



Advocacy After Philadelphia

WisdomForge Booklet — Ages 15–18

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About This Book

This booklet is a set of source protocols, not a civics hymn. *The Federalist* is eighty-five essays written under the mask Publius to win a New York ratification fight. The Constitution already existed. The essays are a brief. Briefs describe, hope, and sometimes promise limits the clauses do not clearly contain.

You will open Avalon or the Library of Congress full text. You will pair every famous Publius claim with Brutus or Cato. You will name the man: Hamilton the majority, Madison the classroom canon and (consensus) the three-fifths brief, Jay the five foreign-policy numbers. You will not recruit the series to a modern caucus. You will not skip Federalist 54.

Six chapters match the academy sitting map: campaign, faction, ambition, judiciary, the lost list, the chain. Chapter 1 carries the only Research Prompt (Avalon essay against the clause). The other five close on Reflect. Practice items are facing-page maps, holding briefs, and authorship checks — not middle-school Talk About It relabeled.

Scholarly debates in this band stay short: Adair versus Hamilton's dying list; Maier/Raphael on 1788 impact; originalism's three claims about what kind of evidence the essays are. Do not pad. Harry's numbered files are complete and compact. Length here comes from unused primary quotation.

Chapter 1: The Campaign Is Not the Machine



Illustration for Chapter 1

Chronology is the first discipline. Philadelphia, May–September 1787, drafts behind closed doors. 17 September, signatures. Confederation Congress transmits. State conventions fight. Article VII: nine conventions, not unanimous legislatures under the Articles. Anti-Federalists called the move a coup against the amendment rule. Federalists called it an

appeal to the people. Both are arguments. Honesty names the irregularity without turning the summer into a debunking skit.

27 October 1787: *Independent Journal*, first Publius. May 1788: last newspaper numbers. McLean's two volumes (22 March and 28 May 1788), title *The Federalist: A Collection of Essays, Written in Favour of the New Constitution*, about five hundred copies. Essays 78–85 reach most readers as a book, not a morning paper. The Mentor paperback's "Papers" is a later stamp. Reading history backwards starts with the title.

Hamilton recruited Madison (in New York for Congress) and Jay. Jay had not been in the Convention. Madison and Hamilton had. None of them could bind the other delegates. Publius sometimes restates a clause, sometimes fills a silence (No. 70 on Article II), sometimes answers Brutus by promising a limit the text does not clearly contain (No. 84's theory of enumeration). If the essay and the clause disagree, the clause wins. That sentence is the integrity rule of the unit.

The mask is a campaign device borrowed from Publicola. It still works whenever a speaker says "the Federalist argues." Seventy-three essays are fairly certain. Twelve (49–58, 62–63) were fought over because Hamilton's dying list and Madison's later list overlapped — including 51 and 54. Douglass Adair (1944) assigned the twelve to Madison. Mosteller and Wallace (1963/64) reached the same assignment by word frequency. Consensus follows them. Remainder exists: some stylometry still argues collaboration, especially around 55, and newspaper / McLean / Gideon texts differ. Do not teach the computer as a miracle. Teach the best current assignment, with a remainder. If 51 is Madison, the tension with Hamilton's 70 is between authors. If 54 is Madison, you may not dump the three-fifths brief on Hamilton as nationalist villain.

1788 impact was slight. After No. 16, out-of-state reprints collapse. After No. 23, the remaining sixty-two almost never leave New York. Wilson's State House Yard speech ran in thirty-four papers in twelve states. McLean arrived after six, then eight, states had already ratified. New York elected about forty-six Anti-Federalists of sixty-five. Kaminski: impact on New York citizens "negligible." Maier: probably no more effective among rural New Yorkers than Mercy Otis Warren's *Columbian Patriot*. Poughkeepsie turned on New Hampshire (ninth state) and Virginia news, and on Jay's *Citizen of New-York* pamphlet. 30–27, 26 July 1788, eleventh pillar, longest ratification message, circular letter for a general convention. Do not teach "the essays won New York."

The afterlife is the other event. By the 1790s the Supreme Court was citing them (*Calder v. Bull*, 1798, is the early marker in this pack). Teachers assigned them. Originalists used them. Living-constitutionalists used them against originalists. Usefulness is not original force.

Magna Carta had the same afterlife pattern. A classic that lost its first election and won the syllabus is still a classic. It is not a statute.

By 1791 the mask was already off in practice. Bank, implied powers, Pacificus/Helvidius. Both men quoted the old essays. Jefferson is not Publius. Recruiting the Republican opposition back into “what the Federalist really meant” is the adult form of the party misconception.

The first essay’s job, on Avalon, is to name the stakes as a *choice*, not as a commentary. Read No. 1 against Article VII: one is urgency about “whether societies of men are really capable or not of establishing good government from reflection and choice”; the other is a nine-state rule. The urgency is not in the clause. That is what a brief looks like. Avalon, Federalist No. 1 (usually Hamilton), 27 October 1787, *Independent Journal*:

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.

The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world.

Mark restatement, hope, and extra against Article VII. The extras are advocacy.

Reprint history is load-bearing, not color. After No. 16, out-of-state reprinting collapses. After No. 23, sixty-two essays almost never leave New York. One excerpt of 38 in New Hampshire is the oft-cited exception. James Wilson’s State House Yard speech ran in thirty-four newspapers across twelve of thirteen states. Some 250 other pieces appeared in six or more states. McLean’s volumes arrived after six, then eight, states had already ratified, and after remaining delegates had been chosen. Maggs notes the reverse possibility: the ratification debates may have influenced *The Federalist* as much as the other way around. Residual case: urban New York readers saw them; late conventions were handed bound copies; Hamilton organized the series because Brutus was landing blows. Slight is not zero. Slight is not “swayed the nation.”

Big Idea

The Federalist is a New York sales campaign that later generations mistook for official meaning. Three authors, one costume, a later split. Citation is not a clause. 1788 effect and

afterlife are different events. Name the man, the paper, the date, and the clause before you quote.

Practice

1. **Facing-page chronology.** Left column: Articles amendment rule; Annapolis resolution; Convention charge; Art. VII; first Publius; McLean; Poughkeepsie 30–27. Right column: one sentence of what each is *not* (not a treatise, not a national catechism, not a conversion of rural New York). Deliverable: one dated page.

2. **Mask protocol.** Take any sentence that begins “The Federalist says.” Replace it with “Hamilton / Madison / Jay, No. __, date, paper or McLean.” If you cannot name the man, you do not have a citation.

3. **Clause versus brief.** Open Article VII and Federalist 1. Mark restatement, hope, and extra. The extras are advocacy.

4. **Reprint table, not vibe.** From this pack’s 3.4 / 7.2, write three facts that kill “everyone read them”: collapse after 16; Wilson’s thirty-four papers; McLean print run. Deliverable: three bullets, no adjectives.

Research Prompt

Open Federalist No. 1 on the Avalon Project and the same essay on the Library of Congress full-text guide. Then open Article VII of the Constitution on the National Archives transcription. In one page: (a) what No. 1 claims about the stakes of the choice; (b) what Article VII actually enacts about how the instrument becomes law; (c) one place the essay’s urgency is not in the clause. Do not ask whether Publius was right. Ask whether you can tell a brief from an enactment.

Chapter 2: Extent as Cure, Extent as Capture



Illustration for Chapter 2

Madison, Federalist 10, from the *New York Packet*, Friday, 23 November 1787. (Name 22 November and the *Independent Journal* if you use both runs. Avalon's header is the Packet date. Keep it.) One definition, Yale's verb, not a modernized duplicate:

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

Causes are sown in human nature: faculties, property, religion, government. Two methods of curing: remove causes, or control effects. Removing causes means destroying liberty or enforcing sameness. Liberty is to faction what air is to fire. He refuses both. In a small democracy a common passion is the majority. In a large republic, representation refines; extent makes concert harder. That last clause is not a poster. It is the unused half of the essay. This chapter puts it on the page.

He is not anti-party in the modern slogan sense. He is anti-*majority faction*. He expects many groups. He is not claiming bigger is always better: extent helps only if representation still refines and the union can govern. Brutus denies both. He is not restating the Declaration's equality claim. Fed 10 is institutional.

Brutus I is the pair, not a footnote. TeachingAmericanHistory, 18 October 1787. Namedrop is a monologue. Put his sentences on the page. Republics, following Montesquieu, must be small. He asks whether thirteen states should be reduced to one great republic or remain confederated republics under a federal head for defined national purposes only. Then the size claim, then Necessary and Proper plus supremacy as the engine of consolidation:

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these increasing in such rapid progression as that of the whole United States.

This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers" ... And by the 6th article, it is declared that this constitution, and the laws of the United States ... "shall be the supreme law of the land."

The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of

their rulers; the people at large would know little of their proceedings, and it would be extremely difficult to change them.

Force, not consent, is where he thinks consolidation ends. Emerging-band resistance is Brutus's sentence: a large republic just hides elite capture. Hold it. Do not referee it.

A recommendation feed is a test of extent. Distance collapses. Passion unites at scale. Madison's geography does not automatically apply to a network. Integrity: do not ask a model whether Madison would have liked Twitter. Ask it to state No. 10's definition, then check the sentence against Avalon. If it says "Madison hated parties," it has failed.

Hume on parties is in Madison's reading. The scholarly layer for this chapter stays one paragraph: Bailyn/Wood republicanism versus Appleby liberalism is a later fight about the founding as a whole (this pack 7.5). Fed 10 can be recruited to both. Beard's ghost (the Constitution as a property coup) is too crude for 10 and too silent if 54 is skipped. You will get 54 in chapter 6. Do not use 10 as a way to skip it.

Avalon, No. 10, the opening and the two refused cures (*New York Packet*, Friday, 23 November 1787; Madison). The definition is already on the page above, with *adversed*. Do not paste it a second time. Do not modernize it to *adverse*. The opening and the air-to-fire paragraph are the diagnosis. The unused half is the cure.

AMONG the numerous advantages promised by a wellconstructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. ... Complaints are everywhere heard from our most considerate and virtuous citizens ... that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects. There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests. It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire

its destructive agency. The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. ... The latent causes of faction are thus sown in the nature of man. ... But the most common and durable source of factions has been the various and unequal distribution of property.

A protocol that modernizes “adversed” without a note has already started summarizing. A protocol that stops before “majority or a minority” has already started recruiting. A protocol that never reaches property has already started skipping 54.

Avalon continues. Property classes, then the majority-faction problem the republican principle cannot vote away:

Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government. ... It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. ... The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS. ... If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. ... When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.

The protocol is the last sentence: public good *and* private rights *and* popular form. Drop any one and you have a different essay. Brutus drops the claim that extent can do that work.

Avalon, the unused remainder — the cure, not a second copy of the definition. Pure democracy versus republic. Two great points of difference. Representation refines. Greater sphere. Do not stop at causes and effects.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, 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 or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority,

and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government.

A protocol that stops before “extend the sphere” has taught the disease and skipped the medicine. A protocol that stops before paper money has skipped the 1780s exhibit Madison thought extent would quarantine. Brutus’s watching problem is the facing-page test of that medicine: if representatives cannot be known, refinement is a hope and extent is cover. Hold both pages.

Big Idea

Madison designs against majority faction without abolishing passion. Brutus designs against distance. A sitting that assigns 10 without Brutus I is a monologue. A feed is a test of “extent,” not a verdict on Madison.

Practice

1. **Definition drill.** Copy the Avalon faction sentence. Underline majority *or* minority. Write one modern group that fits without using the word “party.”
2. **Air-to-fire protocol.** State the two refused cures in ten words each. If you cannot refuse both, you have not read the middle of 10.
3. **Brutus facing page.** Left: Madison’s “extend the sphere” sentence. Right: Brutus I on a free republic over immense extent, or on knowing the rulers. One quoted clause from each. No winner line.
4. **Model check.** Ask a model to summarize Fed 10. Score it: did it keep majority factions, refuse the two cures, and mention size? If it said “no parties,” mark the fail.

Reflect

If extent no longer makes concert harder, is Madison’s *diagnosis* (faction is sown in nature) still live, or only his *geography*?

Chapter 3: Ambition, Energy, and Two Romans



Illustration for Chapter 3

Federalist 51, 8 February 1788, Madison by consensus. The machine assumes imperfect people:

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.

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.

Means and motive in each department. Legislature predominates, so split it. Federalism adds a second split: two governments over the same people. Double security. Justice is the end of government. Not three equal branches. Not “gridlock is always good.”

Federalist 70, Hamilton: Avalon, *New York Packet*, 18 March 1788. Energy is not a mood. It is a list, then a claim about blame:

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 against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; 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.

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

But one of the weightiest objections to a plurality in the Executive ... is, that it tends to conceal faults and destroy responsibility. ... “I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point.” These and similar pretexts are constantly at hand, whether true or false.

Unity makes crisis decision possible and blame traceable. A council hides responsibility. Cato, beginning 27 September 1787 in the *New-York Journal* (often attributed to Clinton), warns that the presidency tends toward monarchy and that distance itself is danger. Cato is the pair to 70. Read them against each other, not as wrong-then-right.

51 and 70 are in tension *inside* the 1788 series. After 1791 the tension is a party system. Hamilton’s Bank opinion (1791) reads implied powers and energy (23, 33, 70). Madison opposes the Bank as extra-constitutional and reads 39 and 45–46. Pacificus (Hamilton, 1793) and Helvidius (Madison, 1793) put new masks on residual foreign-affairs power. “Difference

of principle,” Hamilton later called it. Do not average the essays into one Founder. Do not treat the split as manners.

Cato IV, *New York Journal*, 8 November 1787 (often attributed to Clinton). Namedrop is a monologue. One sentence on the page, facing 70:

wherein does this president, invested with his powers and prerogatives, essentially differ from the king of Great-Britain (save as to name, the creation of nobility and some immaterial incidents, the offspring of absurdity and locality)

That is the crown-fear Hamilton’s energy sentence has to answer. Read them against each other, not as wrong-then-right.

Scholarly paragraph, short: Sheehan and Elkins/McKittrick on the 1790s — Madison coming to think Hamilton wanted a submissive citizenry; Hamilton coming to think Madison had abandoned the nationalist program they had just sold. File 7.4. Not a caucus. A chronology.

Avalon, No. 51, the paragraph classrooms steal. Read the sentence *before* the angels, or you get a poster:

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. 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.

The primary control is the people. Auxiliary precautions are the machine. A sitting that treats 51 as cynicism has dropped the primary control. A sitting that treats elections as enough has dropped the auxiliary. Hamilton’s energy sentence belongs on the facing page, not as a mood swing: “Energy in the Executive is a leading character in the definition of good government.” Unity, duration, support, competent powers. A council hides blame. Cato, 27 September 1787, is the other facing page. Do not sequence them as wrong then right.

Big Idea

51 is a psychology of office. 70 is a psychology of execution. Cato is the fear that unity is monarchy. After 1791 the same campaign trail produces opposite briefs. Name the year when you quote.

Practice

1. **Means/motive matrix.** For House, Senate, president, Court: one constitutional means to resist, one personal motive. If motive is “the base,” you have left 51.
2. **70/Cato facing page.** Hamilton’s unity-as-accountability versus Cato’s unity-as-crown. Copy 70’s energy sentence on the left. Copy Cato IV’s king sentence on the right. No winner line.
3. **1791 overlay.** Pair Fed 39 with the Bank debate in four lines. Mark which Publius each man became.
4. **Angel protocol.** Rewrite the angels couplet without the word “angel,” then check whether you kept both halves (need for government; need to control government).

Reflect

If ambition no longer attaches to the *place* (the office) but to the *team* (the party or the feed), what part of 51 still runs?

Chapter 4: Judgment, Review, and Brutus's Engine



Illustration for Chapter 4

Hamilton, Federalist 78, McLean 1788. The weapons claim:

The judiciary... has no influence over either the sword or the purse... It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

Least dangerous, therefore independent: tenure during good behavior. Avalon, the brace, still unused if you stop at FORCE / WILL:

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. ... The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Limited constitution meaningless if the legislature may ignore it. When a statute is contrary to the manifest tenor of the Constitution, treat it as void. Not judges above Congress: Constitution above both, the people having bound their agents. “Judicial review” is the later name. *Marbury v. Madison*, 5 U.S. 137 (1803), is the later case. Do not collapse 1788 argument, 1803 practice, and 2026 docket.

Brutus XI–XV: life tenure, equity, no higher appeal, Necessary and Proper interpreted by the same court — engine of consolidation, not least dangerous branch. The fear is not ignorant. Integrity: state Brutus in Brutus’s terms, then check the essay. Namedrop is a monologue. TeachingAmericanHistory, Brutus XI, 31 January 1788:

They will give the sense of every article of the constitution, that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the constitution. The opinions of the supreme court, whatever they may be, will have the force of law; because there is no power provided in the constitution, that can correct their errors, or controul their adjudications. From this court there is no appeal.

The judicial power will operate to effect, in the most certain, but yet silent and imperceptible manner, what is evidently the tendency of the constitution: – I mean, an entire subversion of the legislative, executive and judicial powers of the individual states.

Brutus XV, 20 March 1788, the independence charge Hamilton's "least dangerous" has to answer:

There is no power above them to control any of their decisions. There is no authority that can remove them, and they cannot be controlled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself.

Do not ask the model whether the Court is too powerful. Ask it to place those sentences facing Hamilton's FORCE / WILL block.

Brutus XI, still unused if you stop at "opinions as law": equity, the spirit without the letter. TeachingAmericanHistory, 31 January 1788:

The judicial are not only to decide questions arising upon the meaning of the constitution in law, but also in equity. By this they are empowered, to explain the constitution according to the reasoning spirit of it, without being confined to the words or letter.

They will give the sense of every article of the constitution, that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the constitution.

Hamilton's "merely judgment" meets Brutus's "reason and spirit." That is the facing page. Do not sequence them as wrong then right.

Originalism fight (7.3), one tight paragraph. Intent: Publius as window on drafters — but only two of three were in the room, they did not bind the others, they later contradicted themselves. Ratifiers' understanding: most ratifiers outside New York did not read most essays; New York's convention was elected against the Constitution. Public meaning: more defensible, still leaky; Publius is one informed speaker writing to win, Brutus another. A method that cites 78 and not Brutus XI on "judicial power" has chosen a speaker. Eskridge's puzzle: why read *The Federalist* and disdain statutory legislative history? Closed record versus prestige. Both answers on the table. Do not let "use Fed 78 to interpret Article III" pass if the student cannot name which of the three claims they are making.

Avalon, No. 78, McLean 1788 — book fame. The weapons paragraph in full enough to test a model:

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

Consequences Hamilton draws in the next breath: weakest department; cannot attack the other two with success; therefore all possible care to enable it to defend itself; general liberty not endangered from that quarter *so long as* the judiciary remains distinct from legislature and executive. The “so long as” is the load-bearing hedge. Brutus XI–XV denies the hedge will hold. Tenure during good behavior, in Hamilton, is a brace for weakness and a barrier to the representative body’s encroachments. In Brutus it is unaccountable aristocracy with equity and no appeal. Put the two hedges on one page.

Avalon continues into the void-act argument — the paragraph people mash with *Marbury*:

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. ... There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves.

That is 78’s inference, not Marshall’s caption. The mash is the error. Mark what 1803 adds. Mark what Brutus denies: that the same court, in equity, with no appeal, will stay a servant.

Avalon continues into the unused stretch — the intermediate body, not a second FORCE / WILL:

It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both.

A protocol that stops at “least dangerous” has taught the weapons and skipped the inference. Brutus XV has already denied the hedge.

Big Idea

78 infers review from written supremacy and weakness. Brutus infers consolidation from the same independence. Originalists and their critics both quote Publius. The fight is authority, not existence.

Practice

1. **Weapons inventory.** Sword, purse, judgment. Who holds each in 1788 design? Who holds each in one modern fight you name without recruiting a party?
2. **Marbury delta.** One sentence 78. One sentence *Marbury*. Circle what 1803 adds that 78 does not say.
3. **Brutus XI protocol.** Copy Brutus XI on opinions as law and Brutus XV on “independent of heaven itself.” Place them facing Hamilton’s “merely judgment.” No winner.
4. **Evidence-type tag.** On any Fed 78 quotation in a court opinion or textbook, tag: intent / ratifier understanding / public meaning / ornament. If you cannot tag, you have a mascot.

Reflect

If 78’s premise (no sword, no purse) failed, did the *design* fail, or did the other branches surrender 51’s means?

Chapter 5: The Brief That Lost, the Amendment That Won



Illustration for Chapter 5

Federalist 84, Hamilton, the close of the series. Three moves: (1) bills of rights are reservations against kings; this Constitution grants only enumerated powers; (2) listing

rights “would afford a colorable pretext” to claim ungranted power — the list becomes a ceiling; (3) the 1787 text already contains rights-like limits (habeas, no attainder or ex post facto, no religious test, criminal jury).

He lost. Massachusetts, South Carolina, New Hampshire, Virginia, New York ratified with recommended amendments. New York: 25 rights items, 31 amendments, circular letter, Avalon “Ratification of the Constitution by the State of New York; July 26, 1788.” Madison, 8 June 1789, introduces amendments: politics required it; a list is useful against the federal government he had built; second convention is the alternative Fed 85 targets.

Ninth Amendment: enumeration shall not be construed to deny or disparage others retained by the people — Hamilton’s second point as a shield. Tenth: compound-republic reservation. I–VIII: parchment Federal Farmer and Brutus demanded. Storing: Federalist frame, Anti-Federalist amendments. They lost the vote and won 1–10. They did not win a second convention or a substantially smaller House. Do not turn a splice into a knockout.

Genealogy of American rights: 1776, state constitutions, ratification fight, 1791. Not Publius as sole source. “Hamilton opposed rights” is a slide. “Hamilton thought a list the wrong instrument; Madison wrote the list; the Ninth is their compromise” is the protocol.

Avalon, No. 84, the origin story and the danger sentence. He begins with kings, then claims the people surrendered nothing:

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. ... Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. “WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America.” Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights. ...

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?

The press example is the tell. Americans demanded the sentence anyway. Madison wrote it. The Ninth tried to stop the colorable-pretext reading. Civic chain joint: Hamilton uses Magna Carta as a *kingly* document to say lists do not fit a people's constitution. WisdomForge's Magna Carta booklet treats the charter as a later store of maxims. Both uses are afterlives. Do not flatten them.

Big Idea

84 proves the series is advocacy: the lived Constitution contains a list Publius said not to write. Structure and parchment both survived. Name the Anti-Federalist victory without pretending they designed the frame.

Practice

1. **84 three-move brief.** Number Hamilton's three claims. Under each, one ratification fact that shows the claim did not carry Poughkeepsie or Richmond.
2. **Ninth as inversion.** Copy Amendment 9. Write "84.2, flipped" in the margin. That is the whole assignment.
3. **8 June 1789.** From Madison's introduction speech (this pack 2.6 / 6.4), list three reasons he gives for a list. Mark which one is learning and which is strategy. You may mark both.
4. **What they did not win.** Second convention; smaller House; rejection. Three X's. Prevents consolation-prize history.

Reflect

If parchment barriers are "just words," why did the conventions refuse to ratify without them — and why did Hamilton fear the words would *shrink* liberty?

Chapter 6: Compound Tests, Civic Chain, Mixed Character



Illustration for Chapter 6

Federalist 39, Madison: not league, not consolidation. Tests — foundation federal; sources mixed; operation national (laws on persons); extent federal (enumeration); amendment

mixed. Compound republic. Flattening 39 into “one nation” or “state sovereignty” fails the integrity check in 1.3. Not the Articles. Not 1865. Not Calhoun.

Hamilton 15–22 and Jay 2–5: union as security, credit, commerce. *Imperium in imperio*. Requisitions are requests. Shays is the exhibit; historians may say the threat was used; still ask what Congress could *do*. Convention exceeded the charge. Publius treats popular ratification as cure. Argument, not eraser.

Civic chain: Magna Carta (forced charter → store of maxims); Declaration (claim of right, not a government); Constitution (machine); Federalist (brief). Both sides claimed 1776. Bill of Rights is the splice.

Federalist 54, 12 February 1788, *New York Packet*, Madison consensus. Do not skip. Do not assign it to Hamilton to save Madison. Madison ventriloquizes “one of our Southern brethren,” then says the reasoning, “although it may appear to be a little strained in some points,” reconciles him to the convention’s scale.

Enslaved people “partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property.” As labor compelled “not for himself, but for a master,” vendible, “restrained in his liberty and chastised in his body, by the capricious will of another,” the slave “may appear to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property.” As protected in life and limb even against the master, and as punishable for violence, the slave is “regarded by the law as a member of the society... as a moral person, not as a mere article of property.” The Constitution “views them in the mixed character of persons and of property. This is in fact their true character.” The compromising expedient “regards the SLAVE as divested of two fifths of the MAN.”

Avalon, No. 54, 12 February 1788, *New York Packet*. The mixed-character block, then the capitals:

In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others, the slave is no less evidently regarded by the law as a member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property. The federal Constitution, therefore, decides with great propriety on the case of our slaves, when it views them in the mixed character of persons and of property. This is in fact their true character. It is the character bestowed on them by the laws under which they live. ...

Let the compromising expedient of the Constitution be mutually adopted, which regards them as inhabitants, but as debased by servitude below the equal level of free inhabitants, which regards the SLAVE as divested of two fifths of the MAN.

Read the last phrase aloud. Do not paraphrase into “they counted as three-fifths of a person” and move on. The capitals are in the 1788 book. The rest of the eighty-five numbers are nearly silent. Teach No. 54 next to No. 10. The extended-republic theory changes temperature when the durable source of faction is property and the property is persons. The Constitution pack’s 5.3 already kills the cartoon (seats and taxes, not a metaphysical ranking). 54 is worse in a different direction: it theorizes mixed character as *true*. Northerners who wanted enslaved people out of the count were reducing Southern seats, not performing kindness. Southerners who wanted them in as full persons wanted more seats, not abolition. 54 sells that bargain to New York.

Imani Perry and others: political strategy; effect was to deny the enslaved the promise of democracy. The ventriloquism is not innocence. Madison *accepts* the brief. Weaponization: later white-supremacist readings that treat 54 as a truth about Black people are misuse. Later dismissals that treat 54 as “just a compromise, everyone did it” are a different misuse. Teach the text. Do not ask a model whether Madison was “a racist.” Ask it to state the argument in 54’s terms, then check Avalon.

Union as security (2.7, 3.1) was purchased in part with this clause. Students may conclude the purchase was worth it or not. They may not be told the price was unpaid. Skipping 54 to protect the beauty of 10 and 51 is a distortion of the source. A classic that requires silence is a mascot.

Do not recruit 7.4 / 7.5 / 5.6. Which essay, which year, which man.

Big Idea

39 is a pile of tests. The chain has four jobs. 54 is in the series: mixed character, “divested of two fifths of the MAN,” Madison accepting a strained brief. Silence is a pedagogical choice. Name it.

Practice

- 1. Five-test table.** Foundation, sources, operation, extent, amendment — federal / national / mixed, with one clause citation each.
- 2. Harlan protocol is not this pack.** For 54: copy the mixed-character sentence and the two-fifths-of-the-MAN sentence. Write “ventriloquy, then acceptance.” That is the record.
- 3. Cartoon X.** Write the 60%-human cartoon. Write seats-and-taxes. Write mixed-character-as-true. The third is 54. X the first.

4. **Chain jobs.** Four objects, four jobs, one sentence each. Point to which job this booklet is doing (advocacy about the machine).

Reflect

If 10 and 51 require silence about 54 to stay beautiful, what kind of classic are you being asked to keep?

For the Grown-Up Reader

This high booklet is source protocol, not a middle booklet with debate paragraphs pasted on. Practice aims at facing-page maps, authorship, evidence-type tags, and 54's actual sentences. One Research Prompt: Avalon/LOC Fed 1 against Archives Article VII.

Quotes: McLean title; Fed 10 definition (Avalon); Fed 51 angels and ambition (Avalon); Fed 70 energy line (Avalon); Fed 78 FORCE/WILL/judgment (Avalon); Fed 54 mixed character and "divested of two fifths of the MAN" (Avalon; *New York Packet*, 12 Feb 1788); Ninth Amendment (National Archives); Maier, Kaminski, DHRC reprint pattern as in Harry 3.3–3.4 and 7.2; Adair 1944; Mosteller–Wallace; Storing; *Marbury*, 5 U.S. 137 (1803); Madison 8 June 1789. Howard Globe dates are a Fourteenth problem, not this pack. No invented sayings. No family names. No pastoral or legal advice. Section 7 debates shown, not recruited.

Authorship: do not dump 54 on Hamilton. Consensus Madison.

About WisdomForge

WisdomForge turns founding documents and great thinkers into booklets for every age. Each figure or document gets four booklets: ages 5–10, 11–14, 15–18, and adults. The same text, told at the right depth. Because *The Federalist* is not unofficial scripture. It is a brief, and a brief has to be read against the clause, the opponent, and the price.
