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Securing Liberty: The *Federalist Papers*

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An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people, commencing demagogues and ending tyrants.¹

The *Federalist Papers*, written by James Madison, Alexander Hamilton and John Jay, are widely regarded as a classic, indeed the classic, work of American political thought. A justification for the Constitution of the United States, the *Federalist's* exegesis of republican government has been hallowed by the undiminished vitality of the Constitution as the heart of the American state. The Declaration of Independence and the Constitution may embody the deeds of the American Revolution, but it was the *Federalist Papers* that provided the most sustained prose vision of the revolutionary settlement. Yet such canonical status is problematic;

the *Federalist* was a polemical vision produced in a moment of great debate over the legacy of 1776 and the future of the nation.² The arguments posited by Hamilton, Madison and Jay were, in their own ways, revolutionary and yet appeared to turn the values of the Revolution upon their head. In its advocacy for the ratification of the Constitution the *Federalist* advanced the notion that liberty could only be preserved by endowing the new federal government with authority. The security of liberty was no longer to be guaranteed solely by the vigilance of the people but by the workings of a carefully constructed system of government.

Alexander Hamilton (1755–1804) was the instigator of the *Federalist* project and the most prolific contributor of letters, all written under the pseudonym ‘Publius’, which appeared serially in a number of New York newspapers between 1787 and 1788.³ In *Federalist* No. 1 Hamilton introduced the underlying premise of the *Federalist*’s contribution to the ratification debate. The proposed Constitution, which had sprung secretly and unexpectedly from a forum charged with merely ameliorating the defects of the Articles of Confederation, sought to balance the cherished notion of liberty with the need for a more effective form of government. Fearing the seemingly inevitable tendency of power to enrich itself at the expense of liberty, the convention delegates who had convened in Philadelphia devised a plan that carefully balanced the different branches of government. This system of checks and balances introduced a fissiparous tension between the Legislature, Executive and Judiciary that would quash any attempt to engross power at the expense of the people. For the *Federalist*, and in particular for Hamilton, government was not merely something that had to be guarded against; rather, vigorous government was ‘essential to the security of liberty’. This was a controversial statement given the ideological principles that had given birth to revolutionary fervour only a decade or so before.

For a complex event the Revolution’s ideological origins were surprisingly coherent, or rather, the pattern of the many strands of political thought that comprised the fabric of revolutionary motivation boldly delineated an idea of republican virtue countering corruption and tyranny.⁴ There was a dramatic interplay of ideas and events throughout the imperial crisis of 1765–75 as tit-for-tat acts by parliament provoked colonial patriot resistance, fuelled by an increasingly bellicose rhetoric on both sides of the Atlantic in pamphlets, newspapers and on the street. Arguably the most powerful denunciation of British measures and a strident call for independence was Thomas Paine’s *Common Sense*, published in Philadelphia at the start of 1776. Paine’s direct style conveyed a principle that chimed with the mood of the time; he began his treatise

with the distinction between society and government, paraphrasing the notion of the social contract. Reminding his readers that the origins of government were prompted by 'wickedness' and the necessity of 'restraining our vices', Paine was adamant that 'government, even in its best state, is but a necessary evil'. Although the rest of *Common Sense* was concerned with revealing the rottenness of the English constitution and the advisability of making a clean break, Paine's distrust of government did not obviate its fundamental purpose, 'viz. freedom and security'.⁵ Although the apparent division between Paine's distrust of government and Publius's advocacy of the same is, in this important respect, one of tone rather than substance, the tenor of *Common Sense* was to stir a profound hostility towards governmental power. The experience of the Revolution served to reinforce such feelings and hostility to anything that suggested arbitrary power, a wellspring of popular ideology that was to challenge the principles of the Constitution, especially by the Anti-Federalists.⁶

It was a fear of tyranny that had severely limited the scope of Congressional authority over the Thirteen States and the powers with which it could act. For the leading proponents of sweeping political reform, especially James Madison (1751–1836), the lack of authority possessed by Congress was a dismal embarrassment that only became more pronounced in the difficult post-war years of the mid-1780s. Even worse, events such as Shays's Rebellion in Massachusetts in 1786 raised the fear that law and order would be upset by the rule of the mob. Madison drafted a cogent summary of his principal concerns in April 1787; entitled 'Vices of the Political system of the U. States', the unfinished list of twelve points concentrated on the vexed relationship between the individual states and the Continental Congress. Point 7 identified the glaring omission in the existing settlement, a 'want of sanction to the laws, and of coercion in the Government of the Confederacy'.⁷ A delegate to the Continental Congress, Madison shared with the cadre of senior Continental Army officers a profound frustration with the inability of the states to pull together on matters of profound mutual interest. As Madison elaborated under the heading of point 7, 'Even during the war, when external danger supplied in some degree the defect of legal & coercive sanctions, how imperfectly did the States fulfil their obligations to the Union? In time of peace, we see already what is to be expected.' Therefore, the remedy of the Constitution was to vest coercive authority over the states in the federal government; no longer could one state act against the good of the whole, nor stand by while others were in need.

The shift in the locus of sovereignty from the state government to the federal government, exemplified in the words 'We the People' that open the Constitution,

was profound; and it was a transformation that alarmed the Anti-Federalists.⁸ However, for the authors of the *Federalist*, it was the principal means by which domestic tranquillity could be assured harmoniously. As Hamilton explained,

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 punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in 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 only to men; the last kind of necessity be employed against bodies politic, or communities, or States. (149)

The problem of the Confederation government was that it was not a collection of individual citizens but individual states; a situation that rendered force of arms inevitable.

In an association where the general authority is confined to the collective bodies of the communities that compose it, every breach of the laws must involve a state of war; and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it. (149)

Hamilton elaborated this point in the following number, No. 16, in which he explored the likely possibilities of individual states or groups of states resisting the demands of the national government. In such circumstances the attempt of the federal government to enforce its will would in all likelihood lead to war, doubtless resulting in the 'dissolution of the Union' (153). Given the brief experience of the ineffectual confederation government, the resort to arms to compel obedience was both unworkable and unlikely. If coercive sanctions against the states were unfeasible the obvious solution was to bind the national government to individual citizen; and vice versa. In so doing the federal government 'must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions'. In short, the will of government was to be enforced, as in the states, through the wholly unexceptionable means of the courts, operating with neither more nor less efficacy than the existing means of compelling compliance to the laws of the polity. 'The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have

the strongest influence upon the human heart' (154). With a simple yet radical shift, the vigour of government would be mildly effected by its most proper arm, rather than by brutal and unwieldy force.

Hamilton and Madison, who were strongly agreed on this point of sovereignty, justified the federalist nature of coercive power with reference to the problems of the day and also to historical precedent. The Enlightenment values that informed the political principles of the *Federalist* also trumpeted the importance of historical precept.⁹ The republicanism espoused by the patriots during the Revolution naturally led to great interest in classical examples and influences. Madison devoted three numbers (18, 19 and 20) to uncovering the flaws of the various republican confederacies of Ancient Greece and identifying the lessons for the present case. Of greatest alarm was the imbalance of power between the different states within the Amphictyonic league and the consequent lack of common will, a situation that led to 'the weakness, the disorders, and finally the destruction of the confederacy' (160). Classical precedents were particularly telling, given the democratic nature of the polities and the tragedy of their lapse into tyranny, but Madison also elaborated on contemporary examples from Europe. Whereas the Holy Roman Empire had been torn asunder by conflict between its members in the Thirty Years' War, the United Provinces (Netherlands) were only held together by external threats. All were cautionary tales of what ought to be avoided by the United States. Madison echoed Hamilton's prescription, arguing that historical example demonstrated that 'sovereignty over sovereigns ... as contradistinguished from individuals' was 'subversive of the order and ends of civil polity, by substituting *violence* in place of the mild and salutary *coercion* of the *magistracy*' (172).

If coercive authority was a necessary and an effective means of securing liberty it was nonetheless vulnerable to the abuse of tyranny. Vigorous government may have been the means of preserving liberty, but too vigorous an extension of power, anything that amounted to the suppression of liberty, would have been, in Madison's view, a remedy 'worse than the disease' (123). In No. 37 Madison expanded on the difficulties faced by the convention in achieving this delicate balance. The ingredients of effective government, energy and stability, could not be easily reconciled with the 'genius of republican liberty' (243). Whereas energy and stability required decisiveness and duration of office for those in power, republican liberty required deliberation and frequent recourse to the people. For Madison, the Constitution not only established an appropriate balance, but also was achieved by the delegates with 'unanimity almost as unprecedented as it must have been unexpected' (246); such confidence was born not merely from

a belief in the fitness of the constitutional mechanism but also from the greatest safeguard against tyranny, the vigilance of the people themselves.

The precedent of resistance to intolerable coercion was clearly established by the events of the Revolution itself. Echoing Lockean notions of justifiable resistance, Hamilton wrote of the final recourse to the 'original right of self-defense' were the representatives ever to 'betray their constituents' (206).¹⁰ Not only had this principle been established, the people's resolve and ability to safeguard their liberty had been tested and vindicated. In a defence of the construction of the House of Representatives (*U.S. Constitution*, Art I, § 2) in No. 55, Madison countered the notion that the initially small number of elected representatives would be inherently dangerous to liberty.

I am unable to conceive that the people of America, in their present temper, or under any circumstances which can speedily happen, will choose, and every second year repeat the choice of, sixty-five or a hundred men who would be disposed to form and pursue a scheme of tyranny or treachery. (337)

Hamilton, in defending the proposed senate from the charge of aristocratic tendencies, similarly relied on the presumption that any attempt to counteract a republican spirit would be swiftly curtailed by the popular assembly, the House of Representatives, as had been demonstrated in Britain where the House of Commons had the ascendancy (374).

The sustained defence of the provisions of the Constitution was conducted in a rhetorical mode that dismissed fears of excessive governance as imagined, unreasoned or deliberately misconstrued. On the contrary, the unfolding of the Constitution's provisions detailed in the numbers of the *Federalist* emphasized time and again that the safeguards to liberty were secure. Whether it was in the separation of powers between the legislative, executive or judicial branches of the government; the terms of appointment to either branch; or the relationship between the Union and the States, historical precedent, current example and common sense were relentlessly marshalled to prove fears of tyranny groundless. So secure, in fact, was liberty that the genius of the republic was to be found in the distance that the Constitution opened between the passions of the people and the calm contemplations of government. It was a balance of which Hamilton could ask, 'What more can an enlightened and reasonable people desire?' (436).

Inevitably, not all citizens of the United States were as enlightened and reasonable in their support of the federal government as its architects could have desired. The language of states' rights became increasingly shrill as advocates for secession (and slavery) finally provoked the outbreak of the Civil War in 1861.

Yet it was the inner steel of authority within the Constitution, clearly identified in the *Federalist*, which undergirded the Union's coercive response against the secessionist rebels. More recently the concern with the 'original intent' of the founders has propelled the vision of Hamilton, Madison and Jay into the front rank of revolutionary texts; in particular, Madison's Nos 10 and 51 retain especial force. However, as the case of the Civil War demonstrates, it would be misguided to cherry-pick from the complex and nuanced writings of Publius merely the words and phrases that appeal to the purposes of the reader. The enthusiasm for liberty within the *Federalist* is carefully balanced by the vision of an energetic system of government, a government endowed with coercive authority and a government whose purpose was to be effective.

Further Reading

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