

# CONVERSATIONS

WITH BILL KRISTOL

## Conversations with Bill Kristol

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### **I: The Wisdom of the Federalist (0:15 – 42:35)**

KRISTOL: Hi, welcome to CONVERSATIONS. I'm Bill Kristol. I'm joined again today by Harvey Mansfield, professor of Government at Harvard.

MANSFIELD: Hello.

KRISTOL: We're going to discuss *The Federalist*, which you've been teaching and speaking about and writing on. And I suppose the obvious question is –

MANSFIELD: Most of my life.

KRISTOL: Most of your life, yeah, but you teach political philosophy and Aristotle and Machiavelli and Tocqueville, whom you've argued maybe comes to that level, but why *The Federalist Papers*, which seem to be 85 papers written for an occasion? You treat it more like those other things – not quite like them, it's more of a political work, obviously, or a work conditioned by the times.

But at a talk you gave recently, you said, "The wisdom of *The Federalist* brings the politics of liberalism to a height it had not reached before and was not to keep." So defend the proposition that the wisdom of *The Federalist* is at that high a level and that you can think about it as *The Federalist* instead of just "the Federalist Papers."

MANSFIELD: It's a work of political science, *The Federalist*. It's a practical work, but then maybe political science is a practical science. I think *The Federalist* still maintains a lot of a kind of mixture of modern and ancient political science. But according to Aristotle, political science is a practical science, and there are borrowings from modern science, modern physics in *The Federalist*. For example, the word 'energy' and the whole concept of energy.

But it seems to be chiefly a work of practical, political science. Its practical purpose was to get the Constitution ratified and especially in the state of New York.

So Alexander Hamilton was the one who had the idea for this series. He was 30 years old. And he recruited – he was a New Yorker – but he recruited a Virginian, James Madison, who was 36 years old.

*The Federalist* and Tocqueville's *Democracy in America*, I think, are the two greatest works on American politics and, say, works of political science. And both written by young people. Thirty and 36 for Hamilton

and Madison; John Jay was 41; Tocqueville was 35 when the first volume of *Democracy in America* was published. This is a remarkable accomplishment.

And so you've got these three authors. But they didn't appear as three. They appeared as one. A fictional author, Publius, Publius Publico, the savior of the Roman republic. I think it's a common mistake of scholars to disregard the surface fact that these three are presented as a single fictive character. So they look under the surface, but it's, I think, a mistake to look under the surface until you've examined the surface. And the surface, Publius a single author, that's the way it was presented when *The Federalists* were published, one at a time, in New York newspapers. They didn't have Hamilton or Madison identified as the author of that particular paper, so for a reader, the author was Publius.

Now, this was a common thing, both in other Federalist tracts in favor of the Constitution, and against anti-Federalist, one of the most prominent anti-Federalists called himself Brutus. So it was common to conceal the author in this way. Sometimes the real authors got known; sometimes not. Some of them are still unknown.

But to have a single author means that this is meant to be a single work, and Hamilton and Madison were very different people. They had different thoughts before they wrote *The Federalists*, when they were at the Constitutional Convention, and they had very different opposing political positions afterwards. And so people are always looking for the ways in which their differences are manifest in the way they present. And that's not to be despised, but the main thing is the way in which the two of them, because the two of them are – John Jay just wrote a few, the two of them are the principal authors – got together. And they not only seemed to agree in thought but even in style, and they wrote so much alike that when, later on, it became a question who had written which paper, it was a kind of feat of scholarship or statistics to uncover who was correct on this, because Hamilton claimed some that Madison also claimed. So it turns out Madison was right. Hamilton was a little bit disturbed; he was about to fight a duel in which he was going to die, but anyway.

So you have to look at this one author, Publius: classical author. Now again, that was common, like Brutus, or classical reference.

But that means, I think, that this is meant to be a *whole*. It isn't just a series where they're thinking one day ahead as to what's going to come next. It has a plan to it. So *The Federalist* as a whole has a structure, and it also has a movement. These are both features of a work when it's a whole. A structure, the first 36 papers are on union, the necessity of union.

And then from 37 to 85, what's discussed is republicanism. Is this new union, which the Constitution is going to make or set up, constitute, is it a republic? It's necessary to do certain things in order to make it survive, keep it alive. But will those necessary things ruin its status as a republic? So that those are the two points which have to be proved.

And there's a kind of movement that some of the necessities are muted at the beginning, and introduced and then finally made obvious and blatant at the end. And the best example of this is the presidency. The American republic is the first republic with a strong executive. What seems unrepublican about a strong executive is that it resembles monarchy. And so you think that –

KRISTOL: – or even dictatorship.

MANSFIELD: Or even dictatorship, yes. Worse. Monarchy at its worst. Tyranny. And so a strong executive had a bad odor to a republican. And republican history or experience showed that this was a danger. The Romans had dictators. English republic had Cromwell, Protector. He took things over. So the usual view was that republic had to guard itself against a strong executive.

But Publius presents the case for a strong executive in very muted fashion. He doesn't list it as among the novelties right at the beginning when he says some of the new things that we're doing. And he only introduces the whole idea of executing a government – that the Articles of Confederation, the previous status quo, was characterized by failure to be able to execute its enactments. So if the state didn't cough up what was allotted as its tax or its expenses to be paid to the central government, there was really nothing that could be done. And also, the central government didn't apply to individuals; it only applied to states. So you had to order the states then to order individuals to do certain things.

So there is a failure of execution in a general sense. And only later is this need for a single person, an executive, introduced, sort of in the middle of *The Federalist*, when Publius is talking about the separation of powers. And then at the end, there's a whole, a series of 10 or 11 papers which are on the executive, where this strong executive, energy in the executive, is said to be a positive feature of republican government, simply which makes it much better than the weak governments of previous republics.

So that's an example of rhetorical movement, where you have to persuade something; you have to put it over. You not only have to say what's good about it, present the virtues of it, but you have to consider what are the resistances that most people will have to the virtues that you see. And so how do you make them apparent?

So in a way – And this is all presented in the first Federalist, in the first Federalist, the political necessities of making a much stronger republic, are presented in a kind of a rhetorical situation, where the country is divided between two parties: those who favor a stronger Constitution, and that's called the party of Energy; and those who are very doubtful, the anti-Federalists, of this experiment. And that's called the party of Liberty. And so you could start out with these two parties, Energy versus Liberty. And the movement of the whole *Federalist* is to show that Energy and Liberty go together. And the freedom for a powerful president – this is not the only feature of the new – is not just compatible, but is necessary, necessary to a new kind of republic that's going to be fashioned.

KRISTOL: I think it took me years, at least until the end of my undergraduate years, to realize – they are presented so much in normal, introduction to political science or American government courses. You read a few of the papers, the famous ones, numbers 10, 51, 78 for judicial review; maybe one on the executive. You really do think, and it wouldn't be crazy to think this, that they're like newspaper columns. Like even the best columns, the late Charles Krauthammer, I was talking about just a day or two ago, how excellent his columns are. But they really are columns that are not organized as a whole. He then put them together in a book, and if you look at that, he takes columns from different years and decades and under certain themes, and that's great. That's what newspaper columnists do.

But it as soon as you pick up the book [*The Federalist*] with an eye towards it as a work, you realize that there is the first half and the second half, and the first half is union and the second half is republican government/good government. There's a discussion of separation of powers, and then the legislature, and then the executive and then the judiciary. And the organization has something to do with, within those subjects they have to deal with some objections, so I don't know if it's perfectly organized the way a work of political philosophy could be, where you could just imagine it. But it is a whole in that way, with an order. and it's amazing how it's obvious when you look at it for a minute. But it's amazing how many people don't and that really causes one to miss things, I think.

MANSFIELD: Right. And so that tells you a little bit more about what *The Federalist* is. And it is a practical work. A reader wouldn't know that there is this plan to the papers as they unfold, one by one; one every three or four days, actually, for the few months that it took for *The Federalist* to be composed. You wouldn't know that. But the writers knew.

KRISTOL: And they did insist that it be published, I believe, or they wanted –

MANSFIELD: Yes, it was intended as a book. So –

KRISTOL: To be a guide for the Constitution

MANSFIELD: Yes, that's what this was, a work of political science. It wasn't simply a practical, rhetorical pamphlet or set of pamphlets on a particular, though pressing, question, ratification.

KRISTOL: And a work of political science designed to guide beyond the pressing moment. And that's made clear by the book itself, because let's just talk about Federalist 1, the very famous sentence in the very first paragraph, which looks beyond the particulars of 1787, 1788, even the particulars of America in a way. Maybe I'll read this sentence and you can comment on it.

"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. If there be any truth in the remark," next sentence goes on, "this crisis at which we are arrived," etc., etc. Well actually, on second thought let me read it. "May with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind."

So it's about politics as a whole, or about this whole question of good government by reflection and choice as opposed to being governed by accident and force.

MANSFIELD: Yeah. There's a lot in that. Really, a tremendous amount in that. This is America; this isn't Luxembourg or Switzerland. This is a country that wants to be an exemplar for all mankind. It's testing a question which has never been properly tested before: whether good government is possible on the basis of reflection and choice as opposed to force and accident. So that tells you right away that it has to be a republican government, really, because it would be force, if everything depended on a monarch, because the monarch probably would have to use force against the people that he's governing, or have to be ready to do so.

KRISTOL: And the accidents.

MANSFIELD: And the accident, too. That you have a good monarch. And also that you have a reasonable aristocracy, instead of an unreasonable oligarchy.

So, yeah, a government by choice is one which has been reflected upon by political science, choice and reflection go together. You have to reflect first. Political science. You look at the political science which exists. Is it sufficiently republican? No. So *The Federalist* takes liberal political science out of Locke and Montesquieu, the celebrated Montesquieu, who was indeed celebrated in *The Federalist* and praised beyond anyone else, although there's a lot of [John Locke](#) as well. So those are the two main liberal authorities. Neither of them was a democrat or a republican. They both presented constitutional monarchies as the best example for free society.

But *The Federalist* said, "That's not enough. We want to depend on choice and reflection." So the reflection of political science, and then the choice by the people. So political science isn't enough on its own. It has to be chosen. And then to be chosen, it has to be convincing. So to convince – This is a political science which not only sees what's good to do, but sees how to get people to do what's good to do, to choose in the right way.

But still, maybe they won't do it. It was actually a close vote in New York, something like 27 to 20 or something among those elected to decide the ratification. So maybe they won't do it. That, you could say, is a little bit of accident.

KRISTOL: Yeah, yeah.

MANSFIELD: And there's also a little bit of force, too, because America is in a crisis. The crisis is a government that doesn't work. It's made us victims, possible victims, of Europe. Playthings. These cunning Europeans take advantage of us. And we're upright Americans, full of virtue, desirous of freedom. And these sneaky Europeans are trying to divide us and take our territory away, down south in New Orleans, and so on.

So all these problems; the British were not maintaining the treaty that they made with us. So this was a weak government. So the crisis, lack of force, was an important and most obvious thing right at the beginning.

So reflection and choice doesn't do away with accident and force, but it manages accident and force, not perfectly. But the reason that it's not perfect is that there needs to be some virtue in making the right choice. So you can't make the right choice if it's made *for you* by circumstances or some necessary mechanism which will surely work, such that you can say, "This is what is good to be done" and automatically people will do that. No, they won't do it automatically, so you have to convince them. Each person has his own desire to have things his own way, and to be convinced according to his own share of human intellect that this is the right thing to do.

And so a republican government is one that takes seriously not only what's good, but also what people can be persuaded of that is good. And those two have to come together, and that's kind of a chance. But still, if you reflect on it, you can make it probable, maybe, that people will make the right election. Because you're able to show the predominance of the reasons in favor of the Constitution over the much weaker arguments, which were truly much weaker, and contradictory, of the anti-Federalists who opposed it.

KRISTOL: And it's not a once-and-for-all choice because, and slightly contrary to the surface meaning of that sentence, though it's qualified with the "seems to be reserved." [Reads from text] "It's frequently remarked that it seems to be reserved –"

MANSFIELD: Right.

KRISTOL: It seems to me that suggests that this is a huge moment, but it could be decided correctly now and then not maintained, and then what would the verdict be? So it still remains a choice requiring reflection for every subsequent generation.

MANSFIELD: That's right. That's right. That's the great thing about a republic. It engages succeeding generations; it doesn't just [engage] the founding generation. Yes, we look up to it. We wish we were at that level. But we have to be at a high level, too. And we have to maintain it our choice, continue as we make elections. And we can go sadly wrong, or run into trouble, as happened later on with the Civil War.

KRISTOL: Right. And in a way despite, or maybe contrary to what we might think would be coming after this, the first 35, the next 35 papers, 2 through 36, are very much about necessity, and if you want to call it that, accident and force, and how one has to take account of those things.

MANSFIELD: That's right.

KRISTOL: Before we get to really the more reflection and choice about the kind of government we would like. So I mean, say a word about –

MANSFIELD: Right after [*Federalist*] 1, you get the introduction of the crisis that we face. And first it's the foreign crisis; these Europeans are really our enemies, are closing in on us, taking advantage of us. And

we have to face that. And we can't face it unless we have a union. So the first point that needs to be established and established well, is the necessity of a union.

And that's sort of agreed to by the other side, by the anti-Federalists, because the Articles of Confederation were the articles of a union. So the union, in a way, already existed, but not solidly and not safely.

KRISTOL: Not strong enough.

MANSFIELD: Not strongly enough.

KRISTOL: Requirements of foreign policy, really.

MANSFIELD: Foreign policy comes first.

KRISTOL: In a way.

MANSFIELD: Yeah, in a way. And then domestic policy. And of all the problems in a domestic policy, it turns out that the greatest one is majority faction, which is described in Federalist 9 and then 10, most famous of all the Federalist Papers, done by Publius, parenthesis James Madison.

So majority faction. And here you begin to see what's really being done by the political science that *The Federalist* presents to us. And that is a new concern with the history of republics, and the failure of previous republics. Republics up to now had been miserable failures; weak. And they cure their weakness by transforming themselves into a monarchy. There was Venice, lived a long time. That was a republic. But it had a Doge, and it had an aristocracy. And Holland fell apart. It, too, was a bunch of republics, again another weak central government. The Roman Republic is the greatest of all republics up to now, but then it turned into a decayed, and turned into a Caesarean monarchy, and then the Roman Empire. So it survived only by ceasing to be a republic, while pretending still to be one, in a way. So that's a bad history. And then, of course, in England, with the disaster of Cromwell's dictatorship or protectorship.

So this was very bad. And something had to be done to improve the character of republicanism.

And the first thing to do was to recognize the problem of the *form* of a republic. The form of republic is government in the hands of many, so that the main decisions are made by the people, or even all decisions. It's hard to know that distinction between many [decisions]. There are the main ones and the less important ones, because if you delegate the less important questions to an executive, then that executive may start to encroach and start trying to address the main questions as well. And how do you prevent that?

So the trouble with a republican form is that it invites a misleading notion of majority rule. It fails to see that majority rule can be bad, as well as good. That a majority can do wrong as well as right. The most outstanding example of this, at the time, was of course, slavery. Slavery was really a majority faction, you could say, in the South, in the states where there was slavery. Faction is defined as *either* a minority or a majority, which acts against the rights of others, or against the aggregate interests of the community. So that's the definition of a faction. And previous republics had only been interested in minority factions, so they focused on a factious individual, who would be a tyrant, or a factious minority like the rich or the nobles, who would take over the republic. But the real danger comes from the people, from the people themselves.

So *The Federalist* is a work of introspection. When you're finding a new form of government, you should look at what is the main problem of that form, and not confine your attention to the enemies of that form.

So it isn't a matter of whether your opponents are future tyrants, or future oligarchs. It's a matter of whether they form a majority faction. So something has to be done to cure this.

And there are two ways that are given in *The Federalist*, and this is in Number 10. And the first is through elections; in other words, the use of representatives. This is government by choice, but it turns out that the choice that you have, or that the average person voter has, is he chooses the people who choose for him. So that's a choice that's at one remove, that you get and not the direct choice of what's going to happen.

So in that way you arrange it so that the people who do the choosing have their kind of raw passions and interests refined; refined and enlarged. Those are the words of Publius in Number 10, *Federalist*. That's what representative government does to a democratic mass, which might otherwise be a democratic mob, if it tries to rule things directly.

So *The Federalist* represents a government which is wholly popular, that is, what does that mean? It means that each part of it is *derived* from the people. There's no class of hereditary nobles. There's no monarch who inherits the throne. So it's all derived from the people, even the judges are, because they're appointed by people who are elected, though they're not elected themselves. So in that sense, wholly popular. But no part of it is the people themselves. So that's the big difference between the American republic and previous republics, especially ancient republics; the democracy of Athens, the democracy that tried and convicted Socrates. Those were average voters. Voters, not judges, who did that. So that's one feature of it.

And the other is size. So one cure for majority faction is representation, the other is large size. For the first time a republic has to be large. If you're large, you're diverse, because the more territory there is, the more different kinds of people inhabit it, and people with different occupations, different interests. And in mostly Protestant America, different sects of Protestantism. Catholics too, of course. And a few Jews, too, at that time. So a variety in a large republic. The usual republic had to be a small republic. So small size, so that everybody could trust one another. Everybody's like one another. Not diverse. Homogeneous. And everybody's united by some common sense of what is virtue; how one should live, what it means to live a republican life.

But the American republic, in Number 10 *Federalist*, goes against all three of those things. It's not small; it's heterogeneous, not homogeneous; and it isn't so much based on some common virtue, although that gets qualified later on, as it is based on a combination of different interests and different sects. Because majority faction can also have a kind of religious character, as happened in the English revolution, and not merely economics. I think that religious side of it is often left out in analyses of Federalist 10.

KRISTOL: So, yeah, in both the case of size and representation, Publius turns what maybe a traditional republican would maybe acknowledge had to be the case, because there are just too many people and it's too big a country to be like an ancient city or something. But he turns the unfortunate necessity into a virtue. I mean, he really argues that both are positive virtues for –

MANSFIELD: Yes. Right.

KRISTOL: – for maintenance of the well-being of republican government, which we take for granted, but is a pretty big change in republican thought.

MANSFIELD: It is, it is.

KRISTOL: It cuts against, I think, the wishfulness. I would say a word about the extent to which he does re-understand, newly understand republicanism and then defends these new, I think you call it a new republican form almost. I mean, the wishfulness, the utopianism of old republicans.

MANSFIELD: Yeah, the old idea of republic was sustained especially by the anti-Federalists. They interpreted Montesquieu to be a supporter of theirs, so I think that's probably not right. Certainly Montesquieu spoke of the *ancient* republics as being necessarily small.

So now the republican form has been shattered, and these things – variety of interests and so on, disagreement – all that was thought to be a disfiguration of republics. So in the ancient – Livy, for example, attacks a corruption of the late Roman republic because it no longer had the harmony that a republic needs; a sense of common self-sacrifice for the sake of the public good. That's what the usual notion of republican life would be. So that gets entirely changed. What was ugly is now made beautiful.

And we should be proud of what we used to be ashamed of. So there is a kind of hopefulness here, or a kind of even optimism, or a sense that yes, we face big problems, a crisis. And yes, republics have never been able successfully to overcome these crises. But now, when you understand the ill at its worst, you begin to see the cure for it, which is in the very diversity that seems to be the main problem of republics. How do you get people to agree enough to govern themselves? It's a question of *self*-government.

So here again, choice and reflection deal with force and accident in a new and interesting way that's going to solve a problem that has puzzled mankind. Can we really govern ourselves? That, you could say, is *the* political problem, the social problem, or [the problem] of human life generally speaking. What is it, other than this political question: how can we govern ourselves?

And this also had some relation to religion, whether government has to be divine. Can we govern ourselves without looking to God for special assistance? Or understanding ourselves as agents or duty-bound creatures of God? Or did God make it possible for us to govern ourselves? And there's perhaps no adequate theoretical answer, which is truly the case. And that's why it needs to be shown in practice. Coming back to that first sentence which you read in *Federalist* 1. Can it be shown in practice that we can do this? And so the greatest, after *The Federalist*, the greatest American speeches, and above all, Abraham Lincoln in the Gettysburg Address. He presents that as a test of whether a republic, whether man can govern himself, and whether democracy is a viable form of government, or just a wish.

In order to achieve this new republicanism, you have to criticize the old republican theories of a simple belief in a wishful utopia of human choice. All that does is organize your wishes, and it doesn't deal with the problems that are bound to arise.

So the anti-Federalists, that are constantly referred to, but only vaguely – not by name – and they come prominent in *The Federalist* only when he begins to speak of the executive power, which was especially attacked by anti-Federalists. And so some people say it's really a little bit unfair because there's not much direct argumentation with some of their opponents. But what *The Federalist* does is to go to the fundamental theory behind them, which is that government should be simple.

The reason it should be simple is that it's popular and people need to have things made simple so that they can understand them. And so if government – The simplest government is the most popular government. And the most rational, because rank reason teaches you how to make things simple and how to ignore complexities that don't matter. And the great, a master, I would say, of republican simplicity, known to Americans, was Tom Paine. I think that he's kind of *the* figure behind *The Federalist*, the one that they are referring to when they speak of "idle speculators." And Tom Paine had written the famous pamphlet *Common Sense* in 1776, which organized, inspired Americans to make their revolution. Sold 100,000 copies, which was a huge bestseller in those days.

So this was a stronger opinion than you might think. It wasn't that Americans were especially reading James Harrington or Philip Sidney, English republicans, or *Cato's Letters* or things like that. They were reading Tom Paine. Though he's not ever referred to, I think, as I mentioned, he's the kind of unknown *bête noir* of Publius.



So *The Federalist* both democratizes liberal theory and improves the realism of republican theory and brings them together.

The people today, the commentators today, make it liberalism and republicanism into two different camps. And are always looking for the tension and the rivalry between them. I think they overlook the great achievement, really, of *The Federalist*, which is to align them, to bring them together and to make both possible in America, where we want to have liberty and also we want to have equality. We want to live under a popular government, but we also want liberties for the individual and that means especially for the most capable individuals.

## II: The Federalist's Political Science (42:35 – 1:19:44)

KRISTOL: And also be strong enough to defend ourselves. So it seems to me at the end of the first half of *The Federalist* – less than half, I guess, at the end of Federalist 36 – Publius has made the case for necessity of union. I think he uses that term. That's not really a *choice*, that's just the world out there requires a large enough republic, a nation really, to defend itself. And the case for size as being helpful to free government, to maintaining liberty. And the case for representation, as obviously in a largish nation you're going to have to have that.

And then really, beginning in Federalist 37, we get the working out – in a very different way and a very different tone, I would say, than the first half – of, “okay, well with that established, how do you actually set up this government that combines – that does representation in the right way? That combines energy and stability? That's popular responsiveness, and responsibility on the part of the representatives and the different branches of government and so forth, right? So people don't quite appreciate the pivot, the beginning of the second part.

MANSFIELD: That's right. In the 37<sup>th</sup> paper, which is perhaps the most interesting, the most speculative, the most philosophical of all the papers, and there Publius presents five difficulties that stood in the way of the making of this Constitution. So the problems for the – One of them is the one that everybody speaks of: having to make a compromise between the big states and the little states. Compromise which led to one of the reasons behind the provision of the Senate, with two representatives for each state; that's good for the small states. And the House was done by population. That's good for the big states. And historians mostly spend their time with this.

But there were other more interesting difficulties, and one of them is the question of distinctions. And how it is that you make a definition of a power in such a way as to separate one power from another. What is power? And what are the three branches that power is going to be divided into? Say, executive, judicial, and legislative. What does each of them mean?

And so Publius goes into a question of physics, even, doubting that our reason, which is really quite imperfect, enables us to make such distinctions as are needed politically to guide our way. And so it's a kind of epistemological skepticism which you get there. And this is usually a feature of modern philosophy, in Descartes or Locke or Hume, that has as its ultimate purpose the ability to set aside difficult questions and concentrate on the more practical political questions instead. And that means that skepticism is used to throw cold water on our hopes, on our wishes.

And Publius has a little bit of that, but he also uses skepticism as a way of informing us as to what to do. And so the skepticism that he shows enables us to make use of some aspects of modern physics, that a thing is defined by its power, and power has two modes: stability and energy. You want things to act quickly, but you also want things to stay the way they are once you've done it. And isn't this what you want politically, too?

So Publius introduces us to these two sort of physical necessities that all government has. So *good* government – don't forget good government is the standard by which republics are now to be judged,

according to that first page. So good government requires both stability and energy, which is sort of opposite things.

So the difficulty, you see, of defining what good government is begins to be solved if you can sort of look at it most generally. And to do this, you must use modern political science coming from Hobbes, which has a general notion of power. Power means the power to do anything. See. Aristotle said no, power is the power of particular things to do what they're designed for, or what their purpose is. And Hobbes says no. You don't really know those purposes. What you know is that there's a kind of – everything can be used in a certain way by human beings, and that is power in the most general sense, which is then capable of being quantified. It wouldn't make sense to Aristotle to say, "I have more power than you." But according to Hobbes, yes, you can. You can say that, the amount of power. So the amount of power becomes relevant to politics. And power then can be used to check other power. So I can use my power against you. And if it's done in such a way that our powers are separated, then each of us can maintain himself; each branch can maintain itself against the others. This is what is desired in a republic because you want power to be able to check power.

So that's this complicated understanding of necessity, say. It's necessary to have as much power as someone else will have, because power always wants to encroach. "Encroachment" is a great scare word used in *The Federalist*. Power has a tendency to encroach. You want more than you've got. And that's just because power is not a particular capacity, but it's a generalizable quality that you can add to.

So you use your power to encroach and I need to have a power to stop your encroachment. So you get the necessity sort of to work against itself, and power to work against itself. And that's the first presentation of the separation of powers, coming out of the skepticism of Number 37 and presented then in 47 to 51. Those are the papers having to do with separation of powers.

So each branch must have a power to have its own will, but then also to be able to check the other power. And therefore you can't just define the legislative power through what legislation is: the making of laws. But you must spread out the legislation into the other branches, so that each of them can check the legislative branch. Because the legislative branch is usually the biggest danger in a popular government, because it's the closest to the people, has the most in it. So the executive gets a veto power, which is really part of legislation; and the judiciary gets a judicial review, so it gets to decide whether the legislation that's passed is in accordance with the Constitution or not.

So that's why the legislature can't be simply defined by the legislative power, which can be spread out. So that's the first presentation of the separation of powers, and that's based on the notion that power is one thing. And that everything has a little bit of it, a certain amount of it.

KRISTOL: Isn't there, then, one could argue, a kind of, I don't know what you'd call it, hidden quasi-Aristotelianism, if you want, in the character of the powers? Because Publius never seems to want to quite explain where these three come from. It's not deduced from anything; it's sort of inducted from just, they're in the Constitution, so I'm now going to explain them. There is a legislative power and executive power and judicial power, which seem to be somewhat qualitatively different, as well as the quantitatively sharing power.

MANSFIELD: Right, exactly. So that's what happens after 51. After 51, Publius starts to discuss the three branches. In Congress, in 52. And then both first the House and then the Senate, separately of course; and then the executive, that starts what, 67? Yeah, 77. And then 78 to 84 or 85 are the judiciary.

So those three discussions begin to define what it is that the different powers do. I mean, you think about it. Just imagine, it's easy to see that the job of a congressman is very different from that of an executive, different from that of a judge. So a congressman passes laws; so he's interested in the law as it is. But as providing possibility for the laws as it might be. And so he has a somewhat critical stance toward the law

as it is. How it might be improved or changed, and what we should do in response to some new event or some new demand.

Whereas the executive is a person who runs things. He's in an office and he runs other people; he gets things done. But to do that, he has to understand what's been passed by Congress. He has to interpret it. But to him, that's not something he can change. So the law is as it is, or has it has been passed. And the point for him is to run people, to manage people, to execute it all over the country. So that's a very different job.

And then the judge is still different, because the judge looks at the law as a whole. And it consists of everything that has been declared legal, as well as all interpretations of the law, plus the law itself. And it's not up to him, if he understands his job correctly, to make new laws. But only to find, usually by analogous reasoning, how to apply the law in different situations, perhaps ones that weren't correctly or properly anticipated by the legislature, and to see whether this comports with, not with reason or good sense, but with the Constitution.

So those are different activities and they require different expertise. To be a judge, you have to know the law, and that's a lot to know. So that kind of knowledge is recognized by Publius as something distinctive about the judiciary, whereas a congressman doesn't have to know that. Nor does the executive. Though he can be made aware of things in his way.

So the defining purpose – And defining these jobs is not done in the Constitution; but what is done is just how old you have to be, how long your term is. So *The Federalist* discusses these different qualities just in terms of the superficial Constitutional terms that set limits to who can be in the House. You don't have to be as old as you are in the Senate. So it's for the young, as well as for the old, and the old, but the Senate is supposed to be something different.

And so all this is deduced as if it were obvious from these sort of small outward indications. There's an extreme example of this in Federalist 54, which is really the only discussion of slavery in the Federalist. And it comes under the question of apportionment; whether slaves should be counted as persons to make the number of representatives that will be granted to each state. And the famous three/fifths compromise, that a slave would count not as one, as the South wanted it, or as zero as the North wanted it. Because the South wanted credit for the slaves as persons even though it enslaved them.

KRISTOL: Southern white vote counted for more and that is often gotten backwards these days. It was the pro-slavery people who wanted the higher count for the slaves because they got to cast their vote, as it were.

MANSFIELD: Yes, that's right. If you were a white person, you would vote for the black fellows too. Right. And by the way, this is done in a very amusing way. It's written by Madison. Of course, you don't know that at the time, but still it's written by Madison. And it refers to Publius' listening to the representatives from the South, and the South makes these arguments in favor of one or the other. And then the contradiction is noticed between treating the – when you have a law saying that a slave can't murder somebody, that's treating the slave as a moral person; but where you have a law which says that a slave can be bought and sold, then you're treating them as property. So which is the slave? Moral person or property? And the South seems to say both, but that's a contradiction that he mentions but he doesn't sort of bring it out or sort of force it upon them, push their noses in it. And then he refers to a senator, this is what Publius would say to our southern brethren, which is beautiful because that's Madison, he's actually from the South, from a slave state, Virginia, and so from this you get the impression that Publius is not a slave owner.

But he's –

KRISTOL: Dealing with them –

MANSFIELD: – dealing with them as part of a republic which needs to have a union that includes both free and slave states, otherwise there'll be terrible division and open to disharmony, civil war, and also to foreign interference taking advantage of our division.

So all this is very subtly and amusingly done in that one, 54. And so that's an example of the way in which the discussion of the merely formal aspects of the different branches, which are the aspects that are mentioned in the Constitution. Because the Constitution doesn't define –

KRISTOL: It just takes for granted all legislative powers, the executive power. It's a little mysterious why these three –

MANSFIELD: There is one difference that the executive has his own oath: to execute the office, of the president. So no one else executes an "office." So that's a kind of oneness to executive power.

KRISTOL: And the oath is in the Constitution. Whereas the others?

MANSFIELD: Which the others just don't quite have, yeah.

KRISTOL: I think the Constitution says they all take an oath, or it's written later in the first Congress or something, the actual oath. And it's changed over the years, the oath the actual congressmen and senators take. Whereas the president's is Constitutional, which has a certain elevation of the president, I suppose.

Yeah, I guess the reticence about directly addressing the nature, if that's the right word, of executive power, judicial power, or legislative power is...you'd think they might want to deduce this a little more from something, from the nature of politics, or something. They don't really do that.

MANSFIELD: No.

KRISTOL: It just kind of more comes up. This is the way it is, and you learn from this Constitution about the character of these different powers.

MANSFIELD: And that's sort of Aristotelian. Modern political science would say, like Thomas Hobbes, you need to go back to the first principles, and the first principle is a state of nature. You must derive from all power from a situation where there is no power, no government. And no, *The Federalist* takes government, the existence of government, for granted, just as Aristotle does. As if it were the case, as Aristotle says, that man is by nature a political animal.

KRISTOL: Yeah, there's not a big appetite for – this is even true of Locke, you know, in this respect Locke's more like Hobbes – not a big appetite for going back to the state of nature in the *Federalist Papers*, in *The Federalist*.

MANSFIELD: No, there isn't. On the other hand, he also doesn't say what Aristotle says, defining human nature as intrinsically political.

KRISTOL: Yeah, and what about this, you comment on this in the talk you gave recently, the contrast between, I think it's especially in the first part, *The Federalist's*, Publius' almost embrace of the novelty of this enterprise; the need to be bold and making some choices. You can't wish away certain things. You have to [unintelligible] that spirit and novelty and choice and boldness.

And then in the second half, much more caution. We have to mix in a complex way these different and somewhat competing or contradictory or conflicting, I guess you'd say, elements. That seems to be two different sides –

MANSFIELD: Yes, very different.

KRISTOL: – of the Constitutional coin.

MANSFIELD: It is, and so, and that's why you can say that Publius is both liberal, radical even, radical reformer, *and* conservative. Once the reform is made, you want it to remain. And so in Federalist 14, that's a call based on the manly spirit of novelty, which Americans have shown in proposing this new Constitution. "Hearken not," see, to the voice which tells you to worry and be cautious and hesitate. But yes, firmly embrace the new Constitution as a replacement for the Articles of Confederation, the old.

And then, after 37, you get in Federalist 49, a rejection of a proposal by Thomas Jefferson that in case of a disagreement between the two branches, the executive and legislative, that an appeal to the people should be made to decide between them. And, no, that's dangerous and risky. You're asking for trouble if you do that. The Constitution is not only reasonable, but it needs to have the advantage of habitual obedience, rising to the level of veneration. That word is used: veneration.

Now there are a couple of critics of *The Federalist* today, scholar critics, Gary Wills and most recently Sandy Levinson. The two of them, they can't abide this contradiction. They said, why should we venerate when we're supposed to have a manly spirit – well, they don't say "manly spirit" – supposed to have a spirit of innovation and love of novelty, in *The Federalist*? But *The Federalist* puts those two together. That's the wonderful sagacity of this document. It has something for both liberals and conservatives, both things that they would like and also reproaches to them. You should see better than you do the points that the other party makes, that the conservative party makes, or that the liberal party makes. So if you read them, it's a cure for partisanship. It endorses partisanship as a consequence of free government and free spirit; but it also moderates and modifies. Let's you get a view of the whole. That's what it gets you, a view of the whole country, even our lives.

One especial feature of the separation of powers that comes out after Number 51, after power is understood as one thing, is the importance of ambition. It's expected, in this heterogeneous land, that people will act on the basis of their interests, their different interests. Farmers versus merchants, versus consumers, and so on. But it's also necessary to have some ambitious people. And that there are ambitious people is necessary, since there are ambitious people. Since there are ambitious people, it's necessary to have some objects of their ambition, worthy objects. And that's what these different offices supply. Ambition is usually a great danger for republics, because an ambitious person doesn't just want to count for one, like a republican; he wants to count for a little bit more than one. And so, even to grab everything, take hold and become a tyrant or dictator, in order to gratify his own sense of excellence in himself.

So that's a danger in ambition, but *The Federalist* takes this danger, this kind of common danger, that comes from this certain type of human being is not satisfied with anything but being outstanding, and turns it against itself. And this is in 51, "ambition must be made to counteract ambition"; one of the very famous, most famous, phrases in *The Federalist*, from Madison. So ambition works against ambition when you act, when it opposes other ambitious people. And so these are the – And this system of setting ambition to counteract ambition is the best way to cure the problems arising for a republic from ambition; because the ambitious people know what other ambitious people are like, because they share the same passion for advancement. Whereas an ambitious person might be able to con somebody who's not ambitious, doesn't care so much: "All right, let him do it. That's his idea of fun. Mine is better: to be ordinary and stay in my niche in life," what most people say.

So you use ambition against to resolve the problem of ambition; but you also have to have some worthy objects of ambition, and that's again a reason why a republic mustn't be small. It must be great. America must have greatness. So a large country, a powerful country. So this gives worthy objects. You want to be a senator in the United States of America. In Luxembourg, that's not such a big deal. So you need to

have a *worthy* object of ambition so that your ambition can be resolved for the good of your country, rather than by using your country against some other country, like Alcibiades, the Athenian, whose ambition outgrew Athens. And so he went to the Spartans and the Persians, and so he made this kind of tour of countries that he offered to let themselves be run by him.

KRISTOL: Venues for the scope of his ambition.

MANSFIELD: Yes, that's it. But the United States, that's big enough to cover, to satisfy, the largest ambition. And it's great enough. Do you have enough ambition, really, to persuade people to see it? It's easy if you can fool them, or if you can awe them into fear of you. But can you *persuade* a constitutional majority to do something great that you have in mind? And so this is what Hamilton refers to in his discussion of the executive as "extensive and arduous enterprises." It's an enterprise, again, that's a very American word – free enterprise, only this is political. "Extensive and arduous."

So the executive power, on the one hand, deals with emergency events. Things rise very quickly; problems that cannot be solved by passing a law. There's no time for that; we can't argue it out. Somebody has to act.

But on the other hand, too, Congress tends to sort of look at the medium term. This is a solution for this set of problems. But it's not so good at looking at the whole and how this fits into a general program. So the executive again, turns up at the other end. Congress is in between, but the executive is emergency and then long term. So an "extensive and arduous enterprise" would be something like Hamilton's own American plan. That's Henry Clay, later on, but the program of national bank and what we today call infrastructure – roads and canals. Or now, in our time, the New Deal; the Reagan Revolution. These things are meant to have a certain consistency that requires planning, and a certain foresight beyond what Congress normally does. If Congress does this, it's going along with what has been put before it by the executive. This shows that the executive adds something to legislative power. It isn't just a way of checking. See the three powers then cooperate to produce some grander result, some great policy, such as America in twentieth century, our foreign policy. So we won two world wars and a cold war. That was as if, well, they weren't all planned, but the Cold War was.

KRISTOL: – required cooperation.

MANSFIELD: It does, and it requires a certain consistency over time. Cooperation between the parties too, in order to make this work.

KRISTOL: It's striking how much Publius – to get back to Federalist 49 and one time, briefly – he says, I think in 49, it might seem more consistent with democratic principle, republican principle, to recur to the people to resolve the differences among these three branches, each of which derives from the people. But it would be a big mistake, weaken the reverence to the Constitution.

So that's a real rebuke, and he mentions Jefferson, I think, so that's a rebuke to, let's call it Jefferson/Thomas Paine – I think it's the same, really, the same spirit, you might say, of democracy: more direct democracy. On the one hand, veneration. But on the other hand, there's plenty in *The Federalist* for liberals and even progressives, you could almost say, in sort of, "don't be scared of novelty; don't be scared of boldness. Occasionally, politics requires that." So it's not – what's the opposite of Jefferson/Paine? I mean, Burke – it's a caricature to say Burckian – but it's not conservative, it's not Tory. It's not – It's attitude toward politics has elements of liberal and conservative, I'd say.

MANSFIELD: There's a certain prudence, but not to the extent of gradualism.

KRISTOL: Right, that's a good one. Yeah. And that they both – And I guess that has to be kept up going forward. That's not a – just to finish with this – it's not a one-off achievement of Publius or the founders, right? Both these elements will be needed in the routine. It's not a machine that goes of itself, a phrase

that's used by some historian, I think about the Constitution. Maybe he's quoting something from shortly after the Constitution perhaps. But it does require human, it requires people to think like the founders, if not quite at the level of the founders, for it to work.

MANSFIELD: Yeah, so it's up to us. We have to study this so that's why *The Federalist* had to be a book. And then, a book that would last. And be, even as it is, the authoritative guide to the practice of our Constitution. It hasn't lasted perfectly or completely, by any means. So there are things which aren't discussed very much, like parties. And the further democratization, this kind of pressure for democratization of a republic that comes willy-nilly against the careful planning that we see that Publius presents to us in *The Federalist*. But if you want to understand the Constitution and what it was originally intended, and perhaps how we have departed from it or strayed from it, this is your book.

KRISTOL: It's a good note to end on. Harvey Mansfield, thank you for being such an excellent guide to this authoritative guide to our Constitution. And thank you for joining me at this CONVERSATION.

MANSFIELD: Thank you for having me.

KRISTOL: And thank you for joining us.

[END]