

A STUDY OF THE FEDERALIST PAPERS.

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June 13, 1901.



## OUTLINE.

### Introduction.

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"When the transient circumstances and fugitive performances which attended this crisis shall have disappeared, that work will merit the notice of posterity". Such are the appreciated words in which Washington speaks of "The Federalist". Our political life has shown that the high opinions, in regard to the value and excellence of the papers were not faulty. The Federalist has been made the basis of commentaries upon the constitution; of treatises upon questions of political and national procedure; it has been drawn upon by the courts in determining questions of constitutional law. This is the more remarkable when we consider the purposes for which the "Federalist" was written. It was not written as a clear, calm exposition of the constitution from a legal point of view. Yet, weighed by even such a standard, it would merit praise rather than criticism. The object of the Federalist was to meet the most prevalent popular objections to the constitution at the time of its adoption. They are purely political essays, distinctively what we would now call "campaign literature". As such they are probably the most remarkable of their kind in the history of any people. When we consider the dispassionate spirit in which they are written, the clearness and comprehensiveness of treatment, we are given a glimpse of the greatness of the authors as well as of the gravity of the crisis which then threatened the nation.

The Federalist papers were principally the work of Alexander Hamilton, he having written more than one half of the eighty-five papers. He was assisted by James Madison and John Jay. The papers were published beginning on the 27th of October 1787 in the "Independent Journal", issued in the city of New York.

It is the purpose of this article to give a brief summary of



the course of reasoning by which the authors sought to defend and justify the proposed constitution. The limits of this article will not permit a satisfactory analysis. At some places will be given merely a statement of the conclusions. Especially is this true in the portions dealing with the three departments of government. For the sake of clearness and brevity, the paper will be written in the first person.

The question before the people "comprehends nothing less than the existence of the union," it is to decide "whether societies of men are really capable or not, of establishing good governments from reflection and choice, or whether they are forever destined to depend for their political constitution on accident and force". A wrong election by the American people will be a general misfortune to mankind. It is to be remembered that prejudice and party animosity is as likely to be found among those who advocate the right as among those who work for the wrong. "Happy will it be if our choice should be directed by a judicious estimate of our true interest, uninfluenced by considerations foreign to the public good".

The danger from foreign force and influence will first be considered. Nothing is more certain than the necessity of government, and that whenever it is instituted the people must cede to it some of their natural rights in order to vest it with requisite powers. This being true, the question, whether there should be one nation, or whether the people should divide themselves into confederacies and give to each the powers which the proposed constitution advises to be delegated to one national government, becomes worthy of the most serious consideration. Prior to the constitutional convention, union was admitted by all as indispensable to safety. The people were a



united people, enjoying everywhere the privileges and immunities of a people living under a united government, in so far as these privileges and immunities could be secured by a government inherently so weak. But a school of politicians of opposite faith has made its appearance. The physical conditions of the country seem peculiarly adapted to one national government. The variety of soils and productions, the numerous navigable streams, the natural and easy means of communication make feasible a nation of the extent of this country. The people, themselves, are of the same race, speak the same language, and profess the same religion. They have never been divided. In time of war, they instituted a federal government to preserve and perpetuate the blessings of union. That it should prove defective is not to be wondered at, but rather that being formed under such unfavorable conditions, it should have proven so effective in the prosecution of the war. Now, in time of peace, the defects can be remedied. This was the object of the constitutional convention. The plan of government is recommended to the "sedate and candid consideration" of the people to whom it is of vital importance.

Providing for their own safety is one of the first objects to which a people must direct their attention. This safety is only to be procured by providing against the dangers from foreign arms and influence, as well as against domestic violence.

"The number of wars in the world will always be found to be in proportion to the number and weight of the causes, real or pretended, which incite or provoke them". Would the just causes of war be more numerous in united America than in dis-united America? The following considerations answer in the negative: The just causes for war arise mostly from violation of treaty obligations, and from direct violence. Would the violation of treaty obligations be as likely to



occur in one strong national government as in several or many confederacies? That it would not, is to be inferred from the fact that in a national government, the best men will be chosen to manage it on account of the importance of the trust, and, that induced by the dignity and advantage of the position, will consent to serve. Furthermore, treaties will be expounded and executed in the same manner throughout, and thus avoid the breaking of treaty obligations. A part of the country may be tempted to violate a treaty for temporary advantage, but a national government would not be affected by local circumstances, and counter-influence by the various parts, would prevent the commission of wrong.

Deeds of violence by the whole country, by their very nature, preclude all attempts to remedy by legislation. Violence, however, is occasioned more frequently by the passions and interests of a part than of the whole. A strong national government would be able to restrain and punish such offences. From a strong government, other nations would accept as satisfactory, reasonable explanation or compensation for offences committed.

But there is danger from unjust causes. Nations go to war for purposes of gain. Our rival commercial interests with foreign nations would give cause, and pretext would not be lacking. The union of the thirteen states would produce a nation whose strength instead of inviting war would tend to repress and discourage it. Whatever our condition, foreign nations would take note of it, and act toward us accordingly. However plausible the plan of dividing the country into three or four confederacies may seem, the certain and ultimate result would be to create three or four weak states, "formidable only to each other."



If these states should be united into three or more confederacies, contests would inevitably arise. To deny this is to ignore the produce war and facts of history causes which prove this. It has been said that the genius of Republic is pacific. But will not the same passions, similar private interest, rivalries and animosities be operative to produce war in a republic as in any other form of government? Sparta, Athens, Rome, Carthage, Holland, Great Britain, all possessed governments republican in principle and yet their history is full of records of internal contests. Events in some of our states indicate clearly that factions and insurrections are not foreign to republican institutions. Causes for conflict would not be wanting. Territorial disputes over tracts of western lands, competition in commerce, the payment of the public debt would furnish sufficient sources of conflict.

In case of disunion, the several states it is to be assumed would be subject to the same vicissitudes of peace and war as have fallen to the lot of other nations. War between the states in the first period of their existence would be accompanied with greater distresses than it commonly would in older nations. The absence of fortifications leaving the frontier of one state open to another would make inroads easy. War would become desultory and predatory. Plunder and devastation would surely accompany it. The desire for safety would lead the state to maintain a standing army. "To be more safe, the people, at length, become more willing to run the risk of being less free". We now enjoy all the advantages of an insulated state. Our remoteness from Europe, the absence of any other powerful nation on this continent, and union among ourselves make us thus. If we are wise enough to preserve the union this happy condition will continue till remotest time.



The next in order is to examine the defects of the present confederation. We have reached the last stage of national humiliation. Our engagements and contracts are broken; our seaports and forts are occupied by enemies; the public credit is ruined; commerce is at the lowest point; our reputation and standing as a nation is such that other countries refuse to deal with us. The reason for this humiliating spectacle is not far to seek. "The great and radical voice, in the construction of the existing confederation is the principle of legislation of states or governments in their corporate or collective capacities and, as contra-distinguished from the individuals of whom they consist". In the league or alliance legislation for the state in its corporate capacity is permissible, but in a government like the present, it is impracticable and absurd. We must extend the authority of the union to the persons or the citizens - - the only proper objects of government. "Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or in other words, a penalty or a punishment for disobedience. Without, it will in fact amount to nothing more than advice or recommendation. This penalty, whatever it may be, can be inflicted in only two ways; by the agency of the courts and ministers of justice, or by military force; by the coercion of the magistracy, or by the coercion of arms. The first kind can evidently apply to men; the last kind must of necessity be employed against bodies politic, communities or states". The latter can certainly not deserve the name of government.

Lack of power in the central government has led to anarchy among the members of a federal government rather than to tyranny in the head; has invited the intervention and invasion of foreign powers; has induced civil war; has caused the violation of the laws of con-



federation and the final fall of the union itself. That the tendency is rather to anarchy among the members than to tyranny in the head is sufficiently attested by facts of history. The feudal lords and and Scotch clans existed only because of the absence of a strong central government. The history of the Greek leagues, Amphyctionic and Achaeon, is a story of uprising of the members of the league. Attempts by the cities to gain supremacy led to the invitation of Persian arms and to the downfall of Greek liberty and dominion. The Germanic diet, the confederation of the Swiss cantons, and the United Netherlands show the same defects of government.

The most serious defects of the present confederation next to those already enumerated, is the total want of a sanction to its laws. The United States have no power of any kind to exact obedience or to punish disobedience. They have no authority to use force against the delinquent members of the confederation. They can <sup>ask</sup> or command but they cannot execute. The enforcement of its laws rest with the state governments, powers jealous of the encroachment of a federal government.

Another defect is the method of raising revenue. The asking of quotas from the several states is a method entirely inadequate to produce the revenue necessary to meet any and all national exigencies. Furthermore, if a member of the confederation delays or refuses payment of its quota, there is no way of compelling payment without incurring civil war.

The lack of power to regulate commerce is a serious defect. The want of such a power has deprived us of beneficial commercial treaties and given occasion for dissatisfaction between the states. The attempt to derive gain at the expense of a neighbor has led states



to pass interfering and unjust restrictions upon commerce with its neighboring states. Such conditions will inevitably lead to the ruin of commerce.

The power of raising armies is merely the power of making requisitions upon the states for quotas of men. Not only is it unjust and unfair in its operation upon the states, but is objectionable also because it makes the states the chief repositories of power.

Equal suffrage has not been given to the states. The smaller states have all the powers of the greater. The lack of a federal judiciary is sadly felt. To leave the interpretation of national laws and treaties to state courts is absurd. There must be a supreme tribunal to which appeal can be made, in order to produce uniformity of interpretation. Congress is objectionable on account of its organization, its powers, its limitations, and sources of power. It has never been ratified by the people. "The fabric of American Empire ought to rest on the solid basis of the consent of the people".

The utility of the union in breaking and controlling the violence of faction is so great as to make all objections to it seem trivial. There are two methods of curing the mischief of faction; removing the cause, or controlling its effects. There are also two methods of removing the causes of faction; by destroying liberty, and by giving all citizens the same opinions, interests and passions. The first remedy is worse than the disease. The second is unpracticable and unwise. As long as the reason of man is fallible different opinions will be and should be formed. The latent causes of faction are found in the nature of man and cannot be removed. Relief is only to be found in the means of controlling the effects of faction. A republic is peculiarly adapted to this end. The delegation of government to a small body of men whose wisdom, patriotism, and love of



justice recommends their choice, refines and enlarges the public views, assures calm considerations of questions of importance, and prevents hasty inconsiderate action while under the stress of passion. The large extent of the country is favorable to the choice of better men than would be possible in a small territory. And further, a faction extending over a great territory is not likely to know its strength, nor be able to use it.

The utility of the union in respect to commerce and a navy is worthy of our serious consideration. Not only our domestic, but also our foreign commerce needs regulation. Foreign powers seem to be apprehensive of our interference in the carrying trade. They have adopted the policy of fostering division among us and of making our commerce as far as possible a passive one. By union we can counteract such an unfriendly policy. "By prohibitory regulations, extending throughout the states, we may oblige foreign countries to bid against each other for the privileges of our markets". The establishment of a navy would give us another source of influence. A very small navy would enable us to hold the balance of power in the West Indies. By steady adherence to union we can hope to become the "arbiters of Europe and America". A navy is necessary to give strength to the national government, without which it will be the plaything of all. "The rights of neutrality will be respected only when they are defended by adequate power. A nation, despicable by its weakness, forfeits even the privilege of being neutral."

"The ability to pay taxes is proportioned to a great degree to the amount of money in circulation and the celerity with which it circulates." Commerce contributes to both of these particulars. Long experience has proven that it is impractical to raise revenue



by direct taxes. It must be by duties. The union would increase the revenue by increasing the commerce, and by the economy of collection due to proper regulation. Illicit trade is now easy, but would then become extremely difficult as only the Atlantic seaboard would have to be guarded. Union would be conducive to economy; in that instead of three or four civil lists, there would be but one; in that the frontier police to guard the inland communications of each state would be done away with; and in that hostile military establishments would not exist. The necessity of union as regards the standing army, and taxation next claims our attention.

As it is impossible to foresee the extent and variety of the national exigencies, no restrictions should be put on the powers committed to the national government. The powers delegated should be co-extensive with all possible combinations of circumstances. This rests upon the maxim that the means ought to be proportioned to the end. The government should be clothed with all powers requisite to the complete execution of its trusts. Among the powers given to the national government is the power to "raise and support armies". The existence of a standing army in time of peace seems to be an object of apprehension. This is the more to be wondered at when we consider that neither the state constitutions nor the articles of confederation contain any inhibitions in regard to this. The proposed constitution puts this matter into the hands of the legislature under certain wise restrictions. No matter how we may be blessed with peace, a standing army will be necessary, if for no other purpose than police duty. Not to have a standing army is to lay ourselves open to foreign attack, to invite invasion, and to put a premium upon insurrection and rebellion. It is true that a standing army is hazzardous to liberty if it is too large, but the growth of the army would be slow and



easily detected, and hence the tendency towards military domination would be readily checked. It has been contended that the militia would be a sufficient force to insure stability to the government and safety to the people. War, however, has become a science, and perfection is only to be gained by perseverance, time, and practice. To those who demand strict provisions against military establishments in time of peace, it is sufficient to say, that the whole power of the proposed government is to rest in the hands of the representatives of the people. If these betray their constituents, there is no recourse left but the original right of self-defence, which is above all forms of government.

Money is absolutely essential to government, and as a consequence there must be in the scheme of government some power of taxation. It has been contended that the states alone should have the power of internal taxation and that the national government be confined to external taxation as a means of raising its revenue. This violates that rule of good sense and government which dictates that every power ought to be proportionate to its object. Such a provision would place the national government in an inferior position with regard to the states. It is probable that the revenue from duties would in times of peace be sufficient for the payment of current expenses and the lifting of the public debt, but in time of war it would undoubtedly be insufficient and recourse would have to be had to some other source. If the power of taxation to its fullest extent should be left to the federal government, money could be raised by an additional levy or by loans. If the national government be restricted to particular objects it would occasion undue burdens upon them, and hence oppression to particular industries. The states have co-equal authority with the national government in regard to taxation



except as to duties on imports, though the authority is co-equal , interference is not to be feared because of the limited wants of the states, and because of the fact that the government would seldom have to resort to direct internal taxation:

The work of the convention was difficult. The undertaking was novel. The confederacies which were consulted as precedents were valuable only in so far as they showed what to avoid rather than what to accept. The proper mingling of the powers of government so as to produce a strong stable government and at the same time secure to the people the blessings of liberty had never been successfully solved. The jealousy of the smaller states, and many local interests, and the varied private passions made the task more difficult. "The real wonder is that so many difficulties should have been surmounted".

The objection that the plan proposed does not conform to republican principles is next to be considered. A republican government is one which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their office during pleasure, for a limited time, or during good behavior. A careful examination of the constitution will show that it conforms rigidly to this standard. In its foundation it is federal, in the sources of its power it is partly federal and partly national, in the operation of these powers it is national, in the extent of these powers it is federal, and in the method of introducing amendments it is neither wholly federal nor wholly national.

In considering the distribution of power, by the proposed constitution, we may look at it from two general points of view. The first relates to the powers vested in the general government, including the restraints on the states. The second to the distribution of this power among the several branches.



The powers under the first head conferred upon the national government may be classed as follows;

1. Security against foreign dangers.
2. Regulation of the intercourse with foreign nations.
3. Maintenance of harmony and proper intercourse among the states.
4. Certain miscellaneous objects of general utility:
5. Restraint of the states from certain injurious acts.
6. Provision for giving due efficacy to all these powers.

A careful detailed review of all the powers enumerated above brings us to the undeniable conclusion that no part is unnecessary or improper for the accomplishment of the necessary objects of the union. "The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, whether or not a government commensurate to the exigencies of the union shall be established, or in other words whether the union itself shall be preserved".

Under the second head is to be discussed the distribution among the departments of the powers given to the government. It is a political axiom that the legislative, executive and judiciary departments ought to be separate and distinct. The accumulation of the powers of all the departments into one hand is the very definition of tyranny. It is true that the proposed plan violates this rule, but not in the sense used <sup>by</sup> its author, nor as construed in America. In order to secure the proper checks upon the various departments it has been necessary to violate this principle in practice. It has been found expedient to give to a weaker, some of the power belonging to another and stronger department. How shall these departments be separated? A parchment barrier is not sufficient.



It has been tried in the state governments but has <sup>not</sup> proven successful. In every instance, the legislative department has encroached upon the <sup>other</sup> departments. Frequent appeal to the people is a remedy not desirable on account of the probability that the decision will not be based upon the merits of the question because of party prejudice and passion. A "council of censors" has been tried. It has failed because of being composed of party men and government officials, and because of their misconstruction of the limits of the constitution. The greatest security possible is to give to each the constitutional means and the personal motives to resist encroachment. "Ambition must be made to counteract ambition". The legislative being the strongest is divided into two branches; the executive is fortified by its veto, the judiciary by the life tenure of its justices.

The House of Representatives being the most numerous branch is supposed to represent most accurately and closely the sentiment of the people. With this object in view, the election of its members is more frequent, the qualifications although sufficient to insure maturity and experience are less than required for admission to the Senate. The powers given the House are such as to make it in many respects different from the Senate. All revenue bills must originate here; the power of impeachment is lodged here; and the choice of president in case of no election by the electoral college is to be settled here. In the Senate, each state is equally represented. The qualifications are higher and the additional powers are greater than those of the House. The Senate tries all cases of impeachment and confirms appointments made by the president. It shares with the president the treaty making power.

"Energy in the executive is a leading character in the defini-



tion of good government". To secure this, certain ingredients are necessary. They may be enumerated as follows: unity, duration, adequate provision for its support, competent powers. To secure safety in a republican sense <sup>it</sup> is necessary that there be due dependence upon the people and also due responsibility. All these objects are secured by provisions of the constitution. Unity by vesting the executive power in one man; duration by making the term of office four years with the possibility of re-election; adequate provision for support by forbidding the changing of salary during the term of office; competent powers by giving the president the executive veto, the command of the national forces, the power of pardoning, of making treaties, of making appointments and of recommending to Congress such legislation as he deems wise. The executive being one man is wholly responsible for the acts of that department. There can be no evasion. Due dependence is secured by the election of the president by the people at comparatively short intervals. The judiciary is the weakest department. It has been strengthened by tenure during life or good behavior and by provisions for support which cannot be diminished during the term of office. Responsibility is procured by making the judges liable to impeachment. Hamilton in the concluding paper, expresses the utmost confidence in the argument which we have so briefly and so inadequately reviewed. Hamilton again shows his moderation and his admirable mental balance. Speaking of the proposed constitution, he says; "I am persuaded, that it the best which our political situation, habits, and opinion will admit, and superior to any the revolution has produced". He adds almost immediately, however; "I never expect to see perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a



compound of the errors and prejudices, as of the good sense and wisdom of the individuals of whom they are composed. How can perfection spring from such materials." The contest was a bitter one. The result doubtful. The consequences momentous. Hamilton almost despaired. "A nation without an<sup>r</sup> national government is an awful spectacle". "The establishment of a constitution, in time of profound peace, by the voluntary consent of a whole people is a prodigy to the completion of which I look forward with trembling anxiety". No review of the Federalist can give an adequate conception of it. Its value does not rest so much upon its literary merits, as upon the excellence of its arguments. These are long, detailed and exhaustive. To get their full force they must be read in their entirety. They were written as clearly and briefly as possible and do not admit of successful summarizing. One can not read the Federalist without being profoundly impressed by the almost prophetic wisdom of its authors and by their thorough knowledge of human nature and of republican institutions. To read the papers is to gain a greater faith in man; to study them is to be inspired to greater devotion to one's country.