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America's Founding and Limited Government

There is no dearth of studies on the political thought of the American founding era. Yet there is no consensus on what theories, values, or goals were uppermost in the minds of the founding generation. On the contrary, on a number of critical theoretical issues and concerns, there appears to be an inverse relationship between the scholarly attention devoted to this era and what we can affirm with certainty. What we have are competing “paradigms” and schools of thought, each with different approaches, perspectives, and assumptions. And while it is clear that the Framers believed in limited government as essential to prevent oppression and tyranny, these paradigms point to significant differences among them over what these limitations should be, how they should be enforced, and how they might be maintained.

We can begin our survey with a brief examination of the most prominent of the early and adversely critical accounts of the Founders and their motivations: that of the Progressives. It is best to start here, because limited government was one of their central themes: they were against it. In significant ways, as we will endeavor to show, the progressives also provide the background necessary for understanding the modern paradigms, as well as for the differences between them. Finally, by way of assessing where we are today, we turn to modern

conservative thought to see in what ways, if any, our political and social evolution over the decades has “unleashed” government, posing threats to limited government that could not be anticipated by our forebears.

The Old Progressive History

In the early years of the twentieth century, the most comprehensive work highly critical of the Constitution and the Framers was James Allen Smith's *The Spirit of American Government*.¹ This work is notable primarily for advancing the thesis that the Constitution was both undemocratic and a repudiation of the principles proclaimed in the Declaration of Independence, a charge that lives on, largely in academic circles.² Charles A. Beard's immensely influential work, *An Economic Interpretation of the Constitution of the United States*, appeared shortly after Smith's book and seemingly provided “hard” empirical evidence to show that the Constitution was the result of concerted efforts by certain economic interests—“money, public securities, manufactures, and trade and shipping”—whose fortunes had suffered under the Articles of Confederation.³ In his conclusions, Beard also emphasized the undemocratic and elit-

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ist foundations of the Constitution. The Smith/Beard theses, taken together, lead to the view that our constitutional system from its conception to its procedures and institutions—e.g., equal representation of the states, indirect election of Senators, bicameralism, judicial review—is anti-majoritarian, designed to protect the rich from the leveling masses. This, we can say, is an early understanding of the Framers' commitment to limited government and one that is still very prevalent.

Vernon L. Parrington later expanded upon aspects of these works by presenting a theoretically "deeper" and more comprehensive picture of the founding era.⁴ With Beard, he understood economic factors as playing a decisive role for the Framers, and like both Beard and Smith, he pictured the founding period in terms of good versus evil: "English Liberalism" versus Rousseau's formulation of the "French Romantic" philosophy. In Parrington's account, this English Liberalism—which was, in the main, championed by Hamilton—built upon the doctrines of Harrington, Locke, and Adam Smith, and embraced the proposition of "the social, political, and economic sufficiency of *laissez faire*"⁵; it purportedly held that "a social Utopia" would be realized "if only economic forces were given free play."⁶ By Parrington's lights, then, the Framers' conception of limited government closely resembled the modern libertarian's "night-watchman" state, wherein the role of government, aside from providing for defense and internal order, is largely confined to umpiring disputes between competing economic interests. Parrington goes so far as to contend in this regard that, "The revolutionary conception of equalitarianism, that asserted the rights of man apart from property and superior to property, did not enter into their [the Framers] thinking as a workable hypothesis."⁷

Parrington's characterization of the

French Romantic philosophy—the main elements of which were embraced by Jefferson—deserves special attention because it bears a close relationship to the more recent interpretations of our founding experience. As Parrington would have it, this philosophy is based on a "passionate social idealism" that envisions "a juster, more wholesome social order" wherein reason, not interest, will be the foundation of "social institutions." Its ultimate ends, he held, are "universal liberty, equality, and fraternity." In contrasting the English and French schools of thought, Parrington was willing to grant that both embrace a "profound individualism"—but the French individualism was "humanitarian," connected with "reason and social justice," whereas the English was "self-seeking, founded on the right of exploitation, and looking toward capitalism."⁸

Any survey of the thought of the founding period and its impact on the role of government today must also consider Herbert Croly, who may be regarded as the theoretical father of the Progressive movement, and his major work, *The Promise of American Life*, published in 1909,⁹ almost two decades before Parrington's *Main Currents*. On important particulars, Croly and Parrington see eye to eye. They both deplore the acquisitive individualism which they take to be Hamilton's legacy, and Croly's vision of the "national promise" closely parallels the aspirations of Parrington's French Romantic school. But Croly's sense of the divisions surrounding the Constitution differed from Parrington's. Croly believed that the Federalists and Anti-Federalists were both "individualistic in spirit," that both wanted a government that would secure for them the "freedom of action" to improve "their own condition in this world." The Federalists, "chiefly people of wealth and education," wanted a "government adequate to protect

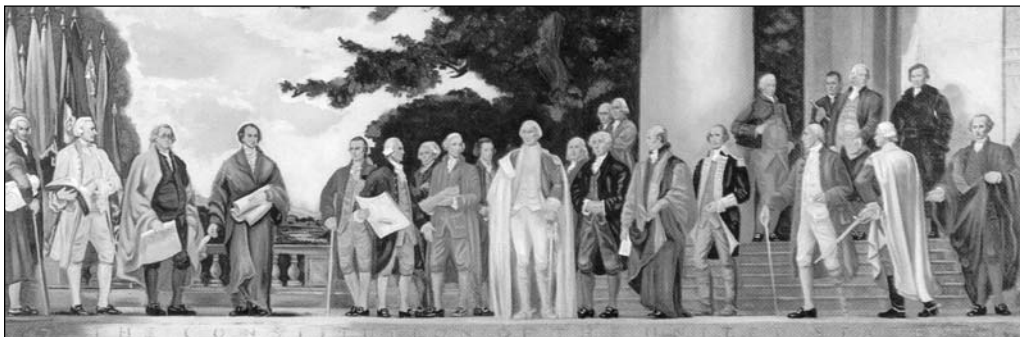
existing propertied rights,” whereas the Anti-Federalists “insisted...upon being let alone than in being protected.”¹⁰ For this reason, Croly maintains, the Federalists were more distrustful of democracy, a distrust reflected in the Constitution’s “system of checks and balances.”¹¹ The critical difference between Croly and Parrington, however, is that Croly regarded an active, centralized government as indispensable for the realization of his vision of the “national promise,” whereas Parrington (as well as Smith), consonant with Jeffersonian thought, believed that genuine republican government required political decentralization. Croly, for his part, was highly critical of Jefferson for not realizing that the achievement of his democratic ideals could only come about through a strong and active central government. It is commonly said, and justifiably so, that Croly advocated Jeffersonian ends through Hamiltonian means.

Locke Alone

In many ways Louis Hartz synthesized the major themes of these “Progressive” critics in his *The Liberal Tradition in America*, published in 1955.¹² Hartz advanced the thesis that, with a few exceptions, the American political tradition, at least from the Declaration of Independence forward, can best be understood by reference to John Locke’s liberalism or variants thereof. “Locke dominates American political

thought,” he argued, “as no thinker anywhere dominates the political thought of a nation.”¹³ Locke is, he continued, “a massive national cliché.” How did this come about? Not, in his view, through any deliberative process, but rather from conditions and circumstances peculiar to America, the most important being its lack of a feudal tradition that freed it from the legacy of a rigid social structure and rendered it “sufficiently fluid to give a touch of meaning to the individualistic norms of Locke.” Beyond this, the American experience and environment provided “letter-perfect replicas of the images” that Locke employed: the frontier could be viewed as a “veritable state of nature,” the Mayflower Compact was a “veritable social contract,” and the “new communities springing up *in vacuis locis* [were] clear evidence that men were using the Lockian right of emigration.”¹⁴

Hartz shared the Progressives’ less-than-idyllic view of American society as highly individualistic, acquisitive, and dominated by the spirit of capitalism. At the same time, he rejected their scenarios as to how this state of affairs had come about. In his view, the competing ideologies of the founding period—those, for instance, central to Parrington’s analysis—could be accommodated within the Lockean framework. At a more general level, he rejected Progressive interpretations that emphasized “economic” or “class” factors as sources of conflict, largely because these approaches were foreign to the American context and inca-



pable of providing a satisfactory understanding of the origins and nature of the “democratic capitalism” that eventually emerged. He even argued at various points that the early Progressives were unaware of the extent to which they had fallen under Locke’s spell: e.g., as when they sought to break up trusts so that the “Lockian race” could begin “all over again.”¹⁵ Indeed, for Hartz, the pervasiveness of Lockeanism raised legitimate concerns about an unhealthy and even dangerous social conformity.

Finally, Hartz acknowledged that a problem of majority rule and minority rights naturally arises “within the philosophy of Locke once his major premises have been granted.” He also acknowledged that this has been “the classic problem of American thought.” But he was quick to point out that “it has rarely occurred to American thinkers that precisely for that reason there has been a classic solution to it: namely, that when a nation is united on the liberal way of life the majority will have no interest in destroying it for the minority.” Consequently, from Hartz’s perspective, it is not constitutional safeguards that guarantee minority rights in the context of our liberal society, but the prior consensus that exists on Lockean premises. Nevertheless, even though majorities in America are among the “tamest, mildest and most unimaginative in modern political history,” resembling an “amiable shepherd dog,” liberalism still gives “rise to a vast neurotic fear of what the majority might do.” In short, Hartz believed that the constitutional “restrictions” upon governmental powers “betray fanatical terror,” rather than respond to a genuine need for safeguards of liberty. He immediately added, however, that these restrictions “have not been forced upon” the American people. Contrary to what “Progressive historians often imply,” Hartz maintained that they constitute a “voluntary servitude.”¹⁶

Paradigms Lost and Regained

Hartz’s work fleshed out a “liberal paradigm” that sought a comprehensive understanding of the American founding in the context of Locke’s teachings, the most fundamental of which Hartz believed was “an assumption” of “the reality of atomistic social freedom.”¹⁷ His analysis, this is to say, is not only consonant with, but casts a new and interesting light on, the thrust and major themes of the earlier critical analyses of the founding period. Whatever academic consensus had formed around his paradigm, however, was directly challenged and seriously shaken in the ensuing decades with the emergence of a “civic republican paradigm.”¹⁸ As one of its chief proponents, Robert E. Shalhope, has put it, by the 1960s “a sophisticated understanding of eighteenth century republicanism... emerged in American historiography.” This new understanding went well beyond republicanism understood simply as self-government to embrace “a dynamic set of ideas that assumed a vital, shaping role within early American society.” In fact, republican historians asserted that these ideas predominated in “colonial America” and beyond, constituting the authentic founding consensus in light of which our institutions and history must be interpreted.¹⁹

While there are notable differences among those who have advanced a republican understanding of the founding period—far too numerous and intricate to deal with here—Shalhope identifies the position’s unifying and basic themes. Perhaps the most important, and one that stands in sharp contrast to Lockean liberalism, was republicanism’s emphasis on the deliberate and voluntary pursuit of the common good. That is, the view that “the public welfare was the exclusive end of good government and demanded a constant sacrifice of individual interests to the greater

needs of the whole." Connected with this, in Shallhope's analysis, were other intertwined beliefs. The character of a republic, whether it would flourish or wither, depended on the virtue of its citizenry. Consequently, the cultivation and maintenance of virtue was deemed of utmost importance, constituting an "essential prerequisite for good government." More concretely, the republican theory held that the prospects for both a good society and a good government were greatest in a society marked by a high degree of "frugality, industry, temperance, and simplicity." Conversely, republican beliefs held that "luxury" and "easily acquired wealth" undermine the moral fabric of society. Obviously, such understandings of virtue and vice do not keep house with liberalism, centered as it is on the pursuit of individual economic interests, with the "public good" or "commonweal" arrived at only as an indirect outcome of fundamentally private, self-interested actions.

With its emphasis on self-sacrifice for the common good and its de-emphasis individual acquisitiveness, republicanism bears a cousinly resemblance to Croly's vision of the "national promise" and the goals of Parrington's French Romantics. What the modern republican school asserts, however, contrary to what Croly and Parrington believed, is that these values actually predominated during the founding era—though not necessarily at the time when the Constitution was drafted and ratified.²⁰ In any event, this republicanism envisioned an active and "positive" government pursuing economic, political, and social policies that would protect and even advance ways of life and attitudes conducive to civic virtue. And in this view, it is the republican virtues, once they become part of the social landscape, that are themselves sufficient protection against majority oppression.

Both the liberal and republican paradigms have in turn been challenged, largely on the ground that they deny, ignore, or tend to downplay the impact of religious thought and practice on the founding generation. Barry Alan Shain, who has taken dead aim at these paradigms from this perspective, contends that "Americans in the Revolutionary era embraced a theory of the good that is best described as reformed-Protestant and communal."²¹ The individualism of liberalism, or of the Hartzian formulation, was simply not part of the political or social culture of this era. But nor were early Americans simply republican citizens on the ancient Greek model, exclusively devoted to public life. Instead, Americans of the founding period were profoundly shaped by "intermediate social institutions"—"the family, the neighborhood, a religious congregation, fraternal organizations, and locally controlled schools and governments"—"guided by an underlying moral, usually religious, conception of a good human life." In this communal context, not only was there "lack of concern about the rights of individuals or minorities," there was also "a commitment to a particular moral vision," namely, "reformed-Protestant norms."²² The republican school, in ignoring the "commitment" to this "moral vision," provides an incomplete and flawed understanding of the sources of, and impulses to, the public good that actually characterized early Americans.

Another important aspect of Shain's analysis is that "localism" was an integral part of the communalism of the early Americans, i.e., freedom of the smaller local communities from control by a superintending or centralized authority. This localism, he writes, was particularly essential for reformed-Protestant communities of the founding era since they had "to remain free to effect moral discipline and thus aid

the individual in honoring God and living a godly life.”²³ For these communities, then, policies curtailing their self-government or depriving them of their *corporate* liberty through governmental centralization constituted oppression. This localism, Shain notes, though eventually shorn of its reformed-Protestant orientation, persisted as a major “force” in American politics well into the twentieth century.

A Dead End?

This survey of competing paradigms, it needs hardly be said, is far from exhaustive. Nevertheless, we have set forth enough to see that one of the most fundamental points of difference between the historical schools revolves around the question of whether our constitutional system is “anchored,” so to speak, on virtue (whether classical or Protestant Christian) or on self-interest. The answer to this question is crucial for any understanding of the Framers’ approach to the problem of limited government. If, that is, the republican or reformed-Protestant understanding prevailed, then the Framers necessarily had to believe that the maintenance and cultivation of virtue in the citizenry is vital to secure a “limited government.” On the other hand, if the “liberal” understanding predominated, then limited government for Americans involves “liberating” various forms of self-interest, primarily economic, while maintaining the institutional prerequisites necessary for orderly competition, thus converting “private vice” into “public virtue.”

The Federalist would certainly seem to be the place to go for an answer to questions of this sort. But that classic text turns out to be ambiguous. For example, Publius’ solution to the problem of maintaining the separation of powers, necessary to prevent “tyranny,” relies upon interest counteract-

ing interest.²⁴ The teaching of *Federalist* no. 10 would also seem consonant with the liberal paradigm: “the most common and durable source of factions, has been the various and unequal distribution of property”; “The regulation of these various and interfering interests [e.g., “manufacturing,” “mercantile,” “monied”] forms the principal task of modern legislation”; “the first object of government” is to protect “the faculties of men, from which the rights of property originate”; and “neither moral nor religious motives can be relied on” to stay the hand of majorities bent on oppressing minorities.²⁵ But in *Federalist* 10 and elsewhere we also find elements of republicanism: a recognition of a common good, above and apart from the competing interests; the view that in the extended republic envisioned by the Constitution the representatives will be “fit” characters, “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 concerns”;²⁶ the argument that delay and deliberation can serve to restore “reason, justice, and truth” to the “public mind”²⁷; and, *inter alia*, the recognition that republican government requires a higher degree of the “admirable qualities of human nature.”²⁸

Even this cursory examination of Publius’ thought suggests the improbability of any of the foregoing paradigms exactly mirroring the thoughts and motivations of the founding generation, if for no other reason than that the political assumptions, moods, and opinions during this eventful era were necessarily adjusting to constantly changing cultural conditions. Moreover, focusing on these overarching paradigms has the effect of diverting our attention from other, subtler means employed by the Framers to provide for limited government. In *The Federalist*, for instance, Publius perceives a reciprocal rela-

tionship between institutions established by the Constitution and the behavior of people that could serve to give majorities second thoughts. To be sure, at various points in the essays, Publius indicates a keen awareness of what can be termed the extra-constitutional "power" of majorities and, as we see from *Federalist* 10, he is not sanguine about the prospects of curbing them once they come to self-awareness. In *Federalist* 58, he argues that the Senate could never block reapportionment of seats in the House because to do so would be counter to the "known and determined sense of a majority" supported by "right," "reason," and "the Constitution."²⁹ In *Federalist* 63, he goes further and advances the proposition that even without the consciousness of right and reason, the branch with the people on its side will ultimately prevail, regardless of the constitutional prerogatives possessed by the other branches—a proposition he supports by recounting the relevant history of Sparta, Rome, Carthage, and England.

In light of all this, then, how can institutions block majorities that are backing unjust or oppressive measures? One answer that Publius provides at the conclusion of 63 comes down to the public's veneration of and confidence in institutions, a veneration that is acquired over time by "a display of enlightened policy, and attachment to the public good."³⁰ This, of course, requires stability and a veneration of the Constitution itself, the realization of which would seem to be a basic reason why Publius is adamant that controversies relating to the Constitution's separation of powers not be injected into the political arena by allowing for their resolution through periodic or occasional appeals to the people. Not only would this serve to degrade the stature of the institutions, every appeal "would carry the implication of some defect" and "frequent appeals would...deprive the govern-

ment of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability."³¹

Publius, we may say, could readily envision circumstances in which, say, the Senate's opposition to a factious measure backed by a popular majority would cause that majority to pause and deliberate and even back off from its position precisely because the Senate is a venerated institution whose judgment cannot be lightly dismissed. Likewise, to the extent that presidents cultivated confidence, they could also use their constitutional powers to stay the hand of factious majorities, with fear of political recriminations.

Publius can be read to offer still another approach to limited government that is not entirely unrelated to institutions. While the Anti-Federalists spoke with many tongues, the more prominent among these opponents of the federal Constitution were concerned that the proposed system would be oppressive to local liberties. "Brutus" sets forth a major reason for this contention: namely, that the national government, with its expansive powers, would be able to impose its will upon states and localities contrary to their interests, ways of life, customs, and traditions. The national government, Brutus feared, would strive to impose uniformity in those areas where heterogeneity prevailed in the states and localities. Relying on Montesquieu, Brutus believed republican government required that "the manners, sentiments, and interests of the people should be similar."³² The "extended republic" would either impose such similarity or it would not be a republic. In either case, it would be oppressive. Thus, republican self-government could only really work on the smaller level of the states.

To Brutus's concern there are two answers. First, Publius firmly believed that

the Congress would not act in this fashion, not, at least, in a directly oppressive way, because of the popular resistance that it would encounter. In *Federalist* 46, he speaks to the issue of an “unwarrantable measure of the federal government” and argues cogently that the “disquietude of the people; their repugnance, and perhaps refusal, to cooperate with federal officials” in even one state would be “cause for consternation,” and in a “large state” joined by adjoining “smaller states” “would present obstructions which the federal government would hardly be willing to encounter.”³³ His position is that the national government would forbear from trying to impose its will, not out any sense of justice or right, but for very practical and prudential considerations such as cost and effectiveness, not to mention the potential political fallout. Why would the members of Congress try to ram down the throats of states and localities such policies, knowing that their implementation would be uncertain and costly, with potentially disastrous political consequences?

The second answer is to be found by removing certain sensitive concerns from the national political sphere. The First Amendment provisions relating to the free exercise and establishment of religion, by removing explosive issues involving the rights of conscience from the arena of national politics, are perhaps the best example of this solution. This “strategy” bears a resemblance to Publius’ concern that controversies surrounding the separation of powers remain outside the realm of partisan politics.

This strategy, however, leads us to recognize that while we may identify the means by which the founding generation believed limited government might be secured, our understanding of the full dimensions of what limited government meant to it is far from complete. Certainly, that is, there

were matters other than religion that they wanted to place outside the purview of the national or even the state governments; matters, however, about which no concern was manifest simply because they were not being drawn into the political vortex. Determining what these concerns might be requires greater insight than we currently possess into the distinctions that generation “drew” between society and government.

Yet acquiring such insights is no easy matter. On the contrary, it is exceedingly difficult, because society’s understanding of what the role of government ought to be *vis-a-vis* individuals, the family, private associations, and the like is more often than not “lived,” not articulated. It is an understanding that is derived from a society’s core beliefs or consensual values that are unconsciously accepted as “givens.” Moreover, to complicate matters even more, this understanding may turn out to vary, as seems to be the case at the time of the Founding, depending on the level of government and its perceived proximity to individuals.

We may hypothesize, by way of concluding, that concomitant with the growing centralization of power in our political system, particularly over the last seventy years, have come drastic changes in society’s accepted understanding of the proper roles of government and society. With this development, the dangers to limited government have not only correspondingly increased, they have also taken on forms that our Founders never contemplated. This suggests that, odd as it may seem, to keep faith with the Constitution as originally intended—particularly its concern for limited government—we may be obliged to turn away from the teachings of the founding generation and instead turn to the works of those who have identified and analyzed the full dimensions of the modern state’s

aggrandizement of power: that is, to the great conservative thinkers of the twentieth century, such as Albert Jay Nock, Robert Nisbet, and Bertrand de Jouvenel.

1. James Allen Smith, *The Spirit of American Government* (New York: The Macmillan Company, 1907).

2. Typical is Robert Dahl, who in his widely acclaimed *Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), maintains that the Framers accepted and acted upon a "Madisonian ideology" by erecting "a political system that would guarantee the liberties of certain minorities whose advantages of status, power, and wealth would...probably not be tolerated indefinitely by a constitutionally untrammelled majority. Hence majorities had to be constitutionally inhibited" (31).

3. Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: The Macmillan Company, 1913), 324. Douglass Adair, writing in 1951, wrote: "Judged in terms of its effect on the thought of a whole generation," this work "is certainly the most significant piece of modern scholarship on the Constitution of 1787." "The Tenth Federalist Revisited" in *Fame and the Founding Fathers*, Trevor Colbourn, ed. (New York: W.W. Norton, 1974), 76.

4. Vernon L. Parrington, *Main Currents in American Thought*, 2 vols. (New York: Harcourt, Brace & World, 1927). This work, it is interesting to note, was dedicated to James Allen Smith.

5. Parrington, I, 274-275.

6. Parrington, II, xi.

7. Parrington, I, 286.

8. Parrington, I, 275-276.

9. Herbert Croly, *The Promise of American Life* (New York: The Macmillan Company, 1909).

10. Croly, 32.

11. Croly, 33.

12. Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace and World, 1955).

13. Hartz, 140.

14. Hartz, 60-61.

15. Hartz, 223.

16. Hartz, 129.

17. Hartz, 62.

18. The origins of this paradigm are generally attributed to such works as Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967), Gordon S. Wood, *The Creation of the American Republic, 1776-1789* (Chapel Hill: University of North Carolina Press, 1969), and J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, Princeton University Press, 1975).

19. Robert E. Shalhope, "Douglass Adair and the Historiography of Republicanism" in *Fame and the Founding Fathers*.

20. Wood, for instance, whose work is the most extensive and intensive examination of the founding era from this republican perspective, echoes James Allen Smith in maintaining that the Constitution was "designed" to curb "the democratic tendencies of the period," not the least of these being a leveling spirit. *Creation*, 615.

21. Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton: Princeton University Press, 1994), 327.

22. Shain, 22, 23.

23. Shain, 52.

24. See, in particular, *Federalist* 51.

25. *The Federalist*, ed. George W. Carey and James McClellan (Indianapolis: Liberty Press, 2002), number 10: 44, 43, 46-47.

26. *The Federalist*, 10: 46.

27. *The Federalist*, 63: 327. For essentially this same position see *Federalist* 71.

28. *The Federalist*, 55: 291.

29. *The Federalist*, 58: 302.

30. *The Federalist*, 63: 332.

31. *The Federalist*, 49: 262.

32. *The Anti-Federalists*, ed. Bruce Frohnen (Washington, D.C.: Regnery, 1999), 381.

33. *The Federalist*, 46: 246.