

Federalists and anti-Federalists

The power of subtleties

The ratification of the Constitution exemplifies the power of subtleties. The two sides in the debate, the Federalists and the Anti-federalists, agreed on an overall framework of a government; they disagreed however on the meaning of nuances resulting from an interpretation of the constitution. The fundamental political, constitutional and ideological thinking of these two groups shows no great divergence. They agreed on more than they disagreed. Their differences emerged in the details and definitions of the consolidation of power from the states to the new proposed national government. These differences in definition would make a profound impact in the final product and its results on posterity.

For a critical essay to investigate the differences in the ratification debate is beyond the scope of this paper. It is possible to argue that there are few, if any contrasts, that the world view held by the Federalists and Anti-federalists was essentially the same. An examination of this subject would require an investigation into the revolutionary experience as a bonding of philosophy, the similarities of experience in the state constitution period and the effects of the extension of republican philosophy through the constitution. Both sides rejected tyranny and sought a government based on the popular sovereignty. Both sides recognized the importance of the individual as the foundation of a society. Both sides rejected democracy in favor of republican government.

To argue that there are political, constitutional and ideological issues in debate over the ratification sets another daunting task. While the Americans of the time might have had broad agreement on the shape and scope of the government, the “devil was in the details.” The range of issues from which caused ideological, political and constitutional differences in the debate over the constitution would take volumes of writing to investigate. It is the intent of this paper therefore, to point out one constitutional and ideological conflict of the time: security of rights. Examination of this issue would require a depth of analysis that go

far beyond the limitations of this writing. The examples given serve as a brief investigation into the definitional details of constitution making.

Philosophical Agreement

Republican government was the foundation for political thinking at the time of ratification. Defined broadly, republicanism is government based on elected representatives. For the Anti-Federalists republican government should take place in small, homogeneous communities; for the Federalists, republican government would come to mean elected representatives serving a large, heterogeneous community. Although the definition is quite different, there is no question that both sides sought government that was elected by the people. This is an important starting point of agreement, and later of disagreement. Neither side advocated a direct. Although referred to occasionally, the word "democracy" was either used to describe a republic (as our contemporary usage indicates), or the form of direct citizen government, the classical meaning. Ultimately, the differences of definition would separate the two sides, but not as far as to cause a separation or counter revolution. This is the larger view of the Americans of the time, the essential area of agreement. They could compromise on the meanings of words like "federal" or "republic," or the extent of the separation of powers within the government, because they shared (what we would call today) a "world view." This agreement of fundamental purpose is not common place in most nation building experiences. In this sense the Anti-Federalists were right, relative homogeneity of the polity facilitated constitution writing. The impact of the world view shared by the Americans of 1780's and 90's is pervasive in the total experience of the participants in the debate.

The principles which gave American Constitutionalism its distinctive character (federalism, checks and balances, separation of powers, enumerated powers, secured rights, frequency of elections), were the principles which popular government used to prevent the

Constitution from becoming only a "parchment project." These ideas laid the foundations for the compromises that led to the ratification of the Constitution.

Security of rights - A Brief Summary of a Constitutional Difference

The Anti Federalists are usually credited with forcing a bill of rights to secure liberty into the Constitution. Madison heard their complaints and eventually put his legislative and parliamentary abilities to work for them to become a reality. The Editor of The Founders' Constitution, Philip Kurland writes, "It is at least arguable that the voice of Patrick Henry and the pen of Richard Henry Lee finally were overcome by the parliamentary skills of James Madison." (Kurland 425).

Madison had a reason to be in charge of the promise to add a bill of rights. If none were added by Congress, a second convention might occur. If the first congress did not deal with the issue, many marginal Federalists might switch sides, or marginal Anti-Federalists would come out of the wood work. The Federalists, including Madison, won the first election for Congress. Madison promised a Bill of rights to the Ant-Federalists in general, and his constituents in Orange County, VA in particular. By taking control of the process, Madison insured that the delicate compromises reached in September of 1787 were not tipped. Except for the Tenth Amendment, none of the other Amendments known as the Bill of Rights made structural changes to the Constitution.

In The Sacred Fire of Liberty, Lance Banning argues that Madison, as with other issues he faced in his political life, evolved in his thinking to see that a Bill of Rights was necessary and that it could be consistent with the value of the Revolution. Banning writes, "...the Bill of Rights was also central to a great campaign to give lie to the charges that the Federalists were less republican than their opponents, to seat the Constitution in the hearts and of the whole political nation ..." (Banning 265). The Federalists held a large majority in congress and could control the agenda. Banning states that Madison did not need to show that he fought for the Bill of Rights to assure reelection, rather, that it was a promise

kept, and fulfilled carefully. In a 1788 letter to Thomas Jefferson, Madison admitted that, “My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect.” (Kammen 369). Madison may not have been completely satisfied with the final product, but he did achieve the goal stated to Jefferson.

Jefferson played an important role in Madison’s change of thinking on the Bill of Rights. While not opposed to the Constitution, he also supported the Anti Federalists view on the necessity of the Bill of Rights. The oft cited example of Jefferson’s thinking comes in his statement in a December of 1787 to James Madison that, “... a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference.” (Kurland 456). In a July of 1788 letter to Madison Jefferson makes it clear that, “I hope therefore a bill of rights will be formed to guard the people against the federal government as they are already guarded in their state governments in most instances.” (Kurland 476).

The Federalist response to the absence of a bill of rights came in Alexander Hamilton’s *Federalist No. 84*. In it Hamilton attacked the Anti-Federalists argument point by point. The crux of his argument is that a bill of rights is not only necessary but “dangerous,” adding that, “They (*a bill of rights*) would contain various exceptions to powers which are not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is power to do?” (Kammen 238).

James Wilson would make the same point, he argued that a government without the power to violate rights could not and would not deny fundamental liberties. In addition, in the republican form of government, why would the representatives of the people ever vote away their rights? Republicanism would act as a check on the possible violation of rights by a government. Wilson stated in an October 6, 1787, speech the often quoted point that in

regards to a bill of rights "...everything which is not reserved is given..." The people retain the fight because the government never had the power to take them away. In a speech given on the 28th of November of 1787 Wilson answered critics asking why a bill of rights was not considered at the Constitutional Convention, Wilson answers, "I cannot say, Mr. President, what were the reasons of every member of the Convention for not adding a bill of rights, I believe the truth is , that such an idea never entered the mind of many of them." He goes on to his main point that. "...an imperfect enumeration would throw all implied power into the scale of the government and the rights of the people would be rendered incomplete. On the other hand, an imperfect enumeration of the powers of government reserves all implied power to the people..." (Kurland 454).

The Anti-Federalists would not accept this line of logic, their position was clear stating to say that the government would not violate rights because it did not have the power was irrational. George Mason proposed the Bill of Rights at the Convention, then did not sign the because it did contain a declaration of rights. In November of 1787, Mason issued written "Objections to the Constitution of Government Formed by the Convention," the first objections stated, "That there is no Declaration of Rights ..." The Anti-Federalist objections were far-reaching. Two-hundred amendments were proposed on about 100 different topics (Ridgeway 7/28/97). Many dealt with the structure and limitation of the national government to expressly limit its powers, to change representation methods, to take from the courts, to separate powers more distinctly, as well as general listing of rights of conscience, press, due process of law and others. The Tenth Amendment would be the only governmental or structural change allowed by Madison, but the statements of rights would placate the Anti-Federalists.

The Anti-Federalist made their most persuasive arguments against the Constitution on the lack of the Bill of Rights. One of the most interesting points made was that if as Wilson stated, "everything not given is reserved..." then why asks *Brutus* (No. 2) , in

Article I section 9 are writs of habeas corpus, or prohibition on bills of attainder, or ex post facto prohibited? He asks,

“...what propriety is there in these exceptions? Does the constitution anywhere grant the power of suspending habeas corpus, to make ex post facto laws, pass bills of attainder, or grant titles of nobility? ...The only answer that can be given is, that these are implied in the general powers granted .. all powers, which the bills of right, guard against the abuse of , are contained or implied in the general ones of the constitution.” (Kurland 452).

Furthermore, argued the Anti-Federalists, why should we ratify an imperfect constitution? If it needs a bill of rights than it should be added as part of the compact sent to the sovereign people for ratification. The Anti-Federalist asked rhetorically, “Have you ever heard of a government taking power and then voluntarily giving it back?” Robert Whitehall stated at the Pennsylvania Ratifying Convention that, “Truly, sir, I will agree that a bill of rights may be a dangerous instrument, but it is to the views and the projects of the aspiring ruler, and not the liberties of the citizen.” (Kurland 456).

For the Anti-Federalists, the necessity of a bill of rights should be obvious to every citizen, and expected as it was in the state constitutions. The one thing the Bill of Rights would do, argued the Federal Farmer, would be to transmit the essential and lasting value of a declaration of rights from generation to generation. Likewise it would give the people foundation to recall their natural rights, and remind the government should a violation be attempted. In *Federal Farmer* No. 16 the writer made this point stating,

“We do not by declaration change the nature of things, or create new truths, but we give existence, or at least establish in the minds of the people truths and principles which the might never otherwise thought of, or soon forgot, If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book.” (Kurland458)

To this argument the Federalists could not respond, for it represents the fundamental experience of the Americans from the first charters to the present constitution. Yet the Anti-Federalists showed great faith in their fellow Americans and in the shared American value of limited government. In spite of the significant shift and consolidation of power away from

the states, the Anti-Federalists held to the fundamental similarities which made both Federalists and Anti-Federalists Americans. When the Anti-Federalists did not walk away from the government that promised to add a statement of rights after the people had given their assent. Thanks to Madison for keeping that promise.