NEW FEDERALIST PAPERS

Essays in Defense of the Constitution

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A TWENTIETH CENTURY FUND BOOK

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PREFACE

Our nation's history reflects a deep mistrust of central authority—the original framework for the newly independent nation embodied in the Articles of Confederation was not weak by accident. In 1787, despite the clear inadequacy of the Articles, the strong, representative national government championed by the framers of the Constitution was a hard sell. The founders themselves disagreed sharply and fundamentally about the right mix of Athenian assembly and Roman senate for America. But most put aside their differences to fight for the ratification of the Constitution. They succeeded, in part because they made the case that a representative federal republic was preferable to a more direct and decentralized version of democracy.

The debate about our system of governance, however, has never ended. One hundred years ago, William Jennings Bryan and others—feeding off the discontent caused by declining farm prices, discriminatory commercial practices, and industrial dislocations—revived one side of the old

argument in a new form called populism. Outraged at the power of big business and its influence over government, they sought to check the "ascendancy of capital" through changes in policy and structure that would put the government squarely on the side of the average citizen.

Today, in modern dress, one can discern a somewhat similar challenge to the status quo. Indeed, it would be surprising if wrenching, contemporary changes in politics, industry, families, and culture had not produced a strong reaction. Today's new movement is at once radical and conservative—anxious for sweeping change and nostalgic for a half-imagined past. Central to the movement is the belief that government is inaccessible, unresponsive, and unworkable; that it seldom, if ever, has the potential to be reformed into an ally. While populism looked to government to remedy the failures of the marketplace, the radical-conservatives revel in unfettered markets. In those limited portions of the public sphere that they see as absolutely necessary, they advocate sweeping devolution of responsibilities from the national government to the states.

At its most extreme, the current assault on government—on the federal government in particular—threatens domestic tranquillity. It has spawned a grotesque collection of armed militia, nativist bigots, and even mad bombers. (Some, oddly, believe that in the midst of government gridlock, we are on the verge of dictatorship.) Government, much of the right claims, is a conspiracy against the people. This perception lies behind the ravings of some right-wing radio talk show hosts; it is common fare in our popular culture, especially in movies and television. On the big screen, the solution is all too often: don't throw the bums out, blow them away. In the real world, public services are among the first casualties in the war against government, and there is "collateral damage" to those who depend on the public sector

for schooling, food, shelter, medical care, and protection. To the zealots, this is a small price to pay for reestablishing "American values."

Much of the disaffected mainstream of the new movement is especially entranced with the presumed tonic effects of more direct democracy. The movement into the cybernetic age makes "interactivity" easier than ever before. Reform proposals often marry a high-tech twist to a low regard for authority. Televised "town halls," electronic plebiscites, instant polling, and "third wave" breakthroughs in technology are touted as means of "empowering" the people. This surge toward direct democracy is also evident in the growth of ballot initiatives and referenda, as well as in proposals for national plebiscites. And support for term limits is strong almost everywhere outside of Washington.

The assault on government threatens the fundamentals of the American system; it has taken formal shape in a host of legislative initiatives and hundreds of proposed amendments to the Constitution. What is perhaps most remarkable is the fact that so many amendments are being given serious consideration in Congress. Amendments relating to balanced budgets, flag desecration, super-majorities for taxes, and the line-item veto are only suggestive of the range of topics addressed by those who seek to reshape the constitutional order. If many are adopted, the impact on the Constitution, as we know it, would be profound. All this is occurring even though the nation is at peace and generally enjoying prosperity.

Surely, the time has come for reconsideration. We need a powerful reminder that constitutional amendments should be rare and limited to issues of historic significance. Our basic governmental structure, after all, has stood the test of time, usually achieving consensus despite the complexity of our democracy; indeed, the Great Republic has earned

global envy for providing the best mix of liberty, community, and abundance.

A century ago, populism's surge provoked an important bipartisan movement that elevated public debate and ultimately trumped simplistic solutions by offering meaningful reform. The result was a progressive agenda that tamed the trusts, regulated the banking system, preserved national forests, and offered professionalism in government. Today, the task of constructive reform is, if anything, *more* complicated: to preserve the Constitution from the short-term and self-interested passions and to sustain the social safety net in face of a new Social Darwinism. The starting point once again is to teach the merits of representation, deliberation, and conciliation.

The general public, on the evidence of the past two national elections, is ambivalent. Voters say that they favor change, but they are not clear about either the amount of change they want or the direction it should take. Conventional political debate has done remarkably little to enhance public understanding of the underlying constitutional issues. But there is still time for those who treasure America's unique governmental structure to speak up. More serious discussion is not only overdue; it is a practical necessity. For one thing is certain: the greatest threats to constitutional government spring from the paucity of serious public discourse, and thus from an uninformed public.

Over the years, the Twentieth Century Fund has examined many aspects of the federal system. Currently, we are coproducing a series of television programs ("The Fred Friendly Seminars") that explore the debate about American government; and we are publishing studies that examine proposals to restructure the roles of the states and the national government.

This volume occupies a special place in our program. We asked three eminent scholars to respond to the contemporary attack on the Constitution by writing essays reframing the arguments for the basic structure of the American government. Alan Brinkley, professor of history at Columbia University; Nelson W. Polsby, professor of political science at the University of California, Berkeley; and Kathleen M. Sullivan, professor of law at Stanford University, responded with insight and wisdom to our request. As planned, each essay is written to stand on its own. Some already have appeared in newspapers and periodicals. Taken together, they form an important contribution to the national debate about the future of the Republic.

The founders did not choose our system by accident. These New Federalist Papers are intended as a challenge to those who would dismantle it by design. On behalf of the Trustees of the Twentieth Century Fund, I thank Alan Brinkley, Nelson W. Polsby, and Kathleen M. Sullivan for their contributions.

RICHARD C. LEONE, *PRESIDENT*
The Twentieth Century Fund
New York, 1997

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INTRODUCTION

In the aftermath of the Constitutional Convention of 1787, a great debate emerged in the young American republic between those who supported the new plan for a national government and those who opposed it—a debate between two groups known to history as the federalists, who supported the Constitution, and the antifederalists, who opposed it. That debate raged for months not only in state conventions deciding whether or not to ratify the Constitution but also in taverns and churches, at town halls and mass meetings, in the columns of newspapers, and in ordinary conversation. At times, passions became so intense that they produced violence and at least once (in Albany, New York) death.

Opponents considered the Constitution a betrayal of the principles of the American Revolution, a vehicle for establishing a tyrannical center of power. The antifederalists were not anarchists, of course. But they were much more afraid of a strong national government than they were of the

states or the people, and they opposed the Constitution because it quite deliberately created a buffer between popular will and the exercise of public power, because it was a design not for a "pure" or direct democracy but for a republic—that is, a representative democracy.

To answer the antifederalists, three of the most gifted participants in the Constitutional Convention—Alexander Hamilton, James Madison, and John Jay—wrote a series of eighty-five essays, widely published in newspapers throughout the nation, defending the proposed new government against its detractors. Those essays, known today as the "Federalist Papers," constitute America's most important contribution to political theory. They explain the philosophical basis of the Constitution, defend the idea of republican government against charges that it would lead to tyranny, and suggest the dangers of a decentralized political system in which popular passions and local or private interests remain unchecked, in which the national government would be incapable of representing the national interest.

The framers of the Constitution wanted a national government strong enough to preserve the fragile Union and promote the general welfare. Like the antifederalists, they feared excessive centralized power. But they feared inadequate national power even more, convinced that without it there would be no protection against chaos and disunion. They were, after all, creating a government to replace the highly decentralized system set up under the Articles of Confederation, which they considered inadequate to the nation's needs. The Constitution was, therefore, an effort to strengthen, not to limit, what we now call the federal government.

The political controversies of our own time are neither so fundamental nor profound as those of the 1780s. But they do call into question some of the principles that have shaped

government and politics as we have known them through much of this century, and indeed through most of our national history. The essays published here, inspired in part by the spirit of the original Federalist Papers, are an effort to stimulate public debate on some of the issues now before us.

Like the original federalists, we are defenders of a strong and vigorous national government, although we are skeptical of many aspects of politics and government in their present form. Like the federalists, we see substantial danger in the current effort to diminish and relocate federal power, although we recognize the importance of state and local governments, of market forces, and of the many other intermediate institutions on which a healthy society depends.

It is, we realize, extraordinarily presumptuous to present a series of essays as a "New Federalist Papers." We do so not because we expect to match the intellectual or literary power, or the impact, of the originals. Clearly we will not. We do so because we believe, as the federalists believed, that much is at stake in the public issues of our time and that it is the task of public discourse to bring about a reasoned consideration of those issues. These essays are meant as a small contribution to that task.

Part 1

The Foresight of the Framers