

Analysis of Federalist Paper #78

Hamilton begins by telling the readers that this paper will discuss the importance of an independent judicial branch and the meaning of judicial review. The constitution proposes the federal judges hold their office for life, subject to good behavior. Hamilton laughs at anyone who questions that life tenure is the most valuable advances in theory of representative government. Permanency in office frees judges from political pressures and prevents invasions on judicial power by the president and congress. The judicial branch of government is by far the weakest branch. The judicial branch possesses only the power to judge, not to act, and even its judgments or decisions depend upon the executive branch to carry them out. Political rights are least threatened by judicial branch. On occasion, the courts may unfairly treat an individual, but they, in general, can never threaten liberty.

The constitution imposes certain restrictions on the congress designed to protect individual liberties, but unless the courts are independent and have the power to declare laws in violation of the constitution null and void, those protections amount to nothing. The power of the Supreme Court to declare laws unconstitutional leads some people to assume that the judicial branch will be superior to the legislative branch. Hamilton examines this argument, starting with the fact that only the constitution is fundamental law. To argue that the constitution is not superior to the laws suggest that the representative of the people are superior to the people and that the constitution is inferior to the government it gave birth to. The courts are the arbiters between the legislative branch and the people; the courts are to interpret the laws and prevent the legislative branch from exceeding the powers granted to it. The courts must not only place the constitution higher than the laws passed by congress, they must also place the intentions of the people ahead of the intentions of their representatives. This is not a matter of which branch is superior; it is simply to acknowledge that the people are superior to both. It is futile to argue that the court's decisions, in some instances, might interfere with the will of the legislature. People argue that it is the function of congress, not the courts, to pass laws and formulate policy. This is true, but to interpret the laws and judge their constitution are the two special functions of the court. The fact that the courts are charged with determining what the law means does not suggest that they will be justified in substituting their will for that of congress.

The independence of the courts is also necessary to protect the rights of the individuals against the destructive actions of actions. Certain designing men may influence the legislature to formulate policies and pass laws that violate the constitution or individual rights. The fact that the people have the right to change or abolish their government if it becomes inconsistent with their happiness is not sufficient protection; in the first place, stability requires that such be changes be orderly and constitutional. A government at the mercy of groups continually plotting its downfall would be a deplorable situation. The only way citizens can feel their right are secure is to know that the judicial branch protects them against the people, both in and outside government, who work against their interest.

Hamilton cites on other important reason for judges to have tenure. In free government there are bound to be many laws, some of them complex and contradictory. It takes many years to fully understand the meaning of these laws and a short term of office would discourage able and honest men from seeking an appointment to the courts; they would be reluctant to give up lucrative law practices to accept a temporary appointment. Life tenure, modified by good behavior, is a superb device for assuring judicial independence and protection of individual rights.