

LESSON 3: LIMITED GOVERNMENT AND THE RULE OF LAW IN THE FEDERALIST, NUMBERS 23, 51, 53, 70

LIMITED GOVERNMENT and THE RULE OF LAW are principles of government and core civic values in the American heritage. Limited government means that officials cannot act arbitrarily when they make and enforce public decisions. In their roles as public officials, members of the government cannot simply do as they please. Rather, they are guided and limited by laws as they carry out the duties of their government offices. In the United States of America, the Constitution is the supreme law that guides and limits the exercise of power by government officials. Laws made in conformity with the Constitution also guide and limit the actions of government officials.

The rule of law means that neither government officials nor common citizens are supposed to break the law. Furthermore, persons accused of crime are supposed to be treated equally under the law and accorded due process in all official actions against them. Law governs the actions of all persons in the system, public officials and the citizenry, and from highest to lowest ranks in government and society.

Limited government and the rule of law are main characteristics of constitutional government in the United States. The rights and liberties of individuals are supposed to be protected by law against abuses of power by government officials. However, if constitutional limits on government are too strict, it will be too weak and duties will not be carried out effectively. A government that is too limited by law may not even be able to enforce laws and maintain public order and security. By contrast, if the government is too strong, or unlimited in its use of power, then the liberties of individuals may be lost and tyranny might prevail. An effective constitutional government is neither too powerful nor too weak. Legal powers are granted in the Constitution to enable the government to perform tasks the people expect of it. The Constitution places legal limits on the government's powers to protect liberties and rights of individuals against would-be tyrants or dictators. There is a workable balance between powers granted to government, in the name of the people, and limits on those powers on behalf of individual liberties and rights.

A workable balance is difficult to achieve between power sufficient to govern effectively and limits on power sufficient to protect liberties and rights of the people. On the eve of the Civil War, Abraham Lincoln asked despairingly: "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?" During the 1780s, Hamilton, Madison, Jay, and other Federalists believed that

government under the Articles of Confederation was too weak to maintain its own existence. However, Anti-federalists feared that the Constitution of 1787 might provide a government too strong for the liberties of the people. Authors of *The Federalist* argued that limited government and the rule of law—principles of government in the Constitution of 1787—would protect the rights and liberties of people from abuses of power by would-be tyrants. Hamilton and Madison discussed limited government and the rule of law in several essays of *The Federalist*. They argued that the best government is both "energetic" (strong enough to act decisively and effectively in the public interest) and "limited by law" to safeguard individual liberties and rights. Excerpts from four essays are presented below and on the following pages: 23 and 70 by Hamilton and 51 and 53 by Madison.

NUMBER 23: HAMILTON

THE necessity of a Constitution, at least equally energetic with the one proposed . . . is the point. . .

Every view we may take of the subject . . . will serve to convince us that it is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are intrusted to its management [specific grants of power enumerated in the Constitution]. It will indeed deserve the . . . vigilant and careful attention of the people to see that it be modeled [limited] in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration should not . . . be found to answer this description, it ought to be rejected. A government, and constitution of which renders it unfit to be trusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depositary of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the co-incident powers may safely accompany them. . . . The POWERS [of the Constitution] are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. . . .

Publius

Reviewing Main Ideas in Essay 23

1. What is the main point of this essay?

2. What are two reasons presented by Hamilton to support the main point of this essay?

3. Find one example in this essay of Hamilton's views on limited government.

4. Find one example in this essay of Hamilton's views on the rule of law.

5. How does Hamilton answer the charges of critics of the Constitution of 1787 that it grants too much power to the government of the United States and therefore is not sufficiently limited to protect the rights and liberties of individuals?

NUMBER 51: MADISON

... the great security against a gradual concentration of ... powers in [the government] ... consists in giving ... the necessary constitutional means and personal motives to resist encroachments. ... It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions [limited government based on the supreme law of a written constitution]. ... Publius

Reviewing Main Ideas in Essay 51

1. What are Madison's views about how to achieve limited government and the rule of law?

2. What are the difficulties in creating a limited government that can also be an "energetic" government?

NUMBER 70: HAMILTON

... Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property ... ; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. ...

... A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution, and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

... It is not to be supposed that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety [provisions for limited government] in the republican sense [government in the name of the people by their elected representatives]? And how far does this combination [energetic government that is also limited by law] characterize the plan which has been reported by the convention? [In Hamilton's opinion, the Constitution of 1787 provided energetic government with sufficient limits on the powers of government to protect the rights and liberties of the people.]

The ingredients which constitute energy in the executive are unity [a single chief executive or President]; duration [a long enough term of office]; an adequate provision for its support; and competent powers. [Hamilton argued that these ingredients were included in the Constitution of 1787.]

The ingredients which constitute safety in the republican sense [provisions for limited government and the rule of law] are a due dependence on the people, and a due responsibility. ... Publius

Reviewing Main Ideas in Essay 70

1. What advice does Hamilton offer about the value of "energy and power" in government?

2. What is the role of a chief executive or President in providing "energy and power" in government?

3. What negative consequences, according to Hamilton, would follow from ignoring his advice about an "energetic and powerful" government?

4. What does Hamilton say about "ingredients which constitute safety" in government (limited government)?

5. Does Hamilton argue for a balance between "ingredients which constitute safety" and "ingredients which constitute energy" in government? Explain.

NUMBER 53: MADISON

... The important distinction so well understood in America between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government seems to have been little understood and less observed in any other country. Wherever the supreme power of legislation has resided, has been supposed to reside also a full power to change the form of the government. Even in Great Britain, where the principles of political and civil liberty have been most discussed, and where we hear most of the rights of the Constitution, it is maintained that the authority of the Parliament is transcendent and uncontrollable as well

with regard to the Constitution as the ordinary objects of legislative provision. They have accordingly, in several instances, actually changed, by legislative acts, some of the most fundamental articles of the government. . . . An attention to these dangerous practices has produced a very natural alarm in the votaries (supporters) of free government, of which frequency of elections is the cornerstone; and has led them to seek for some security to liberty, against the danger to which it is exposed. Where no Constitution, paramount to the government . . . existed . . . no constitutional security, similar to that established in the United States, was to be attempted. Some other security . . . was to be sought for; and what better security would the case admit than that of selecting and appealing to some simple and familiar portion of time as a standard? . . . The most simple and familiar portion of time applicable to the subject was that of a year; and hence the doctrine . . . to erect some barrier against . . . unlimited government, that the advance toward tyranny was to be calculated by the distance of departure from the fixed point of annual elections. But what necessity can there be of applying this expedient to a government limited, as the federal government will be, by the authority of a paramount Constitution? Or who will pretend that the liberties of the people of America will not be more secure under biennial elections, unalterably fixed by such a Constitution, than those of any other nation would be, where elections were annual, or even more frequent, but subject to alterations by the ordinary power of the government? . . . Publius

Reviewing Main Ideas in Essay 53

Madison discusses: "The important distinction . . . between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government. . . ."

1. What is the distinction to which he refers?
2. Why is this idea a basic element of Madison's position on limited government and the rule of law?