
Daniel Hulsebosch
NYU School of Law, daniel.hulsebosch@nyu.edu

David M. Golove
NYU School of Law, david.golove@nyu.edu

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Abstract:

Conventional accounts of The Federalist tend to overlook a critical and uncontroversial fact about the Constitution: the principal function it assigned the proposed new government was the conduct of the Union’s foreign affairs. By neglecting this simple point, readers too often are led to miss the forest for the trees. The Federalist’s central task was not to offer a general blueprint for republican government but, rather, to demonstrate the depth of the Confederation’s failures in foreign affairs and to explain why the new federal government would both govern more effectively in that realm and not imperil the republican commitments of the Revolution. This insight, in turn, reveals another: Even when The Federalist focuses on themes that seem far removed from the problem of foreign affairs—whether in analyzing the general principles of federalism or the separation of powers, the importance of energy in the executive or independence in the judiciary, or the deficiencies of popular assemblies—foreign affairs remains its ultimate subject. It was while developing a theory adequate to explain the interrelation between domestic and foreign governance that the authors of The Federalist were led to their deepest insights. Borrowing from Scottish Enlightenment ideas—which they filtered through their political experiences under the Confederation—they rooted their argument in theories of human nature and the social psychology of governance, which they then applied not only to diagnose the causes of the Confederation’s failings but also to explain the institutional arrangements that could overcome them. The result was an account of how the new federal government would be able to limit the influence of the destructive passions over the making of foreign policy and thereby take advantage of the bounded possibilities of peaceable, productive international relations.

I. Introduction

Conventional accounts of The Federalist tend to overlook a critical and uncontroversial fact about the Constitution: the principal function it assigned the proposed new government was the conduct of the Union’s foreign affairs. By neglecting this simple point, readers too often are led to

miss the forest for the trees. *The Federalist*’s central task was not to offer a general blueprint for republican government but, rather, to demonstrate the depth of the Confederation’s failures in foreign affairs and to explain why the new federal government would both govern more effectively in that realm and not imperil the republican commitments of the Revolution. This insight, in turn, reveals another: Even when *The Federalist* focuses on themes that seem far removed from the problem of foreign affairs—whether in analyzing the general principles of federalism or the separation of powers, the importance of energy in the executive or independence in the judiciary, or the deficiencies of popular assemblies—foreign affairs remains its ultimate subject. These explorations were so many arguments to demonstrate that the federal government would neither repeat the Confederation’s foreign affairs blunders, nor pose a threat to the states and the republican principles upon which they were founded.

The tension between productive foreign relations and domestic republicanism that emerged in the wake of the Revolution had not been anticipated at its outset. The Declaration of Independence assumed that they were harmonious ends when it announced as twin goals of the Revolution independent republican government in the states and peaceful commercial relations with the larger world, governed by the principles of the law of nations. By the time the Philadelphia Convention convened, however, it was widely agreed that the weak institutions of the Confederation had failed on the latter front. State violations of treaties and the law of nations, which Congress could neither control nor redress, combined with Congress’ dependence on the states for financial and military resources, had left the Confederation incapable of conducting the nation’s diplomatic relations,

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2 “[T]hese united Colonies are, and of Right ought to be Free and Independent States,” the Second Continental Congress declared, and “as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.” *Declaration of Independence* (1776). Simultaneously, Congress was drafting its Model Treaty to promote free trade and provide the foundation of the United States’ relations with the European world. Daniel J. Hulsebosch, “The Revolutionary Portfolio: Constitution-Making and the Wider World in the American Revolution,” *Suffolk University Law Review, 47* (2014): 759-822.
ensuring its security, promoting its commerce, or even paying its bills, not least foreign loans that had helped finance the fight for independence. The ensuing foreign policy fiascos, combined with a mounting sense of impugned honor among American elites—rather than a quixotic effort to reform internal governance within the states from the ground up—provided the main impetus for constitutional reform.

Although there was consensus on the need to reform the Confederation, there remained sharp controversy over how much and of what sort. The delegates to the Philadelphia Convention had provided their collective, if negotiated, answer in the proposed Constitution. *The Federalist’s* improved “science of politics” was designed to answer Antifederalist critics by demonstrating that the Constitution’s proposed reforms were the minimum necessary to preserve the Revolution’s goals of robust republican government at home and full integration of the United States into the Atlantic world of “civilized nations.” According to the authors’ diagnosis, the Confederation’s dysfunctional foreign relations resulted from the failure to manage the tension between these goals properly. At the root of the problem were the twin early decisions to concentrate largely unchecked power in the states’ legislative assemblies and, conversely, to construct only weak federal institutions to unite them. Experience demonstrated that the revolutionaries had struck the balance defectively. To preserve republicanism while managing foreign affairs effectively and honorably, it was necessary to adopt the Constitution’s innovative structural arrangements, which, *The Federalist* argued, would resolve the tension between republicanism and international legitimacy without jeopardizing either.

It was in developing a theory adequate to respond to Antifederalist criticisms and justify the Constitution that the authors of *The Federalist* were led to their deepest insights. Borrowing from Scottish Enlightenment ideas—which they filtered through their political experiences under the

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Confederation—they rooted their argument in theories of human nature and the social psychology of governance, which they then applied not only to diagnose the causes of the Confederation’s failings but also to explain the institutional arrangements that could overcome them. The result was an account of how the new federal government would be able to limit the influence of the destructive passions over the making of foreign policy and thereby take advantage of the bounded possibilities of peaceable, productive international relations.

Central to this vision was the law of nations. Not simply a collection of black letter rules, the law of nations was a system of principles, maxims, practices, and procedures that guided an enlightened nation’s foreign policy. Alexander Hamilton, James Madison, and John Jay were not naïve or utopian about international relations. Rather, they followed a main line of Enlightenment thought in believing that a balance of powers among nations would make it possible for each nation, willing to invest prudently in its own self-defense and committed to adhering to treaties and the law of nations, to reap the benefits of international engagement without being overly vulnerable to its perils. *The Federalist* accordingly emphasized the importance of the Constitution’s innovative institutional arrangements that were designed to encourage the United States to become that sort of nation and thereby to enable it to participate credibly in the Atlantic world of trade and commerce. Especially in the later essays, *The Federalist* began to sketch out a vision of a world in which nations, capable of maintaining mutual respect with other nations, could engage in beneficial international relations, guided by treaties and the customary rules of engagement in times of both war and peace. The new federal government would be able to gain that respect, make those treaties, enforce them at home and abroad, and generally “possess that sensibility to the opinion of the world.” Above all this opinion, what Madison called “the known opinion of the impartial world,” was the “best guide” to, as well as the reward for, wise national decision-making.4 For all their apparent realism, the belief that public

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4 James Madison, Federalist 63, p. 423.
reason was possible—a collective national reason constituted in part through dialogue with the civilized world—reveals the profoundly hopeful premise of *The Federalist*.

II. International Relations in the Confederation

Alexander Hamilton was not mincing words when he declared in *Federalist* 15 that “something is necessary to be done to rescue us from impending anarchy.” His critique of the “insufficiency of the present Confederation to the preservation of the Union” remains a classic expression of the so-called “critical period” before the Constitution. Strikingly, nearly every count in his indictment concerned foreign affairs. Charging that the Union had “reached almost the last stage of national humiliation,” Hamilton offered an extended bill of particulars, which demonstrated that both collective security and commercial prosperity were at risk: British troops held several key forts along the Unions’ western boundary in violation of the Treaty of Paris, but Congress lacked the capacity to negotiate seriously for their withdrawal or even the moral authority to make the attempt, given “[t]he just imputations on our own faith, in respect to the same treaty.” Notwithstanding the political and economic importance of the American claim “to a free participation in the navigation of the Mississippi”—and of Congress’ efforts to secure it—Spain nevertheless continued to “exclude[] us from it.” Nor could Congress pay the foreign (or domestic) debt, though they had been “contracted in a time of imminent peril, for the preservation of our political existence.” Indeed, it had seemingly abandoned the cause of restoring public credit “as desperate and irretrievable.” The most promising source, customs revenue, was in the hands of the states.⁵ Even had it been otherwise, it would have made little difference because Congress’ was unable to convince the leading Atlantic powers, most importantly Britain, to enter into negotiations for commercial treaties, bringing the nation’s commerce to its “lowest point of

declension.”  Indeed, as Hamilton bemoaned, “[n]o nation acquainted with the nature of our political association would be unwise enough to enter into stipulations with the United States . . . while they were apprised that the engagements on the part of the Union, might at any moment be violated by its members; and while they found from experience that they might enjoy every advantage they desired in our markets without granting us any return.” A leading figure on the British Board of Trade, he noted, had accordingly advised the House of Commons to refrain from developing a long-term commercial policy toward the United States “until it should appear whether the American government was likely or not to acquire greater consistency.”

The Confederation’s predicament, according to The Federalist, was fundamentally one of governmental structure. Famously, The Federalist maintained that it was the weakness of the Confederation and the centrifugal forces the Revolution had unleashed that were the major sources of the problem. The states had the de facto power to override Congress’ decisions simply by refusing to carry out its resolutions, and they had regularly exercised it to serve local interests and satisfy momentary passions, drummed up by populist demagogues. Because Congress could rely on the states neither to supply soldiers nor revenues, the Confederation was without an effective military force, its coffers were empty, and it could not control the behavior of the states or its citizens. As Hamilton succinctly observed, “[w]e have neither troops, nor treasury, nor government.”

The parochial perspectives of the states, moreover, had produced immoral as well as self-defeating policies. Hamilton’s first indictment went directly to this point: “Are there engagements, to the performance of which we are held by every tie respectable among men?” “These,” he avowed, “are the subjects of constant and unblushing violation.” The British cited the states’ own violations of the treaty to justify their continued possession of the posts, and, because the charges were true, the

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6 Hamilton, Federalist 15, pp. 91-92.
7 Hamilton, Federalist 22, p. 136.
8 Hamilton, Federalist 15, p. 91.
Confederation was not even in “a condition to remonstrate with dignity.” The predictable result was a state of “national humiliation . . . degrad[ing to] the character [] of an independent people” and rendering the Confederation incapable of even acting the part of a civilized nation: “Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us. Our ambassadors abroad are the mere pageants of mimic sovereignty.”9 At home, so too was Congress.

Hamilton’s coauthors offered similar indictments in their essays. John Jay wrote only five numbers but the contributions of the Confederation’s secretary of foreign affairs memorably focused on the inefficacy of the states’ diplomacy near and far. Sounding a central theme of The Federalist, he observed that the Confederation’s wounds were largely self-inflicted, and he counseled that the best defense against foreign aggressions was preemptive discipline over the American states and citizens. Belligerent Americans, not foreign belligerents, posed the greatest threat to American security: Opportunistic state legislators and unruly western settlers risked exposing the United States to recriminations for their breaches of treaties, violations of the law of nations, and provocations against other powers in the American “neighborhood”—namely, British and Spanish colonies surrounding the States and, within and around them, Native American nations.10 The thrust of Madison’s essays was similar. “Every nation . . . whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of their wiser neighbors.” This was not just an abstract lesson derived from philosophy and history, he argued. Instead, “the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed

9 Hamilton, Federalist 15, p. 92.
affairs.” The painful truth was that responsibility for the Confederation’s failings lay not so much in
the overreaching of neighboring powers as in the opportunities for such that the Confederation’s
structure made inevitable.

Nor was this assessment especially original to The Federalist. Everyone, Hamilton noted with
only some exaggeration, “opponents as well as the friends of the new Constitution,” agreed that the
Union demanded reform, pointing to the same set of failures. Samuel Bryan and the other twenty
“Dissenters” in the Pennsylvania Ratifying Convention, for example, admitted that “the federal
government” should have the power to negotiate treaties of foreign commerce and to lay indirect taxes
and that the purpose of those powers would be to bolster the nation’s international reputation. “[O]ur
national character,” the Dissenters acknowledged, “was sinking in the opinion of foreign nations,”
because, among other things, “congress could make treaties of commerce, but could not enforce the
observance of them.” Many other Antifederalists similarly conceded that Congress needed more
control over foreign affairs. “That the present confederation is inadequate to the objects of the union,”
Centinel wrote in the Philadelphia Independent Gazette, “seems to be universally allowed. The only
question is, what additional powers are wanting to give due energy to the federal government?”

Centralization of the foreign affairs powers—war, peace, diplomacy, and commerce—was the
common denominator. With consensus on the need to reform the states’ diplomacy with the rest of the
world, the key issue in the ratification debate quickly became not whether change was needed but how
much change and of what sort. “[T]here should be a confederated national government,” proclaimed

11 Madison, Federalist 62, pp. 420-21. For the attribution of authorship to this and other disputed numbers, see
Cooke, introduction to The Federalist, xi-.

12 The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania, to their
Constituents, DHRC 2: __. The Dissent has recently gained notoriety for its statements about an individual right
to own guns. The language here about trade retaliation was controversial, but some Federalists, notably
Jefferson and Madison, believed that trade retaliation was a valid weapon in diplomacy.

13 Centinel IV, Independent Gazetteeer, Nov. 30, 1787.
14 Hamilton, Federalist 15, p. 90. See also Frederick W. Marks III, Independence on Trial: Foreign Affairs and
the Constitution (Louisiana State University Press, 1973). See generally Jack N. Rakove, “From One Agenda to
Another: The Condition of American Federalism, 1783-1787,” in The American Revolution: Its Character and
one Antifederalist, “but [] it should be one which would have a control over national and external matters only, and not interfere with the internal regulations and police of the different states in the union. Such a government, while it would give us respectability abroad, would not encroach upon, or subvert our liberties at home.”

Embracing the goal of respectability, Antifederalists often drew the line, familiar from pre-Revolutionary debates within the empire, between internal and external powers. The distinction, however, was of little help, as Hamilton had forcefully argued a few years earlier in his *Phocion* essays. Given its essential ambiguity, it served mostly as a cover for fundamental disagreements about how the competing goals of the states should actually be balanced: Should the states retain exclusive power to execute the Confederation’s decisions and resolutions, or should the federal government be empowered to operate directly on all citizens? The former ensured state autonomy but risked undermining the ability of the federal government to carry out its foreign affairs responsibilities. Similarly, should the federal government’s measures be subject to the states’ bills of rights because, as Patrick Henry asserted in Virginia’s Ratifying Convention, treaties threatened the liberties of individual Americans? Or did state limitations on federal policymaking unduly threaten the uniformity and supremacy of federal law and treaties throughout the Union?

These questions shaped the main themes of the ratification debate. Antifederalists feared that the new Constitution, with the federal government’s enhanced powers to act directly on citizens and not through the sovereignty of the states, would constrict the hard-won local, popular sovereignty achieved in the Revolution. In response, *The Federalist* turned the tables, maintaining that it was the

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17 Patrick Henry, June 18, 1788, in DHRC 10.
18 Madison, Federalist 44, p. 299.
susceptibility of the states’ popular institutions to demagoguery and the cacophonous pursuit of local interests that accounted for the ineffectiveness and injustice of their own governments and, more importantly, for the foreign policy failings of the Confederation itself. Nor was it sufficient just to augment the federal government’s foreign affairs powers and limit further the de jure powers of the states over international affairs. The Articles of Confederation had already granted most of those powers and imposed many of the necessary limits—but to no avail. What was crucial was to grant new powers and impose new limits and, simultaneously, to make all of the federal government’s powers, and all of the corresponding limitations on the states, effective. That required an overhaul of the principles of the federal Union. Most urgent of all was to eliminate the dependence of Congress on the states for implementing its decisions, from raising troops and money to executing treaties. Only then could the national government ensure the effective implementation of federal policy, by maintaining consistency and reining in both state and private provocations. “[A] cordial Union under an efficient national Government, affords them the best security that can be devised against hostilities from abroad,” Jay maintained. Why? Because “the Union tends most to preserve the people in a state of peace with other nations.” An effective state was a peaceful one, able to harmonize national policy and the interpretation of treaties and the law of nations, as well as to enforce both within the United States.

The relationship between the states and the federal government, however, was not the only issue. Once the federal government was freed from dependence on the states, the question of the proper structuring of the relationships among its various branches came into view, a subject to which the authors devoted even more pages of text and about whose importance they were equally emphatic. The complex institutional structures embodied in the text, which were nowhere more in evidence than

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in the context of foreign affairs, necessitated the equally complex defense they mounted. Among their core concerns was that the more democratic House of Representatives, like the state legislatures, would be especially susceptible to the sway of local passions and partial interests in international controversies. *The Federalist* accordingly emphasized the Constitution’s institutional strategies for mitigating this problem, including its exclusion of the House from some of the most important elements of diplomacy, like treaty-making and the implementation and enforcement of treaties and the law of nations. The Constitution assigned those matters instead principally to the more insulated president and Senate and also to the independent judiciary. As Hamilton explained, “[t]he fluctuating and, taking its future increase into the account, the multitudinous composition of [the House], forbid us to expect in it those qualities which are essential to the proper execution of [treaty-making].”

Madison, more pointedly, if more abstractly, noted that “the more numerous an assembly may be, of whatever characters composed, the greater is known to be the ascendency of passion over reason.” He then added, the larger the representative body, “the greater will be the proportion of members of limited information and of weak capacities. Now, it is precisely on characters of this description that the eloquence and address of the few are known to act with all their force.” Paradoxically, it was larger representative bodies that were more susceptible to the demagogic entreaties of a “few.” Simply put, there was a mismatch between the revolutionary faith in popular assemblies and what the authors of *The Federalist* saw as universal and enduring psychological and institutional truths of politics. Americans could only ignore those truths at the cost of undermining the promise of republicanism.

Given the consensus on the Confederation’s foreign affairs failures, the authors of *The Federalist* were notably restrained in specifying the state legislation that had violated treaties and the

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21 A leading contemporary scholar famously described the Constitution’s allocation of foreign affairs powers as “not so much ‘separated’ as fissured, along jagged lines indifferent to classical categories of governmental power.” Louis Henkin, *Foreign Affairs and the Constitution* 27 (1996).


23 Madison, Federalist 58, pp. 395-96.
law of nations and thereby generated Congress’ diplomatic travails.24 In other essays and venues, all of them developed these criticisms at great length and in granular detail.25 Instead, here they developed a theory for why the problems had emerged and provided a positive account of the promise that their “science of politics” offered for a future in which foreign affairs were deftly managed. Standing back from the negotiated document that they had helped craft but that had wholly satisfied none of them,26 the authors largely ignored the compromises that went into the Constitution’s making, portraying it instead as a coherent scheme of government to be defended in broad theoretical terms. It was this move that enabled them to make their most original contribution to the ratification debate and to American political theory. Everyone felt the symptoms. Publius provided a new diagnosis in support of a novel prescription.

III. Human Nature and American Republicanism

The theory of politics at the heart of The Federalist was polemical in its origin—there was after all an election to win in New York (which the Federalists, in fact, lost). In the course of defending the Constitution, however, the authors’ ambition grew—along with the number of essays they penned, expanding from about twenty, as originally planned, to eighty-five (and leaving their printer financially distraught27). This evolving project led them to root their argument more deeply, in a theory of the

24 Many of these had only recently been described in luxurious detail on John Jay’s voluminous Report to the Confederation Congress on state violations of the Treaty of Peace.
26 Madison for example had wanted Congress to exercise a federal negative over state legislation. Hamilton favored lifetime appointments for the president and the senators and advocated federal appointment of state governors. Jay, like the others, wanted proportional representation in both houses of Congress.
27 Although the essays were originally published in New York newspapers, early in the process Hamilton planned to compile them into a book for wider distribution. When submitting his bill in late 1788, the printer recalled that “[w]hen I engaged to do the work, it was to consist of twenty Numbers, or at the utmost twenty-five, which I agreed to print for thirty pounds, five hundred copies.” However, as the number of essays increased from 25 to 85, he was obliged to print three times the number of estimated pages, across two volumes. By the fall of 1788, after the ratification debate was all but over, he was left with “several hundred copies on hand” and expected that he “would not clear five pounds on the whole impression.” Archibald McLean to
nature of the human personality and of the social psychology of governance that mixed Enlightenment ideas with their lived political experience in the Confederation. The result was some of The Federalist’s most innovative and profound theoretical insights, as well as an extended account of how the new federal government’s institutional arrangements would facilitate productive international relations.

According to The Federalist, the fundamental defect of the Confederation was that its structure had left the nation’s foreign affairs subject to the passions and interests of local lawmakers and consequently to their short-term thinking, expedience, and frequently belligerent instincts. Reform required that the Union be restructured in such a way as to maximize reasoned rather than impassioned decision-making, long- rather than short-term calculations, and sociable rather than belligerent inclinations. The Federalist’s analysis in this respect derived substantially from Scottish common sense philosophy and faculty psychology, but the authors arranged these familiar ideas in new and controversial ways.

For Hamilton and Madison, in particular, political theory began with an account of human nature and proceeded to analyze how effectively alternative institutions, interacting with that universal psychology, would achieve the ends of republicanism. Hamilton was perhaps being overly polemical in suggesting that political theory must rest on the premise that “men are ambitious, vindictive, and rapacious.”28 It was a notion, however, that he borrowed from Scottish psychological realism, and what was supposedly “real” about eighteenth-century realism was its unsentimental conception of human nature. According to David Hume, it was “a just political maxim, that every man must be supposed a knave; though, at the same time, it appears somewhat strange, that a maxim should be true

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28 Hamilton, Federalist 6, p. 28.

in politics which is false in fact.”  All men were not in fact knaves, but the careful institutional
designer had to take seriously this deflating maxim, as Madison explained in his famous excursus in
*Federalist* 51 on the connection between individual human nature and government structure: “what is
government itself, but the greatest of all reflections on human nature? If men were angels, no
government would be necessary.”

In fact, however, the authors recognized that republicanism was inconsistent with a rigid
adherence to Hume’s most pessimistic dictums. Humans are capable of being virtuous, public-
regarding, and even wise, but their passions, prejudices, and interests also leave them susceptible to
biased judgments and unjust, and self-defeating, conduct. “As there is a degree of depravity in
mankind which requires a certain degree of circumspection and distrust,” Madison observed, “so there
are other qualities in human nature which justify a certain portion of esteem and confidence.
Republican government presupposes the existence of these qualities.” Hamilton, too, understood this
essential feature of republicanism, as he explained in one of his last essays: “The supposition of
universal venality in human nature is little less an error in political reasoning than the supposition of
universal rectitude.” Departing from the more pessimistic portrait of human nature in his earliest
contributions, he observed that “[t]he institution of delegated power implies that there is a portion of
virtue and honor among mankind, which may be a reasonable foundation of confidence.” To be sure,
as Madison insisted, if men were angels, no government would be necessary. Equally, if they were all
devils, no government could succeed. Because they were neither, the task of constitution-making was
to supply the deficit, identifying the institutional arrangements that would bring virtue to the fore,
minimize the occasions in which deleterious passions and interests would work their poison,

29 David Hume, “The Independency of Parliament,” in *Essays, Moral, Political and Literary* (1742). See also
30 Madison, Federalist 51, p. 349.
31 Madison, Federalist 55, p. 378.
32 Hamilton, Federalist 76, p. 514.
channel self-interested impulses to promote the public good. Having revealed the springs of politics, *The Federalist* sketched a psychological account of human behavior that purported to explain how humans made short- and long-term decisions and why some people, under the right conditions, were better able than others to assess correctly, and then pursue, their own and collective interests and moral duties.

The challenge posed for republican government by the human passions was especially severe in the conduct of foreign affairs. Many of *The Federalist’s* most characteristic themes reflect the authors’ assessment of the obstacles that human nature posed for carrying out this critical task. The inevitable partiality of national viewpoints in the rivalries of international relations, exacerbated by the dynamics of internal political competition, rendered popular opinion especially susceptible to parochial perspectives and to the appeal of demagogues, whose “brilliant appearances of genius and patriotism, [] like transient meteors,” as Jay gently put it, “sometimes mislead as well as dazzle,” or who “flatter [the people’s] prejudices to betray their interests,” as Hamilton more pointedly explained.\(^{33}\) Events since 1776 had demonstrated that foreign affairs suffered acutely when government was incapable of constraining popular or demagogic passions and local interests. The great difficulty, Madison explained, was the prospect that “[t]he passions, . . . not the reason, of the public,” would be the arbiter. “But it is the reason of the public alone that ought to control and regulate the government. The passions ought to be controuled and regulated by the government.”\(^{34}\)

For nations as for individuals, the authors argued, gaining respect in the world required internal self-discipline. Historians over the past generation have examined how *The Federalist* deployed Enlightenment philosophy, in particular the Scottish realism of Frances Hutcheson, David Hume, and Adam Smith.\(^{35}\) They have not, however, analyzed the ways that faculty psychology proved especially

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\(^{33}\) Jay, Federalist 64, p. 433 ; Hamilton, The Federalist 9, p. 50.


\(^{35}\) Daniel Walker Howe has effectively argued that Scottish realism informed “the psychology of The Federalist” and in particular that the authors “used” Scottish faculty psychology realism to justify and explain the workings
useful when the authors sought to understand and explain the Constitution’s complicated structures of power. Despite, and perhaps because of, the many compromises that went into its making, the authors reframed the Constitution as a coherent blueprint for a new kind of federal government and sought to lay its foundations on fundamental psychological premises, rather than on more transient or even casuistic grounds. That was not a matter primarily of explicating the meaning of particular clauses to help future generations resolve retail level constitutional disputes. The point, instead, was to persuade voters to accept the Constitution by demonstrating how its structures would enable the Union to foster reasoned decision-making and limit the influence of the destructive passions over government, particularly in foreign affairs. It was for this purpose that they presented their vision, inspired by the Scottish writers, of each branch of the new government as both a faculty and a composite of faculties, each with its own roles, virtues, and weaknesses. The goal was to elucidate how the Constitution’s complex structures would enhance public reason while, at the same time, control popular passions.36

Self-discipline was the answer. A recurring motif in *The Federalist* (as in much Enlightenment thought) was the modeling of states on individuals—not on an organicist notion but as a reflection of the fact that states are just collections of individual persons.37 States, like individuals, were comprised of momentary passions, long and short-term interests, an inclination toward sociability, and a deep concern for reputation and respect. Taking these crosscutting faculties and impulses as given, political institutions—a constitutional system—could help minimize the most destructive features of human

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36 The Scottish thinkers debated the relationship between reason and passion. Hume juxtaposed the two in his early essays, for example, but later categorized reason as a special, socially useful kind of passion. Publius by contrast simply contrasted the two. Compare David Hume, *A Treatise of Human Nature* (1738-40) (contrasting reason and passion), with Hume, *An Enquiry Concerning Human Understanding* (1748) (defining reason as “nothing but a general and a calm passion, which takes a comprehensive and a distant view of its object”).

37 Golove and Hulsebosch, “Civilized Nation.”
psychology while maximizing the best, meaning those most productive, virtuous, and honorable.\(^{38}\)

The complexity of the federal Constitution created firewalls against impulsive, short-term decision-making and would thereby foster more reasoned and long-term choices. Although Hamilton in \textit{Federalist} 78 famously ascribed to each of the three federal branches a faculty of the mind—force in the executive, will in the legislature, and judgment in the courts—the authors generally tended to treat each branch as possessing the full range of inputs (passions, interests) and faculties (reason, understanding, and will) for making decisions.\(^{39}\) The gravamen of \textit{The Federalist} was that the proposed Constitution would generate respectable national policy-making by arranging these institutions in a way that fostered reasoned decision-making in each branch acting alone and together.

In some contexts, that required including a particular branch in decision-making in order to play a checking function. In others, it meant excluding that same branch in order to channel decision-making into the most suitable branches. For example, in the context of making, interpreting, and enforcing of international obligations, the prospects for reasoned decision-making depended, the authors argued, on the exclusion of the more democratically-responsive elements in the American system, particularly the House of Representatives and the state legislatures, in favor of the president, the Senate, and the courts.\(^{40}\) Officials in these more electorally insulated branches would have not only the motive but the “time and opportunity for more cool and sedate reflection,” Hamilton argued, so that they could “withstand the temporary delusions” and recall the people to their true interests.\(^{41}\) In this context, the

\(^{38}\) As Daniel Walker Howe has observed, that “the art of governing was a decision-making process analogous to that of an individual; the institutions of government were analogous to the individual's faculties of mind. In both cases, reaching a right decision required a careful act of balancing. Precipitate, ill-advised action was to be avoided; long-term prudence and morally right actions were desired.” Daniel Walker Howe, “The Political Psychology of The Federalist,” \textit{William and Mary Quarterly} 44 (1987): 499-500. See also Colleen A. Sheehan, “The Politics of Public Opinion: James Madison’s ‘Notes on Government,’” \textit{William & Mary Quarterly} 49 (1992): 609-27.

\(^{39}\) In order for the separation of powers to function, which “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.” Madison, \textit{The Federalist} 51, p. 349.

\(^{40}\) Golove and Hulsebosch, \textit{Civilized Nation}, 973-76.

\(^{41}\) Hamilton, \textit{Federalist} 71, pp. 482-83.
Constitution’s careful division of powers—between the federal and state governments and among the branches of the former—would work together to promote more effective, and more just, decision-making.

Given the psychological foundations of their theory, it was quixotic to believe that the exceptional virtue of the American people and the revolutionary states would somehow exempt them from the ordinary pitfalls of human nature. “Have we not,” Hamilton asked, “already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, weaknesses and evils incident to society in every shape?” To so believe “would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages.”42 It was this supposition of psychological universalism that lends The Federalist much of its cosmopolitan character, motivating, for example, the authors’ reliance on the experiences of other nations, ancient and modern, as well as of the states themselves. The fact that human nature was everywhere the same, however, did not imply that people everywhere acted the same way or that one set of institutions was appropriate for all polities. As Montesquieu had taught, climate, geography, size, religion, economic development, and a host of other factors were relevant to the analysis.43 Taking human nature as given, it was the task of constitution-makers to identify the institutional arrangements that best fit their particular polity. That, The Federalist claimed, had been accomplished at the Philadelphia Convention.

To be sure, the authors recognized that some people are more public-spirited and possessed better reasoning capacities than others. That notion lies at the bottom of repeated assertions that “the best men” would be elected and appointed to the federal government.44 But that assumption was in no way inconsistent with The Federalist’s basic premise of psychological universalism. There were, and

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42 Hamilton, Federalist 6, p. 35.
43 See Paul M. Spurlin, Montesquieu in America, 1760-1801 (University, La.: Louisiana State University Press, 1940).
44 See, e.g., Federalist 3, 9, 10.
would always be, differences among individuals, the sources of which were traceable to both nature and nurture. As Madison explained most famously in *Federalist* 10, the Constitution’s institutional arrangements were self-consciously designed to take full advantage of this unavoidable feature of human society by ensuring that government officials would be most likely “to centre on men who possess the most attractive merit and the most diffusive and established characters” and “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.”

Nonetheless, individuals were only better or worse at managing the internal conflict between reason and passion; no one was immune from the affliction.

**IV. Reason and Structure in Foreign Affairs**

The authors of *The Federalist* were not Pollyannaish about international relations. They had a sober view of human nature and of history, especially the history of international relations of the European states, and they doubted that *laissez-faire* international relations would be free of conflict and war, or that the good motives of other nations would naturally yield mutually beneficial and fair terms of international commercial exchange. They recognized, moreover, that the absence of a sovereign institution that could adjust disputes among nations—what Hamilton referred to as a “superintending power” or an “umpire or common judge”46—meant that other mechanisms were necessary to achieve peace and stability. The problems of international relations were therefore especially delicate and necessitated informed and skillful management, for which the maxims, doctrines, and institutions of public law provided guidance.

Like many eighteenth-century thinkers, the authors looked to the balance of powers as part of the solution to the problem of international relations. Although today that concept has realist

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45 Madison, Federalist 10, p. 63.
46 Hamilton, Federalist 7, p. 38; Hamilton, Federalist 15, p. 95.
connotations, in the eighteenth-century Enlightenment it was closer to an ideal, counterpoised to the alternative of universal monarchy, and was a crucial part of the eighteenth-century jurisprudence of the law of nations with which the authors were intimately familiar. Grotius, Pufendorf, Vattel, Bynkershoek and many other European jurists were required reading not only for lawyers but for all men of affairs, and all three authors had pored over their treatises as part of their education. Far from merely listing natural law bromides, these volumes elaborated on the principles and maxims governing the conduct of international relations and offered detailed accounts of diplomatic institutions like treaties, embassies, admiralty courts, and arbitral tribunals; parsed the customary and treaty-based rules for going to war and waging it; and analyzed the conventions of peacetime commercial relations between nations. Nor were these treatises just textbooks for students; they remained guides that Hamilton, Madison, Jay, and countless others consulted, analyzed, and argued about throughout their careers.

The ideal of balance in this literature held that a nation counterbalanced by other nations would be less opportunistic, more hesitant about risking war, and more inclined to resolve disputes peacefully under the law of nations. It would not willfully seek to impose its interests on other states in violation of their acknowledged rights. Likewise, a world balanced in power, and interlocked by commercial connections, would not only reduce the incidence of war but also generate new opportunities for trade. Many of the eighteenth-century thinkers who aspired to build this world did not naively believe that commerce would produce perpetual peace. Commercial rivalry could be intense and generate new jealousies. However, the jealousies caused by shifting commercial balances were different from those caused by imbalances of political power. They were less predictable, more

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47 For the connection between the law of nations literature and the Scottish Enlightenment, see Knud Haakonssen, *Natural and Moral Philosophy: From Grotius to the Scottish Enlightenment* (1994), 322-27.
shifting and unstable, and tended toward equilibrium. As a result, they were less threatening than the
lopsided power relations caused by skeins of military alliances.49

If the literature of the law of nations provided instruction for the conduct of foreign affairs, it
also offered a rich theoretical model that helped the authors of The Federalist elucidate the dynamics
of federal-state and inter-branch relations under the Constitution. Just as there was no “superintending
power” to resolve international disputes over the rights of nations, so too there would be no such power
that could ultimately “umpire” disputes between the federal and state governments, or among the three
branches of the federal government, over their respective rights and powers. The burden on The
Federalist was thus to demonstrate why this structural feature of the Constitution, which reiterated the
structural dilemma of international relations, would not leave the states vulnerable to abuse by the
federal government, and the weaker branches of the federal government—the courts and the
executive—defenseless against the overbearing power of Congress. Publius devoted a series of essays
to answering to this critical challenge, which drew from the law of nations literature and similarly
rested on the principle of the balance of powers, only now transposed into the domestic context. It was
this balance that explained why the Constitution’s limits would generally be respected, and how
defections would be policed, just as it elucidated in the international context the circumstances under
which nations could establish and maintain peaceful and law abiding relations.50 In this respect, the
Constitution, as the public law of the Union, would serve the same function internally that the law of
nations, as the public law of “civilized states,” served for the wider society of nations. As William

49 For Enlightenment debates about the effect of commerce on international relations, see Istvan Hont, Jealousy
of Trade: International Competition and the Nation-State in Historical Perspective (Cambridge, Mass.: The
49, p. ?
Grayson declared in the Virginia Ratifying Convention, the Constitution was to be “the law of nations in America.”

Given the states’ resistance to federal treaties and their repeated violations of the nation’s international legal duties, it was not surprising that the Constitution’s framers recognized the law of nations as part of the supreme law of the new nation and that the two bodies of public law intertwined in the former. The authors of The Federalist associated the states’ cavalier attitude towards the states’ international duties with selfish, parochial perspectives that only confirmed the European view of the former colonists as lacking in both sophistication and moral rectitude. Hamilton, in particular, resented the Europeans’ sense of “superiority,” but he acknowledged that “[f]acts have too long supported the[ir] arrogant pretensions.” His frustration reflected a still fresh sense of wounded honor occasioned by the disparaging treatment that the Confederation’s diplomats had experienced in Europe. The most memorable came at the hands of the British Ambassador to Paris, the Duke of Dorset, who summarily dismissed their entreaties to negotiate a commercial treaty, remarking with artful contempt: “The apparent determination of the respective States to regulate their own separate [sic] Interests renders it absolutely necessary, towards forming a permanent system of commerce, that my Court should be inform’d how far the Commissioners can be duly authorized to enter into any engagements with Great Britain which it may not be in the power of any one of the States to render totally fruitless and ineffectual.” Dorset’s dismissal cut so deeply because it was so undeniably reasonable under the circumstances.

51 The Virginia Convention: Wednesday 18 June 1788, Debates, 10 DHRC: 1383. See also David Hendrickson, Peace Pact (2003). Notably, Grayson was an Anti-federalist who was not satisfied that the Constitution would establish the appropriate law of nations for the Union.
52 Hamilton, Federalist 11, p. 72.
53 Dorset to the American Commissioners, 26 March 1785, The Papers of Thomas Jefferson, vol. 8 (ed. Julian P. Boyd)(1953), pp. 55, 56, 59 (noting, in editorial note, that “[i]t might not be too much to say that the “linch pin of the Constitution” of 1787, Article vi, is in part at least a monument to the British ministry’s use of the fact that the Confederation lacked power to compel recognition of treaties as the law of the land”).
In part, the authors of *The Federalist* focused on the instrumental benefits of compliance with the law of nations—for example, as protection against the hostile policies of foreign powers and as a prerequisite to obtaining commercial privileges. Hamilton underscored this point, at first discretely, by alluding to Congress’s failure even to begin negotiating a commercial treaty with Great Britain, and then more frankly, observing that “[t]he imbecility of our government even forbids [foreign nations] to treat with us.”

A “requisite sense of national character,” Madison likewise insisted, was a condition for admittance on an equal footing into the European state system, a status that was essential to the nation’s interests after the rupture with Great Britain. International respectability was valuable, moreover, not only for its instrumental benefits, but also for its own sake, to ensure that the nation’s conduct would appear to foreign powers “as the offspring of a wise and honorable policy.”

Experience had taught, however, that preserving “good faith and justice” towards other nations could not be achieved without reforming the Confederation’s constitutional structure, as the states’ attitude to treaties and the law of nations had demonstrated: “The case of the treaty of peace with Britain,” Jay noted with understatement, “adds great weight to this reasoning.” Without a government that could prevent “each State [from] doing right or wrong, as to its rulers may seem convenient . . . what a poor, pitiful figure will America make in the[] eyes [of foreign nations]! How liable would she become not only to their contempt, but to their outrage.”

Notwithstanding these commitments, *The Federalist* seems at first blush to have had a schizophrenic perception of international relations and law. The early essays drew a shocking portrait of relations among the American states in a hypothetical future in which the Constitution was rejected. If the Confederation’s centrifugal tendencies were already apparent, the authors insisted, they would only intensify if the constitutional project were to fail. The inevitable result would be the collapse of

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54 Hamilton, Federalist 11, p. 67; Hamilton Federalist 15, p. 92.  
55 Madison, Federalist 63, pp. 422-23.  
56 Jay, Federalist 4, pp. 22-23.
the states into two or three regional confederacies or possibly into thirteen separate sovereigns. At that stage, relations among them would be essentially no different from international relations. Yet, although the authors were at pains to emphasize how the federal government under the Constitution would be able to participate productively in a world of sovereign nations, meeting its international obligations, preserving peace with the rest of the world, and fostering prosperity through beneficial trade, the states would face a radically different prospect. They would “be a prey to discord, jealousy, and mutual injuries” and risked devolving into “an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt.”

Hamilton was especially strident, if brilliant, in playing out the inevitable dynamics, painting a dark picture of international relations and, uncharacteristically, denigrating the force of treaties and the law of nations. “The genius of republics (say they) is pacific,” Hamilton wrote capturing an optimistic strand of the Enlightenment thinking embraced by many Antifederalists, who argued that the independent and sovereign American states would always enjoy peaceful, productive relations no matter the form of their association. Unfortunately, he observed in Federalist 6, the history of the classical republics proved otherwise. So did the recent history of the Netherlands, which, though a republic, had taken “a leading and conspicuous part in the wars of Europe.” The claim that republics would avoid war because the people would vote against war-mongering representatives was simply untrue, for history showed that there were “almost as many popular as royal wars.” Nor would continuing commercial relations among the states promise greater success. Reflecting Montesquieu’s notion of *doux commerce*, many Antifederalists claimed that “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.” But, Hamilton countered: “Is not the love of wealth as domineering and enterprising a passion as that of power or glory” and the jealousy of trade as powerful as the thirst for land or glory? This claim was no less belied by experience. Although Britain was no republic, “commerce has been for ages the predominant pursuit of that country. Few nations, nevertheless, have been more frequently engaged in war; and the wars in which that kingdom has been engaged have, in numerous instances, proceeded from the people.” Similarly, the recent controversies over paper money between the most tightly commercially linked of American states, Rhode Island and Connecticut, revealed the fallacy of this kind of utopian thinking. Summing up his indictment of the naïve belief that the special combination of republican government and commercial pursuits would yield peace, Hamilton invoked an especially grim version of Scottish theory as applied to international relations:

Has it not, on the contrary, invariably been found that momentary passions, and immediate interest, have a more active and imperious control over human conduct than general or remote considerations of policy, utility or justice? Have republics in practice been less addicted to war than monarchies? Are not the former administered by MEN as well as the latter? Are there not aversions, predilections, rivalships, and desires of unjust acquisitions, that affect nations as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known that their determinations are often governed by a few individuals in whom they place confidence, and are, of course, liable to be tinctured by the passions and views of those individuals? Has commerce hitherto done anything more than change the objects of war?

Nor was Hamilton through. Antifederalists were also wrong to think that an interlocking web of treaties of alliance among the newly independent American states would maintain the peace. The history of multilateral alliances, he continued in Federalist 15, shows that such “fondly hoped for benefits were never realised.” The celebrated treaties of Utrecht in particular, which “were scarcely

59 Hamilton, Federalist 6, p. 31.
60 Hamilton, Federalist 6, p. 33. See also Hont, Jealousy of Trade.
61 Hamilton, Federalist 6, p. 32.
formed before they were broken, gave an instructive but afflicting lesson to mankind how little
dependence is to be placed on treaties which have no other sanction than the obligations of good faith;
and which oppose general considerations of peace and justice to the impulse of any immediate interest
and passion."^{62}

There was a deep tension between this gloomy diagnosis of relations among the American
states, were they to become fully independent, and Publius’ confident assertions that the federal
government, guided by the law of nations, would be able to navigate international relations effectively
and foster transatlantic peace and prosperity. If nations really did regard their obligations as cavalierly
as Hamilton seemed to suggest in *Federalist* 6, then Publius’ emphasis on the importance of national
character, good faith, and earning the confidence of foreign nations would seem baffling. What
purpose would law-abiding conduct serve if the rapaciousness of foreign nations rendered any
assumption of reciprocal good faith unrealistic and national character beside the point? Why would
the framers have developed so many innovative institutional mechanisms for promoting compliance
with international obligations? Why would Publius have begun the essays by emphasizing the “high
importance to the peace of America” of “observ[ing] the law of nations towards” foreign powers?^{63}

One obvious—and compelling—answer is that *The Federalist* was at least partly an
argumentative text that was at its most polemical in these early essays. The authors felt a great sense
of urgency as they undertook their project to influence the upcoming election of delegates to New
York’s ratifying convention. The Convention delegates had insisted, with Congress’ support, that the
only option for the states was either to accept the new Constitution in full or reject it and perhaps begin
the reform process again.^{64} The nature of the election as a take-it-or-leave-it referendum affected the

^{62} Hamilton, Federalist 15, p. 94.
^{64} Congress unanimously forwarded the Convention’s report, which was the Constitution, along with a
resolution proposing that it be sent direct to the states for ratification, and become effective when nine did so.
Report of September 17, 1787; Resolution of September 28, 1787.

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tone and, at the outset, the substance of The Federalist. Given the daunting electoral prospects, the authors began by wielding their most fearsome weapon: a warning that rejection of the Constitution would mean the end of the Union, war among the states, and ultimately the undermining of their republican institutions. Hamilton offered a kind of Hobbesian argument in which Union was the only viable option because the available alternatives were catastrophic. It was only as the number of essays expanded, and the authors turned to their positive account, that the emphasis shifted toward the advantages of the new Constitution in the international realm.

It adds fuel to the fire that both Hamilton and Jay were successful attorneys and Madison had studied law intensely.65 A good common lawyer’s tactics often change subtly over the course of litigation in ways that are superficially reconcilable but, at a deeper level, reveal theoretical inconsistencies. The authors had not committed to theoretical consistency and, at least in the early essays, deployed what they believed were the most rhetorically effective claims. It would be reasonable simply to discount the bona fides of these arguments, which, in any event, were responding to postulated Antifederalist arguments of dubious provenance.66

Beyond this strategic motive, a close reading of the text reveals more subtle explanations for the inconsistency between the authors’ dour view of the prospects for relations among the states should the Constitution be rejected and their hopeful prognosis for the Union’s international affairs should it be adopted. Some of The Federalist’s most penetrating insights derived from the authors’ recognition of the inextricable link between domestic and international politics. Publius maintained that a nation’s

66 An Observer, New-York Journal, November 19, 1787, DHRC 19: 268, 270 (denying Publius’ suggestion that Antifederalists were complacent about the prospect of the Union dividing into multiple confederacies and confessing “that I have not seen, in any of the pieces published against the proposed constitution, any thing which gives the most distant idea that their writers are in favor of such governments . . . and from hence it must evidently appear, that the design of Publius, in artfully holding up to public view such confederacies, can be with no other intention than wilfully to deceive his fellow citizens”).
international environment inevitably influences the character of its domestic politics, and, conversely, that the character of its domestic politics inevitably shapes the quality of its international relations. For the authors, this self-reinforcing dynamic underscored the importance of adhering to treaties and the law of nations and of the Constitution’s institutional arrangements designed to achieve that result. Republican institutions could not long survive amidst the constant threat of war. Not only security, but republicanism itself, therefore, depended on an effective law of nations to mitigate the dangers of unregulated interstate interactions. At the same time, the effectiveness of the law of nations in maintaining peaceful and productive international relations depended on domestic institutions that simultaneously promoted the observance of national duties and the capacity to defend national rights.

This theoretical framework—positing the interdependence of municipal and international public law—underwrote the authors’ radically different prognoses for federal and state management of international relations. Hamilton assumed that in the event the Confederation were to dissolve the states would retain their constitutions essentially intact, including their commitments to powerful legislative assemblies, popular politics, weak executives, and no standing armies. It was the states’ inability to grasp the interlocking character of international relations and domestic political institutions—and the tension between effective international diplomacy and republican institutions—that rendered their prospects so grim. International diplomacy under the Constitution would be more auspicious, in contrast, because it would be conducted under radically different constitutional principles.

Hamilton was emphatic that doctrinaire republicanism would doom the states to especially brutal wars. European nations had, in fact, mitigated the most devastating consequences of military conflict in part by embracing standing armies, an institution that, if it could not solve the problem altogether, at least kept it in check. “The disciplined armies always kept on foot on the continent of Europe,” he observed, “though they bear a malignant aspect to liberty and economy, have, notwithstanding, been productive of the signal advantage of rendering sudden conquests impracticable,
and of preventing that rapid desolation which used to mark the progress of war prior to their
introduction.” Consequently, “[t]he history of war, in that quarter of the globe, is no longer a history of
nations subdued and empires overturned, but of towns taken and retaken.” In contrast, the
unwillingness of the states to countenance standing armies or other means of discouraging predatory
behavior of neighboring states would leave them vulnerable. “War between the States, in the first
period of their separate existence, would be accompanied with much greater distresses than it
commonly is in those countries where regular military establishments have long obtained. . . . The
jealousy of military establishments would postpone them as long as possible. The want of
fortifications, leaving the frontiers of one state open to another, would facilitate inroads. . . .
Conquests would be as easy to be made as difficult to be retained. War, therefore, would be desultory
and predatory. PLUNDER and devastation ever march in the train of irregulars.”

Aiming to protect liberty at home, the disunited states would unwittingly provoke cruel war and collective ruin.
Unfortunately, these horrors would only be the beginning. Under the pressure of insecurity and
war, the states’ republican institutions would begin to weaken, until ultimately they would be
abandoned altogether. “The violent destruction of life and property incident to war, the continual
effort and alarm attendant on a state of continual danger, will compel nations the most attached to
liberty to resort for repose and security to institutions which have a tendency to destroy their civil and
political rights. To be more safe, they at length become willing to run the risk of being less free.” The
result would be an embrace of “standing armies and the correspondent appendages of military
establishments,” because, parchment constitutional barriers notwithstanding, “[f]requent war and
constant apprehension . . . will infallibly produce them.” That necessity, in turn, would force the states
“to strengthen the executive arm of government, in doing which their constitutions would acquire a
progressive direction toward monarchy. It is of the nature of war to increase the executive at the

67 Hamilton, Federalist 8, pp. 44-45.
expense of the legislative authority.” In the end, the continual need for the military would “enhance[] the importance of the soldier, and proportionally degrade[] the condition of the citizen,” until finally, “the military state becomes elevated above the civil.”

The logical endpoint of not ratifying the Constitution would thus be the fiscal-military state, on the early modern European model, and the recapitulation in America of the darkest periods of European history.

If doctrinaire republicanism would thus perversely undermine the very republican commitments that the states had set out so jealously to defend, the new international environment in which the states would interact would be a ready source of conflict to set these devastating dynamics in motion. In part, Publius emphasized the problem of geography. Montesquieu had famously argued that geography and climate determined much of a nation’s destiny. Hamilton pursued this theme, focusing on “neighborhood” as an explanation for why, in the absence of the Union, the states would be locked in a cycle of conflict and violence. It was unrealistic to expect “a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood,” he wrote, as it was “a sort of axiom in politics, that vicinity or nearness of situation, constitutes nations natural enemies.” Indeed, “‘neighboring nations,’” according to an “intelligent writer” (the Abbé de Mably), “are naturally enemies of each other . . . [because of] that secret jealousy which disposes all states to aggrandize themselves at the expense of their neighbors.” The problem of neighborhood would be especially severe for the American states, Hamilton claimed, because of geographical features that would enable certain states, like New York, to exploit their favorable geography to the detriment of their neighbors. “The opportunities which some States would have of rendering others tributary to them by commercial regulations would be impatiently submitted to by the tributary States.”

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68 Hamilton, Federalist 8, pp. 45, 46, 48.
70 All three of the authors were familiar with Montesquieu’s views, and in this respect at least, were influenced by this writings. Paul M. Spurlin, Montesquieu in America, 1760-1801 (1940).
71 Hamilton, Federalist 6, pp. 36.
72 Hamilton, Federalist 7, pp. 40.
domination would soon breed resistance. Even more inauspicious, however, would be the states’
commitment to granting a large share of influence over the management of their foreign affairs to
popular assemblies. Under these circumstances, unavoidable conflicts of interest among the states—
over territorial claims to the western lands, the allocation of the existing public debt, commercial
policy and foreign alliances, to name but a few—would be “productive of ill-humor and animosity,”
leading “citizens of the States interested [to] clamour” and “denominate injuries those things which
were in reality the justifiable acts of independent sovereignties consulting a distinct interest.”
The hostile measures that would ensue “would naturally lead to outrages, and these to reprisals and
wars”—ultimately, “not of parchment, but of the sword.”73

With British and Spanish colonies surrounding the states, moreover, the states’ larger
neighborhood portended ominous conflict with Europe’s imperial powers. Here, too, the Union, as an
extended republic, had the advantage over the states. Jay argued that a national government would be
able to tamp down impulsive state responses to problems in America’s continental “neighborhood”
that would otherwise be the source of conflict. “The neighborhood of Spanish and British territories,
bordering on some States and not on others, naturally confines the causes of quarrel more immediately
to the borderers,” Jay explained. “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 these nations; and nothing can so effectually obviate that danger as a
national government, whose wisdom and prudence will not be diminished by the passions which
actuate the parties immediately interested.”74 In the absence of a federal government able to alleviate
their sense of insecurity, the states would inevitably enter into conflicting European alliances— “one
inclining to Britain, another to France, and a third to Spain, and perhaps played off against each other
by the three”—and, when conflict arose, out of a sense of desperation they would feel compelled to

73 Hamilton, Federalist 7, pp. 40-42 (emphasis in original).
74 Jay, Federalist 3, p. 17.
invite foreign intervention. “And here let us not forget how much more easy it is to receive foreign fleets into our ports, and foreign armies into our country, than it is to persuade or compel them to depart.” 75 The result would be that “by the operation of such jarring alliances, [the states would] be gradually entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which [they were] divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all.”76 Principled adherence to small-state republicanism would thus yield yet another perverse effect—here, re-colonization.

The Atlantic coast provided another important factor favoring the Union over the disunited states. “There is a wide difference,” Hamilton maintained, “between military establishments in a country, seldom exposed by its situation to internal invasions, and in one which is often subject to them, and always apprehensive of them.” Nations insulated from others by maritime borders, like Great Britain and, on the east coast, the United States, had less reason to fear invasion. Water formed a natural defensive border because it limited the practical access of an invading army. Indeed, Britain’s “insular situation” enabled her to discourage foreign invasion by maintaining a “powerful marine” and thereby to avoid the necessity for a large standing army. This favorable geographical position was one source of her liberty.77 If the states were united under the Constitution, “the Union . . . may for ages enjoy an advantage similar to that of an insulated situation. Europe is at a great distance from us. Her colonies in our vicinity will be likely to continue too much disproportioned in strength to be able to give us any dangerous annoyance. Extensive military establishments cannot, in this position, be necessary to our security.” In contrast, if disunited as separate nations or “thrown together into two or three confederacies,” the states would lose this providential blessing and find their

75 Jay, Federalist 5, p. 27.
76 Hamilton, Federalist 7, p. 43
77 Hamilton, Federalist 8, p. 49.
security threatened and their liberty “prey to the means of defending ourselves against the ambition and jealousy of each other.”

Finally, many of Hamilton’s most skeptical remarks are best interpreted as inflated expressions of Enlightenment balance of powers theory rather than as an embrace of modern realism. He delighted in ironies like the Scottish thinker he essentially was. To avoid war, a nation had to prepare for one. This maxim, which always shocked his opponents, was a clear implication of balance-of-powers reasoning. Once prepared, a nation ought to try as hard as possible to avoid conflict (something his opponents also never fathomed). Every nation, Hamilton insisted, needed some minimum state capacity to be taken seriously and to ward off foreign hostility. Without some plausible means of naval self-defense, he warned in *Federalist* 11, “our commerce would be a prey to the wanton intermeddling of all nations at war with each other; who, having nothing to fear from us, would with little scruple or remorse supply their wants by depredations on our property.” Hamilton was not denying the importance of the international law of neutrality, any more than *The Federalist* was questioning the importance of the Constitution by insisting that institutional arrangements, rather than of the force of law or morality alone—“the weaker springs of the human character”—were necessary means to ensure compliance with its principles. He was simply observing that to be effective the law of nations, like other legal restraints, must be backed by some capacity to oppose those whose interests incline them to disregard their legal duties. “The rights of neutrality will only be respected when they are defended by an adequate power.” Thus, to obtain the benefits of neutral rights, the Union would need to establish a modest navy which, “if it could not vie with those of the great maritime powers, would at least be of respectable weight if thrown into the scale of either of two contending parties.” Any nation that neglected its own defense, and was thus “despicable by its weakness, forfeits even the

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78 Hamilton, Federalist 8, p. 49.
79 Hamilton, Federalist 11, p. 68.
80 Hamilton, Federalist 34, p. 212
privilege of being neutral.” That would be especially tragic for the United States, because guaranteeing extensive commercial opportunities would only require the maintenance of a small navy.\textsuperscript{81}

In these early essays, Hamilton and Madison borrowed—perhaps more than has been recognized—from the writings of the Abbé de Mably, the “intelligent writer” to whom Hamilton referred in \textit{Federalist} 6 and whom Madison explicitly invoked in \textit{Federalist} 18 and 20. Mably’s well-known volume on “the principles of negotiation” appears to have provided an inspiration for some of the authors’ fundamental ideas about the conduct of foreign affairs, as well as a model for their use of historically-grounded comparative analysis.\textsuperscript{82} Like Hamilton, Mably was unsparing in his realism about human nature. Emphasizing how the passions and interests of Europe’s ruling elites drove international diplomacy, Mably eschewed basing his advice on moral “maxims which are ill-suited with beings who have our passions. My morality has so little austerity in it, that I desire not to have virtuous but ambitious men, who make some use of their reason, for my readers.” Nevertheless, again like Hamilton, Mably was a hard-boiled idealist who held that “justice, moderation, and kindness [we]re the soul” of an enlightened foreign policy. Obeying law and duty were in principle the right things to do, but they were also prudent policy. “[A] republic, which respected not the law of nations,” he observed “but disturbed its neighbours, and waged every day unjust wars, in order to extend its dominions” would ultimately be “forced . . . to yield to the efforts of conjured enemies, whom [its] ambition would have raised against [it]; deprived of any other advantage, but that of burying [itself] under the ruins of [its] country.” Although indulging unjust, aggressive passions was thus self-

\textsuperscript{81} Hamilton, Federalist 11, p. 69. 
\textsuperscript{82} Gabriel Bonnot de Mably, \textit{The Principles of Negotiations: or, An Introduction to the Public Law of Europe Founded on Treaties, &c.} (Printed for James Rivington and James Fletcher, at the Oxford-Theatre in Paternoster Row, 1758). Notably, Publius’ essays on ancient and modern confederacies also explicitly rely on Mably. See also Madison, Federalist 18 and 20, pp. 114, 127. Mably’s prominence in America was heightened by his printed debate with John Adams over the principles of government. See Abbé de Mably, \textit{Remarks Concerning the Government and the Laws of the United States of America: In Four Letters, Addressed to Mr. Adams} (London, 1784).
defeating, that did not mean that nations should refrain from maintaining an adequate military capacity. Once again like Hamilton, Mably insisted that to ensure that its rights were respected, a state had to have the means to defend itself: “I own, that virtue, divested of strength, passes only for weakness; and that a state which defends itself against powerful neighbours, only with justice and moderation, must soon or late be oppressed.” However “vicious” men might be, Mably added, they will “place their confidence in the moderation of [a potential rival] . . . when these qualities are accompanied with power and courage.” Mably acknowledged that European nations and elites were not yet prepared to accept his guidance, given their constitutions, manners, and passions, but, as if anticipating the authors of *The Federalist*, he dared “to hope, that my reflections may persuade some man, who raised, one day, to the government of affairs, might be led away by vulgar prejudices. But when, on the contrary, he is guided by maxims drawn from the purest sources, he may be the cause of his own nation’s happiness, by not disturbing that of his neighbors.”

*The Federalist* embraced a similar view of international affairs. The authors remained hopeful and committed to the principles of the law of nations. At the same time, they eschewed naïve optimism about human nature and its implications for the behavior of nations. Proper institutional design would vindicate their hopeful realism by mitigating threats to the United States and enhancing the prospects for peaceful, productive international relations.

V. Separating Powers to Enforce the Law of Nations

As the essays expanded, and the authors turned from their more polemical prognosis of the consequences of disunion to an affirmative defense of the Constitution, they offered a strikingly different vision of international relations and the possibilities for the Union’s diplomacy under reformed constitutional arrangements. In this account—as in their critique of the states under the Confederation—they emphasized the critical importance of law and of institutional design in

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83 Mably, pp. 38, 40, 41, 42, 46.
promoting compliance with the nation’s duties and ensuring its “respectability,” “character” and “honor.” At the outset, Jay declared that “[i]t is of high importance to the peace of America, that she observe the laws of nations,” a point that the authors recurred to frequently. Their focus, however, was not simply on the need to adhere to black-letter rules but also on the importance of deftly managing ongoing relations. Law was for them a managerial mode as much as a collection of rules. Of course there were also rules governing international relations, and the place where they would most often be applied would be in federal institutions.

The federal judiciary was to play a critical role in this respect. As Jay explained, it would fall to the courts to ensure that the law of nations “will always be expounded in one sense and executed in the same manner,” which was one reason why, two years later, he chose to become Chief Justice of the Supreme Court rather than continue on as foreign secretary (under a new title). The federal judiciary’s independence would enable it to counteract “the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves.” Several of the classes of cases to which Article III extended the judicial power were drawn with the goal of enabling the federal courts to enforce the law of nations in mind. Indeed, Hamilton noted, Article III had gone further, granting the federal courts jurisdiction over “all causes in which the citizens of other countries are concerned.” Although “a distinction may perhaps be imagined between cases arising upon treaties and the laws of nations and those which may stand merely on the footing of the municipal law,” he explained, “it is at least problematical, whether an unjust sentence against a foreigner, where the subject of controversy was wholly relative to the lex loci, would not, if unredressed, be an aggression upon his sovereign, as well as one which violated the stipulations of a treaty or the general law of nations.” Accordingly, federal court jurisdiction in all

85 Jay, Federalist 3, p. 15.
86 President George Washington gave him the choice to assume either office in the new federal government.
87 Hamilton, Federalist 78, p. 522.
such cases was “not less essential to the preservation of the public faith, than to the security of the public tranquility.”

Even more critical was the role of the federal judiciary in applying the international law of admiralty, especially when determining prize cases during war, a subject of great delicacy, as wartime experience had taught those responsible for conducting the Confederation’s diplomacy. Admiralty matters “so generally depend on the laws of nations, and so commonly affect the rights of foreigners,” Hamilton observed, that “the most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes.” Notwithstanding the wartime practice of some of the states (following Congress’s soon to be regretted recommendation in 1775), it was necessary to exempt prize cases from the ordinary right to a jury trial in order to ensure strict adherence to the law of nations. “Juries cannot be supposed competent to investigations that require a thorough knowledge of the laws and usages of nations,” Hamilton explained, “and they will sometimes be under the influence of impressions which will not suffer them to pay sufficient regard to those considerations of public policy which ought to guide their inquiries.” Indeed, “[i]t will add great weight to this remark, in relation to prize causes, to mention that the method of determining them has been thought worthy of particular regulation in various treaties between different powers of Europe, and that, pursuant to such treaties, they are determinable in Great Britain, in the last resort, before the king himself, in his privy council.”

Even a fundamental right like the right to a jury trial, so cherished by the revolutionaries, had to be harmonized with the law of nations.

Article III also charged the federal courts with responsibility for enforcing the nation’s treaty obligations. To aid in the task, the Supremacy Clause further declared treaties to be supreme law of the

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88 Hamilton, Federalist 80, p. 536.
89 Hamilton, Federalist 80, p. 538.
land, since “to have any force at all, [treaties] must be considered as part of the law of the land.” This explicit declaration addressed the problem, so damaging to the Confederation, of conflicting and bad faith interpretations of international obligations in the states. “The treaties of the United States, under the present Constitution, are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures,” Hamilton observed in Federalist 22. “The faith, the reputation, the peace of the whole Union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed.” State officials were ill-positioned to take the broader and longer view; they were handicapped by parochial perspectives, local interests, and transient passions. Foreign audiences, moreover, were fully apprised of the problem. “Is it possible that foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honor, their happiness, their safety, on so precarious a foundation?” The federal courts, in contrast, would produce “true” and uniform interpretations, which ultimately required that treaty issues “be submitted, in the last resort, to one SUPREME TRIBUNAL.”

At the same time, the nature of the judicial process, which confined courts to cases of a “Judiciary Nature,” imposed limits on their capacity to ensure the compatibility of American law and diplomacy with federal treaties and the law of nations. As a result, a large share of responsibility for enforcing international law would fall to the political branches, necessitating the deep involvement of federal officials in interpreting and applying the law of nations. Indeed, even members of the House, who were charged, for example, with setting commercial policy, would have a role. They had to be acquainted, Madison declared, “not only [] with the treaties between the United States and other nations, but also with the commercial policy and laws of other nations.” In addition, in a subtle reminder both of the importance of the law of nations and the limited role the House was to play in its

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91 Hamilton, Federalist 22, p. 143-144.
enforcement, even a representative serving for only two years “ought not to be altogether ignorant of the law of nations; for that, as far as it is a proper object of municipal legislation, is submitted to the federal government.” More importantly, Congress had the power to declare war, which included the power, and necessity, of determining when war was justified or necessary and, thus, depended on a proper understanding of treaty commitments and the law of nations.

In contrast to the House, the Senate was supposed to play a more central role in foreign affairs. Accordingly, it proved controversial in Philadelphia and remained so during the ratification debates. The authors of *The Federalist* defended the upper house not primarily because it represented the states as integral communities (none of the authors favored the Great Compromise) but rather because they imagined the Senate as the repository of reason. With their longer term, fewer numbers, and more discriminating selection process, senators would, the authors thought, be more broad-minded, less susceptible to impulse, and less interested in satisfying a vengeful populace than representatives in the House. In addition, once in office together, the small body of senators would identify their service with the national interest in a way not possible for the larger, more mutable, and more locally accountable representatives in the House. “Those who represent the dignity of their country in the eyes of other nations,” argued Madison (who anticipated joining this select group), “will be particularly sensible to every prospect of public danger, or of a dishonorable stagnation in public affairs.” They were therefore institutionally well suited to participate in treaty-making.

The Senate was designed with this purpose in mind. It would take the long view, consider ramifications for the whole nation and not just localities, and consult other guides than the loudest constituents. The indirect and mediated selection process for senators would guarantee, Jay argued in

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93 Madison, Federalist 53, p. 364 (emphasis added).

94 Madison, Federalist 58, p. 395. See also Madison, Federalist 63, p. 423. Patrick Henry blocked Madison’s appointment to the Senate in the Virginia legislature, a fateful move with large consequences for American political history. The Senate, which held its sessions in secret, might have had an unofficial reporter, and the House would have lost its most energetic member. The political and institutional history of the 1790s could have been much different.
*Federalist 64,* that the Senate would be “composed of the most enlightened and respectable citizens . . . who have become the most distinguished by their abilities and virtue . . . and whose reputation for integrity inspires and merits confidence.” Six-year terms, moreover, would afford senators “sufficient time to become perfectly acquainted with our national concerns, and to form and introduce a system for the management of them.” Their superior qualifications also included the constitutional age requirement: 30, as opposed to only 25 for the House. This was necessary, Madison argued, because the Senate’s larger role would require “greater extent of information and stability of character.” In addition, the longer term of office would help prevent “the mischievous effects of a mutable government,” the foremost of which was that “it forfeits the respect and confidence of other nations, and all the advantages connected with national character.”

Madison’s reference to foreign opinion echoed similar warnings by Jay and Hamilton in their essays, but Madison went farther in elaborating structural reasons why the Constitution would send positive signals to the rest of the world. Though less well-known than *Federalist* 10 and 51, Madison’s final two essays, *Federalist* 62 and 63, are imbued with a Humean political psychology that, along with Madison’s characteristic concern with countervailing powers and institutional design, applied directly to the Senate’s role in foreign affairs. Madison’s goal in these essays was to explain how the Constitution’s division and specialization of powers would foster wise diplomacy. Everyone, he noted, would immediately apprehend how an “inconstant” individual is “a speedy victim to his own unsteadiness and folly.” Friends will “pity” him while enemies will take the “opportunity to make their fortunes out of his.” The same held for nations. “Every nation, consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of their wiser neighbors.” This was not just an abstract lesson of philosophy and history. Instead, “the best instruction on this subject is unhappily conveyed to America by the

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95 Jay, Federalist 64, pp. 433, 434.
96 Madison, Federalist 62, p. 420.
example of her own situation. She finds that she is held in no respect by her friends; that she is the
derision of her enemies; and that she is a prey to every nation which has an interest in speculating on
her fluctuating councils and embarrassed affairs."97 Once again, Americans had primarily themselves
to blame for their dismal record in international relations.

Critically, the Constitution would create more stable institutions for the conduct of foreign
affairs. There were two objects of government, Madison argued in Federalist 63, those producing
measures with “immediate and sensible operation” and those “depending on a succession of well-
chosen and well-connected measures, which have a gradual and perhaps unobserved operation.”98
While Madison implied that the House was adequate to the first, it was only the Senate that had
“sufficient permanency to provide for such objects as require a continued attention.” It could similarly
protect the polity from those

particular moments in public affairs, when the people stimulated by some irregular
passion, or some illicit advantage, or misled by the artful misrepresentations of
interested men, may call from 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?99

The institution of the senate had historically proved to be a beneficial check on popular assemblies
because it maintained “the cool and deliberate sense of the community” against fleeting passions and
local interests that tended to infect not only popular assemblies but also “the people themselves.”100 In
those moments, a smaller, durable upper house worked as a brake protecting “the people against their
own temporary errors and delusions” and marking time “until reason, justice truth, can regain their
authority over the public mind.”101

98 Madison, Federalist 63, p. 424.
100 Madison, Federalist 63, p. 426.
101 Id. at 425.
*Federalist* 63 represents Madison’s most penetrating application of his counter-balancing theory of interests and institutions to the Senate and House, and particularly to the former’s expected role in formulating foreign policy. It was his last *Federalist* essay, written just as he was readying to return to Virginia. Nearly a decade of experience as a legislator in Virginia and in Congress stood behind his deep skepticism about popular assemblies, and, indeed, his analysis of this problem had taken up a good portion of his writings in the 1780s.\(^\text{102}\) After the Convention, notwithstanding his reservations about the principle of equal state representation, he retained a deep belief in the importance of a separate, upper house with a capacity for deliberation and cool-headed discernment. *Federalist* 63 represents the culmination of his thinking about democratic legislatures. It came as he applied his theory of countervailing institutions to the conduct of foreign affairs. Without a senatorial check, Madison warned, “the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned; but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary in order to merit, than it is to obtain its respect and confidence.”\(^\text{103}\)

Why, however, was “the opinion of the world” so crucial? “An attention to the judgment of other nations is important to every government for two reasons,” Madison explained. “[T]he one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy.” Other nations would respect a nation that made wise rather than foolish decisions. The wise decision-maker thereby gained twice: once by the wise decision, and then again by the respect other nations bestowed on the nation for acting wisely. The second reason, Madison continued, was that “in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest,

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\(^{102}\) See Rakove, *Original Meanings*, esp. 23-56.

\(^{103}\) Madison, *Federalist* 63, p. 422.
the presumed or known opinion of the impartial world may be the best guide that can be followed.”

That opinion of “the impartial world,” in other words, could help policy-makers navigate through the shoals of popular opinion in politically fraught times and on the most politically sensitive questions involving the nation’s foreign affairs.

This was a deep point in manifest tension with the more pessimistic portrait of international relations that Hamilton and Madison had painted in the early essays. In elucidating the benefits of the Constitution’s structural design, a different picture emerged. Faced with impassioned impulse, national decision-makers should consult the “opinion of the impartial world.” Although Madison did not elaborate on how that opinion was to be ascertained, his method shows that he repeatedly recurred to ancient and modern history and the known rules of international relations. His axiom that “all very numerous assemblies” tend to become “mob[s],” in which “passion never fails to wrest the sceptre of reason,” applied especially to conducting relations with the rest of the world. Jay and Hamilton were of the same mind and even more explicitly looked to the law of nations as a guide to international decision-making. The authors contrasted the traditional customs of international public law to transient domestic politics and found in the former truths that had been tested over time. Those known and conventional rules, tried by history and supported by reason, would offer a better guide to foreign policy than factional or even majoritarian impulses.

Of course, neither Madison, nor Hamilton, nor Jay would have denied that nations sometimes acted unjustly and disregarded the law of nations. To follow suit, however, would be self-defeating. Each nation actually stood to gain more by conducting itself honorably. “What has not America lost

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104 Madison, Federalist 63, p. 423.
105 Madison, Federalist 55, p. 374.
106 See Michael P. Federici, The Political Philosophy of Alexander Hamilton (2012) 117 (“Hamilton placed great authority in the law of nations, because it embodied the deliberative experience of generations of human beings from different nations. . . . In some rudimentary way, Hamilton seemed to recognize that deliberative constitutional process and transnational civilizational standards like the law of nations were part of human groping toward universality.”).
by her want of character with foreign nations,” Madison asked, “and how many errors and follies
would she not have avoided, if the justice and propriety of her measures had, in every instance, been
previously tried by the light in which they would probably appear to the unbiased part of mankind?”107
Notwithstanding the hard-boiled skepticism about human nature and collective politics that they
sometimes expressed, the authors retained the belief that there was an “unbiased” perspective on
national behavior available in the larger world, measured across time and space, which could serve as a
kind of global impartial spectator. It was this opinion that ought to guide a nation’s foreign policy.

Similar considerations stood behind the institutional features of the presidency, which was
among the most original of the Constitution’s institutions and was structured primarily to improve
American foreign policy. The selection of the president was even more mediated than that of senators
and would result in “characters pre-eminent for ability and virtue,” Hamilton assured his readers.
“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.” Virtue and efficiency would combine to produce
“good administration.”108 The single executive, which many Antifederalists thought dangerous, would
assure the “perfect secrecy and immediate dispatch” for diplomacy that a plural council could not.109
Combined with the Senate when making treaties, “the Constitution provides that our negotiations for
treaties shall have every advantage which can be derived from talents, information, integrity, and
deliberate investigations, on the one hand, and from secrecy and dispatch on the other.”110 There was
more to the executive, however, than efficiency. Because of his independence from the legislature, the
president would not be subservient to all its desires. Instead he could, and should, exercise his own
reason and judgment. “The republican principle demands that the deliberate sense of the community

107 Madison, Federalist 63, p. 422-23.
108 Hamilton, Federalist 68, 460-61. See also Jay, Federalist 64, pp. 433, 434.
109 Jay, Federalist 64, p. 435. See also Hamilton, Federalist 70, p. 472.
110 Jay, Federalist 64, p. 436.
should govern the conduct of those to whom they intrust the management of their affairs,” Hamilton explained, but “it does not require an unqualified complaisance to every sudden breese [sic] 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.”

In addition, a four-year term would give the President “firmness,” but that tenure was not so long as “to justify any alarm for the public liberty.” Nor was he restricted to a single term, because that limitation might “occasion a disgraceful and ruinous mutability in the administration of the government.” Finally, the president’s qualified veto gave the executive more than mere “parchment delineation” from Congress; it supplied “constitutional arms” for effective self-defense, as well as “to encrease the chances in favor of the community, against the passing of bad laws, through haste, inadvertence, or design.” Having more eyes reviewing each bill would, in Hamilton’s words, increase “the diversity in the situations of those who are to examine it.” The president’s veto, therefore, “establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.”

The treaty power fell to another “distinct department,” which likewise was structured to enhance the ability of the nation to interact effectively with other nations. As Hamilton explained, a treaty was a contract with a foreign nation and, as such, was neither purely executive nor legislative in nature. Its negotiation required a capacity for secrecy and flexibility, as well as the “wisdom” and “integrity” of an individual “the most distinguished by [his] abilities and virtue” and who “best understand[s] our national interests.” These traits marked out the executive as the most suitable

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111 Hamilton, Federalist 71, p. 482.
112 Hamilton, Federalist 71, p. 485.
113 Hamilton, Federalist 72, p. 487.
114 Hamilton, Federalist 73, pp. 494-95.
115 Ibid., p. 495.
116 Hamilton, Federalist 75, p. 504-5. See also Jay, Federalist 64, pp. ?
branch. On the other hand, “the vast importance of the trust, and the operation of treaties as laws” strongly suggested the necessity of participation by a part of the legislature.\(^{117}\) It was true that the president would have the qualities “indispensable in the management of foreign negotiations” in the highest degree, but *The Federalist*’s political psychology explained why adherence to strict Enlightenment separation of powers theory would nevertheless be unwise in this context.\(^{118}\) In Britain, the king had the sole power of making treaties because his hereditary status gave him “personally too much at stake in the government to be in any material danger of being corrupted by foreign powers.” In a republic, however, the president would be “raised from the station of a private citizen,” have only a modest fortune, and expect to return to private life. These different characteristics were a recipe for temptation, corruption, and even “aggrandizement, by the aid of a foreign power.”\(^ {119}\)

It would, however, go too far in the opposite direction to empower the Senate alone to make treaties, because an agent appointed by the Senate to negotiate—even were it to appoint the President himself—“could not be expected to enjoy the confidence and respect of foreign powers in the same degree with the constitutional representative of the nation.” Nor could he operate with the same “weight or efficacy.”\(^ {120}\) Moreover, involving the House would be folly in view of the defects of popular assemblies in conducting foreign affairs. As Jay explained, “[t]hey who wish to commit the power under consideration to a popular assembly, composed of members constantly coming and going in quick succession, seem not to recollect that such a body must necessarily be inadequate to the attainment of those great objects, which require to be steadily contemplated in all their relations and circumstances, and which can only be approached and achieved by measures which not only talents,

\(^{117}\) Hamilton, Federalist 75, p. 504-5. This explanation calls to mind John Locke’s “federative power,” although Hamilton did not invoke Locke. See John Locke, *Second Treatise on Civil Government*, ch. XII.


\(^{119}\) Hamilton, Federalist 75, pp. 505.

\(^{120}\) Hamilton, Federalist 75, pp. 506.
but also exact information, and often much time, are necessary to concert and to execute.” Hamilton added: “Accurate and comprehensive knowledge of foreign politics; a nice and uniform sensibility to national character, decision, secrecy and dispatch; are incompatible with the genius of a body so variable and so numerous.” In view of the defects of the House, the Supremacy Clause had wisely made treaties “part of the law of the land.” This explicit declaration carried forward, and virtually completed, the elimination of the most popular branch from the treaty process by empowering the federal courts, the most insulated branch, to enforce treaties directly, without involving the House. As a result, “[t]heir true import . . . must, like all other laws, be ascertained by judicial determinations.” Indeed, Jay added, the Supremacy Clause went so far as to place treaties “beyond the lawful reach of legislative acts.” The need to insulate treaty compliance from the winds of popular opinion was, all three authors maintained, a crucial lesson of history—not least the American states’ own short history.

VI. Conclusion

We began with Hamilton’s indictment of the Confederation’s international woes in *Federalist* 15. He did not end that essay, however, on a dark note. Instead he sought to remind his readers what, he thought, was the large consensus about the very point of inter-state cooperation, at home and abroad: “[I]mpelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquillity, our dignity, our reputation,” because the present course “has too long seduced us from the paths of felicity and prosperity.” What made the United States special,

121 Jay, Federalist 64, pp. 433-34
122 Hamilton, Federalist 75, pp. 505-6. He applied the same logic for excluding the House from the appointment of officers, including ambassadors. Hamilton, Federalist 77, p. 519 (“A body so fluctuating, and at the same time so numerous, can never be deemed proper for the exercise of that power.”).
123 Hamilton, Federalist 22, p. 122. See also Madison, Federalist 38, p. 247 (denying that it was “an objection against the new Constitution, that it empowers the Senate, with the concurrence of the Executive, to make treaties which are to be the laws of the land”); Hamilton, Federalist 75, pp. 505-6 (observing that “the operation of treaties as law” requires that the a part of the legislative body be included in the treaty-making process).
124 Jay, Federalist 64, pp. 437.
125 Hamilton, Federalist 15, p. 92.
Hamilton argued in *Federalist 1*, was not that it was a republic or collection of republics, nor that it sought commercial engagement with the rest of the world rather than conquest. Instead, what made it special was its self-conscious experiment with new forms of self-governance, and prominently with institutional mechanisms that would maximize effective, just, and honorable decision-making, while minimizing wasteful, unjust and ineffective decision-making. When Hamilton proclaimed that the United States could become a model for the world, he did not mean that other nations might simply copy the American constitutions and enjoy better governments at home. Rather, he was observing that the benefits of reformed American constitutionalism would increase as other nations followed the American lead in “establishing good government from reflection and choice,” instead of relying for their constitutions “on accident and force.” This is what he meant by adding “the inducements of philanthropy to those of patriotism” in making his case for ratification.\(^{126}\) The world itself would become better governed, each nation, starting at home, and then all together.

\(^{126}\) Hamilton, Federalist 1, p. 3.