

THE FEDERALIST NO. 39

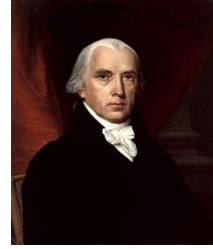
“Conformity of the Plan to Republican Principles”

Independent Journal

Wednesday, January 16, 1788

[James Madison]

Full Text Available: <http://www.constitution.org/fed/federa39.htm>



Annotations

To the People of the State of New York:

THE last paper having concluded the observations which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution...

[Madison defends the republican character of the Constitution for several paragraphs...]

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought, with equal care, to have preserved the *federal* form, which regards the Union as a *Confederacy* of sovereign states; instead of which, they have framed a *national* government, which regards the Union as a *consolidation* of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision....

First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. **The act, therefore, establishing the Constitution, will not be a *national*, but a *federal* act.**

That it will be a federal and not a national act, as these terms are understood by the objectors; the act of the people, as forming so many independent States, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it... Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. **Neither of these rules have been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal*, and not a *national* constitution.**

The next relation is, to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. **So far the government is national, not federal.** The Senate, on the other hand, will derive its powers from the States, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. **So far the government is federal, not national.** The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. **The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society... From this aspect of the government it appears to be of a mixed character, presenting at least as many federal as national features.**

The difference between a federal and national government, as it relates to the *operation of the government*, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. **On trying the Constitution by this criterion, it falls under the national, not the federal character; though perhaps not so completely as has been understood...**

But if the government be national with regard to the *operation of its powers*, it changes its aspect again when we contemplate it in relation to the *extent of its powers*. The idea of a national government involves in it, not only an authority over the individual citizens, but an **indefinite supremacy** over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this **supremacy** is completely vested in the national legislature. Among communities united for particular purposes [i.e., the United States], it is vested partly in the general and partly in the municipal legislatures... **In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects...**

If we try the Constitution by its last relation to the authority by which **amendments** are to be made, **we find it neither wholly national nor wholly federal. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the Union;** and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. **Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all.** The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and particularly in computing the proportion by *States*, not by *citizens*, **it departs from the national and advances towards the federal character;** in rendering the concurrence of less than the whole number of States sufficient, **it loses again the federal and partakes of the national character.**

The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

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