

The Federalist

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On September 17, 1787, after four months of deliberation and compromise, the Federal Convention concluded its business in Philadelphia and forwarded a copy of the proposed Constitution to Congress for further action. According to the new plan of government, nine states would have to ratify the Constitution before it could go into effect. Immediately after adjournment, Alexander Hamilton, New York delegate to the Convention and one of the Constitution's chief supporters, launched an ambitious newspaper campaign to secure ratification in his home state.

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Both supporters and opponents of the Constitution recognized the pivotal importance of New York. Not only did New York provide the crucial link between the New England states and the rest of the country, but it was the seat of government under the Articles of Confederation. A negative vote in New York would surely affect the outcome in other states. Yet, important as New York was, it would not be an easy state to carry. Both Robert Lansing and Robert Yates, New York's other two delegates at Philadelphia, had walked out of the Convention in protest, while Governor George Clinton organized the opposition at home. Unanimously elected president of the New York Ratifying Convention, Clinton would use his considerable influence inside the Convention and "out of doors" in an effort to defeat the proposed Constitution.

Because time was short, Hamilton enlisted the aid of fellow New Yorker, John Jay, in preparing the essays. Jay, though not a delegate to the Federal Convention, was a prominent New York statesman who had served as Secretary for Foreign Affairs under the Articles of Confederation. After several other possibilities had fallen through, Hamilton invited James Madison to join them. Madison, a leading force at the Convention, was now in New York as Virginia's representative to the Confederation Congress. Between October 1787 and May 1788, the three produced eighty-five essays under the title, *The Federalist*. It is now generally agreed that Hamilton wrote fifty-one papers, Madison twenty-six and Jay (owing to illness) five. The remaining three papers, tracing the history of past confederacies, are the joint collaboration of Madison and Hamilton.

Following a common eighteenth century practice, the authors did not reveal their identities but signed the papers under the pseudonyms, "Publius." Americans of that day recognized that the reference was to Publius Valerius Publicola, who, according to the account in Plutarch's *Lives*, had saved the Roman Republic. The choice of "Publius" suggested that, like their ancient namesake, the authors of *The Federalist* papers would save republicanism in America by reconstituting it on sounder principles.

Although *The Federalist* is the most important writing in American political thought, it is, more precisely, an exercise in political rhetoric than political philosophy. Unlike the great treatises of political philosophy by, say, Aristotle or Hobbes, Publius is not engaged in a disinterested pursuit of the truth. The authors of *The Federalist* do not explore such questions as "What are the proper ends of political life?" or "What form of government best promotes these ends?" Rather, they take as their starting point the principles set forth in the Declaration of Independence (which are themselves derived from Locke, the Scottish moral philosophers and others), that the purpose of government is to protect the natural rights of man. Moreover, their work is circumscribed by the knowledge that a republican government, organized on federal principles, is the only form of government Americans will accept. The purpose of *The Federalist*, then, is to persuade the people, by reason when possible and by appeals to passion and prejudice when necessary, that the Constitution establishes a republic, and that this republic is "sufficiently federal" to secure their rights.

But if *The Federalist* has a practical political agenda, it is by no means simply a tract for the times. Indeed, it is doubtful that *The Federalist* had much of an impact upon the ratification drive in New York. As the political scientist Clinton Rossiter has written: "Promises, at,

bargains and face to face debates, not eloquent words in even the most widely circulated newspapers, won hard-earned victories for the Constitution in the crucial states of Massachusetts, Virginia and New York." Ultimately The Federalist's claim to greatness lies in its authoritative exposition of the new Constitution and of the principles underlying it.

The Federalist's View of Human Nature: If Men Were Angels." At the bottom of The Federalist's defense of the proposed Constitution is a view of human nature which may best be described as realistic. The authors of The Federalist rejected the popular Enlightenment view that man was basically good, and corrupted only from without by faulty institutions such as monarchy or mercantilism. Overthrow these institutions, it was widely believed, and men can live together in harmony with little or no government. Although Publius agreed that these institutions were flawed, the authors of The Federalist* held that the causes of human quarrelling could not be blamed simply on external conditions. The roots of discord and faction are "sown in the nature of man" (No. 10). Thus, in answer to the question, "Why has government been instituted at all?" Publius replied: "Because the passions of man will not conform to the dictates of reason and justice without restraint" (No. 15). Since no arrangement of the social order could ever make men good, government, with its ultimate threat of coercion, would always be necessary.

Americans, blessed by Providence with the most favorable external conditions (No. 2), must learn that man is no better in the New World than in the Old. Publius is one of the first to deny "the myth of American exceptionalism." Americans, he warns, have no claim to "an exemption from the imperfections, weaknesses, and evils incident to society in every shape" (No. 6). To believe otherwise is to indulge in "the deceitful dream of a golden age."

But if men are not good, neither does Publius regard them as simply evil. In one of the longest statements on human nature in The Federalist, Publius suggests that human nature partakes of both the admirable and the base and that republican government would be indefensible if men were simply degenerate.

As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust: So there are other qualities in human nature, which justify a portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us, faithful likenesses of the human character, the inference would be that there is not sufficient virtue among men for self-government, and that nothing less than the chains of despotism can restrain them from destroying and devouring one another (No. 55).

Yet although republican government "presupposes" a certain capacity for virtue, elsewhere in The Federalist Publius makes it clear that republican government cannot rely on morality for its preservation. All too often, these "better motives" fail just when they become most necessary. Moreover, the promotion of virtue by the national government would require a degree of political interference in private matters inconsistent with republican liberty.

Instead, The Federalist seeks to ground republican government on the most reliable aspect of human nature: self-interest. By self-interest, Publius means that most men, if left alone, will naturally seek to satisfy their own interests and desires, rather than look to the well being of the whole. In a society such as the one Publius hopes to shape, this means that most men will seek a comfortable material existence. Although some men will continue to pursue the more aristocratic desires for glory and power, Publius understands that the desire for material well-being is the modern democratic passion par excellence. Publius does not condemn any of these selfish impulses, or even try to moderate them. For The Federalist is confident that improvements and discoveries in "the new science of politics" (No. 9) will enable them to channel these desires toward the public good.

The Classical Republican Tradition and "the Extended Republic" Chief among these discoveries is "the enlargement of the orbit" of republican government. Opponents of the Constitution, citing the authority of the French political philosopher

Montesquieu, had insisted that republican government could not be expanded beyond the size of the states. Smallness was essential because it preserved a sense of community and made it possible for citizens to discern the common good. In an extended republic, the people would be too remote from the centers of power to participate in public affairs, and government would fall into the hands of private interests.

Publius responds in Federalist No. 9 by arguing that the states are far too large to meet the requirements of classical republicanism. Strict adherence to this principle would require that the states, too, be broken up into city-sized republics. Having demonstrated the inapplicability of the small republic argument to the Anti-Federalist cause, Publius then proceeds in Federalist No. 51 to turn the small republic argument on its head. In that paper, he argues that "the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government." For The Federalist the chief danger to republican government comes not from the decline in civic virtue but, on the contrary, from the all too active involvement of the majority in schemes of oppression against the minority. According to Publius, the great advantage of the extended republic is that it permits majority rule while discouraging majority faction, or the tyranny of the many over the few. The minority Publius had in mind was principally the propertied few, but it applies with equal force to religious, racial and ethnic minorities.

The Extended Republic and "The Multiplicity of Sects and Interests"

This proposition, that a large republic is better able to protect liberty and hence to govern itself, rests on two premises. First, by extending the size of the country, the number of religious sects, political parties and economic interests would be so multiplied that no one group could force an unjust majority to oppress others. As Publius explains, in a large, pluralistic society, a coalition of the majority "could seldom take place on any other principles but justice and the general good." (No. 51). Here again, we note the crucial distinction between majority faction and majority rule.

But for social pluralism to work to maximum advantage, it is not enough simply to extend the sphere of republican government; the Constitution must encourage a large commercial republic. By commerce, Publius does not mean unrestricted laissez faire, for he regards "the regulation of these various and interfering [economic] interests" as "the principal tool of modern legislation." (No. 10). What The Federalist has in mind, very loosely, is a system of free enterprise, in which government policy and social mores encourage the people to acquire, possess, and most important, increase their property and wealth.

In its defense of a commercial republic, The Federalist challenges still another tenet of the republican creed. For the classical tradition eschewed commerce and insisted that its citizens remain poor so that nothing could distract them from their singleminded devotion to the common good.

Having substituted self-interest for virtue as the ground or "spring" of republican government, Publius is more sanguine about the prospect of a commercial republic. As he explains in Federalist No. 10, the cure for the evils of majority faction lies in the division of society into different kinds as well as amounts of property. Rich and poor must view each other not simply as opposing classes, but as members of different economic interests and occupations: creditors, debtors, farmers, merchants, manufacturers, etc. Since only commerce can give this "variety and complexity to the affairs of a nation" (No. 56), Publius seeks to encourage a commercial republic.

"Inventions of Prudence": Representation and the Separation of Powers

The second reason that a large republic is more capable of self government is that it attracts more qualified representatives. In small republics, such as the states, representatives were drawn from smaller, more homogeneous constituencies and frequently did nothing more than mirror the "local and particular" views of the majority. By contrast, in the extended republic, electoral districts would necessarily be larger, increasing the likelihood that only the most "fit characters" would be elected. And once in office, these representatives

would "refine and enlarge" rather than merely "reflect" their constituents' views. On the political level then, the advantage of the large republic consists in "the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice" (No. 10). Nevertheless, Publius does not believe the large republic guarantees the election of "enlightened statesmen." He recognizes full well that such leaders "will not always be at the helm." Thus an additional advantage of the large electoral district is that even if less qualified men are chosen, the sheer diversity of interests and opinions which they represent, as well as the necessity to compromise miser in order to obtain a legislative majority, will compel them to enlarge their views. So, by virtue of the "refined" representation which the large republic encourages, self government becomes good government. It is for this reason that Publius makes representation the sine qua non of republican government. Republican government is nothing more-and nothing less-than a government in which "a scheme of representation takes place" (No. 10).

If the extended republic makes possible a certain kind of representation, representation in turn makes possible the principle of separation of powers. In a pure democracy, where the people exercise all political power directly, no such division of legislative, executive and judicial powers is possible. Publius, citing Thomas Jefferson, regards the concentration of political power in the same hands as the very "definition of despotic government" (No. 48).

Publius does not claim to have discovered the separation of powers, but the Constitution does modify the principle significantly. Prior to 1787, the separation of powers was part of the theory of the mixed regime. According to this older view, which was given its fullest practical embodiment in the Roman Republic and later the British Constitution, political power was parcelled out to different hereditary classes in society. For example, in England, the monarch exercised executive power while the aristocracy and democracy shared legislative powers. By distributing political powers among these hereditary classes, the theorists of the mixed regime hoped to secure the benefits of monarchy, aristocracy and democracy while avoiding their defects.

What makes the American Constitution unique is that it severs the separation of powers from the separation of classes or orders. Instead the Constitution establishes a democratic republic in which every branch of government-and not just the lower house of the legislature-represents the people. Within this wholly democratic framework, Publius hopes to secure the advantages of a mixed regime. As he explains in No. 37, by creating a single executive, independent of the legislature, the Constitution encourages energy and dispatch in that branch. Similarly, by reducing the size of the Senate and extending its term of office, the Constitution promotes certain other aristocratic qualities-stability, wisdom, dignity-so often lacking in popular governments. In this way, the separation of powers by itself approximates the virtues of a mixed regime while remaining true to its republican form.

Still, the main purpose of the separation of powers is to prevent one branch from encroaching upon the powers of the others. According to Publius, the greatest danger to liberty in a "representative republic" comes not from the executive, but from the legislature. Because its constitutional powers are broader, and because it controls the raising and spending of money, the legislature stands in need of the greatest checks. "The provision for defense must be made commensurate to the danger of attack" (No. 51). Accordingly, the Constitution divides legislative power between the two houses of Congress, each elected independently of the other and responsible to different (though democratic) constituencies. As a further precaution, the Constitution equips the executive with one-sixth of the legislative power through the veto. Finally, the Constitution encourages an independent judiciary to insure the impartial administration of the laws. By giving to each branch "the necessary constitutional means, and personal motives to resist the encroachments of the others" (No. 51), the Constitution puts teeth into the principle of separation of powers. Here again, Publius reiterates his view that the Constitution cannot rely primarily upon the "better motives" of moral and patriotic leaders to maintain the proper separation of powers, but must appeal instead to each individual's self interest. In perhaps the most famous passage of *The Federalist*, Publius connects the separation of powers with his realistic view of man:

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such

devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human man nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary (No. 51).

The Compound Republic: "Partly Federal, Partly National" The Constitution not only divides power horizontally among the three different branches of government, it also divides power vertically between the federal government and the states. This vertical distribution-or federalism-in which power is constitutionally distributed between two levels of government, each of which is supreme in its own sphere, is the most novel of the Framers' inventions. Prior to 1787, federalism was synonymous with confederalism. Federalism in this more traditional sense referred to a league of small republics, united for limited security purposes. The states retained full sovereignty over their internal affairs and were represented equally in the federal alliance. Confederalism was a vital component of the small republic tradition, according to which only the state governments could preserve republican liberty.

But in 1787, a new generation of Americans, having witnessed firsthand the defects of state sovereignty under the Articles of Confederation became convinced a modification of the traditional federal principle was necessary if liberty was to be secure. Accordingly, the new federal principle invented at the Constitutional Convention forms a mean between confederation based on state sovereignty and a consolidated central government based on national sovereignty. The Constitution, Publius concedes, is 1, partly federal, partly national" (No. 39).

But is it "sufficiently federal" to preserve the republican liberty? In Federalist No. 39, Publius examines the new government from five different perspectives-its foundation ti on, sources of power, operation and extent of powers, and the amendment process-to convince his critics that it is "sufficiently federal." His discussion makes it clear the extent to which federalism-in its contemporary meaning-suffuses the political order.

Starting with the amendment process, Publius argues that the foundation of government is a federal act since the Constitution rests on the unanimous consent of the people in the states. No state can be compelled to join the Union without its consent.

Considering next the sources from which the ordinary branches of government are derived, Publius concludes that they are mixed. The House of Representatives is national because it represents the people and not the states. On the other hand, the Senate, especially as originally conceived, is the most "federal" branch, since it represents e4each state equally regardless of its size or population. Because the president dent is chosen by the Electoral College, rather than by direct popular vote, Publius regards the source of executive powers as essentially federal. Indeed, it is worth noting that, even today, there is no federal office which is elected by a simple majority of the people as a whole.

Turning next to the operation of the new government, Publius concedes it is unambiguously national. The federal government will have the power to legislate directly over individuals. Publius regards this provision as essential, for the government would not be a government if it lacked the power to legislate and enforce its decisions.

The amending power Publius considers partly federal and partly national. Although the states have the power to alter the Constitution, the amendment process does not, as traditional federal theory would have it, require the unanimous consent of the states. By contrast with the ratification process, the sovereignty of the dissenting states is here breached.

Finally, "perhaps most importantly, federalism provides some check" upon the extent of national powers. Since the federal government is "an incomplete" national government, the states are necessary to perform those tasks which it is inconvenient or undesirable for the federal government to perform. The federal principle holds that the absorption of these powers by the federal government would dangerously concentrate political power.

It is true that the Constitution does not explicitly enumerate which powers are reserved to the states. For this reason, the division between state and federal jurisdiction has been more a political than a constitutional issue. Nevertheless, modern federalism preserves, however loosely, the division of power necessary for republican liberty. In this way, it accords with the central theme of *The Federalist*, that liberty is best preserved not by limiting political power, but by properly distributing it.

Conclusion Although the immediate aim of *The Federalist* was to secure the ratification of the Constitution in New York, it remains unclear how successful the papers were in achieving this goal. On June 21, 1788, while the New York Ratifying Convention was just beginning its deliberations, New Hampshire became the ninth state to ratify the Constitution. Shortly thereafter, Virginia voted to join the Union, and on July 26, 1788, with the new Constitution already a certainty, New York followed suit.

But the enduring claim of *The Federalist* does not rest primarily on its role in securing ratification. Though written in haste, under the pressure of editorial deadlines, *The Federalist* was from the outset regarded as the most authoritative explication of the principles underlying the Constitution. And two hundred years later, there is no reason to revise this view.

Suggested Additional Reading: David F. Epstein, *The Political Theory of "The Federalist"* (1986).

Clinton Rossiter, ed. *Federalist Papers* (1986).

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