THE BROOKINGS INSTITUTION

READING "THE FEDERALIST" IN THE 21st CENTURY

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P R O C E E D I N G S

MR. GALSTON: Good morning, one and all. Thank you for coming. My name is Bill Galston. I am a Senior Fellow in Governance Studies here at Brookings and the Impresario of the hit series, Governing Ideas, now in its seventh year I believe.

Let me just take a minute to explain the point of this series. As you know, Brookings' bread and butter is rigorous, impartial, nonpartisan policy research. It's what all five of our research divisions and our numerous research centers do on a daily basis. I think all of us are aware that public policy argumentation and decision making in this country as in all countries takes place within a broader context, a context of political culture, of history, of political institutions, and even -- dare I say it -- philosophical assumptions, even if many of them dare not speak their name anymore. And the point of Governing Ideas is to explore these essential background questions, to take them out of the shadows, to drag them kicking and screaming into the sunlight. And I can't imagine a more perfect topic for this series than the one that will engage us in the next hour and a half, or perhaps a bit more if we can seize the room, and that is the relationship between one of the genuinely seminal documents of American politics, namely The Federalist Papers and our current circumstances.

That brings us to our featured speaker for today, the author of the book on the aforementioned topic. His formal moniker is Sanford Levinson -- but I don't know of anybody who even remembers that if they don't read it -- Sandy to one and all. His full bio is in your packet, but just to touch on the essentials he has a Chair at the University of Texas Law School which he joined 35 years ago. He is also a professor in the Department of Government at the University of Texas, where I taught in my youth, and he brings together the disciplines of Constitutional law and political science in an enormously fruitful way. He has written 400 and counting articles and commentaries, 6 books, more

than 1 of them prize winning and I wouldn't be surprised if this book joined their company. And as a token of his standing as a political scientist, not just as a Constitutional lawyer, he received the Lifetime Achievement Award from the Law and Court Section of the American Political Science Association a few years ago.

As the lead commentator on Sandy's book we have an equally distinguished individual. In this case a long-time denizen of Washington, so he's gotten a little bit of time off for good behavior. Mickey Edwards was a member of Congress for 16 years. He served on key committees like the Budget and Appropriations Committees, and also as a Chairman of the House Republican Policy Committee. After leaving Congress he taught for more than a decade at the Kennedy School and then spent some time at Princeton's -- well, the current name is the Woodrow Wilson School of Public Policy and International Affairs -- stay tuned for late breaking developments. (Laughter) -- and he's now a Vice President at a fellow -- or should I say rival -- institution down the block, the Aspen Institute where he directs a bipartisan fellowship for elected public officials. Zooming in on today's topic, he's a Board member of both the Constitution Project, where he has chaired task forces on judicial independence and the war power, and also the project on government oversight. He is also a lauded author in his own right. Among his books are Reclaiming Conservatism, published almost a decade ago by Oxford, and The Parties Versus the People: How to Turn Republicans and Democrats into Americans. And if you can do that I have this glass of water that I'd like you to turn into a glass of wine before our very eyes. (Laughter)

So without any further ado, let me just walk through the proceedings for the morning and then invite Sandy Levinson to the podium. Sandy will speak first, he'll present his book. Then, you know, Mickey and I will join him at the podium. Mickey will offer some opening remarks on and responses to the book after which I'll moderate a

conversation. And then for the final half hour or so the podium is yours in effect. There will be a roving microphone and I'll recognize as many of you as I can. And I conclude with the ritual invocation to please silence electronic devices.

Sandy, welcome to Brookings. (Applause)

MR. LEVINSON: First let me offer my sincere and intense gratitude to Bill and to Brookings for arranging this event. I truly appreciate it for many different reasons. One of the reasons is that I have just published this book and am eager to have people aware of that fact. So let me begin with what I think are three distinctive aspects of the book, which is titled An Argument Open to All: Reading the Federalist in the 21st Century.

The first thing that is distinctive is that it concerns each and every one of the 85 essays in the Federalist. The book is comprised of 85 short essays of my own, each one on the corresponding number from the Federalist. Authors when reading their published books for the first time always find a typo and always find at least one sentence and usually more than that that they wish they had the opportunity to revise and now it's too late. The sentence I would revise is the beginning of the second paragraph of the introduction where I say, "The Federalist is without doubt the best know, most widely read, and analyzed extended work of American political thought." What is wrong with that sentence I now believe is the assertion that it is the most widely read. That is to say it is certainly the best known, it is certainly the most often cited, but I have come to believe, partly through teaching a reading course at the Harvard Law School this last term and giving a talk a couple of weeks ago at the University of Chicago, both notably serious law schools where one might expect the best educated students in America, and they probably are the best educated law students in America, to be a certain kind of sample. At Harvard the only student among the 14 in my course who had read The

Federalist in its entirety was an LOM from abroad. At Chicago about six of the hundred or so students who where there had read the Federalist in its entirely. Most students have read I would guess four to six of the Federalists, and you probably can guess what they are -- 10, 47, 51, 78, and maybe another couple. But there is certainly a greatest hits aspect to The Federalist that I have come to believe is a tremendous mistake in all sorts of ways, ranging from understanding what The Federalist was about to discerning any contemporary relevance. There are 85 essays. You can do the math yourself. If the attention is focused on even six of the essays, or eight of the essays, that's still only ten percent. And the essays I mentioned are not really a representative sample, but they do serve often certain polemic or political purposes to be focused on. Every lawyer loves 78 because it is a defense, persuasive or not, of judicial review and a strong judiciary. So why wouldn't lawyers and judges love to cite 78 at every opportunity? And I could make similar remarks about the utility of 10, 47, and 51.

But as I say there are these other 81 essays. And one of the theses of the book is that each and every one of the 85 essays has something in it of interest to us and that we ignore it -- it might be a little bit melodramatic to say we ignore them at our peril, but we do ignore them at the cost of our own intellectual development. So that is one aspect about the book that I want to highlight at the beginning that is about each and every one of The Federalists, not simply to what I've taken to calling the greatest hits.

The second thing that is distinctive is that with regard to the authorship of The Federalist, I refer exclusively to Publius. I am not interested frankly in whether it was James Madison or Alexander Hamilton or John Jay who wrote a particular Federalist Paper. I am not interested in whether they were sincere in writing any given paper. Obviously if you're a historian trying to figure out what accounts for specific essays in 1787 or 1788, you would be well advised to be aware of the political situation that

Federalist 39 for example, which Anthony Kennedy often loves to cite because it's one of the relatively few of The Federalist Papers that has anything good to say about states. But you realize that the purpose of The Federalist, the most magnificent propagandistic op-eds in the history of the world, were to encourage wavering basically anti Federalist delegates in New York to vote to ratify the Constitution, which they did by the ringing vote of 30-27. So by the time the 39th Federalist comes along it's really important to assure wavering delegates that the so called anti Federalists are wrong, that the Constitution is not simply a recipe for consolidated government, which of course it is. But in number 39 there is an attempt to reassure the wavering delegates that no, it really does protect states in a number of important ways. You should resist these canards that are being thrown at the Constitution, that it is simply a way of centralizing power. I say if you tried to understand The Federalist in its historical aspect, it is important to know the context within which the essays are written, and it is an interesting question whether the authors of The Federalist believe their own arguments in particular instances.

I'm not interested in that in this book. I'm interested in a fictive author named Publius, the anon of English poetry, or of any other poetry where you simply read a text and try to figure out what does it mean, and there is nothing you know about the author. Or even at Shakespeare, it's the next best thing to knowing nothing about the author because we don't know enough really about historical Shakespeare to offer any truly well founded views as to whether it was the Catholic Shakespeare or the Protestant Shakespeare, or the anti royalist, or the royalist, et cetera. You just have these magnificent plays that really could have been written by anon and then you try to figure out what they're saying. And so that's what this book does, it's Publius all the way. There are a couple of references to Hamilton or Madison, but only in the context of other things they might have done, not in the context of the particular essay and as I say I'm

totally uninterested in the sincerity issue that is part of some of the scholarship of The Federalist.

The last thing that is distinctive, and may drive some historians crazy, if they're not already perturbed by my indifference to the authorship of the actual essays, is that he only question I'm really interested in in this book is what's in it for us today to read The Federalist? If you're interested in the history of American political thought, then of course you have to read The Federalist, but most people aren't interested in the history of American political thought. Everybody's very busy and the question is, is it worth taking your scarce time to read The Federalist because of any insights it might throw on American or world politics in 2015 and thereafter. And the thesis of the book is yes, it is worth taking your time not only to read my book, which I obviously hope you do, but also to go back to the original essays and to read them as well. And quite frankly I was surprised as I worked through this project to discover that I actually was able, genuinely and sincerely, to find something in each and every one of the 85 essays that has relevance to us today. The obscure essays about the ancient Greek confederations, the Dutch Republic, and the like, I think they are 18, 19, and 20, I think actually have a lot to say with regard to what's going on in Europe right now. The European Union is not a genuine union, it is not a genuine consolidated government of the kind that the Constitution was designed to create. Rather it really does remain a confederation, just as what the Constitution replaces was the Articles of Confederation. And one of the themes of Publius in a number of essays is that confederations will never really work, that you have to move to some kind of strongly centralized government in order to work. That is the real challenge that we see being played out in Europe right now.

Another example is number 11, which I'm very, very confident that only those of you who not only have read The Federalist in its entirety, but really are

specialists, would remember, number 11 follows the all time hit, number 10, but is really quite different in its thrust. Number 11 explains why the new vulnerable United States needs to protect itself against foreign dangers, against predators. One thing we need to do is to get control of imports by not really letting other countries believe they can have unfettered access to our markets without tariffs and things like that. The other thing we need to do is to build a strong Navy because we need to have ships that will carry our products and defend ourselves against these predator countries that do not wish the United States well.

One of the things the U.S. State Department and the ABA do is to send copies of The Federalist abroad in the belief that it is a good thing if people around the world read the wisdom of Publius. One of the questions that I ask in this book is why exactly do they think that's such a good thing. And I think one quick answer is because they like most people tend to fixate on three or four of the essays and believe that it would be a good thing if everybody around the world read Federalist 78 and came out of it with a view that every country needs a strong, independent judiciary to enforce Constitutional rights, which may be true. That's not my particular focus of interest. But imagine say that you're a Chinese reader reading The Federalist in its entirety and you come across Federalist number 11 and you say well, you know, China is in its own way an emerging world power that has suffered under a very, very long history of being colonized or put in its place by stronger powers, in a basically Hobbesian international political order. And China now really has to develop its own independence and ability to defend itself in this international order. So what do you do? Well, you try to establish control over imports and you build a Navy. So I want to say I have no reason to believe that the heads of the Chinese Navy decided to start building islands in the South China Sea because they read Federalist 11, but it does seem to me that Federalist 11 has

some very interesting lessons to people all around the world and these may or may not be lessons that the United States State Department wants them to learn, but this simply helps to illustrate the fact that great works whether of art or of political theory, or of fiction can't always be controlled in the impact they have. The Publius was collectively a very, very smart person, very well aware of the vulnerability of the United States, very much afraid for good reason about the future unless the United States ratified the Constitution and really did develop a new understanding of politics. And the insights Publius has or the advice that he is giving to his fellow countrymen may indeed have interesting lessons for leaders outside of New York or Virginia or the like in 1788.

So these as I say are the three things that I do regard as distinctive and important about the book. Let me take literally about eight more minutes to talk about just one or two of the essays in addition to surprising you with a discussion of Federalist 11, but that does capture one thing that I think is important about the book, which is that every one of The Federalists may have something of interest.

But let me begin with numbers one and two. Number one begins by saying 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 on their political constitutions on accident and force. This I think in some ways is the most important single sentence in The Federalist. Not only for 1787, but also for 2015, because from my perspective the key question facing us today is whether we really do believe that we live in a polity where people are genuinely capable of engaging in reflection and choice about how we are to be governed. As it happens I'm the way the outlier on a spectrum in actually wanting a new Constitutional Convention, but I don't expect or have any particular desire to spend much time talking

about that today. I've had other occasions to talk about that here at Brookings. But I don't see all that much difference between what one has to believe about one's fellow citizens with regard to a new Constitutional Convention and what one has to believe with regard to viewing, let us say, the election process of 2016 as a truly legitimate process, one in which you will accept the result even if you disagree with it because you believe that reasonable people can disagree. It may be that there are really good things to be said for positions that you generally tend to disagree with, and in any event the majority should rule and you'll have your opportunity down the line to vote the rascals out if you don't like the result. I think possibly the most truly fundamental problem that we're facing in 2015, and Mickey has indeed written a very fine book about this, is whether our polarization is such that we don't really believe that those who disagree with us are capable or manifesting any capacity for reflection and choice. And you can offer various analyses as to why that might be true. Some people would focus on campaign finance; other people would focus on the rise of social media or talk radio. There are all sorts of analyses for the desperate straits of contemporary American politics. All of you I'm sure know of Tom Mann and Norman Ornstein's book, It's Even Worse Than it Looks, and I'm sure that nothing has happened in the last couple of years to lead them to wish to revise their title. And that I think is a fundamental challenge, it is a fundamental challenge that existed in 1787. And one of the remarkable things about Federalist one is its optimism.

I think part of the utility of referring to Publius instead of the actual author, who is Alexander Hamilton, is that if you simply threw out to a group of students or others, here's an essay, it was written by a famous founder, who do you think it was. I think a lot of people say, well it's Thomas Jefferson, because this really sounds like Jefferson. Federalist one is suffused with faith in the public to engage in reflection and choice about fundamental issues. I don't know whether Hamilton believed that or not. As

I say it is of no concern whatsoever to me in this book. What I know is that Publius offered this description of his fellow Americans that is very, very attractive. The only question is do we believe it. It doesn't matter whether he believed it in 1787, the question is whether we believe it today.

Moving on to number two. And again let me just begin with the most central part of number two. After Publius begins by saying well, isn't it wonderful that we have a topography that will unite the country, the rivers, the fact that if you live on this coast of the country rather say than in the Rockies or California, you're not really aware of serious mountains. And so you can go from Massachusetts to South Carolina without ever really having to climb over a mountain. But then Publius goes on, with equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people, a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs. Now there are two things that can be said. First of all, even in 1787 this is a thoroughly preposterous view of the United States. No observant person -- and one has to assume that Publius believed that we were homogeneous in this way. One of the first things that was done after September 7, 1787 when the Constitution was signed and then sent out for the first time to the public, one of the first things that happened is that it was translated into Dutch and German. Why? Because 40 miles north of New York in what was then called Upstate New York, there were lots and lots of Dutch speakers. Benjamin Franklin was very, very upset about the number of German speakers in Pennsylvania. So you begin with that. You go on to the fact that even if you believe that all Christians are alike, there really is no difference between a Catholic and a Southern Baptist. And then all the Presbyterians and Congregationalists and Episcopalians in between. There are still some non

Christians in America, even in 1787, and so this is really a remarkable statement. So then the obvious question is why was it thought necessary to offer such a preposterous view. Note, incidentally, and I shouldn't finish without mentioning this, there's no mention of race of American Indians. We're talking -- or Publius is talking about a remarkably restricted number of people living in the United States in 1787, but why the felt necessity to say we're really all alike? Well, part of it has to do with political theory. Montesquieu, who is actually the most often cited political philosopher in The Federalist, that to be a republic and to have a republican form of government, you need to be homogeneous. And this is an assurance that we really are homogeneous, whereas Agrippa, one of the critics of the Constitution has written, saying how could you possibly believe that the people in Massachusetts and the people in Georgia are really similar enough to be able to unite in a single consolidated government where there will be a single governor that can make rules that will apply to both Massachusetts and Georgia. This is just crazy. And of course, as an empirical matter, that turned out to be correct. We did kill 750,000 Americans between 1861 and 1865 because in fact we were not a homogeneous country. But it was thought to be important to say oh yes, we are.

So let's do a fast forward and the debates that many of us heard last night and that are very much a part of the American political debate today, whether you call it diversity, multiculturalism, the melting pot, or whatever, the really serious question -- and I segue in my own commentary on Federalist two into a discussion of the final book by Samuel Huntington, a great and controversial, justifiably controversial political scientist at Harvard, whose last book bewailed the influence of particularly Latin American immigration to the United States in part because he feared that English was losing its hegemony in significant parts of the country and this was a threat to national unity. And he said that it was naive to believe that we could really maintain sufficient unity simply by

declaring our allegiance to a set of very abstract values found in the Constitution. Now I'm not a particular fan of Huntington's views. Huntington is probably best known for his prediction of basically a worldwide clash of civilizations between Islam and Christianity, and there are some people who think that is in fact coming to fruition. But whether one agrees with Huntington or not is beside the point. On this the point is that it's an issue very, very much relevant to contemporary politics, and it is naive to dismiss any relevance at all to some degree of what when I was a young grad student was called a consensus view of politics, or a political culture view of politics, that said very often, look, formal institutions really aren't very important, it doesn't matter what the Constitution says, it doesn't matter whether you're a parliamentary system or a presidential system, et cetera. What really matters is a certain degree of unit around a common culture and then where does this commonality come from. Some people think it comes from a share religious heritage. Others would say it comes from a certain kind of shared political background, or god knows what. It can come from a certain kind of socialization processes in public schools, common schools. All of these are obviously very controversial issues that are at the absolute heart of our contemporary politics and you see a particular articulation of the view emphasizing homogeneity in Federalist two. And the principle argument that I make with regard not only to Federalist two, but also number eleven, number fifty-two, number eighty-one, et cetera, is that each and every one of these Federalists, including the ones that most people have never read, give us something to think about with regard to the politics of our own time.

So let me stop there and call Mickey and Bill to the podium. With regard to Mickey, a close and valued friend, as somebody who often writes blurbs himself, I know what a sentence that begins, agree with him or not, he goes on to offer (laughter) very, very appreciated praise for the book. But as I say, I know what the cause, agree

with him or not, means and so I'm especially interested to hear why Mickey wants to hedge his bet, his endorsement of the book. (Laughter) (Applause)

MR. GALSTON: Well, Sandy, you won't have to wait long because, you know, by prearrangement Mickey gets the first crack at you, after which I'll try my best to moderate a conversation. And there is a button usefully labeled "speak" that you may want to (laughter) --

MR. EDWARDS: So if you push the button you have to speak, is that it? Well, you know, first of all, Sandy, I -- Sandy had already referred to this before to me about the fact that I had said in the blurb, you know, agree with it or not, I must say that that aside this is really a good book. And I've known Sandy a long time. It is extremely well argued, it is very, very readable. He is a terrific writer and so I enjoyed this book. I've read parts of it now, Sandy, several times. And it gives you a lot to think about. There's no reservation in promoting it and suggesting that you do it.

I had to question a little bit. And kind of amazed that so much attention and so much thought given to The Federalist Papers. Back in the 1960s there was a German company that made automobiles, Volkswagen, and they were trying to come into the American market, and in doing so -- you know, in America at that point people enjoyed the luxuries of their Cadillacs and their Lincolns. Those were signs that you had made it, and people were quite happy with the American auto industry and the luxury that it provided. And so the Volkswagen people deciding that somehow you had to convince people that what they thought was good was really not all that good, that you had to persuade them that they needed to change, even though they hadn't felt the need to change. And so they went out and they hired Doyle, Dane, and Bernbach. So the founders hired Hamilton, Jay, and Madison, you know, to do a similar kind of PR job.

There's a lot in The Federalist that resonates today. Ten is well known

and well respected because what Madison puts out there in terms of the importance of checking faction against faction has great importance to us today. But I enjoy reading The Federalist Papers but I never forget that it's a PR job. It is and as you said, Sandy, you don't know whether Hamilton, you know, believed what he wrote. I think there were other things that he did from time to time that suggest he didn't, but -- and I know it's not a perfect analogy with the Volkswagen because there we were trying to talk or the manufacturers were trying to talk consumers from going from big to small. And what Publius collectively was trying to do was to take us in the other direction, and to argue about why we needed to go from small to -- a loose confederation to big and to be a powerful nation capable of defending itself.

So I look at The Federalist Papers, Sandy, actually interesting but it's not the Constitution, which is law, it's not the Declaration of Independence, which is aspiration. You know, it has a very specific, narrow purpose which is barely succeeded in accomplishing, in getting support for the Constitution. So the question -- and I think the question that Sandy puts before us, and does very well, is does it hold up to the arguments that are made in The Federalist Papers. I think in some ways -- you refer at one point to Publius' paranoia. And that had to do with the amount of effort, the tremendous amount of effort that is put into arguing for a stronger central government in order to be able to justify the need to -- be justified by the need to defend ourselves. It's hardly paranoia. I mean given that Spain, Britain, France, and other countries, you know, had great ambitions to encroach upon this new nation, which was admittedly weak at that point. And you at some point then go on to talk about that as the beginning of an exalted status in the United States for our military. I'm not sure that it's that exalted. I think the other branches of government are held in such low repute that by comparison, even with the problems in the military in terms of sexual harassment and other kinds of problems

that exist there, it is the one branch of government that seems to be functioning much more the way we hoped it would. And if you look at -- well, you heard the debate last night where the only issue was, you know, how do we protect ourselves. It seems to me that it was perhaps a little bit too much of a dig at Publius' paranoia.

But that aside, let me look a little bit more at some of the things that may or may not be relevant to us today. You I think are partly inspired to write this book, as many people are, by what is called the current dysfunction of American government, and you refer to Tom and Norm's book, and I think draw a line suggesting that some of the ideas in The Federalist underlie the dysfunction that we now see. Well, first of all, you know, I don't want to go on too much about what I've said before in my books, but it's not dysfunction because what we see is operating exactly according to the systems that we have set up, the way we have our primary elections systems, and funding of elections, and so forth, which produce the results. But that doesn't come from either The Federalist Papers or the Constitution. In fact it is a departure from what the Constitution envisions. The founders all were pretty unanimous against having the kind of a party system that we have now. And we created the system where Ted Cruz became a United States Senator because in a runoff against David Dewhurst he -- with the votes of two percent of the population of Texas he was allowed to be the only republican on the ballot in a republican state. And where Mike Lee in Utah, you know this argument, Mike Lee in Utah was allowed to be the only republican on the ballot in Utah by the votes of one-tenth of one percent of the population in a convention. So you can't blame The Federalist or the Constitution for that. Those are things that have been set up where we departed from the arguments of the Constitution.

So I want to wrap this up quickly because I'm eager to get to this general conversation. We come at the end -- and this is a case you make a lot, Sandy, and I can

understand the reasons for it, and that is the advocacy of setting all of this aside and having a Constitutional Convention, start over, you know, look at things that are not working as well as we wished they would. And the question to me goes back to something you said here that I think we're in agreement about. You talk a lot about -- and properly so -- about in the founding days the importance of reflection and choice, reflection and choice. I have some serious questions about whether or not I would trust the current electorate to be able to be reflective and to make a wise choice. We have gotten so far away in the education systems from the ideas of critical thinking, studying philosophy, studying the humanities, that I would be very concerned about whether if we brought about the Constitution convention that you would like to see, whether what we would do is repair an imperfect system or in fact change it to the point that we lost most of the basic principles that are not only in the Constitution, but that are to a great degree advocated in The Federalist Papers. So I liked reading what you wrote. It really made me go back and spend a lot of time thinking about what you had written. But at the end of the day, as you tie -- because you're tying it into the Constitution and the changes we need to make, I think we need to be very cautious about that. At the moment we may have both too much democracy and too little, and a Constitutional Convention is probably not likely to produce a better result.

MR. GALSTON: Well, Mickey, thank you so much for that benevolently pointed commentary. And without breathing hard I wrote down a list of 21 questions (laughter) that I wanted to put to Sandy and Mickey, and I now see that time will permit exactly one of those questions.

So let me go to the heart of the book and perhaps the heart of the question before us as Americans today. On page 81, Sandy, you ask what I take to be the central animating question of the book. And I quote, "What does it mean in the 21st

century to be faithful to the Publian vision of politics set out in 1787?" And the entire book in a way is an answer to that question. And here's what I took away and took to be your three part answer to that question. Number one, you know, your emphasis on a presentist reading of these essays stands for a proposition, that is there may not be permanent answers, but there are permanent questions. That's number one. Number two, the point at which you begin, namely the emphasis on reflection and choice and the optimism about self government that lies in back of that proposition. And number three, your insistence, which is the Publius' insistence as well, that in the first instance political pathologies are linked to institutional defects. And if you want to address the pathologies rather than just whining about them, you have to look at the institutional context.

That's a challenging thesis. And so let me put a question about that thesis on the table which I actually think goes to the heart of the disagreement between you and Mickey about the wisdom and prudence of a new Constitutional Convention. As you say later in the book, Publius oscillates between two quite different views of human nature as it's expressed in politics. So everybody is on the same page literally, let me read it. This is in the course of a commentary on Federalist 57, where you say what is most visible in this essay is another swing of the pendulum between two Publian positions. One might be described as the realist or cynical Publiest, suspicious of people's motives, dismissive of parchment barriers, and concerned to construct a complex network of institutions, et cetera, et cetera. In other words, mistrust of human requires institutional contrivances in order to screen out the very worst consequences of the very worst in us. The other side of Publius you go on to say is instantiated in his definition of the aim of every political constitution. These aims are first obtaining from rulers men who possess the most wisdom to discern and the most virtue to pursue the common good of the society. So we have a realist side of human nature, one might even

say pessimistic, and then a reason centered, virtue centered, optimist side. Your emphasis on reflection and choice is you're giving that pride of place leads you to the view that a new Constitutional Convention would not be a disaster, but just the reverse. I think Mickey picks up the other part of Publius' vision, the more realistic, cynical, pessimistic part and says that in the name of making things better by ignoring the downside of human nature you could end up making things a lot worse.

So why do you take one piece of Publius' description of human nature and give it pride of place?

MR. LEVINSON: I'm happy to defer extended discussion of whether or not we should have a new Constitutional Convention because in part as I said in my remarks I don't see significant difference between the degree to which you would be optimistic or pessimistic about a new Constitutional Convention. And at the end of the day the degree to which you're optimistic or pessimistic about the 2016 election, and whether those elections will produce results that you'll be willing to live with, with relative equanimity even if you disagree. I have to say I feel myself caught in this oscillation. I literally began the introduction by quoting, this is from Federalist six, men are ambitious, vindictive, and rapacious. And there is no notion of American exceptionalism, that we're better, but everybody is vindictive and rapacious. This is a universalistic theory of human nature. I think it can easily be derived from Thomas Hobbes, the philosopher, along with Machiavelli who dare not speak his name in The Federalist. But we know where Hobbesian philosophy ends up, and it's not a liberal constitutionalist vision full of self determination and contestation among electorates. On the other hand, there is the Jeffersonian vision that we identify. Not only I'm arguing with Federalist one, but also the Declaration, the view of government by consent of the governed, and one reading of the end of the Gettysburg Address, government of the people, by the people, for the people.

Those are three different notions. One can easily have government for the people with the benevolent despite. And the 18th century had serious theories of benevolent despotism. George III no doubt viewed himself as -- even if a bit despotic, then benevolent in taking care of his charges. Government of the people is a little bit more complicated, but here all you need to do is to do what the Americans did, which is to get rid of a hereditary kingship and replace it with somebody drawn from the people. But if you accept say Hamilton's speech in the Constitutional Convention on June 19, 1787, it should be as close to an English monarch as possible, but without the stupid principle of hereditary succession. Then there's the government by the people. And that means holding elections in the middle of a civil war and expressing faith in popular judgment. There are certainly times when I'm even more pessimistic than Mickey about our fellow Americans. And that pessimism would lead me to have very serious questions about whether I will regard the outcome of the 2016 elections as legitimate. I'm on record in two other books as not particularly regarding the United States Senate as legitimate because of this crazy principle of allocation of power that gives -- I usually say Wyoming and California, but let me say Vermont and Texas. My two favorite Senators are the Senators from Vermont. My two unfavorite Senators are the Senators from my home state of Texas. I still do not believe it is legitimate to give Vermont the same voting power as Texas. The House of Representatives is republican because of a mixture of gerrymandering and assertion of where people lead these days. And then, you know, we could talk about the electoral college and the primary system, et cetera.

So you don't need to get to Constitutional Conventions to be pessimistic. And I think I am caught in this bind. But what I would say, and here's where I really do find it valuable to move away simply from talking about prospect of a new Constitutional Convention, which is not going to happen, at least in my lifetime, but an election will

happen, is that the issues raised with regard to a sufficient degree of confidence in one's fellow Americans are there on the table and they're really is a deep pessimism. And if we ultimately, I want to say succumb to it, but if we ultimately do decide that Hobbes was right, or the more pessimistic theories of mass democracy, much talked about when we were in graduate school, are right then one has to revise one's feelings about the whole democratic project. And one of the things this means is asking why it is that American presidents at least since Woodrow Wilson -- in regards to political party it doesn't matter whether you're democrat or republican -- but American presidents have made a defining issue of American foreign policy to support democracy around the world. Does that make any sense unless you do have a certain notion of the capacity of ordinary people to engage in self government? Maybe that's, at the end of the day, a dumb theory (laughter), but we really do need to wrestle with it in a way that we don't do whatever party is in power. Barack Obama has been no different from George W. Bush in offering any cogent analysis of what is meant by what I sometimes call the democracy project. Maybe we'll get a discussion of that in the run up to 2016 because one of the things expressed last night, particularly by my Junior Senator, is a resistance to the democracy project. It really shouldn't be of any great interest to the United States. But that really is almost un-American if you look at the course of American politics over the last 100 years.

The very last point I want to make, because I think it is important with regard to Mickey's comment about the military. One of the things that I think is really fascinating about different parts of The Federalist are its discussions of political sociology. In fact, I have two essays called The Political Sociology of Federalism. That when Publius talks about defending states he doesn't refer to anything in the Constitution really. He refers to the character of the people, the identification of people, the actualities of institutions, where it is you're going to go for zoning variances, as against other things.

And he says most governmentalism will take place at the local level. This is what will preserve federalism. And then as a political sociologist you can say well, has that turned out to be accurate?

In the early essays in The Federalist the relentless theme is we need to unify in order to defend ourselves against these countries from abroad. And if we don't unify we're going to be two or three separate countries along the Atlantic and we'll be at war with one another. And he says, in addition -- and I think this is one of the most -- this is Federalist state -- one of the most fascinating arguments, each of the three separate countries would become militarized because each of them would have to have a strong military, not only to protect itself against the UK, France, Portugal, Spain, and American Indian tribes, but also Dixie would have to protect itself against Midatlantica, and Midatlantica would have to protect itself against New England. And he says inevitably this would lead to militarized societies, but if we unify then we'll escape that kind of militarism because a unified country protected by the pond -- he wasn't thinking about the Pacific at that point -- protected by the Atlantic, we'll be able to defend ourselves and really devote ourselves to becoming a commercial society. The ponds no longer protect us. You know, I don't think it's foolish to say there are enemies around the world who wish us ill. To the degree one develops a political psychology of being under attack and possibly exaggerating -- this is where the element of paranoia comes in -- but part of the early essays is to beat the drums, just like last night, that America is in mortal peril and we've got to junk this imbecilic system of the Articles of the Federation in order to defend ourselves. There's almost no discussion in the early Federalists about the blessings of liberty. It's about the common defense. But there is this notion that if we do unite we can escape militarization. I genuinely do think that we are becoming an ever more militarized society. I think it is interesting, and maybe even ominous, that the only national political

institution that has the strong confidence of the American public is the military. And I think Federalist State describes the political sociology and psychology that develops this view. We escaped it for quite a while because we were protected by the pond and we were a unified country and by and large with a weak military. We don't live in that world anymore. And so one of the things we contend with is what kinds of formal powers should government have, but we also contend with what are the sociological and political consequences of being told every moment that we have to live in fear, and that the only way we can protect ourselves against these threats is to support the military in one or another way.

MR. GALSTON: Mickey, do you have a brief response?

MR. EDWARDS: Very brief. Well, I hope. (Laughter) Number one, I am not a Hobbesian. You know, I understand why Hobbes, you know, fearful of the Spanish and all, you know, came to the conclusions that he did. Hobbes was paranoid just as Lindsey Graham is (laughter), but so I'm not here advocating that we -- and I have my own concerns about the military. You know, my point here about resistance to the idea of a Constitution is not questions about the capacity of the American people, it is about the systems that we have built around them, the level of education, the level of knowledge of history and Constitutionalism and the great values, you know, that a citizen needs. One of the things that happened in the Constitution was that Madison, who I credit, gave us a great blessing, but he also gave us a curse. And the curse was it requires a certain kind of educated, thoughtful citizenry in order to protect that Constitution. And we don't have that now, not through the fault of the people, but our education systems, which basically are now voc-tech schools, even the best of them. You talk about democracy, it's not wrong to support democracies overseas, except we've redefined it. So, you know, with Fareed Zakaria I think we are supposed to support is

liberal democracy, not just any country that calls itself a democracy. Because if you use the good descriptions of what's a democracy in terms of how you elect your leaders and all, the United States is not a democracy. We let small groups of people in primaries who can be on the ballot, through redistricting we decide who can't vote in a race where they may not vote with us. You know, so I'm not taking the -- we probably agree on the faults, but they are not related to The Federalist Papers or the Constitution in my view. They're related to how we as a people have created systems subsequent that have created the problems that we have today.

MR. LEVINSON: You know, I think Mickey and I are in substantial agreement. My friend, Mark Graber, who has been a very important goad for me, says that we really need new people more than new institutions and his analysis I think is very close to yours. What sort of education process, what sort of civic virtue would be necessary. And I have in recent writings emphasized more institutionalist sides. And it may be that you and Mark are absolutely right. I would wish to say ultimately it's both/and rather than either/or.

MR. GALSTON: That brings to mind Bertolt Brecht's famous comment about dismissing the people and electing a new one. After 10 years at Brookings I believe I've learned the true meaning of the word moderator. It comes from one of the four classical virtues, moderation, which means self restraint. So I will restrain myself, although as you might imagine I have a lot to say and 20 unasked questions. (Laughter) But it's your turn now. And hearing no objection, unless you start voting with your feet, we will extend this session by 15 minutes until 11:45 if that's okay with the Brookings staff so that we can have a full discussion involving you. And inverting the usual order I'm going to begin at the back and move forward. There's a woman on the aisle there with her hand up. And would you announce your name and institutional affiliation if you care

to and then ask a question without too much of a preliminary.

MS. FREEMAN: My name is Jo Freeman and I write books and I'm mostly writing about the south these days, which makes me wonder how Publius and his co-authors would have viewed the Civil War and the rejection by many states of federation for confederation.

MR. LEVINSON: Good question. There were certainly people in Philadelphia who thought that slavery would tear the Union apart. And Publius actually says that is more likely to be a danger to the country than the small state-large state divide. One answer to your question though comes in Federalist 54, which is about the three-fifths clause, which has to be the most unattractive and indefensible part of the original Constitution. But what's interesting about 54, it makes it very, very much worth reading today, is not for its substantive defense of the three-fifth's clause, but rather its defense of the need for compromise. And another issue, certainly at the heart of contemporary American politics.

And so the question really does boil down, under what circumstances do you make pacts with the devil, and under what circumstances do you draw red lines and say, no. And here I come back to the beating of the drums in the early part of The Federalist. If you believe that national unity and the need for a new Constitution was absolutely central in every way, then you make very troublesome compromises. You ally with Stalin against Hitler. There's nothing in The Federalist that suggests that slavery is good, but there is material in The Federalist that suggests that it's not so completely awful that we shouldn't make a deal with the slave owners in order to get what's really important, which is union. And then it's up to us to decide whether they were right then. There were people who opposed ratification because of slavery. And then much more importantly, what does this have to teach us today about the kinds of compromises we're

willing to make in a very harsh world that we live in.

MR. GALSTON: Yes, the woman right next to the woman who just asked a question.

MS. HUNSICKER: Hi. I'm Jacqueline Hunsicker of Catholic University. First of all, Montesquieu, who you mentioned several times, will really help you out on the institutions versus a political culture. Think of Maurice de Tocqueville.

And my question goes to that. In Federalist two, Federalist two seems to be a rhetorical exercise. And I say that without prejudice. Rhetoric is not necessarily bad. But if we know this both in 1787 and now, why is rhetorically successful to say something that is patently untrue? Why is it believable, both to Publius' audience and to us today/

MR. LEVINSON: Great question. And we could go on for hours. Some of it has to do with the prestige we assign to people making these arguments. Part of it is because there is an element of truth even to exaggerated, and what we might find at the end of the day, false ideas. I mean this is the whole issue. Can one really completely utterly dismiss the importance of minimal homogeneity? If you look at some other radically divided societies around the world, one is not necessarily made very happy by seeing what -- I mean the worst case obviously would be contemporary Syria, but one could look at India, one could look other very, very multicultural societies and get very mixed messages. So, you know, I don't think -- I mean what's -- I think most important about your question is why did Publius believe it necessary to exaggerate to the degree did. And I offered my answer for that. But I think that the reasons it gets purchased is because it's not a crazy argument, that it's one we really do have to wrestle with.

I disagree with Huntington, but he certainly wasn't crazy.

MR. EDWARDS: Can I just add one thing?

MR. GALSTON: Please, please, Mickey.

MR. EDWARDS: You know, partly it's a matter of utility. Donald Trump is not the first person to make a habit of serially telling likes, but they get resonance because people -- when you have heard the lie often enough you believe it. And so if you have a particular aim in mind and telling lies will help you get there, there's a great temptation among people who have limited self restraint to do that. And in this case I started out -- and Sandy did too -- you know, that the purpose of The Federalist papers was to persuade. It had nothing to do with, you know, the philosophy even though they spell out philosophy. The whole purpose was to try to persuade people either to think you need a stronger military or to think you need whatever. It was an argument and perhaps it was too tempting to ignore.

MR. GALSTON: Yes, gentleman in the white turtle neck.

MR. GRABER: My name has been taken in vain. I'm Mark Graber, University of Maryland. And sort of off of that, the bulk of Federalist one, if I remember it, after asking whether in fact societies (inaudible) and choose their government through accident or reflection in choice, goes on to highlight all the obstacles in an democratic or republican society, to reflection and choice. So sort of like (inaudible). What is a government chosen by reflection and choice? Is it enough that it be democratic or must it have other institutions? And does Federalist one sort of force us to think about that?

MR. LEVINSON: Yes. Yes. (Laughter) This book, for better and for worse answers op-eds with op-eds. The longest single essay I think is the one for number two, which is about 2200 words. I think the average is about 1500 words of my own commentary.

SPEAKER: As an op-ed writer let me tell you that's not an op-ed. (Laughter)

MR. LEVINSON: Generous, generous. But it is the case that many of the 85 essays, not all of them -- even I don't believe that -- many of the 85 essays could support extended articles in response. And of course number 10 has provoked books, and 78 has provoked a whole industry that both of us participate in.

So the question you asked, you know, is absolutely central, that you could offer a Talmudic exegesis of number one, that is going through, paragraph by paragraph, and saying, you know, the main theme is reflection in choice, but then you see certain sorts of cautionary notes about are people out there who are going to try to mislead you. But I'm going to tell you the truth. And, you know, talk about rhetorical performance. But what I wanted to do in my own 85 essays is to pick out what often were literally the one or two sentences that were most stimulating not only to offering what I hope is a defensible understanding of the essay as presented, but also what's in it for us to think about for 1500 words or so.

MR. GALSTON: Next question please. Yes, there's a gentleman in that row -- that row right there. Yeah.

MR. GLUCK: Thank you. My name is Peter Gluck. It may be a misperception on my part but it seems to be that both in the classroom and in other places, the papers written by Madison and Hamilton get much more attention that those written by Jay. Why is that? Or maybe I'm wrong about that.

MR. LEVINSON: No, it's simply a question of numbers. Jay gets sick and ends up writing five of the eighty-five papers. My wife and I saw Hamilton in New York on Sunday and one of the points that is made there is that Hamilton ends up writing 51 of the papers, Madison writes only I think -- what -- 24 or so.

SPEAKER: But his were better. (Laughing)

MR. LEVINSON: And Jay's essays -- I don't want to say are less

interesting because number two I think you could write a whole book about and Sam Huntington in effect did, but in terms of the greatest hits nobody is particularly interested in the issue of homogeneity. There's the first essay that is assigned, if any essays will be assigned at all in contemporary school. And I share Mickey's pessimism about the direction of civic education. It's going to be number 10 and there will be a discussion of factions and parties and the like. You'll just skip the first nine. And then the only other essay that Jay wrote after number five I think or six is sixty-three about the -- or sixty-five about the treaty power. And unless you're teaching a course on American foreign policy law you're not going to find it worth taking the scarce time in a high school or even college course to stop for a serious discussion of the treaty power. So I think there is a relatively simple explanation.

Madison actually does very, very well given that he wrote less than a third because number 10 and 51 really do have a certain pride of place and he wrote both of those and as well as 47. So, you know, Hamilton struck gold with 78 because of law professors. (Laughter)

MR. GALSTON: Continuing our relentless march toward the front of the room, this gentleman here.

MR. CHECCO: Thank you very much. Larry Checco. And I do agree with Mr. Edwards that we've done a better job educating consumers than we have citizens for sure. But I've just returned from a recent visit to Monticello and Montpelier, and the thing that struck me the most was the gravitas of these people at that time. And I mean to think that Madison held himself up at the age of 35 in that second story library of his and actually studied every Constitution know to man and put together something that we could kind of agree with, it's just amazing.

But my question is -- I don't think we see that kind of gravitas in our

leaders today and last night was unfortunately a bit of an indication to me of that -- I guess my question is do we have the trust in our institutions, in our politicians, to conduct a successful Constitutional Convention should anyone decide to do that?

MR. LEVINSON: Again I want to emphasize to (inaudible) leaders whom we will repose trust in, and the answer may be no. Again I think the issue that you're articulating is absolutely central. Mark Graber has argued, and there's a lot to the argument, that things really started going downhill with Andrew Jackson. And that was certainly the view of John Quincy Adams for example. (Laughter) I forget his particular phrase at the Harvard Commencement.

SPEAKER: He had a stake in that discussion as I recall. (Laughter)

MR. LEVINSON: He basically viewed Jackson as a militaristic barbarian. But it is striking the -- you know, I'm not overly romantic about the founders. I think there's actually too much romanticism of the David McCullough variety. That being said, it is hard not to be impressed with the civic virtue of both Hamilton and Jefferson. And that I have to say is one of my takeaways from Hamilton that I don't think he was on the take. I think he was genuinely devoted to his view of the common good as I think was true of Jefferson. And I think it is central both to that play and to American history that it was Hamilton who elected Jefferson in the disputed election of 1800 because he despised Aaron Burr for being (inaudible), for being untrustworthy. And he thought that at some level Jefferson, though sadly mistaken in almost every one of his political views nonetheless was a man of sufficient virtue to be trusted with the presidency. I think that's a central question today, that what do we expect of presidents or senators or anybody else, and what do we mean by virtue in a polity that is organized around what political scientists call interest group liberalism. And it doesn't matter if you're democrat or republican, it's just different interest groups where the role of a representative is to be the

faithful mirror of your constituents and the selfish factional interest of your constituents. You go back to

Federalist 10, and there was a highly romantic view in number 10 that people like Mickey will be able to be independent of constituency interest because of a commitment to the common good. Do we believe that? Do we believe that people are really capable of it, or do we say if they even try it they're going to be "primaried" -- a new verb that was not around when Bill and I were in graduate school. (Laughter)

MR. EDWARDS: Yes, and I would say, Sandy, that, you know, there may be people who run for office, and I think there are, who would like to be Burkean, and may even represent a constituency that would accept that, but they first have to get through a primary as you said, with very small turnout of ideologues and partisans who determine in combination with laws in 46 states, loser laws, that if you lost your primary you can't be on the ballot in November. And so I'm not sure that we have to live with this forever. I think the American people could accept a Burkean explanation of how you justify what your vote is, but you have to get past the little group of hard liners to advance.

MR. MITCHELL: Thanks very much. I'm Garrett Mitchell and I write the Mitchell Report. I'm sort of on this question that was just asked. I was thinking that one could argue that we've sort of gone from gravitas to "grovel-tas" which was, you know, much in evidence throughout last night.

I want to ask a question about the Constitutional Convention, but with a different sort of a slant on it, and that is, if one is either negative or highly skeptical about the feasibility of conducting a Constitutional Convention in 2020, is it a question of quality, which I use as a word to describe a certain level of civic education, sense of virtue, et cetera, and how much of it is a concern about scope? Which is to say -- we don't talk

much about this these days, but I question whether a country that is approaching 350 million and headed north isn't almost by definition headed for trouble and therefore the Constitution becomes even more problematic in that circumstance.

The question I want to pose is whether you think it would be more feasible for America to engage in Constitutional Convention-ism at the state level as opposed to at the federal level?

MR. GALSTON: Good question.

MR. LEVINSON: Let me answer both of those. Numbers nine and fourteen -- and for what it's worth, nine is written by Hamilton, 14 by Madison -- are the extended republic Federalists, and they reject Montesquieu and David Hume. They really say that we can have a republican form of government in a much larger sphere than Montesquieu and Hume have thought, and they have been taken to be seminal essays. But what your touching on is I think a very profound reality that what Publius was writing about was the United States that then ran from what we call today Maine to the southern border of Georgia and over to the east coast of the Mississippi River. And in the 1790 census there were about four million people or so, probably, maybe ten to fifteen percent of whom actually participated in politics, the white males, and in many states property owners. Today we're 320-330 million, goes up literally every second, and we extend to the mid Pacific, and depending on your theory of Puerto Rico, into the Caribbean. And is the extended republic infinitely extendable.

And here again, my students are often frustrated with me I think because I don't believe in closure. I almost always end up saying, well, there are two ways you can go. One way you can go is to say what you're suggesting, we're just too big to be what the Constitutional calls a republican form of government. That even if Publius was right, that we could extend ourselves beyond the narrow limits of Virginia and New York

into a wider United States circa 1787, it's kind of crazy to think that we can do that in the country we live in. And so then the message is just give up on this 18th century vision of a little r republican political order, and let's try to figure out what does make sense. The other side of the coin is to say, you know, maybe Publius was right, we really can extend and keep extending, and that if you read some of the analyses of why unity is so important, some of them having to do with national security and defense, we really should move ultimately to some sort of world government because we have to realize since the pond no longer protects us that even a political system of only two great powers is going to look an awful lot like Thomas Hobbes. You're going to spend a lot of your time ducking and covering against fear of a nuclear attack or terrorist attacks -- so whatever the fear of the day is. The only way to escape that Publius tells us is to move toward strong centralized government if you don't have a pond that protects you. So there are two radically different possibilities. I think you can legitimately read Publius as an apostle of world government, which to put it mildly is not the way he is usually read, but I think the logic of the arguments can be read in that direction.

Another way of reading Publius, especially if you focus on number two, we're just way too big, way too heterogeneous, and George Cannon, a very interesting person in a number of ways, George Cannon in one of his last books written when he was 95 or so basically said we should go back to the Articles of Confederation, have a very, very limited national government, but by and large decentralize far, far more radically than we can envision. And you can find some of those notions with regard to states. I'm glad you point to that, you mention that. One of my real disappointments in the United States Constitution is that it doesn't emulate the fourteen state Constitutions that give the populous the ability at stated intervals to vote on whether or not to have a new Constitutional Convention. From my perspective, the most important state election

coming up, and maybe even the most important national election in terms of potential impact, is the 2017 election in New York on whether or not New York shall call a new state Constitutional Convention. First of all given that both the speaker in the house and the head of the majority -- the majority leader of the senate have both been convicted within the past two weeks (laughter) for rank corruption, one might think that New York could use a discussion. But if there is ever even the slightest possibility of a new national convention in this country, it will happen if and only if a major state demonstrates -- you know, it's kind Brandeis little laboratory notion of federalism -- if a major state demonstrates that it can engage in reflection and choice and talk about the importance of institutions, talk about the importance of public education, talk about god knows what. Rick Lazio, when he was running for the gubernatorial nomination I guess now eight or ten years ago, actually said why does New York need a second house of the legislature? Maybe New York could emulate Nebraska, which is another one of my favorite states, which does just fine with one house of the legislature. So will it happen? Unfortunately the teachers unions have already come out against a new Constitutional Convention in New York because they are justifiably fearful that one of the things the new Constitutional Convention would do is to attack pensions of public employees, which is a rational fear. And, you know, it is always easier to put together coalitions of people committed to different aspects of the status quo than to get majority approval to roll the dice where we would have to see what the people of New York would be capable of. And you can imagine simply, you know, degenerating into people throwing chairs at one another, or people rising to the occasion. I don't know which would happen, but I really, really hope we get the opportunity to see.

MR. EDWARDS: I would just throw in as an aside, Garrett, because you brought up about the states, that as I watch in my own party, it's amazing how so many of

the people who most ardently insist on obeying the Constitution are actually supporting return to the Articles of Confederation. (Laughter)

MR. GALSTON: Well, on that challenging note, before I gavel this meeting to a close, I have it on very good authority that if you buy any one of the books on sale at the back of the room the author of said book will inscribe it for you personally.

With that let me thank Sandy and Mickey. We are adjourned.

(Applause)

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