

THE FOUNDING FATHERS AND VOLUNTARY ORGANIZATIONS

The student of American institutions will search in vain for any mention of voluntary associations, philanthropy, or even corporations in the Constitution, the records of the debates of the Constitutional Convention, and The Federalist Papers. Their absence is suggestive. On the one hand, it points to the paucity of voluntary associations in a society where most of the activities that today fall to nonprofit organizations were carried out by government at the municipal, county, or state level. Where state support of religion was a given, even the churches, with a few dissenting exceptions, were considered a part of government. Corporations of any kind, whether for commercial or cultural purposes, were also treated as public instrumentalities.

On the other hand, the failure of the Founding Fathers to mention voluntary associations and their corollaries suggests a certain knowing hostility towards them. As leaders of a recently completed revolution against the world's most powerful military force, the Founders, many of them former organizers of the Sons of Liberty, Committees of Correspondence, and other radical groups, knew all too well the potential power of voluntary associations. Certainly Franklin, the Constitutional Convention's elder statesman knew, having parleyed his Junto and the host of associations to which it had given rise, into an impressive political machine. And events of the 1780s, which had seen armed mobs rising throughout the former colonies to protest deteriorating economic conditions, served to remind the Founders of the hazards that voluntary bodies presented to stable government.

To say all this is not to suggest that the Founders entirely ignored the issue of voluntary associations. Certainly James Madison's contributions to the series of newspaper essays written by himself, Alexander Hamilton, and John Jay -- later

published as The Federalist Papers -- touch on voluntary bodies in their discussion of political faction.

History is written by winners and, as such, leads us to treat our established institutions, especially the most fundamental ones like our governmental framework, as products of inevitable and inexorable historical processes. To treat the past this way may serve to affirm institutional authority; but it deprives us of the capacity to appreciate our own responsibilities to understand, uphold, and, if necessary, reinvent institutions. It also deprives us of an appreciation of the complexity of the past and of the formidable struggles which produce historical outcomes.

Nowhere is this more true than in regard to the Constitution. However well-intentioned, enlightened, or disinterested its framers might have been, their efforts were not in their own time universally hailed as the nation's salvation. Quite the contrary, the opposition aroused by the proposal to create a strong central government was fierce, determined, and led by such patriots as Patrick Henry and Samuel Adams. Winning ratification required a strenuous, concentrated, and well-organized effort in every state. The Federalist was only one of many such efforts to convince those who feared the power of the state that "vigor of government is essential to the security of liberty."

The late 1780s must have been a very remarkable time. Though political passions ran high, citizens were able to address fundamental issues with astonishing clarity and straightforwardness. No passage is more suggestive of *mentalite* than the opening paragraph of The Federalist Papers. "After an unequivocal experience of the inefficacy of the subsisting federal government," wrote Hamilton in pointing to the weakness of the Confederation,

you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks for its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world.

In a resonant echo of Winthrop's sense of the uniqueness of our "errand into the wilderness," he continued

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conducts and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

Hamilton's rhetoric is notable for the extent to which it tries to get beyond the interests of groups, associations, and factions in order to address directly the citizen as an individual. His doing this helps to communicate the gravity of the constitutional effort: the struggle for ratification was not, he seemed to argue, political -- in the sense of involving the interplay of individual interests and ambitions. Rather, it involved the nature of public life itself and, as such, required individuals to address and reflect on the issues at stake in a very different way. In doing this, he comes astonishingly close to using a religious language of revelation and conversion.

"In the course of the preceding observations," Hamilton wrote at the conclusion of the first essay,

I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time have collected from the general scope of them that proceed from a source not unfriendly to the new Constitution. Yes, my countrymen, I own to you that after having given it an attentive consideration, I am clearly of the opinion that it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation which I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply profession on this head. My motives must remain in the depository of my own breast. My arguments will be open to all and may be judged by all. They shall at least be offered in a spirit which will not disgrace the cause of truth.

In Federalist 10, Virginian James Madison addresses the central dilemmas of popular government:

*how can the public good be ascertained when citizens and their representatives are

driven to act by their personal interests?

*how can a government "of the people" accommodate the diversity of interests and

inequality of circumstances that arise inevitably from differences in talent and opportunity?

*how, under these circumstances, can government on the one hand protect the public

good from being dominated by well organized majority interests and, on the other,

from the turbulence and violence of organized minorities?

All of these questions revolved around the issue of faction. By "faction" Madison meant more than organized *political* interests: he had in mind any group of citizens motivated by any common interest or passion -- political, religious, or economic -- who sought to turn the power or resources of government to its own advantage. These necessarily included voluntary associations of every sort, from political clubs and churches through banks and manufacturing companies.

What made these factions so problematic was that, however disruptive to stable government they might be, they were also essential to the exercise of liberty. Without them, people had no way of influencing the public agenda. The solution to this dilemma was first to have the people rule indirectly, through their representatives (republican government) and, secondly, to ensure that the republic was large enough to embrace a large number of competing interests. Under such circumstances, Madison hoped, no one faction could grow large or strong enough to dominate government on the national level. (And even if it tried to, as other essays in Federalist Papers point out, their influence would be diluted by the checks and balances between the three branches of government, the variation in the terms of officeholders, and staggered elections.)

Federalist 10 reminds us not only that the activity of voluntary associations is ultimately framed by political constraints, but also that, however noble and disinterested promoters of such associations may profess to be, their purposes are ultimately public in nature. In this uniquely American solution to the hazards presented by organized voluntarism, the Founders created a political setting which both made voluntary associations more necessary -- since organized action became the prerequisite of public influence -- and ensured that they would become stabilizing elements -- since the variety of interests would tend to cancel one another out.

Of course, the Founders did not envision the system of political parties that would emerge within a decade of ratification. Nor could they have anticipated the nationally-based denominational and economic initiatives that would also soon emerge. Despite the success of some of these, Madison's wisdom was largely affirmed. Jefferson's Democratic Republican Party, which captured the national government in 1800 and ruled virtually without meaningful opposition for thirty years was far from the despotic force that its opponents feared. To create a national political organization required a coalition of local, regional, occupational, and denominational interests of such diversity that genuinely concerted action on any front (beyond electing candidates who labelled themselves Democratic Republicans!) was virtually impossible. And in any case, however ineffectual the Federalists might be electorally, the life tenure of the judges they appointed ensured that the Jeffersonians, however united in their purposes, could never act without judicial opposition.

Although it can be argued that voluntary organizations are as old as the nation itself, it seems quite clear that their importance as forces in public life and their proliferation was a product of constitutional government. Had De Tocqueville visited America in 1789, he certainly would not have found voluntary associations to be

ubiquitous and of those he might have seen, very few could have been described as "private." In transforming the nature of government, the Founders created a new domain of public action which would be filled by associations.

The Founders seem to have been cognizant that the new federal framework might set in motion a number of incalculable institutional forces. In answering those who criticized the Constitution because of its possible imperfections, Hamilton replied in the last number in the Federalist,

the zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to accede to the truth of the following observations of a writer equally solid and ingenious: "To balance a large state or society [says he], whether monarchical or republican, on general laws, is a work of so great difficulty that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; EXPERIENCE must guide their labor; TIME must bring it to perfection, and the FEELING of inconveniences must correct the mistakes which they *inevitably* fall into in their first trials and experiments. These judicious reflections contain a lesson of moderation to all sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the states from one another, and perhaps military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from TIME and EXPERIENCE. . . .

The ultimate form of constitutional government would come, in Hamilton's view not from planning which sought to foresee every contingency, but from time and experience. Given the proper foundation, the Founders believed, the system would

invent and perfect itself as it encountered new and unanticipated challenges with the nation's inevitable growth.

JAMES MADISON

FEDERALIST 10: THE UTILITY OF THE UNION AS A SAFEGUARD AGAINST DOMESTIC FACTION AND INSURRECTION

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils have, in truth, been the mortal diseases under which popular government have everywhere perished, as they continue to be the favorite and fruitful topics from which the adversaries of liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements and alarm for private rights which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administration.

By a faction I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one by destroying the liberty which is essential to its existence; the other by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an element without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection between self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the societies into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities that where no substantial occasion present itself the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principle task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.

No man is allowed to be a judge in his own cause, because his interests would certainly bias his judgement, and, not improbably, corrupt his integrity. With equal, nay greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on the one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or in other words, the most powerful faction must be expected to prevail.

Shall domestic manufacturers be encouraged, and in what degree, by restrictions on foreign manufacturers? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant part to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

It is in vain to say that the enlightened statesman will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is that the causes of faction cannot be removed and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administrative, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When the majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our enquiries are directed. Let me add that it is the great desideratum by which alone this form of government can be rescued from the opprobrium under which it has so long labored and be recommended to the esteem and adoption of mankind.

By what means is this object obtainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such a coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity by suffered to coincide, we well know that neither moral nor religious motives can be relied on as adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of nor cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations.

In the first place it is to be remarked that however small the republic may be the representatives must be raised to a certain number in order to guard against the cabals of a few; and that however large it may be they must be limited to a certain number in order to guard against the confusion of a multitude. Hence the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being

more free, will be more likely to center on the men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniencies will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is the greater number of citizens and the extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. Besides other impediments, it may be remarked that, where there is consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears that the same advantage which a republic has over a democracy in controlling the effects of faction is enjoyed by a large over a small republic -- is enjoyed by the Union

over the States composing it. Does this advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here again the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is more likely to taint a particular county or district than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans ought to be our zeal in cherishing the spirit and supporting the character of federalists.

Source:

Alexander Hamilton, James Madison, and John Jay, The Federalist Papers [1787-88] (New York, 1961), 77-84.