

The Federalist Papers #44

In this essay, Madison justifies many parts of the Constitution, specifically those sections which limit the powers of the states, give Congress full authority to execute its powers and establish the Constitution as the supreme law of the land.

His discussion begins with article 1, section 10 (which limits the powers of individual states), wherein he justifies the outlawing of state sponsored privateering as consistent with not allowing states to conduct their own foreign policy, which could lead to great mischief.

He then expounds upon why states should not be allowed to mint their own currencies or issue paper money, saying that multiple currencies would cause confusion and discrepancies, hurt citizens and fuel animosity between the states. He condemns the state issuance of paper money by citing the huge problems caused by this after the peace in 1783 (paper money issued by the states led to runaway inflation).

Madison vigorously defends the outlawing of *bills of attainder*, *ex post facto laws* and laws impairing the obligations of contracts. He insists that such laws would contradict basic principles of sound legislation, and of the social contract itself by allowing congress to remove basic individual rights and security.

Madison then argues at length for the *Elastic Clause* noting that no part of the constitution had come under more attack. He states flatly that the clause is "invulnerable" and that without it the constitution would be a "dead letter." He says that the Constitution might have listed either enumerated those necessary and proper powers or attempted to list those that were expressly not necessary and proper, but argues that either exercise would have been futile in that no list could ever fully take into account all of the nation's present and future concerns.

He responds to critics who feared that the clause would allow the government to overstep its powers that the people would have the same redress to this as to any occasion on which the legislature abused its powers: the balance of the executive and legislative branches, and the potential to remove the offending legislators via the ballot box.

Madison similarly defends the *supremacy clause* vital to the functioning of the nation. He noted that state legislatures were invested with all powers not specifically defined in the constitution, but also said that having the federal government subservient to various state constitutions would be an inversion of the principles of government, comparing it to having the brain subservient to limbs of the body.

Finally he speaks to the importance of having both state and federal legislators and judicial officers swear an oath to the constitution, noting that the federal government is dependent upon the states to carry out policy.

The Federalist Papers #51

James Madison begins his famous federalist paper by explaining that the purpose of this essay is to help the readers understand how the structure of the proposed government makes liberty possible. Each branch should be, for the most part, in Madison's opinion, independent. To assure such independence, no one branch should have too much power in selecting members of the other two branches. If this principle were strictly followed, it would mean that the citizens should select the president, the legislators, and the judges. But, the framers recognized certain practical difficulties in making every office elective. In particular, the judicial branch would suffer because the average person is not aware of the qualifications judges should possess. Judges should have great ability, but also be free of political pressures. Since federal judges are appointed for life, their thinking will not be influenced by the president who appoints them, or the senators whose consent the president will seek.

Madison furthers, the members of each branch should not be too dependent on the members of the other two branches in the determination of their salaries. The best security against a gradual concentration of power in any one branch is to provide constitutional safeguards that would make such concentration difficult. The constitutional rights of all must check one man's personal interests and ambitions. We may not like to admit that men abuse power, but the very need for government itself proves they do, "if men were angels, no government would be necessary." Unfortunately, all men are imperfect, the rulers and the ruled. Consequently, the great problem in framing a government is that the government must be able to control the people, but equally important, must be forced to control itself. The dependence of the government on the will of the people is undoubtedly the best control, but experience teaches that other controls are necessary.

Dividing power helps to check its growth in any one direction, but power cannot be divided absolutely equally. In the republican form of government, the legislative branch tends to be the most powerful. That is why the framers divided the Congress into two branches, the House of Representatives and the Senate, and provided for a different method of election in each branch. Further safeguards against legislative tyranny may be necessary.

In a representative democracy it is not only important to guard against the oppression of rulers, it is equally important to guard against the injustice which may be inflicted by certain citizens or groups. Majorities often threaten the rights of minorities. There are only two methods of avoiding evil. The first is to construct a powerful government, a "community will." Such a "will" is larger than, and independent of, the simply majority. This "solution" is dangerous because such a government might throw its power behind a group in society working against the public good. In our country, the authority to govern comes from the entire society the people. In addition, under the Constitution society is divided into many groups of people who hold different views and have different interests. This makes it very difficult for one group to dominate or threaten the minority groups.

Justice is the purpose of government and civil society. If government allows or encourages strong groups to combine together against the weak, liberty will be lost and anarchy will result. And the condition of anarchy tempts even strong individuals and groups to submit to any form of government, no matter how bad, which they hope will protect them as well as the weak.

Madison concludes that self-government flourishes in a large country containing many different groups. Some countries are too large for self-government, but the proposed plan modifies the federal principle enough to make self-government both possible and practical in the United States.

Definitions

Ex Post Facto laws: laws that make an act punishable as a crime when such an act was not an offense when committed.

Bills of Attainder: an act of the legislature declaring a person or group of persons guilty of some crime and punishing them without benefit of a trial.

Elastic Clause: granting Congress the power to pass all laws necessary and proper for carrying out the enumerated list of powers.

Supremacy Clause: States that the constitution, laws passed by congress, and treaties of the United States shall be supreme law of the land, and binding of the states.