules of government would conform as closely as possible to the lessons of experience. And they judge alternative arrangements, for example, dissolution of the Union into three or four confederacies, against the teachings of experience.

Our examination of "experience" in The Federalist can begin by reminding ourselves of the point made previously. The meaning of "experience" is context-dependent. Definitions of "experience" point to specific examples and rules which show the term's use in those circumstances. In The Federalist we look at the kinds of language-games which are the context for "experience." Most importantly, we are looking at the

kinds of things we can do with "experience." To know the meaning of "experience" is to be the master of a skill; it is to possess a technique; it is to be able to do something. In effect, we need to look at the Federalists' use of this term to understand their meaning.

First, we can look at one particualr context of use. Hamilton writes, "To look for a continuation of harmony between a number of independent, unconnected sovereignties situated in the same neighborhood would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages" (6, 2). There are two immediate criteria for use of "experience" in this description of human affairs. Human events are "uniform" and experience "accumulates." In their use of "experience" the Federalists emphasize the uniformity of human events; they speak of the "concurring testimony of experience" (6, 8). It is possible, in the Federalist view, to learn from the past because of the repetition of human events. There are ways in which one event can be identified with another though occurring at a later time. There are criteria of identify, of sameness. It is this possibility which underlies generalization, teaching, learning, progress, and science for the Federalists.

Indeed, the first fourteen papers of The Federalist endeavor to show that the lessons learned from British and European experience are applicable to the United States in the event the Union were dissolved into three or four confeder-

acies. The experience of Great Britain (before its union of England and Scotland), Europe and the nations of ancient Greece show the relations of neighboring states. The form of government is not particularly important because the nature of human beings remains the same and situations are the same, that is, "a number of independent, unconnected sovereignties situated in the same neighborhood" (6, 2). Given the nature of human beings, the situations of nations, and the history of past consequences from such situations, it is possible to predict the results of similar situations created by the dissolution of Union into three or four confederacies. As Hamilton declares, "From this summary of what has taken place in other countries, whose situations have borne the nearest resemblance to our own, what reason can we have to confide in those reveries which would reduce us into an expectation of peace and cordiality between the numbers of the present confederacy, in a state of separation?" (6, 18).

The argument in these papers is not only to show the lessons of British, European, and Greek experience but to show the similarities between these situations and those in the United States should dissolution occur. In effect, it is the question of uniformity in human affairs and the cumulative nature of experience which is at issue here. Hamilton is especially intent on refuting suggestions that these foreign experiences are not applicable to the United States. He raises one such question as follows:

> "But notwithstanding the concurring testimony of experience, in this particular, there are still to be found visionary or designing men, who stand ready to advocate the paradox of perpetual peace between the States, though dismembered and alienated from each other. The genius of republic (say they) is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humors which have so often kindled into wars. Commercial republics, like ours, will never be disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord" (6, 8).

Here it is a general contention that comercial republics are not subject to the same uniform experience which Hamilton mentioned previously. Because the United States is a commercial republic, say some men, it will not be subject to the same kind of consequences which have resulted from similar situations in Europe and Great Britain. Hamilton denies this claim of exemption for commercial republics. He gives a long and perhaps too varied, list of commercial republics and cites the many wars they have initiated. He completes the argument by showing that there are causes of wars which are commercial in origin. He writes, "The wars of these two last-mentioned nations (England and France) have in a great measure grown out of commercial considerations -- the desire of supplanting and the fear of being supplanted, either in particular branches of traffic or in the general advantages of trade and navigation, and sometimes even the more culpable desire of sharing in the commerce of other nations without their consent" (6, 16). The United States, whether dissolving into three or four confederacies, commercial republics or not, would be in the same situation and subject to the same motives which are

present in all relations of states. The United States experience in case of dissolution would not be different from that of Britain or Europe.

Hamilton's quote also points to another important feature of experience in The Federalist. "A desire of supplanting" is not something which can be known ouside experience. Such a motive is recognised in the actions of individuals, interests, or states. This recognition depends, as we have argued in the previous chapter, on the particular rules and practices of a given activity. In this instance, it is foreign commerce. A particular feeling isolated from actions cannot be known as a "desire of supplanting." Nor can we look at some individual and say that s/he is or is not experiencing "a desire of supplanting." The existence, in the Federalist view, of such desires is always evident in some particular context. The recognition of such a desire depends on a complex situation which weaves together rules and uses within a language-game. Such a "desire of supplanting" is evident in the endeavor of one country to change the existing trade relations. But there are many ways this can be done and these are learned as one learns the rules and practices governing the activity of foreign trade. In Hamilton's view, " a desire of supplanting," especially in carrying trade is also tied to a nation's naval strength. A "desire of supplanting" goes beyond changing the existing advantages in foreign trade; naval strengths are changed also. But let us return to the explicit relation of motives and experience.

We can look at another example to show the public criteria which are embedded in the Federalists' use of motive terms. Our example is Hamilton's characterization of Cardinal Wolsey, Henry VIII's prime minister, as an "ambitious cardinal." Hamilton's description does not depend on any particular knowledge of the feelings of the Cardinal. In effect, there are public criteria for ambition and those are or are not met. In this example, Hamilton claims that Wolsey sought to be Pope and "entertained hopes of succeeding in the acquisition of that splendid prize by the influence of the Emperor Charles V" (6, 5). If this were the extent of Hamilton's comments we might wonder at his use of such a strong word as "ambitious" to describe the Cardinal. Perhaps the Cardinal told his friends that he wanted to be Pope and may have written letters to Charles V asking for his support. All this might have been ordinary enough depending on the customs of the times. But Hamilton does not end his description here. He continues, "To secure the favor and interest of this enterprising and powerful monarch, he precipitated England into a war with France, contrary to the plainest dictates of policy, and at the hazard of the safety and independence, as well of the kingdom over which he presided by his counsels as of Europe in general" (6, 5). It is this action which Hamilton makes crucial to his description of Wolsey as "ambitious." It is his act of endangering the safety of England and even Europe to gain the influence of Charles V which for Hamilton,

constitutes the grounds for using "ambitious." The disregard for national interests in a strong pursuit of personal gain marks those who are politically ambitious. Political ambition, in The Federalist, is always used in a context of disregard for the general good. If it were not possible to talk intelligently about the public good then the use of "ambition" would be very limited in The Federalist.

But we must be careful not to let these emotions drop completely out of these descriptions because this would be inaccurate. These emotions are there and they are the cause of these actions. It is simply that there is no direct knowledge of these passions. As Hamilton remarks, "There are appearances to authorize a supposition that the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe" (11, 2). The actions of the maritime powers of Europe are indications of specific sensations which motivated their acts. And Madison makes a similar point. "The latent causes of faction are thus sown in the nature of man; and we seem them everywhere brought into different degrees of activity, according to the different circumstances of civil society" (10, 7). The emotions, sensations, passions, or interests as motives can only be known in the activities of individuals, factions, or states. It is always an inference from experience to the existence of certain emotions as motives. These are the causes but they are inferred from the effects.

As causes, these emotions are viewed by the Federalists as real events which preceed the effects: they occur prior to the actions; they are the source, the cause, the motives of these acts. To know of these causes the Federalists tell their readers to look to the "different degrees of activity according to the different circumstances of civil society."

Or put another way, the Federalists suggest we look to experience to see the effects of passions. Madison draws on examples from ancient Greece to examine previous confederacies. He describes the Amphictyonic council and particular incidents in its history. Of one such incident he writes:

> "After the conclusion of the war with Xerxes, it appears that the Lacedaemonians required that a number of the cities should be turned out of the confedeacy for the unfaithful part they had acted. The Athenians, finding that the Lacedaemonians would lose fewer partisans by such a measure than themselves and would become masters of the public deliberations, vigorously opposed and defeated the attempt. This piece of history proves at once the inefficacy of the union, the ambition and jealousy of its most powerful members, and the dependent and degraded condition of the rest (18, 7).

The events are described and they are the effects of the ambition and jealousy of the most powerful members of the confederation. Or rather, these events prove the ambition and jealousy of these powerful members. They offer such proof because of the past experiences of such a connection between passions and events. But there is a problem in The Federalist on this point.

The constant appeal to experience as the "proof," "the concurring testimony," "the least fallible guide of human

opinions," or "the oracle of truth" does, however, obscure the problem of criteria of events. How do the Federalists know that this is an act of ambition? This is certainly not an empirical question and it is one which is open to dispute. To declare this an act of ambition becuase it is activated by this particular passion gets us no further because we must still ask how we can know of this passion if it is hidden. The appeal to criteria of "ambition" looks to the public rules which govern the use of the term. The Federalists' appeal to experience does not solve the problem of how we know what we see. This is a conceptual question.

The Federalists, however, have little time for such philosophical complexities. They accept that we all know the difference between ambition and jealousy (and don't we know the difference) and then proceed to argue that these actions are caused by natural dispositions in human beings. But they hasten to add that it is only in experience that we can know the effects of the passions. To those who would claim that republican governments or commercial activities change the patterns of men's behavior, the Federalists offer their own examples of commercial republics instigating wars.

The Federalists tightly control the argument by limiting possible explanation of certain events. They do not see any other possible explanation of wars except from human nature. Further, all events in politics have their causes in the nature of men. For example, Madison's definition

of factions is strictly based in the individual motives of each citizen. A faction is a majority or minority of citizens "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" (10, 2). Collective behavior comes from common impulses of individuals. We shall not pursue this argument as to whether the Federalists believe states are artificial or natural. We need only add Jay's comments on jealous neighbors. He remarks that such conduct is natural but it is also not wise (4, 15). This, as we have pointed out, is a constant theme in The Federalist. Motives are natural but they are also unwise when citizens see their consequences in experience. It is in experience, the source of knowledge, that we know the consequences of certain passions.

Judgments, opinions, explanations, etc., are supported by the testimony of experience. For the Federalists, experience is what we see; it is what we observe. Experience is the ground of opinion. Hamilton declares, "There are causes of differences within our immediate contemplation, of the tendency of which, even under the restraints of a federal constitution, we have had sufficient experience to enable us to form a judgment of what might be expected if those restraints were removed" (7, 1). It is our perception, our observation, or those things we see ourselves which are the source of opinions and predictions. Our opinions are based

in observation, our own or others for there to be knowledge. Hamilton describes the experiential grounds for the consensus of opinion as to the imperfections in the existing confederation. The opinion is supported by opponents and friends of the new Constitution. But for Hamilton, "The facts that support this opinion are no longer objects of speculation. They have forced themselves upon the sensibility of the people at large, and have at length extorted from those, whose mistaken policy has had the principal share in precipitating the extremity at which we are arrived, a reluctant confession of the reality of those defects in the scheme of our federal government which have long been pointed out and regretted by the intelligent friends of the Union" (15, 2). The support for the opinion is not speculation but what people see and observe for themselves; it is what they experience. Indeed, Hamilton makes the point even stronger in that citizens cannot avoid seeing the effects of this confederation because they are so obvious and so pressing on the senses. Hamilton shows this with a long list of facts which are seen by citizens or observed by those the citizens trust. There are debts owed to foreigners and citizens without any provision for payment. There are valuable territories and important posts in the possession of a foreign power. There are no troops, treasury, or government to repel or resent aggression. Spain excludes the United States from free participation in the navigation of the Mississippi. There is no public credit.

Commerce is at the lowest point of declension. Private credit is reduced within the narrowest limits. These are some of the facts which Hamilton lists as support for the opinion that the existing confederation is founded on mistaken principles. Whatever the principles or rules of government their consequences must be seen in experience. Citizens experience the consequences of particular principles of government. Hamilton begins The Federalist by declaring that there is an "unequivocal experience of the inefficacy of the subsisting federal government. . . ." (1, 1).

We now return to Adair's comments on the importance of Scottish social science in the formulations of the Federalists. It is possible to offer some support for Adair's position. The Federalists, themselves, speak of the experiences of other nations as offering experimental instruction. Madison discusses the experience of ancient confederacies as a "source of experimental instruction" (19, 1). We can see Adair's claim that these historical references are not "mere rhetorical-historical window-dressing," is indeed a true one. The Federalists were intent on learning as much as they could from past experiments in governments and they were trying to ground the new Constitution in principles which were supported by the lessons of history. The Federalists were quite candid in their descriptions of deviations from this goal of an experientially based Constitution. Thus, in speaking of the Senate, Madison declares, "it is superfluous to try,

by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but 'of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable'" (62, 4). Here, the Federalists are quite candid about the deviation from the norm of republican government, a theory of government grounded in the lessons of past governments. This is a deviation in favor of prudence but it is not the norm. The Federalists are trying, as Adair says, to learn from the past experiments in popular government and thus, to found government which avoids past errors and retains the efficacious principles which Hamilton declares are the results of improvement in the science of politics (9, 3).

The Federalists are not intent on the history of other forms of government such as monarchy, or with the improvement of those forms. Their interest is in popular forms of government and the consequences of these different forms. They are concerned with the sources of failure of different principles or forms of popular governments. This success or failure of different principles is evident in experience. These consequences can be observed; these results can be seen. The Federalists are intent on discovering the truth as best they can. They look to experience to know the consequences of particular rules for structuring government.

We need to add one final point about experience. The Federalists make much of experience as teacher, as instructor, and as giver of lessons. We can see this use of "experience" in a particular example. Hamilton is concerned with the question of whether regular armies ought to be maintained in times of peace. But he declares that, "All violent policy, contrary to the natural and experienced course of human affairs, defeats itself" (25, 9). What Hamilton means is that restrictions on legislative powers for raising an army, its training, etc., in times of peace, are all defeated by events. The consequences of such policies are evident in their actual workings. Hamilton fortunately has a range of experience to draw upon in the previous history of the States. Thus, he turns to Pennsylvania for an examination of the consequences of limitations on standing armies. He writes: "The Bill of Rights of that State declares that standing armies are dangerous to liberty, and ought not to be kept up in time of peace. Pennsylvania, nevertheless, in a time of profound peace from the existence of partial disorders in one or two of her counties, has resolved to raise a body of troops; and in all probability will keep them up as long as there is any appearance of danger to the public peace" (25, 9). Mistakes or errors are evident in experience. Those who would improve government must look to what experience can teach them. Mistakes are evident in the case of Pennsylvania. There will always be instances which will render necessary

military force in time of peace. And Hamilton adds another lesson learned from this experience. "Wise politicians," he writes, "will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable" (25, 10). The consequences of not learning the lessons of experience, of repeating the same errors again, are dangerous not only to the security of a State or nation but also to the constitution of that nation.

But the stronger point needs emphasis again. A popular government which does not learn from the lessons of the past is bound to be flawed and a popular government whose structure is dictated by the demands of various interests or passions has no hope of success. There can be occasional deviations in the name of prudence as in the case of the United States Senate, but if such claims of interest become the rule rather than the exception then any hope of a successful government is lost.

FOOTNOTES

[1]Marvin Meyers, ed., The Mind of the Founder: Sources of the Political Thought of James Madison (Indianapolis: Bobbs-Merrill, 1973), p. xxi.

[2]Martin Diamond, "The Federalist," in History of Political Philosophy, 2nd ed., eds. Leo Strauss and Joseph Cropsey (Chicago: Rand, McNally, 1972), p. 635.

[3]Ibid., p. 632.

[4]Douglass Adair, "'That Politics May Be Reduced to a Science': David Hume, James Madison, and the Tenth Federalist," reprinted in The American Past, 2 vols., 2nd ed., eds. Sidney Fine and Gerald S. Brown (New York: Macmillan, 1965), I, 192.

[5]David Hume, A Treatise of Human Nature (London: Oxford University Press, 1888), p. xx.

[6]Ibid., p. xxi.

[7]Ibid., p. xxiii.

[8]Adair, Il, 191.

[9]Ibid., Il, 194.

CHAPTER FIVE

"ENDS AND MEANS"

In this chapter we shall discuss the concepts of ends and means and show their importance as terms for description and explanation of government. To speak of government in The Federalist is to speak of specific ends and the means necessary to their attainment. But this set of concepts is systematically overlooked in most interpretations of The Federalist. Most interpreters, as we shall see, concentrate on the dangers of a government's powers and the constitutional checks on its powers. They do not take note of Madison's own words on this subject: "The Constitution proposed by the convention may be considered under two general points of view. The FIRST relates to the sum or quantity of power which it vests in the government, including the restraints imposed on the States. The SECOND, to the particular structure of government and the distribution of this power among its several branches" (41, 1). It is odd that the Federalists are interpreted as advocating the narrow argument which they are so intent on rejecting. Both Hamilton and Madison are concerned that questions about the structure of government

are only to be discussed after the ends of government have been stated and the necessary means elaborated. They are adamant that arguments not dwell solely on the dangers of powers and the necessity of checking powers.

In response to those who would "dwell on the inconveniences which must be unavoidably blended with all political advantages," Madison replies:

> . . .cool and candid people will at once reflect that the purest of human blessing must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT, good; and that in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment" (41, 4).

We have quoted Madison's own words at length to show how he thinks the issues of governmental power ought to be discussed. Powers must be judged according to their necessity for the public good. We must look at government in "ends and means." To think only in terms of abuses of powers and limitations on powers is, in Madison's view, a violation of rules for a proper deliberation of these questions. This question of rules of propriety is one we address in our next chapter but suffice it to say that the Federalists believe that all questions of politics have rules governing their deliberation. To dwell only on the possible excesses of previous governments, to see every power as stimulus for

imagining every conceivable abuse tears political deliberation from any reasonable context: it is to make political speech a matter of fantasy and not of reason.

But let us now look at some interpreters of Madison and The Federalist to see that Madison's words of caution have not always been heeded by later writers. We can begin by examining James MacGregor Burns. In his book, The Deadlock of Democracy, his interpretation of Madison is evident in the title of the first chapter, "Madison and the Strategy of Checks." His reading of Madison and The Federalist concentrates on the checks against an oppressive majority capturing and using the powers of government for their own ends. Burns says:

> "The key to Madison's thinking is his central aim to stop people from turning easily to government for help . . . The fact is that Madison believed in a government of sharply limited powers. His efforts at Philadelphia to shift powers from the states to the new national government were intended more to thwart popular majorities in the states from passing laws for their own ends than to empower national majorities to pass laws for their ends. For the new national government was supposed to tame and temper popular majorities--which some states had been unable to do. This meant weaker government--but it was Madison, after all, who said that the necessity of any government was a misfortune and a reflection on human nature. Government, in short, was a necesary evil that must be curbed, not an instrument for the realization of men's higher ideals or a nation's broader interests. Hence he could sponsor what Richard Hofstadter has called a harmonious system of mutual frustration."1

Such interpretations of the Constitution were opposed by Madison. His above quote emphasizes the importance of powers and the public good they seek to attain. It is only within

this context of ends and means that there can be any reasonable discussion of limitations on those powers. If the curtailment of powers was the only end Madison had in mind why did he work so hard to change the Articles of Confederation? Burns has so narrowed the context of deliberation that Madison's view of government and its purposes is distorted.

Burns is not the only interpreter to pursue this reading of Madison and The Federalist. Robert Dahl, in A Preface to Democratic Theory, begins with a chapter entitled, "Madisonian Democracy." For Dahl, "The central proposition of the Madisonian theory is partly implicit and partly explicit, namely:

> Hypothesis 1: If unrestrained by external checks, any given individual or group of individuals will tyrannize over others."[2]

Dahl, in his reading of Madison, concentrates on the checks of governmental powers as protection for minorites. Dahl reads the Madisonian system as an essentially protective one. He writes: "At the formation of the Constitution, the Madisonian style of argument provided a satisfying, persuasive, and protective ideology for the minorities of wealth, status, and power who distrusted and feared their bitter enemies--the artisans and farmers of inferior wealth, status, and power, who they thought constituted the 'popular majority.'"[3]

Leaving aside Dahl's rather odd language it is clear that his emphasis is on the Madisonian system as one of checks.

This, again, ignores Madison's own emphasis on government as empowered to attain certain ends. It is within the language of ends and means that the Federalists discuss the failing of the existing Confederation, the nature of government, and the reasons for the powers entrusted to the new government and the necessity of those powers. It is only within these terms that Madison and Hamilton discuss the particular checks on factions and different departments of government. As Hamilton writes of the principles of checks and balances, independent judiciary, representation of the people, and regular distribution of power into distinct departments, "They are means, and powerful means, by which the excellencies of republican government may be attained and its imperfections lessened or avoided" (9, 3). These principles are not ends in themselves but are means to the end of a stronger republican government.

We shall, in a later chapter, give an assessment of the view that the first fourteen papers of The Federalist are an endeavor by the Federalists to prove that a large republic, rather than being an impossibility which must end in tyranny, is possessed of virtues which make it far superior to small republics or democracies. The point here is that the argument in Number Ten about diversity of interests indicates the greater stability of large republics and their increased attention to the public good. Large republics rather than small ones or democracies are more constant in

their attention to the public ends. In the Federalists' view, they are checks, but checks upon narrow local prejudices in favor of the broader national interests. It is again within the context of ends and means that such discussions of checks have their true perspective. But let us turn in detail to the use of these terms in the text.

Talk about government in The Federalist is within the concepts of ends and means. These words are constant in the descriptions of government and of civil society. Indeed, it is in the language of "ends and means" that we know of government and civil society. Deliberations about government are governed by the rules of "ends and means." What can and cannot be said about government or civil society depends on the kinds of uses of "ends and means." These uses are not learned from experience but are the context of experience. Thus, to open The Federalist with a statement of "an unequivocal experience of the inefficacy of the subsisting federal government" (1, 1), is to use terms drawn from the language-game of "ends and means." The use of "inefficacy" in descriptions of government is governed by rules which set the context for our experience. It is in terms of such concepts that we experience events in political life. Hamilton uses "inefficacy" knowing that his readers can discover the kinds of events which would justify his description. His readers can recognize what events would or would not meet the criteria of this description. All this is embedded within the language of "ends and means."

"Ends and means" describe domains of human action. Events are subject to human intervention and in politics it is possible to act to promote certain situations and impede others. Human beings do not live in a world outside their control, at least not in the Federalists' view. Certainly, they may sometimes speak in the language of "cause and effect" and give a mechanistic description of government, citizens, and civil society. But "cause and effect" are not their only descriptive terms for government: they do speak of separating powers and checking and balancing powers. These terms are part of the language of limitation within The Federalist. But there is a language of action in the text and this should not be overlooked. Powers may be separated, checked and balanced but they are still powers. To limit the actions of government, to make it incapable of managing the ends of civil society, would be no improvement on the existing confederation.

Descriptions of events with the language-game of "ends and means" is a rule-governed activity. What can be described as an end depends on the context and the rules which govern a use. A car can be an end for a teenager and a means for a salesman. But a teenager's description of a car as his end cannot be separated from questions about means. If the teenager cannot be described in other ways such as working after school, asking his parents for money, saving money, etc., then what does he mean when he speaks of a car as his

goal? At some point, he must do certain things. It is as if one intended a game of baseball but did not accept any of the rules of play. These rules connecting "ends" and "means" are woven into the customary practices of language-users. Likewise, in The Federalist, talk of the ends of civil society involves descriptions of means. What can and cannot be a means to the ends of civil society depends on the uses of these terms and the context of use. Thus, to talk of the security of civil society from foreign danger and then to make no mention of armies, ships, revenue, etc., is to talk in terms outside the practical context of politics.

Or, to put it another way, "ends" is used similarly to "objects" and "purpose." These are terms which describe the intentions of actors whether they be citizens, factions, States, or nations. And meaning or intending something depends on more than the momentary impulses of the individual or State. A nation whose constitution declares that government's object is to protect civil society from foreign danger but whose constitution has no powers or even inadequate powers to fulfill this intention, would be described as absurd by the Federalists. Madison offers a similar point in attacking a particular concept of confederate government. He writes, "The important truth, which it (experience) unequivocally pronounces in the present case, is that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals,

as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting violence in place of the mild and salutary coercion of the magistracy" (20, 24).

Madison's claims against a government over governments appeals to the rules of grammar which govern the use of "government." Such a use of terms violates the rules of "government." To describe something as a government but which is without powers except at the will of other governments, in the Federalists' view, violates the idea of government itself. Hamilton is explicit on the point. He declares it is an instance of the capriciousness of the human mind that "there should still be found men who object to the new Constitution for deviating from a principle which has been found the bane of the old and which is in itself evidently incompatible with the idea of GOVERNMENT" (15, 7). Concepts may be incompatible with one another; the rules which govern the application of terms may exclude certain concepts and welcome others. Thus, for the Federalists, the conceptual questions are significant in clarifying just what it is that is intended. A clear conceptual analysis would have shown what was intended in certain concepts. As Hamilton continues, "There is nothing absurd or impracticable in the idea of a league or alliance between independent nations for certain defined purposes precisely stated in a treaty regulating all the details of time, place, circumstance, and quantity, leaving nothing

to future discretion, and depending for its execution on the good faith of the parties (15, 8). The concept of a "league" has a particular use. So long as states understand and accept what is and is not included within this concept there will be no source of confusion. But if states mistake "league" for "government," if they misunderstand the kinds of uses of these terms and the kinds of terms which are compatible with them, all manner of problems can follow. As a further example of conceptual confusion we could add Madison's distinction between the words, "democracy" and "republic," and the conditions necessary for using each of these descriptive terms. But let us return to "ends and means."

Hamilton, Madison, and Jay speak of ends and means in a number of passages. "Means and ends" are internally connected not by empirical evidence but by the meaning of the terms. In the Federalists' view, talk of the ends of civil society cannot be separated from the means appropriate to those ends. To learn the meaning of "ends" in describing civil society we cannot avoid learning of "government" and of "powers." As Hamilton declares, "This is one of those truths which to a correct and unprejudiced mind carries its own evidence along with it, and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal; the <u>means</u> ought to be proportioned to the <u>end</u>; the persons from whose agency the attainment of any <u>end</u> is expected ought to possess the <u>means</u> by which

it is to be attained" (23, 5). Thus, in describing some agency, i.e., government, as the means to attaining an end, we cannot in this language-game avoid talk of means. This truth depends on the rules for using language.

The point for the Federalists is the use of language. Language is not primarily an instrument of dreaming but is woven into our practical lives. In human actions language performs an integral role. Therefore, our common speech is part of our common lives. Thus, in speaking of the maxims of ethics and politics, Hamilton writes: "And there are other truths in the two latter sciences (ethics and politics) which, if they cannot pretend to rank in the class of axioms, are yet such direct inferences from them, and so obvious in themselves, and so agreeable to the natural and unsophisticated dictates of common sense that they challenge the assent of a sound and unbiased mind with a degree of force and conviction almost equally irresistable" (31, 1). These truths are the truths of common sense. They appeal to the common elements embedded in political language-games. They appeal to the ordinary ways of life, to the practical rather than to the theoretical life.

Politics is within the domain of practical life. There are immediate consequences within this form of life, and language is embedded in this activity. This is part of the reason for the Federalists' continued emphasis on experience, but experience within this domain of common meanings. It depends on the common sense of the community.

We can explain part of this common sense in The Federalist by looking at a particular quote of Madison. He writes, "Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils. Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative" (41, 7 & 8). Madison does not mean that some citizens may answer his question in the negative, but he does not see what use such a response can have in ordinary political language. Citizens who speak in this manner may imagine situations and circumstances, for example, fairy tales and fantasies where negative responses would be the norm. But for Madison, this use is outside our forms of political life. Here, there is too much urgency to indulge such idle theories. The meaning of a negative response is what the Federalists do not understand. What would be confusing is the context or circumstances of use. Madison is engaged in the talk of the powers of government necessary for securing civil society from foreign danger. But a negative response to the war-powers question would confuse him as to the context of the conversation. What can someone mean by "government" or "security" if s/he denies the power of declaring war? The difficulty is more than a factual one. It denies the ordinary talk of government

and political life. The meaning of terms in the ordinary conversation of government would be broken. We would not know just what kinds of things government would or would not be capable of doing.

In effect, speech would not be part of the practice of politics but would move into theoretical or speculative domains. The language-game of politics would have no ordinary context but would draw on other domains to establish its context. The rules governing the use of terms in describing events in politics would be open to question. Indeed, the meaning of political life would be thrown open to question. Statements which in ordinary political life were unproblematic would be subject to scrutiny. The context of politics would collapse and the activity, the pursuit of politics would also collapse. It is as if someone wished to play baseball but declared that the outfield ended ten feet behind the base paths. And if every third batter hit a home run--would we still call this baseball? For the Federalists it is the same in politics. In their view, talk of government without powers is talk of something, but not talk of politics.

This separation of language from its ordinary context is also evident in the Federalists' distinction between powers in theory and powers in practice. Hamilton emphasizes this point in his discussion of the vices of the existing Confederation. He writes: "Except as to the rule of apportionment, the United States have an indefinite discretion to make requi-

sitions for men and money; but they have no authority to raise either by regulations extending to the individual citizens of America. The consequence of this is that though in theory their resolutions concerning those objects are laws constitutionally binding on the members of the Union, yet in practice they are recommendations which the States observe or disregard at their option (15, 6). The problem in Hamilton's opinion is a conceptual one. Just what is the use of "powers" in the existing Confederation? There is a separation between words used in theoretical circumstances and those in practice. In the existing confederation, "powers" has none of the ordinary contexts of use. The ordinary rules for use of "powers" are lost. To talk of the "powers" of a government is to describe the kinds of actions which government can do, and some instances of these actions must be evident. A government which has all its powers in theory is not what we ordinarily call "government."

A similar point can be made of the influence of passion and interest on language. Hamilton, in speaking of the axioms of ethics and politics, declares, "These (axioms) contain an internal evidence which, antecedent to all reflection or combination, commands the assent of the mind. Where it produces not this effect, it must proceed either from some disorder in the organs of perception, or from the influence of some strong interest, or passion, or prejudice" (31, 1). This is a point which we have made several times in preceding

chapters. When language loses its ordinary context it is not governed by the rules of public discourse; rather, it becomes embedded in the passions and interests. "Men," continues Hamilton, "upon too many occasions, do not give their own understandings fair play; but, yielding to some untoward bias, they entangle themselves in words and confound themselves in subtleties" (31, 3). This, for the Federalists, is another of the unfortunate separations of political language from its ordinary circumstances. The ends of civil society and means for their attainment are confused when men speak of government as the means to their personal ends. The natural ends of civil society are discussed in what appears to be public speech but which is only adequately understood within the context of passion and interest. Citizens and groups do not separate themselves from their passions and interests. This is clear to someone who takes a quiet moment to listen to their passionate words. Their speech is violent and hurried. They are agitated and upset. They talk of the public good but with none of the detachment necessary for a just deliberation. They use words but with none of the natural context of such terms.

We need now to be more specific about ends and means in The Federalist because the Federalists are quite specific about the ends of civil society and the means necessary to attaining those ends. They are consistent throughout the Papers in their description of the ends of civil society

and the national government's responsibility for those ends. Hamilton offers a description: "The principle purposes to be answerd by union are these--the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between States; the superintendence of our intercourse, political and commercial, with foreign countries" (23, 3). These are the ends of civil society; they are the responsibility of the national government. It would be absurd, in the Federalists' view, not to give the national government the powers necessary to the superintendence, the management, or the attainment of these ends.

It would be absurd, as we have argued, because such ends as "common defense" are interwoven with talk of armies, navies, rules governing both, commands, and support. Governments which are structured with these ends but which have insufficient powers are absurdities. They are mere pageants of government; they resemble those who would try to play baseball without bats. The pitcher might throw his ball and the batter would swing his hands and call "a hit," running to first base. But we would be confused about such a game and would be inclined to think it only <u>looks</u> like a baseball game. Similarly, a government without powers would only <u>look</u> like a government. There are certain actions which are part of the use of "government" which we ordinarily must see if we are to use this term. These are conceptual and not empirical questions in <u>The Federalist</u>.

There is a further consequence of enumerating such specific ends and means in political life. The explicit ends listed by the Federalists are "primitive objects of civil society." There is a general agreement, in their view, about such ends: these ends are not to be debated and eventually decided by majority rule. These are national interests which are part of the common sense of society. As Madison responds to his own question of the necessity of power to declare war, "No man will answer this question in the negative" (41, 8). To deny a government the power of ensuring the common defense would be an absurdity. As the Federalists clearly indicate in their organization of The Federalist, the first question which the Constitution must adequately answer is the issue of a government of adequate powers to attain these primitive objects.

The existence of the "primitive objects" has consequences for those interpreters like Burns and Dahl who concentrate solely on the questions of checks on the majority. The Federalist is not solely a commentary on limited majority rule. As the Federalists constantly emphasize, the existing confederation is a failure not on grounds of abuse of power, but of insufficient powers to achieve the ends of civil society. These ends of civil society do not depend on any given majority or any set of minorities within the society. It is not a question which needs to be answered by all citizens in each era. Part of the concept of civil society includes this object of common defense.

The constant emphasis on checks belies the Federalists' view of the Constitution as establishing a national government which is empowered to act in attaining society's ends. As Madison declares:

> "But if the Union, as has been shown, be essential to the security of the people of America against foreign danger; if it be essential to their security against contentions and wars among the different States; if it be essential to guard them against those violent and oppressive factions which embitter the blessings of liberty and against those military establishments which must gradually poison its very fountain; if, in a word, the Union be essential to the happiness of the people of America, is it not preposterous to urge as an objection to a government, without which the objects of the Union cannot be attained, that such a government may derogate from the importance of the governments of the individual States?" (45, 2).

The Union is a declaration of the national interests of the society and the advantages to be gained by such a large republic over smaller States. And in the Federalists' view, there is a positive role for the national government in securing both external and internal peace. All is not simply a matter of sociological diversity or checks within the national government.

In summary, we can again emphasize the positive aspects of the national government as means to the primitive ends of civil society. It is within the context of ends and means, of purposes and powers, that there is a proper understanding of the checks on those powers.

FOOTNOTES

[1]James MacGregor Burns, The Deadlock of Democracy (Englewood Cliffs: Prentice Hall, 1963), pp. 21-22.

[2]Robert A. Dahl, A Preface To Democratic Theory (Chicago: University of Chicago Press, 1963), pp. 5-6.

[3]Ibid., p. 30.

CHAPTER SIX

REASON AND COMMON SENSE

We shall now examine the uses of "reason" in The Federalist. "Reason" has a number of different rules governing its use and these rules depend upon the particular context. For example, if "reason" is used in comparison with "passion" or "interest," the comparison may be one of strength of motives. Reason is a milder force than passion or interest. Thus, in a context of explanations of actions the Federalists are more inclined to use "reason" with terms such as "moderate," "cool," or "sedate." However, there are other contexts in which "reason" is used with stronger terms.

When used with phrases such as "common sense" or "the general sense and general practice of mankind," "reason" implies a stronger force; it describes the maxims, rules, and practices of the community. For example, security against foreign danger is a primitive object of civil society. For the Federalists, objection to this primitive end would be outside the bounds of reason. Those who would accept this end but would deny that governments need armies or navies would be equally ouside the bounds of rational discourse.

It is because the context of rational discourse is so bound to the ends and means of civil society that two terms, "propriety" and "prudence" appear so frequently in the text.

These terms speak of the rules which are generally known and shared by the community. Anyone who declared that security from foreign dangers was not an end of civil society would violate the rules of propriety and prudence. They would deny the rules, the customary ways which are embedded in any talk of government. This points to the significance of practice in the structuring of any deliberation about government. It is the known rules, the shared sense of the community and the agreement as to the ends of civil society which govern any talk of government. It is these maxims and rules which are embedded in such phrases as "no man will answer this in the negative" (41, 8). To these rules of practice of the community, the Federalists contrast the abstract and speculative aspects of "theoretic reasoning." Theoretic reasoning is usually associated in The Federalist with speculative schemes which political philosophers have envisioned. As Madison writes, "Theoretic politicians, who have patronized this species of government (a pure democracy), have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions" (10, 13). Theoretic reasoners operate in too abstract a context; they dream outside the confines

of the customary rules and maxims which are the legacy of any political community. Again Madison declares that "theoretic reasoning, in this as in most other cases, must be qualified by the lessons of practice" (43, 17). Theoretic reasoning is not bound by the common sense of the community and too easily drifts beyond the bounds of ordinary practice into dreams. But before we develop this argument further, there is more to say about the use of "reason" in a motive context.

"Reason" used in explanation of human actions is in the Federalists' view, a moderate force in comparison to the passions or interests. As Madison writes, "the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain" (42, 11). Reason is described in The Federalist as "moderate," "cool," "sedate," "serious," "cautious," etc. These words show the kinds of actions which could be described as "reasonable." The rules which govern the use of "reason" are embedded in quiet, calm, or even contemplative circumstances. The Federalists use "reason" to describe the individual faculty which governs human actions. It is as an individual faculty in its theoretic sense that the Federalists speak of reason as such a mild force. The passions and interests are stronger motives. They are described as "loud," "bitter," "angry," "intolerant," "extreme," "immoderate," "malignant," etc. At times there

is little that reason can do against such "hot" tempers. Only contrary "hot" tempers can balance such immoderate passions until such momentary and immediate impulses fade. However, the Federalists see these times of extreme passion as unusual and temporary. The federal government must withstand such immoderate impulses until calm and moderation are restored.

In this return to moderation, the Federalists see the common sense of the community as vitally important. For them, moderation is the essence of politics. Only in moderate deliberations is there the flexibility and tolerance necessary for political choices. But also, only to moderate tempers will the rules and maxims of the general sense of the community have their appeal and force. To those governed by passions or interest the general security against foreign danger will have limited appeal in contrast to pursuit of their own gain. It is the practice of the community which serves to strengthen the moderate elements of society. There are a specific set of ends which are generally accepted as the ends of civil society and these give structure and direction to the federal government. There are rules and maxims which moderate their actions.

It is also important not to forget the Federalists' emphasis on experience in applying the maxims and rules of government. In some instances there are several rules and in such instances it is necessary to look at the empirical consequences of these rules. Thus, the Federalists describe

in detail the consequences of the rules of the Articles of Confederation especially those rules governing requisitions of men and money. The experience of the federal government under the rules of the Articles of Confederation offers a chance to assess these rules in actual use; the value of past practices strengthens the rules of the new Constitution.

Hcwever, the Federalists believe these rules the exception. There are a large number of rules which have been well-tested in State constitutions, British practice, and in other governments. These rules are part of the accepted practices which are embedded in the history of politics. They are part of the primitive forms of all political life. Those who would disregard such rules are outside the bounds of common sense. Most rules ar not controversial and this is what grounds political deliberation for the Federalists.

This raises another problem about the passions and interests as sources of action. Because they reflect the impulses of the moment, they are arbitrary. They do not embody the larger interests of the community nor do they appeal to the rules which advance the general good of the community. They are narrow, private, and without justification. They are ultimately bereft of any claim to justification in general terms. The passions and the interests do not partake of the rules and maxims of reasoned society. They are attacks on the community and the rules which have evolved over many years. They deny the fundamental order of society in favor

of momentary gain. Indeed, society's rules and structures are partially developed to guard against such arbitrary attacks. The laws of society are endeavors to control those who would use government and society for their own ends. It is a denial of the notion of government itself.

But again, we need to return to the use of "reason" to describe an individual faculty. For there are instances in which reason is influenced by the passions and the interests. Rather than being involved in the common sense of the community which calms and controls the passions, reason may be influenced by the passions. Madison speaks of this reciprocal relation between passion and reason in Number Ten of The Federalist Papers. He writes: "As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves" (10, 6, emphasis added). We ought to emphasize that for Madison reason does have an influence on the passions; reason is not simply the slave of the passions. Also, in this passage it is possible to argue that the passions attach themselves to an opinion not because it is a means to some gain but because we are inclined to love the opinions we hold. It is because we hold a position that we are passionately attached to it. Here Madison sees opinions influenced by self-love rather than opinions influenced by self-interest.

However, there is one instance in the text in which Madison speaks of reason prescribing means to passion's ends. The passage is unusual because it is the only one of its kind which can be found in The Federalist. In speaking of the legislative power Madison writes: "the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes. . . ." (48, 5). Here, reason is clearly an instrument of the passions, offering means to passion's ends. But we need to note that Madison is building another of his arguments, one in which only passions have the strength to counter passions. This is true of reason as an individual or group faculty. But it is not the only use of "reason" in The Federalist.

It is within the context of the rules and maxims of common sense that even the rules of the Constitution and its separation of powers must be judged. Madison writes of the Constitution that it is written to "solicit the attention of those only who add to a sincere zeal for the happiness of their country, a temper favorable to a just estimate of the means of promoting it" (37, 2). And for the Federalists such a temper is one which is capable of calm, cool, and sedate deliberation and also, one which is moderate in terms

of practice. It is a temper which is governed by the rules of prudence and propriety.

Now let us look at this use of "reason" as common sense in The Federalist. We may begin by emphasizing the collective aspect of common sense. Rather than being limited to a particular citizen at a particular time, common sense is a deeper and more powerful force because it is so embedded in the life of the community. This we may assume, is Madison's point when he writes: "If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depends much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ancient as well as numerous, they are known to have a double effect" (49, 6). Individual reason is timid and cautious but common sense gives men assurance in their opinions. It is in conjunction with others, not in physical contact, but participating in the general forms which ground communal life that there is a chance for reason to be a strong force.

The prominence of this common sense is evident in any number of places in The Federalist. Whether they appeal to political maxims, propriety and prudence, or the explicit

rules of the State constitutions, the Federalists write with the assurance that their appeals to common sense and reason will remind their readers of what they, the readers, already know. As an example, Hamilton speaks of the inherent nature of sovereignty. He writes: "It is inherent in the nature of sovereignty to not be amenable to the suit of an individual without its consent. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union" (81, 17). There are several points which need comment here. First, the right to sue a sovereign state is a right which only the sovereign can grant. This is a rule which depends on the general practice of the community as to the use of "sovereignty" to describe States within the Union. To claim that a sovereign can be sued against its wishes violates the general practice of the community. It would, for the Federalists, be an absurdity in theory and also in practice. There would be, as in the case of the Articles of Confederation, the pageant of sovereignty but none of the actual uses in actual situations. It would be like a gate which stands alone at the entrance of a yard; the fence which should surround the yard is missing. Is it then properly called a gate? It is like language but it has no use; it is idling. It is a gate "in name only." There is an absurdity for Hamilton in speaking of sovereignty outside its uses within the general practice of the community.

It is the general practice which gives meaning to maxims. These maxims depend not on the experience of States but on the rules which govern the use of terms. The connection is not made in experience; the meaning of sovereignty is embedded in the context of experience.

We may see this same point expressed another way. Many times in The Federalist Hamilton and Madison depend on political maxims or principles to support the Constitution. Now, such maxims or principles are of the sort that do not need demonstration. To argue these maxims would be "as vain and fruitless as to attempt the serious proof of the existence of matter, or to demonstrate any of those propositions which, by their own internal evidence, force conviction when expressed in language adapted to convey their meaning" (83, 1). Conviction about these maxims depends on their clear statement. If their meaning is made plain, then for the Federalists it is difficult to understand how anyone could disagree. Their conviction comes from the general use of terms within the community. As in the proof of the existence of matter a demonstration of these maxims would be fruitless because they are part of the context of deliberation. To argue that matter exists or to argue whether you are alive or whether political states are sovereign is useless in the Federalists' view. If there is to be deliberation about an issue in politics then all terms of the deliberation are not subject to complete justification. At some point there must be agreement if

there is to be political life. If language collapses so does political life. For the Federalists these meanings are part of the shared structure of our political lives but we sometimes confound ourselves in subtleties. It is then necessary to offer a clear statement of our meanings to reaffirm what we already know.

If we can state these propositions in clear terms so that their use is clear then it is difficult for Hamilton and Madison to see how anyone could refute what to them is the general practice of the community. And it needs to be emphasized that this general practice is not an abstract notion. These rules and maxims are there in the State constitutions, in the Articles of Confederation, and they are drawn from the actual practice of politics in Great Britain.

But part of the meaning of maxims in The Federalist is their application in ordinary circumstances. Thus, the meaning of maxims includes what are, according to the practice of the community, applications of a maxim. Thus, to describe a state as sovereign means more than just another name for a state. A state must have certain abilities, certain powers not on the laws of past experience but in terms of what we mean by "sovereignty." It would be a violation of the general sense of the community if a sovereign were not able to do certain things. Hamilton gives a clear example of this point when he shows the internal relationship between money and the body politic. He writes:

> "Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of revenue, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular, one of two evils must ensue: either the people must be subjected to continual plunder, as substitute for more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and, in a short course of time, perish" (30, 2).

Hamilton begins with a maxim which he takes to be proper or in accord with the customary ways of the common sense of the community. He then proceeds to show just what application this maxim would have for the writing of a constitution. It is, in the Federalists' view, difficult to see how anyone could accept the first statement without accepting the second. There must be a complete power within the constitution to procure a regular and adequate supply of revenue. This is the style of argument throughout The Federalist. It is an argument beginning with the maxims which are part of the general practice of the community and which then draws practical conclusions from those maxims. In effect, the Federalists are arguing that if money is vital to the life and motion of the body politic then a power to procure a regular and adequate supply of revenue must be written into the Constitution. This necessity of some constitutional means for providing revenue shows the need for application of maxims. Maxims must have some means of achievement. To say that money is vital to the body politic but to make no provision for its

adequate supply would be an absurdity in the Federalists' view.

But for Hamilton and Madison the propriety of some application of principles in constitutional provisions is not always so clear in new circumstances. Madison makes this point when he comments on the maxim, "that where annual elections end, tyranny begins." He says:

> "If it be true, as has often been remarked, that sayings which become proverbial are generally founded in reason, it is not less true that when once established they are often applied to cases to which the reason of them does not extend. I need not look for a proof beyond the case before us. What is the reason on which this proverbial observation is founded? No man will subject himself to the ridicule of pretending that any natural connection subsists between the sun or the seasons, and the period within which human virtue can bear the temptations of power. Happily for mankind, liberty is not, in this respect, confined to any single point of time, but lies within extremes, which afford sufficient latitude for all the variations which may be required by the various situations and circumstances of civil society" (53, 1).

Madison is offering a commentary on the meaning and the application of the maxim. His commentary is an endeavor to show that the point of the maxim ought not to be taken <u>too</u> literally. Just as baseball is a game of nine innings this is a rule which depends on circumstances such as rain, light, temperature, etc., etc. And in supporting his variation of the rule, Madison is careful to show that in the State constitutions the time between elections varies from half a year to two years. The point of these two commentaries is to show that the rule within the Constitution can be included within the general consensus of the community.

We ought to recognize that Madison's commentaries do not depend on empirical evidence. The evidence from the States, Great Britain, and Ireland offers no clear rule. The maxim is a statement of the general sense of the community and that rule is subject to different applications given different circumstances. Madison is intent on showing that the new Constitution does not differ from the general wisdom of the community as that general wisdom is explicitly written in the State constitutions and has come to the United States from Great Britain. Many of the commentaries on the Constitution are endeavors to show that its provisions are in accord with the common sense of the people.

However, it is not always possible to claim that there is a general practice in the community. Hamilton argues this case in his commentaries on confederations and consolidations of States. He examines rules which are embedded in descriptions of confederations and finds that the national government's authority must be restricted to members in their collective capacities. The national government must exercise its authority through the States which joined to form the national government. Further, the national government ought to have no concern with internal administration and there ought to be an equal suffrage among member States. These are the main rules in the definition of confederate government. But Hamilton denies the claim that these rules are embedded in the general practice of the community. For him, these are not rules at all; in fact:

> "These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened that governments of this kind have generally operated in the manner which the distinction, taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown, in the course of their investigation, that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government" (9, 15).

Hamilton here points to the exceptions to a rule as indications of the arbitrariness of the supposed maxim. It is because of these exceptions to the practice that there is not a generally accepted use of the term, "confederation" in a political language. The principle of restriction of authority to members in their collective capacity is not adhered to in all cases and this denies the ruleness of the use. It is this confusion of meaning in the use of "confederacy" which makes its application in politics so confusing. Here, there is no rule; there is no general practice which can be pointed to as an example or as an application of the rule. In the absence of a rule, whether principle or precedent, the use is arbitrary. It is not even a use in the sense of use as implying a rule.

But though these are instances of arbitrary positions, the general view throughout The Federalist is that there are rules, practices, or customary ways. These rules are embedded in the common sense of the community, and in The Federalist their application is constantly a question of propriety. "Propriety" is a word which is used with great

frequency in the text. It bespeaks the appropriateness of given procedures to the general rules of society. As an example, Jay writes: "When the people of America reflect that they are now called upon to decide a question (the adoption of the Constitution), which in its consequences must prove one of the most important that ever engaged their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it will be evident" (2, 1). Because of its importance to the citizens there are certain rules which ought to be followed in deliberating these vital questions. This is in accordance with the generally-accepted wisdom of society. To decide an important question without taking a comprehensive and serious view violates propriety; it violates the common sense of the community. Hamilton's use of "propriety" is a sort of shorthand for a set of rules which he does not feel need comment. These are rules which are known and accepted by all. To argue otherwise would be to deny the deliberative ways of society and possibly to deny the claims of rationality in general. In effect, Hamilton is appealing to the agreed, unwritten rules which govern how important issues are to be deliberated. It is these rules which are embedded in the Federalists' concept of rationality.

It is this same sense of propriety which is embedded in the appropriateness of certain powers to the ends of civil society. Government is responsible for attaining those ends

and therefore must possess the powers necessary for these ends. Thus, the number of powers conferred on a government depends on the objects of civil society. "Not to confer in each a degree of power commensurate to the end," writes Hamilton, "would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigor and success" (23, 9). Here, "propriety" is used to indicate the appropriateness of a set of powers to the end. The claim of Hamilton is that there is a set of powers which is appropriate to a given object or end of government. These are the powers which according to the rules of general practice and common sense are necessary and proper to the attainment of a particular end. The rules of propriety are not rules which need be stated; they may be shown. Those who know or are masters of the given terms will see the given connection. The rules of propriety are part of the general, unstated rules which are embedded in all forms of social life. To ask for explanation of these rules of propriety would be like asking why you can't use a tennis racquet in playing baseball or why you can't use an aluminum bat in cricket. An answer depends on the appropriate bat for each game and that is part of what it means to play each game.

There are domains in which the rules of propriety are made explicit. This is especially the case in legal interpre-

tation. Such rules as "A specification of particulars is an exclusion of generals," and "The expression of one thing is the exclusion of another," are specific rules which are embedded in legal interpretation. It is from the practice of the community that even these rules have their meaning. Thus, even these rules of interpretation may need interpretation and there may be further rules to interpret these rules of interpretation. It is always possible to ask for explanations of rules which interpret rules but this becomes fruitless very quickly. Commentaries come to an end. Hamilton accepts the ordinary, customary ways of interpreting rules and he depends on the sense of propriety in his readers. He specifically makes this point in his comments on the meaning of the absence of a constitutional provision for jury trial in civil cases. He writes:

> "The rules of legal interpretation are rules of common sense, adopted by the courts in the construction of laws. The true test, therefore, of a just application of them is its conformity to the source from which they are derived. This being the case, let me ask if it is consistent with reason or common sense to suppose that a provision obliging the legislative power to commit the trial of criminal causes to juries is a privation of its right to authorize or permit that mode of trial in other cases? Is it natural to suppose that a command to do one thing is a prohibition to the doing of another, which there was a previous power to do, and which is not incompatible with the thing commanded to be done? If such a supposition would be unnatural and unreasonable, it cannot be rational to maintain that an injunction of the trial by jury in certain cases is an interdiction of it in others" (83, 4).

It is significant that here and throughout The Federalist Hamilton and Madison use the rhetorical question to appeal

to their reader's own sense of propriety. The Federalists are appealing to the customary ways, to the common sense of their readers through the device of the rhetorical question. They ask their readers what is the appropriate use of the positive provision for jury trial in criminal cases. Does this mean that a negative provision for jury trial in civil cases follows from the absence of any such provision? Hamilton appeals to the informal rules. He appeals to the natural rules which are embedded in the forms of governmental powers. The legislature has the power to constitute the courts and to prescribe the mode of trial. Legislative discretion is abridged by an injunction of jury trial in criminal cases but this discretion is not abridged on the subject of jury trial in civil cases.

Hamilton's claim is that a clear exposition of the provisions shows that the legal maxims are not appropriate for an adequate interpretation of the absence of a provision for jury trial in civil cases. His commentaries are endeavors to show those rules which are appropriate and those which are not. And his appeal is to what we ordinarily say. He reminds his readers of the ordinary uses by means of the rhetorical question: he asks them questions which will clarify just what uses are appropriate. He is appealing to the context for the rules governing this particular provision and the absence of this provision in jury trials for criminal and civil cases.

These rules of propriety are the unwritten rules which are embedded in our language-games. They are learned as we learn language and the kinds of things we can do with words. And they are taught by examples, gestures, demonstrations, etc. As Hamilton remarks about the use of legal maxims: "Having now seen that the maxims relied upon will not bear the use made of them, let us endeavor to ascertain their proper use and true meaning. This will be best done by examples" (83, 7). Meaning is embedded in the use which is made of these maxims. These uses are governed by the rules of propriety and the rules reflect the customary ways, the practices, the common sense, etc., of the community. Hamilton demonstrates that the supposed use of these legal maxims does not accord with the traditional uses which are the common sense of society. A specification of jury trial in one set of cases does not exclude it from others.

In all their emphasis on propriety the Federalists are showing that deliberation of these questions is not arbitrary. Just as experience can offer rules for deciding how to act, so also, knowing the common sense, the community's rules of what is proper, can avoid confusion as to how to proceed. By appealing to the rules of propriety, the Federalists are trying to embed the Constitution in the customary wisdom of society.

CHAPTER SEVEN

THE LANGUAGE OF REPUBLICAN GOVERNMENT

The language of republican government is our concern in this chapter. For the Federalists, republican governments offer a solution to the problem of passionate or interested minorities or majorities. Interested groups in pure democracies, small republics, or States may easily act together to oppress others within the society. Interested or passionate groups act for narrower ends; they make the business of government the pursuit of their limited, private, and narrow goals. Some groups in society are oppressed; they are denied any access to the procedures of government. Government becomes the instrument for one group within society and it excludes all others. This cannot, in the Federalists' view, be the basis for any stable government. Passionate and interested groups are always too narrow or too self-interested to be the basis of government. Government must include the interests of all in its work. For example, security against foreign danger is the aggregate interest of all groups, citizens and States within the society. Government must act to protect all rather than select groups against such danger.

This is the particular advantage of republican government in controlling abuses of factions either by the diversity of interests in society or by the diversity of interests within government. Because republican governments can extend over larger territories, they can encompass larger numbers of interests. Republican governments do not depend on all citizens meeting to legislate and administer; rather, citizens elect representatives who meet, legislate, and administer for them. This overcomes the difficulty of all citizens meeting to legislate and administer and allows for states of increased size. Increasing the size of a state increases the number of interests included within the society and decreases the chances that one interest will be able to dominate the government for its own ends. Likewise, by dividing the government into legislative, executive, and judicial departments elected by different procedures, the chances of one interest dominating all departments of government are decreased. Thus, the diversity of interests within a large republic limits the possibility of one interest oppressing all other interests. It is the diversity of interests and departments in a large republic which weakens the chances for abuses of government. It becomes difficult for one interest to extend its concern over a large republic and further, other interests will work against such collusion. And other departments will seek to thwart one department which attempts to acquire all power for its own ends.

Because of the diversity of interests and departments elected by different means, there is an increased possibility that republics will elect men of more diffuse character who are not passionately attached to one interest. The small and vicious arts that are practiced by ambitious men in small States will be less successful in a large republic. This enhances the chance that men of more stable character will be elected and they will be more conscious of the general nature of government. Or, as Madison writes of the delegation of government:

> "The effect of the first difference is, on the one hand, to 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 and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that 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, convened for the purpose" (10, 16, emphasis added).

The chosen representatives of the people are more likely to be attentive to the public good than the people themselves. They are least likely to sacrifice the general good to some temporary or partial passion.

We shall now proceed to examine the problems inherent in pure democracies and small republics. The danger in pure democracies and small republics are the ease with which a factious majority may develop. This is because of the smaller number of interests in small societies and because in pure democracies all citizens meet together to legislate and admin-

ister the rules for the society. For the Federalists, the dangerous tendencies of pure democracies are well known and documented in experience. The consequences of such a set of rules for legislation and administration of a small society are frequent factious majorities acting for their own interest or passion and oppressing different minorities and individual rights. And the formation of such factious majorities is facilitated by the vicious arts of those ambitious men who can arouse the passions of men meeting to legislate and administer.

Here, it is possible to see or to experience the consequences of pure democracies or small republics. Such a set of rules has clear consequences resulting from them. Hamilton reminds his readers of those consequences when he describes the history of petty republics of Greece and Italy. He writes:

> "It is impossible to read the history of petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrasts to the furious storms that are to succeed. If now and then intervals of felicity open themselves to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage" (9, 1).

This has been the turbulent history of petty republics and it is from such turbulent histories that the Federalists draw their conclusions. Why are small republics so unstable and so inclined to violent disturbances? As we have already

mentioned it is easy to arouse the passions and interests of citizens when they meet to legislate and administer for a society. It is easy for a factious majority to form. Such a factious majority is motivated by its own goals or advantages and it has little concern for the general good of society.

But for the Federalists such attention to the general good can be the only basis for a stable and enduring society. As Madison writes in Number Fifty-One:

> "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful" (51, 10, emphasis added).

All pure democracies and small republics allow a stronger faction to "readily unite and oppress" other interests and to disregard the general aggregate interests of society. And for the Federalists, such forms of government are hardly government at all. Rather, such states are no different from the anarchy which reigns in the state of nature. If the processes of government are based in the passions or interests there can be little of the concern for the aggregate

and permanent interests of society which are the ends of ordered and stable government.

Likewise, forms of government which do not separate the powers of government into different hands are also unstable. In pure democracies, because citizens both legislate and administer for themselves there is a danger of tyranny. Again, Madison writes: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constituion, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system" (47, 3). In a pure democracy there is no separation of powers into different departments and there is nothing to thwart the progress of a factious majority both legislating in its own interest and administering the rules or regulations for its advantage. A factious majority can "readily unite" and readily enact and execute regulations for its advantage. And in the Federalists' view there is little difference between the extremes of anarchy and tyranny. For them, accumulation of all powers by a factious majority for its own interests is but another name for anarchy. The essential generality of government regulations is lost. The actions of government

are those of an oppressive majority which seeks nothing but its own advantage: it is anarchy. The national government must speak for the aggregate and permanent interests of the community. It must be a set of institutions which follows a set of rules. And that set of rules must enhance not the ease of a factious majority, but the chances for a moderate, calm, and reasoned legislation and administration. It is the Federalists' fundamental belief that reason takes time. Rather than foster the ready uniting and legislating of a passionate majority acting on a shared impulse, the Federalists seek to enhance the chances for free deliberations. Madison shows this point clearly when he writes of the differences between a republic and a democracy: "In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters" (10, 18). For Madison, the possibility of thwarting a politics based in the passions offers a greater chance for citizens to act freely in their suffrages. The result of such greater freedom is the increased prominence of men who possess proven abilities and characters extending beyond any one interest or passion. Rather than a politics of emotion,

the Federalists seek to enhance the election of men who have enough experience to see the folly of narrow, interested regulations and the advantages of laws which further the aggregate and permanent good of society.

It is the belief of the Federalists that in less passionate times there will be greater attention to more general considerations. Citizens free from the small and vicious intrigues of various candidates will elect men who have greater experience in seeing the general, whether in the past or in their own lives. There are men who can see beyond their own passionate interest to those general schemes which include the good of others. These are men who believe in moderate rather than extreme behavior. But there must be a chance for such men to act in government and they need to be protected against those who would use the vicious arts to arouse citizens and further their ends. We need to take a moment to summarize the points we have raised thus far in the chapter.

We have seen that uncontrolled passion or interest of any group in society cannot be the basis for a stable and just government. If groups can "readily unite" legislate and administer, it is but another name for oppression and anarchy. Government must follow an ordered set of procedures; there must be something to discipline the extremes of passion and interest. Only if there are checks on attempts to legislate and execute acts of passions can there be any possibility of a stable and just government. There must be a chance

for moderate deliberations which seek to further the aggregate and permanent interests of the community. And as the passions are impulses of the moment it is necessary to provide some checks on the ready uniting of a majority and its quick enactment and execution of regulations. It is to these endeavors in moderating the extremes of passion and interest that we now turn.

The Federalists argue that a large republic, rather than a pure democracy or a small republic, has a greater chance to thwart the uniting of a factious majority. For them, a pure democracy is governed by the people meeting, legislating and administering for themselves. But this form of government offers a ready possibility for a factious majority to unite. As Madison writes: "A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies 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" (10, 13). Pure democracies are inherently unstable as there is anarchy embedded within the form. It is too easy for a factious majority to unite and oppress. But republican government offers a cure for the ready enactment and execution of the aims of a factious majority.

A republican government offers a cure because it is a form of government which depends not on the people meeting to legislate and administer but on their election of representatives who meet and act for them. Because citizens elect representatives to act for them a republican government can encompass a greater number of citizens and a larger territory. And this enlargement of territory has immediate advantages for limiting the uniting and acting of a factious majority. Madison explains that:

> "The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer probably will be the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed,the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other" (10, 20, emphasis added).

A large republic encompasses a greater variety of interests and this impedes the ready unification of interests into a factious majority. A common motive cannot easily unite a group or interest because the distances in a large republic make communication and concert difficult. Nor can the vicious arts of some candidates extend over the larger territory without losing much of their force.

Further, because the federal government is separated from the citizens, the Federalists believe that this government

will be more deliberate and judicious in its proceedings. The loud and bitter appeals of the passions or interests will not so easily hold sway in a government of representatives of the people as the people uniting to make their own regulations. They further believe that if citizens are free from the intrigues of men of limited qualifications, they will more likely look to men who exhibit merit and clear character. If decisions are made on the basis of candidates' histories and actions rather than on their skills in arousing the passions or interests there is greater likelihood that the government regulations will foster the aggregate good of the society. Hamilton argues against those who would seek a division of the larger States that, "Such an infatuated policy, such a desperate expedient might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue but it could never promote the greatness or happiness of the people of America" (9, 5). The breadth of a large republic increases the chances for rationality in politics; it increases the chances for men of more general reputation and for less passion in selecting representatives. This is a point which Jay also makes. He declares:

> "When once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed to manage it; for, although town or country, or other contracted influence, may place men in State assemblies, or senates, or courts of justice, or executive departments, yet more general and extensive reputation for talents and other

> qualifications will be necessary to recommend men to offices under the national government--especially as it will have the widest field for choice, and never experience the want of proper persons which is not uncommon in some of the States. Hence, it will result that the administration, the political counsels, and the judicial decisions of the national government will be more wise, systematical, and judicious than those of individual States, and consequently more satisfactory with respect to other nations, as well as more safe with respect to us" (3, 8).

Small nations and States are always subject to the influence of men of lesser talents while larger republics will offer greater choice and weaken the chances of those who would succeed purely on passionate appeals.

Madison makes a similar point when he argues that each representative will be chosen by a greater number of citizens in a large republic thus weakening the influence of unworthy candidates and their passionate appeals. Further, he contends that large republics are more favorable to the election of proper guardians of the public weal on another ground. He argues that the representatives, even in a small republic, must be raised to a certain number to guard against the cabals of the few. However, the representatives in a large republic must be limited to avoid the confusion of the multitude. "Hence," for Madison, "the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows that if the proportion of fit character be not less in the large than in the small republic, the former will present a greater opinion, and consequently a greater

probability of a fit choice" (10, 17). The advantages of a large republic lie in its ability to curb the excesses of a factious majority by lessening the chances of such an oppressive majority's development and by offering more qualified candidates for national office. If citizens are freed from the vicious arts of candidates who appeal to the passions or interests, they will be more likely to give their support to candidates of merit and "diffusive and established character." A large republic because of its greater number of qualified candidates, greater number of citizens selecting a candidate and greater varieties of parties and interests, will be less likely to facilitate the formation of an oppressive majority. A large republic will decrease the possibility of government securing only the advantages of an interested and factious majority. Instead, it will increase the chances of candidates who have contacts with diverse interests in society. Rather than being spokesmen for momentary passions likely to advance their ambitions, these candidates will have established character. Politics will be based in solid issues grounded in experience and past rules or maxims. Citizens and groups who would use government for their own advancement will be limited by the greater size and number of citizens and interests in a large republic. But if a large republic with its many interests makes factious majorities less likely, it is still necessary to control the ease of enactment and execution of regulations.

Here, we return to Madison's definition: all power in the same hands is tyranny. Madison's reason for such a definition, as we have observed throughout our discussion of republican government, depends on the same concern for ease of uniting, enactment, and execution. When government acts quickly in ordinary circumstances there is a strong danger that such acts will advance the interest of some particular groups in society. There will not be that moderate and deliberate judgement which tries to advance the aggregate and permanent interests of the community. And such injustices are facilitated by the inclusion of all powers in the same hands.

Therefore, it is essential for the Federalists that there be a separation of power into legislative, executive, and judicial departments and that there be different modes of selection for each department. And because the legislative department has such extensive powers which are less susceptible to precise limits, it is necessary to divide the legislative powers. As Madison writes: "In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; 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" (51, 6). By dividing the legislative authority between two

different branches elected by different modes, the Federalists seek to limit the chances of an easy unification of different interests in a single legislative body. Such a factious majority could use government for its own advantages and, overpowers any objections raised by the executive or judicial departments.

The creation of different departments and legislative branches makes an easy unification more difficult and also thwarts the aim of those officials who by their vicious arts seek to accumulate all governmental powers in their own hands. And the aim as we have frequently mentioned is to enhance the chances for reason in government. Madison, in discussing executive and judicial appeals to the people for redress of legislative usurpation, writes:

> "It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpations of the legislature might be so flagrant and so sudden, as to admit of no specious coloring. A strong party among themselves might take side with the other branches. The executive power might be in the hands of a peculiar favorite of the people. In such a posture of things, the public decision might be less swayed by prepossessions in favor of the legislative party. But still it could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question itself. It would be connected with persons of distinguished character and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of, the measures to which the decision would relate. The passions, therefore, not the reason, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government (49, 10).

The separation of powers and the legislative checks and balances are part of the struggle to weaken the influence of the passions and interests in republican government and to enhance the chances for reasoned regulations for the public good.

In the large republic the diversity of interests weakens the chances of an easy unification of a factious majority which seeks to further its advantage at the expense of other interests in society. Likewise, in a large republic there is a separation of government into different departments and the legislature into different branches. And this again is to thwart the quick enactment and execution of a factious majority. But it is also necessary to sustain such separations against the ambitions of one department toward the powers of another. If such an accumulation were possible there would be nothing to block the oppression of an interested minority or majority over other interests in society. Therefore, the Federalists argue that, "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" (51, 4). Each department in republican government must have adequate means to resist encroachments. Here, the Federalists make provisions for the secure salary and continuance in office during good behavior. The Constitution offers explicit provisions against reducing the emoluments because of its effect

on the will of the President and judges. Hamilton, in speaking of the executive, declares that, "The legislature, with a discretionary power over the salary and emoluments of the Chief Magistrate, could render him as obsequious to their will as they might think proper to make him. They might, in most cases, either reduce him by famine, or tempt him by largesses, to surrender at discretion his judgment to their inclinations" (73, 1). The will of the Chief Magistrate and federal judges could be weakened if they were deprived of income by the legislature. The Federalists believe strongly that there must be provision which supports the will of those who are elected or appointed to the executive and judical departments.

Another aspect of this fortification of wills is the method of appointment to office. As Madison points out: "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" (51, 2). In Madison's view, such a provision for a will of its own in the executive, legislative, and judicial departments would ideally require that all appointments depend directly on the people. But the problems of

a factious majority make different modes of appointment necessary to weaken the chances of a candidate experienced in the small arts of popularity attaining office. There is a constant concern to limit the chances of a factious majority being created by a candidate skilled in impassioned pleas.

Thus, in selecting a Chief Magistrate, the Constitution provides for electors, selected by the people, to meet in each state to decide on a President. Such a process, in Hamilton's view, "affords a moral certainty that the office of President will seldom fall to the lot of any man who is not in an imminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States" (68, 8). For the Federalists, there must be a process which gives the President a mode of election which secures the office from candidates with small abilities, but one which also gives the elected candidate the requisite will to defend the office from usurpations of powers by the legislature.

But there is an even greater security against concentration of the several powers in the same department. This is to

insure that the interest of the man must be connected with the constitutional rights of the office. As Madison writes: "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. We see it particularly displayed in all 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" (51, 5). Madison shows that just as there are advantages to diverse interests within society there are advantages to diverse interests in government. Different offices create different motives and make men sentinels over the powers of their office. But the principle is the same as in a large republic. A diversity of interest weakens the chances of a factious majority easily enacting and executing its will. And a republican government which divides the powers of government between the various departments acts as an obstacle to the accumulation of all powers in one department.

Again and again we see that the Federalists take great precautions to fortify such a motive, especially in the case of the President. Hamilton argues this case forcefully with respect to limits on a President's terms. He writes:

> "It is a general principle of human nature that a man will be interested in whatever he possesses, in proportion to the firmness or precariousness of the tenure by which he holds it; . . . The inference from it is that 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 execution 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" (71, 1).

For Hamilton it is not enough to simply create an office which will be possessed by a citizen. Unless the office has sufficient duration, provision for support and powers, there will be little to interest the ambitions of men. There must be adequate provision for interesting a citizen in his office.

Finally, we must speak of the ends of these various checks on the passions. Government seeks to further the aggregate interests of the community and does so through rational deliberation. For Hamilton, "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" (71, 2). The goal of the Constitution is a system which weakens the influence of passion and enhances the chances for rational deliberation by government. The aggregate interests, the public good of the community will be the aim of such rational deliberation.

CHAPTER EIGHT

THE LANGUAGE OF CONFEDERATE GOVERNMENT

The Federalists speak not only of republican government but also of confederate government. In this chapter we shall discuss the rules and uses of the language of confederate government but first we shall examine some of the rules and uses governing the language of government. For the Federalists, government has limitations in its use; it is governed by customary rules indicating where it can be applied. This sense of meaning and of rule governs the use of such terms as "absurdity" in describing certain linguistic uses. Thus, to describe the existing confederation as "government" is to confuse those particular criteria which are generally accepted as necessary for its application. For Hamilton, "In an association where the general authority is confined to the collective bodies of the communities that compose it, every breach of the laws must involve a state of war; and military execution must become the only instrument of civil disobedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it" (15, 11). The

existing confederation does not meet the criteria which distinguish government from other forms of association. To claim that the existing confederation is a government is similar to calling someone an umpire while leaving his calls of "Out!" or "Safe!" depending on his defeating all challenges in an arm-wrestling contest. An umpire constantly defending his calls by shows of superior strength would strain our criteria of "umpire."

For the Federalists, it was quickly apparent that the criteria of government were not met by the existing Confederation. The acts or inaction of a political body permit us to say, "this is government." The rules governing the use of a term challenge some uses of "government." There are acts which a government must perform. But the existing Confederation does not meet those criteria; it does not perform those acts. As Hamilton declares: "Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation" (15, 3). There are certain performances which are embedded in the use of "government" and the existing Confederation consistently fails to perform them. If the existing Confederation can be described as government it must be in such words as "weak" and "inefficacious." The existing Confederation may "look" like a government just as our umpire may be dressed in a black suit, give exaggerated hand signals and be positioned in the appropriate spots on

the field. But just as the umpire's calls are violated so also are the laws of government. And a government which is consistently disobeyed quickly fails to meet the criteria of government. In the Federalists' view, it does not "deserve the name of government." To be more explicit, let us look at Hamilton's list of failures which undermine the use of "government" in describing the existing Confederation: "Have we valuable territories and important posts in the possession of a foreign power which, by express stipulation, ought long since to have been surrendered? These are still retained to the prejudice of our interests, not less than of our rights. Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government" (15, 3). Hamilton claims that the existing Confederation meets only the weakest criteria of "government;" in fact, it meets more the criteria for a league than a government.

It is possible to derive criteria for the use "government" from the Federalists' criticisms and comments on the existing Confederation. For them:

a) a government must have the "powers to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of privilege, or by any other constitutional means" (21, 2).

b) a government must be authorized "to raise its own revenues in its own ways" (21, 9).

c) a government "ought to be invested with full power to levy troops: to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced in other governments" (23, 8).

d) in the power to regulate commerce "there is no object, either as it respects the intrests of trade or finance, that more strongly demands a federal superintendence" (22, 2).

e) a government must have "a judiciary power. Laws are a dead letter without courts to expound and define their true meaning and operation" (22, 14) and

f) ". . . the right of equal suffrage among the States in a Confederation . . . contradicts that fundamental maxim of republican government, which requires that the sense of the majority should prevail" (22, 7).

This last criterion of the Federalists speaks not of "government" but specifically of republican government. And in describing the existing Confederation the other criteria are absent. It is the existing Confederation's failure to perform these particular actions which denies it the name "government." Or, as Hamilton suggests, it may require a new name: "we shall be obliged to conclude that the United States afford the extraordinary spectacle of a government destitute even of the shadow of constitutional power to enforce the execution of its own laws. It will appear from the specimens which have been cited that the American Confederacy,

in this particular, stands discriminated from every other institution of a similar kind, and exhibits a new and unexampled phenomenon in the political world" (21, 2). The existing Confederacy is a new phenomenon; it is not a government. But we need to see what distinguishes the existing Confederacy from ordinary governments.

In the existing Confederation the laws of the confederate government apply to the member States. This system imposes intermediate political institutions between the confederate government and the people. And these States are older than the existing confederate government. As a consequence:

> "The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state, which is essential to a right judgment, and with that strong predilection in favor of local objects, which can hardly fail to mislead the decision" (15, 14).

The result of legislation for States in their corporate or collective capacity is the consistent violation of the confederate authority by the member States. The laws of the confederate legislature do not meet the ordinary criteria of law. The use of law for the Federalists is woven together with the concept of sanction, and the only sanction available to the confederate government is war.

Hamilton makes this point in a long passage and we shall quote him at length. He writes:

> "Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws, will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms. The first kind can evidently apply only to men; the last kind must of necessity be employed against bodies politic, or communities, or States. It is evident that there is no process of a court by which the observance of the laws can in the last resort be enforced. Sentences may be denounced against them for violations of their duty; but these sentences can only be carried into execution by the sword" (15, 11).

"Law" and "sanction" cannot be separated in the Federalists' view. To talk of law with no mention of a sanction would be an absurdity. And to speak of a sanction in the case of the existing Confederacy is to mean the use of the sword in compelling obedience. Only a government with laws operating on the people can sanction its laws through the courts. Sovereigns legislating for sovereigns is always an absurdity for the Federalists. The confederate government's relations with its member States, communities, or cities, always bears a stronger resemblance to a league than to a government. The mild activities of the courts have little force in the affairs of a confederate regime. If the States in their corporate capacity remain objects of confederate laws, there can be little of the mild salutary processes of government: there are not the laws and orderly sanctions of the courts.

Further, the Federalists offer descriptions of associations such as that of the Amphictyonic council which, "bore a very instructive analogy to the present Confederation of the American States" (18, 1). Madison and Hamilton are intent on showing that such associations, despite provisions for the efficacy of federal powers, did not exhibit the behavior of a government. There is a specific reason for the failure in this case of the Amphyctyonic council: "The members retained the character of independent and sovereign states and had equal votes in the federal council" (18, 2). So, despite the provision for federal power, "Very different, nevertheless, was the experiment from the theory. The powers, like those of the present Congress, were administered by deputies appointed wholy by the cities in their political capacities; and exercised over them in the same capacities. Hence, the weakness, the disorders, and finally the destruction of the confederacy. The more powerful members, instead of being kept in awe and subordination, tyrannized successively over all the rest" (18, 4). Government depends on its ability to extend its rules to the people. And these examples of associates whose powers extend to member states in their corporate capacities show the weakness of confederate government.

If the confederate government has power it comes not from its own authority but from the tyranny of the most powerful members. As we mentioned in our earlier discussion of republican government, the Federalists deny the term "govern-

ment" to factious majorities oppressing other interests in society. In their view, a political body which tyrannizes over states or interests hardly meets the criteria of government. If passion and interest are dominant in the actions of a governing body, the general ends of society are forgotten.

The existing Confederation is a failure; it is weak and inefficacious. Its laws are always subject to the judgment of the States and as such depend on another's will for their efficacy. There is no body to pursue the general good of the society as all such objects must be subject to the rulers of the several States. Only if the States accept such goals and agree to provide the necessary means to these goals can the confederate government then achieve any of the general goals of society.

From this understanding of the conditions of government there are certain changes which must be embedded in the new Constitution. Hamilton makes these clear:

> "The result of these observations to an intelligent mind must be clearly this, that if it be possible at any rate to construct a federal government capable of regulating the common concerns and preserving the general tranquility, it must be founded, as to the objects committed to its care, upon the reverse of the principle contended for by the opponents of the proposed Constitution. It must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart.

> It must, in short, possess all the means, and have a right to resort to all the methods of executing the powers with which it is entrusted, that are possessed and exercised by the governments of the particular States" (16, 7).

The Federal government's powers of taxation, of raising and supporting an army and navy, of regulating commerce, etc., must extend to the citizens of the States rather than to the States in their corporate capacity. The federal government's laws must reach down to the citizens of society to direct their conduct. And the federal government must be able to manifest its authority through its own courts of justice. These are not the criteria of an association or league of States or cities; they are the criteria of government.

For the Federalists, a government has consequences in practice. To understand the word, "government" is to know something of the things governments do. One may point to a window on a vacant lot and tell someone that this is called "window." However, that person knows very little unless he also learns that there are windows in buildings, some windows can be opened, you can see through windows, most windows will break, windows can be replaced, some windows conserve energy better than others, etc., etc. Likewise, there are descriptions which are embedded in the language of a community.

However, language, because of its infinite possibilities, may confuse us as to the kinds of descriptions which distinguish government. Just as windows painted black, windows drawn

on the walls of a windowless cell, holes in a thatched hut, or pioneer windows made of bottle bottoms all strain our ordinary understanding of the term "window," so also a government which is dependent on other governments to execute its laws, raise an army, navy and revenues, strains our ordinary use of the term, "government." A government which can only do things with the agreement of other governments is in the Federalists' language, absurd.

We may extend the criteria of "government" as used in The Federalist by recalling our discussion of ends and means in an earlier chapter. The Federalists emphasize that federal government in pursuit of society's ends must have unlimited means. Government, in pursuit of the objects of its superintendence, must be sovereign; it must be able to act without the active consent of thirteen State governments. There may be reviews by the federal legislature of moneys spent for any army and navy but these moneys are not dependent on the active consent of the States. As the Federalists repeat, to give a government ends but not the means, or to encumber those means so that action is difficult or impossible, is to violate the fundamental rules of prudence and propriety. It is to divorce government from the traditional reason which is so deeply embedded in its definition. Governments must be able to act and they must be sovereign over the means to act. But this sovereignty of the federal government raises all manner of criticism.

The Federalists meet constant criticism of the new Constitution by opponents who see the federal government usurping State powers. But it is the counter-claim of the Federalists that all such questions of usurpation and possible limitation must be addressed in discussions of the composition and structure of the federal government. As Hamilton declares, "I repeat here what I have observed in substance in another place, that all observations founded upon the danger of usurpation ought to be referred to the composition and structure of the government, not to the nature or extent of its powers. The State governments by their original constitutions are invested with complete sovereignty. In what does our security consist against usurpations from that quarter? Doubtless in the manner of their formation, and in a due dependence of those who are to administer them upon the people" (31, 11). The federal government "ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people" (31, 5). These are strong positions on the sovereignty of federal government and the kinds of limitations to be placed on it in its structure and composition.

The Federalists define "government" in terms of its sovereignty. And such a definition points to its ability to act to attain society's goals without the active consent

of other governments. If there are to be restraints on governments they must be structural. They must divide the powers so as to thwart attempts to concentrate all power in a single department of government.

It is this dual sovereignty over the means to achieve their different objectives which distinguishes the federalism of the Federalists. The federal government must possess the means to its ends as the State governments possess the means to their ends. Both are instruments of society's ends and therefore derive ultimate sovereignty from the people. Republican government must include protections against usurpations of powers just as the structures of State governments possess protection against usurpation of powers.

On the point of dual sovereignty, the Federalists emphasize the explicit provisions within the Constitution granting powers to the federal government. Hamilton writes:

> "An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, <u>exclusively</u> delegated to the United States. This exclusive delegation, or rather this alienation, of State sovereignty would only exist in three cases: where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union to which a similar authority in the States would be absolutely and totally <u>contradictory</u> and <u>repugnant</u>" (32, 2).

The sovereignty of the federal government is made explicit in the Constitution. Only to attain certain objectives is the federal government granted authority to act without limitations. Authority not explicitly granted to the federal government is retained by the States. Hamilton offers the rules which distinguish instances of federal authority granted to it alone. If there is explicit provision in the Constitution granting the federal government authority, or explicit provisions of authority and explicit prohibitions on the States exercising such authority, then the federal government is sovereign. Hamilton's third case needs further explanation. He has in mind the federal power to establish a uniform rule of naturalization. Such a power would have to be exclusive to the federal authority because if each State government established its own rule of naturalization there would be no uniform rule.

However, there is another distinct group of powers which are retained by the States but also granted to the federal government. These are concurrent and coequal powers. The most prominent example of such powers is the power of taxing. Of this power Hamilton writes: "This, I contend, is manifestly a concurrent and coequal authority in the United States and in the individual States. There is plainly no expression in the granting clause which makes that power <u>exclusive</u> in the Union. There is no independent clause or sentence which prohibits the States from exercising it" (32, 3). Hamilton

adds that there may be instances in which the exercise of this concurrent power of taxation may require forbearance on the part of the State or federal government in taxing the same article. This is a matter of prudence and not of consitutional inability to impose a further tax. Both governments have the authority to tax but they must be prudent in such exercises.

It is also important in their view of federalism that the laws of the federal government are the supreme law of the United States. Hamilton writes:

> "It merits particular attention in this place, that the laws of the confederacy as to the enumerated and legitimate objects of its jurisdiction will become the SUPREME LAW of the land; to the observance of which all officers, legislative, executive, and judicial in each State will be bound by the sanctity of an oath. Thus the legislatures, courts, and magistrates, of the respective members will be incorporated into the operations of the national government as far as its just and constitutional authority extends; and will be rendered auxiliary to the enforcement of its laws" (27, 6).

The sovereignty of the federal government as regards its enumerated and legitimate powers extends to the public officials of the States governing their behavior just as it does that of ordinary citizens.

The Federalists consistently defend the sovereignty of the federal government in attaining its enumerated objects. And in Hamilton's quote it is to the extent of requiring the observance of federal laws by officers of the States. Their strong defense of the federal government's authority is governed by their desire to show that the work of the

Convention was to produce a government and not a league or association. The federal government's laws in pursuit of its objects must be supreme. Hamilton makes this point:

> "A LAW, by the very meaning of the term, includes supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from every political association. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers entrusted to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government, which is only another word for POLITICAL POWER AND SUPREMACY" (33, 7).

The Federalists have shown that the existing Confederacy does not satisfy the description of a government. It is not supreme and its laws are mere recommendations. The new federal government must be supreme; it must be sovereign as to the powers necessary to achieve its enumerated objects. It must meet the criteria of government; it must be able to do the things which distinguish a government from a league.

Further, if there are disputes as to the enumerated objects of the federal government and its actions and laws in pursuit of those objects, those disputes must be heard before a federal tribunal. And it is Madison who makes this argument. He writes:

> "It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution and all the usual and

> most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated" (39, 14).

The Federalists emphasize the sovereignty of the federal government to achieve enumerated objectives, the supremacy of federal tribunals in deciding State-federal jurisdictional disputes, and the claim that State officials are bound to administer federal laws which are derived from duly constituted powers. There is one final addition. This is their claim that the necessary and proper clauses, "are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government and vesting it with certain specified powers. This is so clear a proposition that moderation itself can scarcely listen to the railing which have been so copiously vented against this part of the plan without emotions that disturb its equanimity" (33, 2). The meaning of the clause which authorizes the national legislature to make all laws which shall be necessary for carrying into execution the powers that the Constitution vested in the government of the United States is embedded in the very concept of a federal government. To speak of a government but to deny continually that it has any power to enact laws would be absurd. As Hamilton emphatically declares: "What is a power but the

ability or faculty of doing a thing? What is the ability to do a thing but the power of employing the means necessary to its execution? What is a LEGISLATIVE power but a power of making LAWS? What are the means to execute a LEGISLATIVE power but LAWS? What is the power of laying and collecting taxes but a legislative power, or a power of making laws to lay and collect taxes? What are the proper means of executing such a power but necessary and proper laws?" (33, 3). Hamilton defends the sovereignty of the federal government against another attempt to weaken the federal government. And his appeal is again to the generally accepted rules governing what means are necessary to make a government capable of attaining its enumerated objectives.

Hamilton and Madison are clearly intent on protecting the sovereignty of the federal government from restrictions which would weaken it. They defend the supremacy of the federal government in making laws pursuant of its enumerated goals, they defend the responsibility of States' officers to enforce these laws, and they defend the right of the federal tribunal to decide disputes between the federal and State governments. To grant final authority to the States in these questions is to violate all those rules of ends and means, prudence and propriety, and ordinary reason or common sense, all of which are deeply embedded in The Federalist.

CONCLUSION

From the analysis of the previous chapters we may now draw some conclusions. There has emerged from The Federalist Papers two broad systems of expressions. These two systems are informal in character; they are not strict logical systems. The rules which govern the linguistic uses within these systems cannot be reduced to one complete set of rules which govern all linguistic uses in all circumstances. Linguistic uses are always tied to circumstances. Our comments on these two systems are deceptive because we shall exhibit greater coherence than is immediately apparent in the text. But for the sake of general conclusions let us proceed.

The first system of expression describes, explains, and condemns extremes of behavior. Actors are described as "violent," "bitter," "inflamed," etc. Their actions are "momentary," "impulsive," "passionate," etc. Citizens, factions and States, when aroused, pursue their narrow ends by the most extreme means. They act impulsively to achieve their immediate objective. They do not deliberate or reflect on their actions; they do not exhibit restraint. They lack a sense of propriety and prudence.

Thus, when the Federalists discuss the dangers of a democracy where all citizens assemble, legislate, and administer their own affairs, they warn of the increased possibility of citizens uniting quicky and easily into a faction to legislate for their immediate ends without regard for the broader interests of the society. The broader interests are the concern only of men who can deliberate, reflect, and learn from experience. Democracy facilitates the uniting of citizens into factions whose actions are quick and extreme. Further, citizens in a democracy or a confederacy may be united by the passionate appeal of some factious leader. By the vicious arts of certain prominent men, citizens are inflamed to impulsively pursue the narrow ends of these factious leaders. Citizens are actuated by "temporary and partial considerations" (10, 16). They act in extreme ways.

Small societies are dangerous because they facilitate the formation of factious majorities. While there are fewer factions in small societies, the chances of one faction becoming a majority to legislate for its own narrow goals, is greatly increased. But it is the strength of the passion which is primarily responsible for the extreme actions. Factions do not act with moderation; they act quickly and violently for their narrow ends.

The consequence of such violent and passionate acts is the undermining of the society's stability. For this reason, the Federalists fear that a factious majority or

minority will be "adverse to the rights of other citizens, or the permanent and aggregate interests of the community" (10, 2). Such inflamed pursuit of a narrow goal means that all broader questions are disregarded. All rules of propriety and prudence are ignored as factions seek to gain their advantage. Such extreme behavior ultimately destroys the stability of a society. Those who are oppresed by a factious majority will rebel. Society, in the Federalists' view, degenerates into anarchy and tyranny in the extremes of factious behavior. Both a factious majority and a factious minority are dangerous to society because of their violent and impulsive behavior. A majority is not by itself virtuous. A factious majority, like a factious minority, is dangerous to the stability of society. Both are equally to be condemned.

The extremes of factions cannot be the basis of any stable political order. Passion and interest inflame men and actuate them into immoderate behavior. Citizens so aroused engage in improprieties and in imprudent behavior. Men must be more conscious in their behavior; they must be more moderate and deliberative; they must be less impulsive and passionate. This concern for moderation and calculation brings us to our second system of expressions.

Throughout The Federalist Papers, there is a use of "moderation" and there are a number of words which are woven into this broad language-game. For the Federalists, citizens who are described as "moderate" can also be described as

"calm," "sedate," "deliberative," "experienced," "diffuse," etc. In any stable society, the endeavor is to enhance the chances of such characteristics. Only men who act in such a manner can reach an agreement which will be viable and enduring. Only men who can be described in these terms can look to the broader interests of society.

Men who unite on the basis of passion or interest will be extreme in their behavior; they cannot be judicious and care for the broader interests of society. They use government for their narrow ends and government becomes the tool of private interests. However, those with diffuse characteristics and greater learning from experience will be more calculating in their behavior. They will not be so rash in their actions. They will be more proper and prudent in their behavior. These citizens will learn from past failures and see in the rules of propriety and prudence the guides for behavior. They will see the value of calculation and reason for a stable government.

The size of the Union enhances the chances for rational calculation because of the diversity of interests within the States. Factious interests check each other. Also, the increased size of the Union will make it more difficult for those who, united by a common passion or interest, seek to unite and enact laws to their own advantage. The distance and diversity of the Union will allow men to be more circumspect in their behavior. They will have a chance to remember the

teachings of past experience and the rules of propriety and prudence which are embedded in their language-games.

Likewise, the structure the new federal government with its three branches of government will check passionate or interested acts of one branch. The aim of this structure of government is to limit the possibility of a factious majority impulsively legislating for its limited advantage. The Federalists believe that if men have time to calculate they will arrive at a variety of opinions. They can then begin the task of arriving at an agreement on a broader perspective than one passionate interest. The Federalists further believe that the deliberate sense of the community is the basis of any stable government. It is because citizens can reason and have a sense of what is proper and prudent that there is the possibility of stability for the new federal government.

We may conclude this summary by emphasizing the importance of the language-game of "moderation" for any understanding of the structure of the new federal government. Also, from the perspective of this language-game, we can better understand the strength of the Federalists' condemnation of both factious minorities and factious majorities. Because it is within this language of moderation that there is such a strong concern for the broader interests of the society. Any adequate interpretation of The Federalist Papers cannot ignore this pervasive language of moderation.

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