

edited by
O. Carlson

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THE FEDERALIST
ON PUBLIC OPINION

Francis G. Wilson

THE MAXIM that all government rests on opinion became in 1788 in its way as venerable as *vox populi vox dei*. Those who framed our system of government knew both sayings, but they stressed the former more than the latter. "If it be true that all governments rest on opinion," we read in *The Federalist*, No. XLIX, "it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ancient as well as numerous, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato. And in every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side."¹

Our problem is to discuss the theoretical function of opinion as *The Federalist* states it. This issue is part of the more comprehensive theory of public opinion, but many would regard it as the initial and most essential phase of this larger subject.² Today, when the bald use of

¹ The numbering of the papers in *The Federalist* and the ascription of authorship follows here the Lodge edition of 1886. See introduction to Everyman edition of 1911 by W. J. Ashler.

² Cf. my article "Concepts of Public Opinion," *The American Political Science Review*, XXVII (1933), 371ff.

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amoral political technique to re-examine the fundamental conflicting theories of the

Now the central problem of modern discussions of the fundamental issues, and the problems, as well as assist in the theory of opinion. What is the function of public opinion in its time, just such a few of the few genuine theories of opinion by charity toward ordinary men, the weaknesses of the political system of *The Federalist*, never to be forgotten, or that government is for the citizens.

THEORIES

It may be said that, but the theory of opinion. In the first place, the standard of government and the standard of government are vitally important to the people can do or attain by a kind of consensus generally approved by such consent of the government should be directed. The theory of moral relativism, or that the theory of opinion, it is much more difficult to do precisely what we desire of people go counter to the consequences of behavior differ

More serious in our time, must be in accordance with the theory of justice is more than simple moral relativism may have. The theory of opinion, but the condemnation have found, requires more than "don't." It requires a standard

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amoral political techniques by our enemies has forced the democracies to re-examine the fundamentals of social morality, it is essential that conflicting theories of the function of opinion should be clarified.

Now the central propositions to be argued here are that most modern discussions of the function of opinion do not face clearly certain fundamental issues, and that *The Federalist* can throw light on these issues, as well as assist in the formulation of a coherent, conservative theory of opinion. What is needed today is a frontal analysis of the function of public opinion in a revolutionary age. *The Federalist* was, in its time, just such a frontal attack, and it contains perhaps one of the few genuine theories of opinion stated in modern times. It is animated by charity toward ordinary mortals, but it also speaks with candor of the weaknesses of the political animal. Modern writers, like the authors of *The Federalist*, never say really that government rests entirely on opinion, or that government is justified wholly by the opinion of its citizens.

THEORIES OF THE FUNCTION OF OPINION

It may be said that, broadly, there are three theories of the function of opinion. In the first place, it may be argued that the operational basis and standard of government is what the public wants. Two assumptions are vitally important to this view. Its proponent must argue that the people can do or attain what they want, either in a particular state or by a kind of consensus gentium. It must also be argued that whatever is approved by such consent is right or is the standard by which a government should be directed. It is clear that while it may be easy to argue moral relativism, or that the very idea of morality is a kind of linguistic boner, it is much more difficult to say that in practical politics the people are able to do precisely what they may want. Briefly, whenever the desires of people go counter to the patterns of political control, the consequences of behavior differ from the purposes originally accepted.

More serious in our time, however, is the view that government must be in accordance with more than human caprice, or, indeed, that justice is more than simple whim or even long-standing prejudice. The moral relativist may have an easy time of it in periods of peaceful prosperity, but the condemnation of tyranny and irresponsible oligarchy, we have found, requires more than a mere "some people do and others don't." It requires a standard of justice, a theory of morality which ap-

plies to men in general. It requires a philosophy of right which cannot be stated simply in terms of a mathematical equation or a scientific formula; it must be stated in terms of the Greek-Christian theory of morality, which has been the fortress of Western humanity in times of social disaster. When Socrates in *The Republic* denounced and vivisected the theories asserting that what the people want and can get is the basis of justice, he was stating an argument which is all but as fresh as on the day it was written. Indeed, the grossest perverters of Machiavelli have hardly reached the proposition that the standard for the conduct of the state is merely what the public wants. We may, therefore, consider this point of view as something of a straw man, needing little further attention.

A second theory of the function of public opinion assumes the rationality of man and the binding character of the power of reason. Rational opinion discovers the rights of men and the moral criteria for action by the state. Upon this assumption the right of the majority to sovereignty is clear, and opinion so guided would be able to achieve its legitimate purposes. The rising defense of democracy during the period since the Enlightenment is closely associated with this interpretation of the function of opinion. We might call to witness Rousseau's conception of the general will, the contract theory of society propounded by John Locke, or many of the defenders of a democratic philosophy in America, such as Thomas Jefferson and his followers. But how will we reconcile the assertion that men have natural rights against society when we also say that a majority of the people have a right to govern? Professor Kendall has recently shown that Locke, at least, believed men would act rationally and therefore there could be no enduring conflict between the moral capacities of men and the will of the sovereign majority. He has called this Locke's "latent premise," which should have been elaborated in the *Two Treatises* but which was not.³ In adopting Kendall's interpretation, we argue that we have, in the second place, the latent premise theory of the function of opinion. It is the pervading reasonableness of man which gives opinion its legitimate majority authority in society.

It should be noted that this theoretical product of the age of reason did not stress the immediate participation of reason in the divine mind.

³ See Willmoore Kendall, *John Locke and the Doctrine of Majority-Rule* (Urbana, Ill., 1941), pp. 132ff.

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since in general a deistic attitude was assumed. In its day this theory was radical enough and is to be distinguished from the historically more conservative theory which insisted on the divine origin of the moral order and the participation of human reason in the reason of God.

CONSERVATIVE THEORY

In the third place, there is what may be called the conservative theory of the function of opinion. In some respects we cannot separate this third view from the second, and like the second its adherents waver between an unshaken confidence in popular reason and a strong element of scepticism, asserting that the majority is not always or ultimately to be followed. Thus there is no latent premise that men will act rationally, and there is in general a theistic interpretation of the relation of human reason and the moral order. One immediate implication of this position is that democracy is a form of government, depending on a social theory of justice which is applicable to any form. In other words, the principles of justice are not directly democratic as in the second theory. The criteria of justice may or may not be accepted by the majority; the norms of behavior may or may not coincide with opinion. In this statement we have, it may be argued, the historic and conservative theory of the operation of opinion in the state.

Opinion here becomes a subdivision of a general theory of justice. Our third conception of the function of opinion involves a theory of truth not essentially different from the second point of view; but it involves also a conception of the pattern or characteristics of human behavior which is widely different. Under Hamilton's statement we could not say that men will in the end act rationally under mere majority control; but we could say that they may or may not act rationally depending upon various circumstances. It might be observed that even the Jeffersonians veered toward the third view whenever the majority went against them, and in their defense of the constitutional balance they were implicitly taking the conservative view of public opinion. It hardly needs to be mentioned that what Hamilton was saying was the echo of the ancient moral tradition of the East and the West. Confucius, the Laws of Manu, Plato, the Christian Fathers, John Calvin, Leo XIII in his great nineteenth-century Encyclicals, and in part the authors of the Declaration of Independence would find nothing strange in it.

Now the American tradition as expressed by the Philadelphia Convention and *The Federalist* holds that some opinion is estimable and some is not, and that it is the function of enlightened rulers to stand against that opinion which is either erroneous or impracticable under the circumstances. Yet withal we must say that *The Federalist* was kindly in its attitude toward the common man, and that never during the formative period of our tradition was the sovereignty of the rational people denied. Most people have reasoned judiciously in response to the patriotic appeal of the Philadelphia Convention, John Jay notes in *The Federalist* No. II. And Madison declared in No. XIV: "Is it not the glory of the people of America, that, whilst they have paid decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?"

Yet there are special problems regarding opinion which must be faced in a republic. "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust," we read in *The Federalist* No. LV, "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 in a higher degree than any other form." Further in No. LXXVI, Hamilton urges that the "supposition of universal venality in human nature is little less an error in political reasoning than the supposition of universal rectitude."

If the good and bad in opinion must be balanced by government, it is the organization of government that will reflect the principles of balance. Thus, the framers of the Constitution and the authors of *The Federalist* believed in a new application of the principle of the mixed constitution, combining democratic and aristocratic elements with a strong executive, and supported by a check and balance system or the separation of powers. In some of the discussions the separation of powers looms larger than the principle of mixed government, but it is clear that the framers wanted checks and separation in order to limit the people as well as the agencies of the government. In the government there must always be a clearly democratic element, in this case the House

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REPRESENTATIVE GOVERNMENT

Our concern here is primarily with the popular branch, for it was in the representative system that opinion would have its fullest expression. Madison in the famous No. X of *The Federalist* shows that the effect of representation is "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary and partial considerations." Hamilton, indeed, believed that the general government would be better administered than the local ones because, as he said in No. XXVII, the extension of the spheres of election in the House will give a greater choice to the people and it will be less responsive to the temporary aberrations of the people.

The evaluation of the action of opinion in *The Federalist* centers essentially on the legislative power of the people and neglects measurably the constituent function of opinion. *The Federalist* itself was an argument directed to the latter problem, but within the document the central issue is how the people act in the choice of representatives and the laws exemplified in the conduct of the delegates of the people. It was recognized that the House of Representatives must have a common interest and sympathy with the people. Specifically, Madison or Hamilton argued in No. LIII against the proposition "that where annual elections end, tyranny begins." The general character of the Republic, the kind of work to be done, the distance to be traveled, were against one year terms and for the moderate proposal for a term of two years. Likewise, while there must be enough representatives for consultation and discussion, the membership must be limited "to avoid the confusion and intemperance of a multitude." Thus in No. LV our authors declare: "Had every Athenian been a Socrates, every Athenian assembly would

⁴ The Declaration of Resolves of the First Continental Congress, October 14, 1774, stated "that the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council." See *Documents Illustrative of the Formation of the Union of the American States*. 69th Congress, 1st Sess., House Document No. 398, 1927, p. 3. This idea runs through the work of the Constitutional Convention, but with varying emphasis on the part of the members. Madison, Wilson and Franklin especially defended the democratic element in the Constitution. We may assert that, broadly, the framers of the state constitutions were in agreement with the framers of the national constitution and the authors of *The Federalist*.

still have been a mob." The clear admission that the people must be checked by devices they accept themselves is crucial in the third theory of opinion we have discussed, but it is an idea that more radical exponents of the power of opinion today hardly like to accept.⁵

THE PATTERNS OF POLITICS

The conservative theory of the function of opinion centers, therefore, not only upon an objective and rational theory of moral validity, but also upon the proposition that part of the theory of opinion is a statement of the patterns of political behavior. The mixed constitution is an institutional statement of the same proposition, as are the devices associated with it. In addition to the disorderly inclinations of men, because of the distortion of passion and ignorance, government must be effective, and there is a pattern of effective government which leaders may carry into effect. *The Federalist* shows little concern with what we might call naturalistic limitations on governmental effectiveness; it is chiefly concerned with the limitations on government imposed by the known operations of human opinion.

In the light of these observations we may consider briefly Madison's utterances in No. X. This document has been regarded by many as an economic interpretation of politics, but a careful reading might show that the principal theme is the passions and ignorance of men reflected in their political opinions, whether or not such passion and ignorance arise from the unequal distribution of property. Madison makes himself clear that property is not the only cause for the disorder of faction and the repudiation of the common interests of the Republic. Popular governments, he urged, tend toward the dangerous vice of faction; confusion and violence in the public councils will be remedied by the establishment of the Union. But the latent causes of faction are sown in the nature of man. Hamilton states a similar realism in No. XXVIII when he declares that "... seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumours and eruptions from the natural body. . . ." Under the Constitution force will be proportionate to the need.

⁵ The fact that the regulation of the right to vote was left to the states made it unnecessary to discuss this matter at length in *The Federalist*. In a sense it is outside the scope of this paper, since the suffrage is the most prominent device for defining the participating public. The framers of the Constitution were in favor, generally, of the conventional freehold qualification for voting.

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This doctrine is further elaborated in No. LI. Government itself is the greatest adverse reflection on human nature, and government must first control the governed and then control itself. In controlling the governed, one part of society may need protection against another. If the majority be united by a common interest, the rights of the minority will be insecure. Thus in America we need to create "a will in the community independent of the majority—that is, of the society itself." But in addition there should be such a diversity in interest that a majority combination will be improbable.

The modern analysis of oligarchy, the government of the few or the elite, was not wholly strange to *The Federalist*. In No. LVIII it is argued that the greater the number of representatives, the fewer will be the number who control. Moreover, the greater the number in the House of Representatives, the more will be the ascendancy of passion over reason, and the more will be found representatives with weak capacities and limited information. "The people can never err more than in supposing that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of the few. . . . The countenance of the government may become more democratic, but the soul that animates it will be more oligarchic."⁶

CONSTITUTIONAL CHECKS ON OPINION

Politics must be more than mere technique, more than the manipulation of the passions of the population. Yet in the construction of the Constitution, the framers were conscious of the values of an arrangement of offices. The Senate, the President, and the judicial organization, as well as the guarantee of rights, all were related for the purpose of preventing one branch of the government, especially the predominant popular branch, from exercising a concentrated authority. That same balance in the Constitution, combined with the federal principle, served to check at the point of authority the power of opinion. Those who defended our Constitution did have a sense of political technique, but it was not, as in recent years in Europe, used for the purpose of establishing an irresponsible and concentrated authority; rather it was technique

⁶ See Franklin's speech on June 2, 1787, in the Constitutional Convention in opposition to the presidential veto. "It will be said that we don't propose to establish kings. I know it. But there is a natural inclination to kingly government. It sometimes relieves them from Aristocratic domination. They had rather have one tyrant than five hundred. It gives more the appearance of equality among citizens, and that they like."

ton affirmed in No. LXXVIII, but momentary inclination holding a majority of the people does not justify a violation of the Constitution. Only by solemn and authoritative act may it be changed; until then it is binding as it stands. Moreover, judges who interpret the Constitution should not be removed merely because of inability. "The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts," said Hamilton in No. LXXIX.

The capstone of the conservative view of opinion is the theory of rights, rights which deserve protection in republican government against both the people and the officials of government. To the charge that the Constitution contained no bill of rights, Hamilton replied in No. LXXXIV that there are provisions protecting rights throughout the proposed instrument of government. And to the argument that there was no guarantee of the freedom of the press, he answered tartly that no such provision was to be found in the Constitution of New York. But who can define freedom of the press? Whatever security there is for the press must "depend on public opinion, and on the general spirit of the people and of the government. And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights."

LIBERAL LIMITATIONS ON OPINION

Hamilton's appeal to public opinion for the protection of rights is of more than passing interest. For it is clear that the fundamental purpose of the Constitution as it came from the hands of the framers was to secure rights which social morality assigns to the individual. It is in the theory of rights of individuals or groups, i.e., minorities, that the theories of the function of opinion diverge in the final analysis most sharply. We have seen already that in fact no theory of opinion does actually accept the existing wish of a majority as the final test of what ought to be done by government. It is, as has been said, the limitation which counts.

We may take, for example, the work of V. L. Parrington, *Main Currents in American Thought*. Whenever the conservatives suggested limitations on the majority in regard to the rights of property, the Parringtonian scorn is directed against the evils of the reactionary mind. But when William E. Channing argued that the multitude could not determine what subjects ought to be discussed by the citizenry, Parrington is pleased. Here is clearly a principle of political

morality above the determination of the majority.⁸ The conservative would say that both the rights of property and free inquiry are morally above the determination of the majority. Edwin Mims, Jr., goes to great length in arguing the freedom and sovereignty of the majority; he asserts quite correctly that our tradition stands for the sovereignty of the people. What he seems to forget is that all defenders of majority principle were likewise defenders of rights and Constitutions as fundamental law; this situation eliminates a right of immediate revolution vested in the people. If so, the road back to the conservative theory of opinion is well-paved. Mims declares: ". . . the true alternative to the corporate will of the prince is the general will of a public-spirited, patriotic majority whose power is limited only by the stipulation that minority individuals shall be unrestrained in their efforts to form a new majority. . . ." The conservative denier of the latent premise theory would assert, first, that if there is one limitation on the majority there may be others; and, second, that the tradition of limitation on the majority in American history is broader than is stated in the above quotation, for it is based on a theory of morality and justice which guarantees other rights as sacredly as the one mentioned.⁹

The latent premise theory historically has tended toward the assertion of one natural right, the right of the majority. But even here the theory has never quite asserted that what the majority wants will really be rational. Conservatives, on the other hand, have maintained the plurality of rights inhering in the people, and have, in fact, often looked to the judiciary for the protection of rights associated with property. When John Quincy Adams in the articles signed *Publicola* in 1791 stated a theory of justice higher than a mere majority he was presenting the conservative theory of opinion. "This principle, that a whole nation has a right to do whatever it pleases, cannot in any sense whatever be admitted as true," he said. "The eternal and immutable laws of justice and of morality are paramount to all human legislation. The violation of those laws is certainly within the power, but it is not among the rights of nations."¹⁰

Both the latent premise and the conservative theories of opinion

⁸ V. L. Parrington, *Main Currents in American Thought* (New York, 1927), Vol. II, pp. 326-337, for the quotation from Channing, *Works*, Vol. II, p. 161.

⁹ Edward Mims, Jr., *The Majority of the People* (New York, 1941), p. 275.

¹⁰ See *The Writings of John Quincy Adams*, edited by W. C. Ford (7 vols., New York, 1913-1917), Vol. I, pp. 70-71.

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admit limitations. In recent literature the former imposes only one significant limitation, and that is the right of the minority to talk. The latter would certainly accept this limitation, since freedom of speech and press are among the rights the majority may not invade. But the basis of this right (which is not clear in radical majoritarianism) in the conservative theory is the same as the other rights which may be accepted. For there is a norm above opinion, a standard of justice and morality which assures to the individual his freedoms in society. And these freedoms are more substantial than the right to grumble against the acts of a majority which may or may not be rational.

THE FEDERALIST TODAY

Specifically, *The Federalist* recognized two general sources of limitation on the function of public opinion. There were, in the first place, the principles of social morality from which specific rights were deduced, including the right of the majority to act so long as it remains within the framework of justice. But the failure of *The Federalist* to discuss the formation of opinion, or to sense the control mechanism in propaganda, is one of its greatest weaknesses. Today we are less concerned with constitutional limitations on the majority and more with the limitations which arise from the direct formation of the majority itself. In the second place, there are tendencies in political behavior which must be guarded against, since neither the people nor those in power always respect the principles of social morality. Thus the Constitution, the elements of the mixed constitution, the separation of powers, the restraining influence of the Senate, the veto of the President, and the right of judicial review, all tend in the same direction—to introduce responsibility into government. Not only do these structures, in the theory of *The Federalist*, assure the rights of individuals but they also prevent the normal toleration of the behavior patterns which result in oligarchy, the government of the few, or the concentration of authority.

No theory of the function of opinion remains unchanged in detail from generation to generation. It would be foolish to assert that what the authors of *The Federalist* believed to be the proper constitutional position of opinion should be followed slavishly today. Yet in the form of historical continuity much that they believed remains with us today. The spirit of limitation on public opinion as stated in *The Federalist*

is changed, but limitation remains. We do not believe that what the public wants is the applicable criterion of social justice; nor do we believe that the majority is always right, or that the representatives of that opinion need no enforcement of political responsibility. Today, as the civil servant becomes more and more the central issue in politics, we must assume that the principles of conservative limitation on opinion will in measure apply. Madison, Hamilton and Jay would argue no differently.

The study of public opinion must go beyond the descriptive phase through which it has been passing. Civilization, in this time of revolution, must embody principles of justice as they have been developed in Western thought, in the Greek-Christian tradition, for the past 2500 years. The norms of the people and the norms of the leaders must be subjected to rational criticism in the light of what we can know of social and individual morality. Here at least is one of the imperatives of the age of reconstruction we are sure to face. We cannot trust the mere passions of masses and leaders for the creation of a just peace.

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