

New Model Federalist No. 3 – On Representative Government

That democracy ought to be more direct the nearer that government is to the people – That it ought to be more by representation the farther that government is from the people – That States and local entities ought to have some representation as a body politic in higher levels of government – That the practice of legislation by referendum ought to be curtailed – That outside financing ought to be restricted in state and local elections – That a well-functioning federal system weakens special interests – That electoral districts ought to be drawn in accordance with community boundaries – That the 17th Amendment ought to be modified – That citizens ought to place trust in representatives – That representatives ought to lead

A Republic, by which I mean a Government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure Democracy, and we shall comprehend both the nature of the cure, and the efficacy which it must derive from the Union. —James Madison, Federalist No. 10, November 22nd, 1787.

In our previous essay, we argued that the United States ought to restore its federal character by returning to the several States their due part of sovereignty. This task cannot be done without also reinforcing the system of representation that supports such a wide and diverse Union. The framers of this country’s Constitution intended that it be governed as a Republic; not, in most instances, by the people directly, but through the representatives of each State or district, who are accountable to the people through periodic elections. They did so because history had taught them, through examples ancient and modern, that if a country so vast as these United States of America were to be governed as a direct democracy, it would, through the deceptions of ambitious swindlers, descend first into a tyranny of the majority and from there inevitably into a tyranny of one.¹ Indeed today, when technology has made it possible for polls to be taken at a moment’s notice, and when cable news and the internet have made every citizen consider him- or herself an able judge of national questions, direct democracy has returned to our Republic in grotesque form.²⁻³ It is no coincidence that with it have returned demagogues and would-be tyrants, who embrace ‘illiberal democracy’ to enrich themselves and feed their lust for power. To counter this destructive drift, our Republic must adopt reforms which shall restore to its elected representatives the responsibility and will to lead, and which shall likewise restore to the people the confidence in their representatives that makes republican government possible.

There are two principles that relate to the necessity and structure of representative government. The first involves the ability of the people directly to make wise decisions at the various levels of government. Some urbane citizens, arrogant and aloof, denounce the common

¹ “Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption or by other means, first obtain the suffrages, and then betray the interests of the people.” Madison, *Federalist No. 10*.

² Opinion polls, if premature and hasty, turn democracy into a hall of mirrors. Mice are made into giants, for an aura of victory envelops those who lead early, though the poll is taken from a small sample of voters not yet familiar with any candidate; likewise are giants reduced to mice. Endless polls also sap representatives’ will to use their judgment, for which the people elected them. They follow the polls, chasing an illusion of the people’s wishes; but the people often are not yet decided. The people meant to elect a leader; instead they install an aimless and inconstant follower.

³ The 24-hour news and social media have reduced the world’s intricacies to sound-bites, which lull the people into false understanding; they also nationalize every local issue, eroding the federal system by leading citizens to believe that something that has happened in New York must also affect them in Texas, when often this is not the case.

man and woman as stupid or degenerate. That conclusion is wrong, and leads only towards the establishment of aristocracy and the loss of freedom for all. The proportion of men and women who are stupid or degenerate is small; the common man is neither a fool nor depraved; he has in him basic human decency and is not deceived in things with which he is familiar.⁴ Most people, both rich and poor, are, however, narrow-minded: our understanding and desires are limited by our personal experience, which cannot encompass everything. Most people tend also to be short-sighted, desiring that which offers us immediate advantage and neglecting that which would benefit us in the future. But those detriments are different from stupidity or degeneracy, and understanding them allows us to structure an effective scheme of representative government.⁵

Because most men and women understand very well those matters that surround them and affect their daily lives, democracy ought to be the most direct at the local level. This is doubly so because of the small number of citizens that makes up a community: it is easier to reach compromise and consensus with your neighbors, whose circumstances you know and understand, than it is with an anonymous multitude. Therefore, decisions reached by a majority in local votes are less likely to be unbearable to those who dissented. As the people themselves can thus be expected to make wiser and more accommodating decisions at the local level of government, municipal constitutions should allow a maximum of direct democratic participation.

At the state level, the matters at hand are often a step removed from daily life, and their consequences are less immediate; state governments thus require wider knowledge and greater foresight. We must therefore revisit the human shortcomings discussed above. Whereas there is no remedy for stupidity or depravity, education can remedy narrow-mindedness and short-sightedness by informing its recipient of possibilities outside his or her personal experience.⁶ A state is thus governed better when the people choose learned citizens from amongst themselves to govern it, then hold those legislators and officers accountable through periodic elections. It follows that federal lawmaking and administration, which demand thorough understanding of the arts and sciences of economics, diplomacy, and war, ought to be done primarily by the most experienced and knowledgeable of citizens, so long as they win the people's confidence through election.⁷ As such, while direct democracy is appropriate at the local level, governance ought to be done increasingly by representation at the state and federal levels to diminish the probability of unwise choices caused by the most natural, widespread, and correctable of human limitations.

We do not say, however, that education makes a particular citizen superior to his fellow countrymen, for not every citizen needs an extensive education to make an honorable living. Furthermore, human vices such as greed or jealousy cannot be corrected by education, and thus ought to be considered a constant, affecting in equal proportions both the common man and the

⁴ "However deceived in generalities, men are not deceived in particulars." Niccolo Machiavelli, *Discourses on Titus Livy*, Bk. 1, Ch. 47.

⁵ As goes the saying famously attributed to Abraham Lincoln: "You can fool all of the people some of the time and some of the people all of the time, but you cannot fool all of the people all of the time."

⁶ "If we take into account the momentary humors or dispositions which may happen to prevail in particular parts of the society, and to which a wise administration will never be inattentive, is the man whose situation leads to extensive inquiry and information less likely to be a competent judge of their nature, extent and foundation than one whose observation does not travel beyond the circle of his neighbors and acquaintances?" Hamilton, *Federalist* 35.

⁷ "But to form a free government; that is, to temper together those opposite elements of liberty and restraint in one consistent work, requires much thought, deep reflection, a sagacious, powerful, and combining mind." Edmund Burke, *Reflections on the Revolution in France*.

highest magistrates. And we shall also note that an education can be self-obtained; it need not be accompanied by a lofty university degree, nor indeed any degree at all. Education is simply the broadening of understanding beyond personal experience through the acquisition of knowledge; and the citizen who possesses an education, however he or she achieved it, can render effective service in the administration of their State and the Republic, if held to account through elections. The history of our Republic attests to this truth: neither George Washington nor Harry Truman was college-educated, but each took the time to teach himself; each proved a capable President.

The second principle applying to representative government is that it is necessary for communities and States to be represented as political bodies in higher levels of government in order to govern themselves effectively and independently. The Constitution of the United States is federal in structure, in that its authority is drawn from both the several States and the whole of the people of the United States.⁸ States are represented in the Senate, the people are represented in the House of Representatives, and through the Electoral College both the States and the people are represented in the election of Presidents.⁹ That the interests of each State are represented in Congress is necessary to the well-being of the Union, because otherwise the federal government would be moved only by national majorities of citizens, and thus driven to ignore the distinctions between States when crafting laws and policies. Such neglect would undermine the ability of the several States to govern themselves using the powers reserved to them by the Constitution. If the people wish to manage the affairs of their own State, thereby shielding themselves from the tyranny of the national majority, they must allow some of their representation at the federal level to flow through their State, rather than from them directly. The same principle applies to representation of counties and cities in state governments and of districts in city governments.

We have established, then, that these United States are meant to be governed as a Republic, not a direct democracy; that the exercise of democracy ought to be the most direct at local levels of government and the most indirect at the federal level; that the several States, though their duly elected governments, ought themselves to be represented in some manner in the federal government; and that the same principle ought to apply to the representation of municipalities in state governments. From these conclusions follow several proposals.

First, the practice of legislating through referendum, abused of late by state governments, ought to be curtailed.¹⁰ Using popular referendums to pass laws does not make government more enlightened, but merely confuses it. The practice undermines state legislatures, which under the constitutions of every State are the bodies empowered to propose, debate, and pass laws. If the legislature forfeits its legislative function to the people, then why does it exist in the first place?

⁸ A confederate government draws its authority only from the governments of its various parts, and a centralized government only directly from the whole body of the people.

⁹ “The House of Representatives will derive its powers from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in the Legislature of a particular State. So far the Government is national, not federal. The Senate on the other hand will derive its powers from the States, as political and co-equal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is federal, not national. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them, are in a compound ratio, which considers them partly as distinct and co-equal societies; partly as unequal members of the same society. ...From this aspect of the Government, it appears to be of a mixed character presenting at least as many federal as national features.” James Madison, *Federalist No. 39*.

¹⁰ California being a notorious example, but this addiction surfaces in states as different as Maryland and Oklahoma.

It exists for the reason discussed above, that the people as a whole are focused on their daily lives and have little time or inclination to ponder the future of their State; therefore, they delegate legislative authority to individuals of their choosing, who may devote their full knowledge and attention to that task. Thus, on balance, laws passed by elected legislators at the state level will be wiser and more effective than laws passed directly by the people. Nor can it be pretended that state legislatures lack democratic legitimacy or proper accountability: a popular referendum is built into them, at set intervals, through the election of their members. When those representatives, through laziness or timidity, cede their lawmaking function back to the people, they discard the system of governing that the people themselves have established for their own benefit. This to us smells of negligence.

That is not to say that there are never extraordinary situations in which a question of great import ought rightly to be put before the people; but those situations ought to be extraordinary, not routine. When such matters arise, they might often be better addressed by use of conventions, rather than referendums. In that method, the broad question is presented to the people, and they elect a special convention of delegates, independent of the legislature, to debate the matter and decide upon a resolution. Such a method, as was used to ratify the Constitution of the United States, allows the people to weigh in upon the issue at hand – as the citizens whom they would choose as their convention delegates would need, in order to be elected, to make their mind on the particular question known – while avoiding the shortfall of direct democracy at higher levels of government, namely that the people may be called upon to decide the details of an issue with which they are not familiar.¹¹

Second, the use of funds from outside of a State ought to be restricted in the elections of that State, and the same principle should apply also to local elections. That money is useful and influential in an election campaign is well known to all of us citizens of the United States in the present era; so with what justice should a candidate for office in Montana gain an advantage through funds drawn from Virginia? This practice infringes upon the sovereignty of the State and on the right of the people in that State to determine their own affairs; it has the effect of subordinating one State to another, or of unconstitutionally subordinating the State to the federal whole. The role of private finance in election contests generally is a broader question, open to reasonable debate; the use of outside funds to intervene in state and local elections is hardly defensible and ought to be curtailed.

A note is appropriate here on the subject of lobbying and special interests, which popular consensus holds, with some basis, to be both rampant and corrosive to representative government in our Republic.¹² A properly functioning federal system, however, works naturally against the ability of wealthy interests to unduly influence elected representatives. In one aspect, it disperses and dilutes the efforts of those who would influence with money the workings of government. When more decisions are reserved to state and local governments, special interests must, with the same amount of resources, attempt to target many more officials and representatives. Rather than win the ear of one hundred U.S. Senators, they must instead attempt to woo several hundred state senators; rather than whisper in the ear of one President, they must try to reach fifty governors. Thus, if corruption enters into one part of the Union, the others may remain sound.

¹¹ Referendums are more appropriate at lower levels of government: of some use for a city, more for a town, and much for a neighborhood, as the people are familiar with the issue being decided and the effects of their decision.

¹² Though, since it is the nature of such things to lurk unseen, to precisely measure lobbying's effect is impossible.

Also, it is in the conduct of election campaigns that politicians become most susceptible to moneyed influence; this is because national campaigns have become excessively expensive on account of the need to reach two hundred million eligible voters. State and local campaigns need to reach fewer citizens; they therefore require less money; and candidates are more able to raise a smaller sum from ordinary citizens, and so rely less on large donations from interested parties. Moreover, local representatives are closer to the people; they are thus more easily scrutinized by the citizens they represent, and so corruption may be more easily discovered and exposed.

Third, electoral districts for the U.S. House of Representatives ought to be drawn contiguously and in accordance with existing administrative lines. This is to say that, as far as possible, county and city boundaries ought to be used as the boundaries for electoral districts, and adjacent counties and cities ought to be grouped together when proportionality in population requires them to be combined into districts. Partisan gerrymandering is as old as our Republic, yet modern technology has enabled it to become obscene. The distortions it causes, by relegating all meaningful electoral competition to party primaries, are well known and discussed. We base our argument on a federalist foundation: the fragmentation of electoral districts to suit partisan ends denies actual communities any true representation in their highest level of government. Just as it benefits the Republic that the States are represented in the Senate, so is it healthy that counties and cities find some measure of representation in the House. Members of Congress who are charged through their election with acting on behalf of a real community, which has distinct interests based upon common needs of life and not upon ideology alone, shall be imbued with a feeling of duty to that community, rather than solely to their national party.

Finally, the 17th Amendment to the United States Constitution ought itself to be amended. That amendment, which transferred election of Senators from the state legislatures to the people directly, has undermined the constitutional purpose of the Senate to represent the several States. The federal system, as discussed above, was designed deliberately to draw legitimacy from both the people and the States; hence why all States are represented equally in the Senate, but are represented proportionally, by population, in the House. That the election of Senators by state governments was useful for the representation of state interests was hardly debated before the Constitution's ratification: our Founders were confident that the legislatures of each State would be more focused upon the long-term needs of the State and the intricacies of the issues facing it, than would the general citizenry.¹³

The Founders' method of electing Senators also served the second purpose of the Senate: to enable consistency and far-sightedness in its functions by insulating it from the ever-changing currents of public opinion.¹⁴ But the 17th Amendment, which was intended to serve this aim by

¹³ "It is equally unnecessary to dilate on the appointment of senators by the state legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the state governments such an agency in the formation of the federal government, as must secure the authority of the former; and may form a convenient link between the two systems." Madison, *Federalist No. 62*.

¹⁴ "...there are particular moments in public affairs, when the people stimulated by some irregular passion... may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice and truth, can regain their authority over the public mind?" Madison, *Federalist No. 62*.

shielding Senators from the self-interest of state politicians, has in recent years instead placed their nomination into the unsteady hands of party primaries, which often present the people with only extremists to choose from. Nor can the length of a Senator's term alone permit him or her to chart a steady course if, every few years at the end of it, he or she is reduced to thoughtless and inconsistent pandering to obtain a nomination for re-election.¹⁵ In this way, the 17th Amendment has reduced the Senate to a mere copy of the House of Representatives, which was established by the Founders to represent the people directly, with all of their momentary passions.¹⁶

Yet to repeal the 17th Amendment would be to move too far in correction of the problem that exists. The argument for that amendment's adoption had some sound logic to it. The election of a Senator, who serves for six years and may not be recalled,¹⁷ is a significant commitment; as the Senator will continue to represent the State even if the composition of the state government changes during that term, it is appropriate that he or she receives some mandate from the people.

We thus propose that the 17th Amendment be modified to provide for the nomination of candidates for the U.S. Senate by vote of party caucuses within each state legislature, and for the Senator to be elected from among those candidates by the people of that State. For instance, all the Democratic state legislators shall convene to choose the Democratic nominee; Republican legislators shall likewise nominate the Republican candidate; and in the same manner shall other parties represented in the state legislature select their candidates;¹⁸ those candidates shall then go to the people for a general election. This method returns to the state governments some hand in the election of Senators, thereby reinvigorating the federal system, while leaving to the people the final say, so to ensure that the Senator's mandate shall extend through his or her full term.

The success of these proposals, and of a republic generally, requires that the people place some trust in their elected representatives, and that they expect them to think, decide, and lead, rather than merely follow the polls.¹⁹ It is common to hear complaints today that representatives are corruptly beholden to some special interest, but this charge can be thrown back to the citizen. Representatives are, in the final reckoning, beholden only to the people: perhaps the sole salutary effect of the election of 2016 is that it demonstrated vividly to many who had grown cynical that their vote is counted; that it is not, in fact, 'rigged.' If, citizen, you desire honest government, then vote for honest men and women to be your representatives; and if you voted for one who seemed honest, but became corrupt, then throw him out at the next election and replace him with one better. Use your vote, too, to make the prestige of office a reward for distinguished service to town, State, or Union; make election the culmination of duty, not a step in a career that puts talk

¹⁵ "But when the leaders choose to make themselves bidders at an auction of popularity, their talents, in the construction of the state, will be of no service. They will become flatterers instead of legislators; the instruments, not the guides of the people." Edmund Burke, *Reflections on the Revolution in France*

¹⁶ "The federal constitution made the two chambers come from the votes of the people as well; but it varied the conditions of eligibility and the mode of election, so that if one of the two branches of the legislature did not represent different interests from the other, as in certain nations, it at least represented a superior wisdom." Alexis de Tocqueville, *Democracy in America*, Vol. 1, Part 1, Ch. 8.

¹⁷ Per judicial precedent, for good reason: the continual recall of Senators would severely disrupt federal legislation.

¹⁸ Unaffiliated legislators could together nominate an independent candidate, or instead vote with one of the parties.

¹⁹ "...the principle of democracy is corrupted not only when the spirit of equality is lost but also when the spirit of extreme equality is taken up and each one wants to be the equal of those chosen to command. So the people, finding intolerable even the power which they entrust to the others, want to do everything themselves: to deliberate for the senate, to execute for the magistrates, and to cast aside all the judges." Montesquieu, *Spirit of the Laws*, Bk. 8, Ch. 2.

above service, nor a birthright, nor a final grab in a life of self-enrichment. We have had enough of that. Let us preserve our Republic; be thankful that we choose our representatives; hold them accountable at elections; and expect them to govern, for that is what we have elected them to do.

—U.S. Citizen