

**What Distinguishes the Federal Constitution of
the United States of America from
All Other Federal Constitutions**

The American confederation apparently resembles all other confederations. However, its effects are different. Why is this? How this confederation does differ from all others. The American government is not a federal government, but an incomplete national government.

The United States has not provided the first and only example of a confederation. Without speaking of antiquity, modern Europe furnishes several examples. Switzerland, the German Empire, and the republic of the Netherlands have been, or still are, confederations.

When one studies the constitutions of these various countries, one notes with surprise that the powers granted to the federal governments are nearly the same as those accorded to the government of the United States. Like the latter, they give the central authority the right to make war and peace, to raise men and money, to provide for the general needs, and to regulate the common interests of the nation.

Nevertheless, federal government in these various countries has always remained weak and impotent, whereas that of the Union conducts affairs with vigor and with ease.

Furthermore, the first American Union could not survive because

of the excessive weakness of its government, but that government which proved so feeble had been granted rights as broad as those of the present federal government. One may even say that in certain respects its privileges were greater.

There must therefore be in the present Constitution of the United States some new principles which do not strike one at first glance but which have a profound influence.

This Constitution, which at first sight one is tempted to confuse with previous federal constitutions, in fact rests on an entirely new theory, a theory that should be hailed as one of the great discoveries of political science in our age.

In all confederations previous to that of 1789 in America, the peoples who allied themselves for a common purpose agreed to obey the injunctions of the federal government, but they kept the right to direct and supervise the execution of the union's laws in their territory.

The Americans who united in 1789 agreed not only that the federal government should dictate the laws but that it should itself see to their execution.

In both cases the right is the same, and only the application thereof different. But that one difference produces immense results.

In all confederations previous to that of contemporary America, a federal government appealed to the particular governments to provide its needs. Whenever one of these disliked the measure prescribed, it could always avoid the necessity of obedience. If it was strong, it could appeal to arms; if it was weak, it could tolerate resistance to laws of the union, though accepted as its own, giving its impotence as an excuse and relying on the force of inertia.

Consequently, one of two things has always happened: either the most powerful of the combined states assumed the prerogatives of the federal authority and dominated all the others in its name⁸⁷ or the federal government has been left to its own resources, anarchy has reigned among the confederates, and the union has lost its power to act.⁸⁸

In America the Union's subjects are not states but private citizens.

⁸⁷ This happened in Greece, under Philip, when that prince took on himself the execution of the decrees of the Amphictyonic League. It is what happened in the Netherlands republic where the province of Holland has always made the law. The same thing is taking place now within the Germanic confederation. Austria and Prussia make themselves the agents of the Diet and dominate the whole confederation in its name.

⁸⁸ It has always been like this in the Swiss confederation. Switzerland would have ceased to exist centuries ago were it not for the jealousies of her neighbors.

When it wants to levy a tax, it does not turn to the government of Massachusetts, but to each inhabitant of Massachusetts. Former federal governments had to confront peoples, individuals of the Union. It does not borrow its power, but draws it from within. It has its own administrators, courts, officers of justice, and army.

No doubt the spirit of the nation, the collective passions, and the provincial prejudices of each state still singularly tend to diminish the power of the federal authority thus constituted and to create centers of resistance to its wishes; restricted in its sovereignty, it cannot be as strong as if it possessed complete sovereignty; but that is an evil inherent in the federative system.

In America each state has comparatively few opportunities or temptations to resist; if it does think of doing so, it cannot carry this out without openly violating the laws of the Union, interrupting the ordinary course of justice, and raising the standard of revolt; in a word, it would have directly to take up an extreme position, and men hesitate for a long time before doing that.

In previous confederations the rights accorded to the union furnished more elements of discord than of power, for they multiplied the nation's claims without augmenting its means of enforcing them. For this reason the real weakness of federal governments has almost always increased in direct proportion to their nominal powers.

That is not so in the American Union; like most ordinary governments, the federal government can do what it has been given the right to do.

The human mind invents things more easily than words; that is why many improper terms and inadequate expressions gain currency.

Some nations form a permanent league and establish a supreme authority which, though it cannot act directly in dealings with individual citizens as a national government would do, nevertheless acts directly on each of the confederate peoples taken as a body. Such a government, so different from all others, is called federal.

A form of society is then discovered in which several peoples really fused into one in respect of certain common interests but remained separate and no more than confederate in all else.

Here the central power acts without intermediary on the governed, administering and judging them itself; as do national governments, but it only acts thus within a restricted circle. Clearly here we have not a federal government but an incomplete national government. Hence a form of government has been found which is neither precisely national nor federal; but things have halted there, and the new word to express this new thing does not yet exist.

It is because they have not understood this new type of confeder-

tion that all unions have come to civil war, subjection, or inertia. The peoples composing them have all lacked either enlightenment to see the remedies for their ills or courage to apply them.

The first American Union, too, suffered from the same defects.

But in America the confederated states, before gaining independence, had long been part of the same empire; they had, therefore, not yet formed the habit of governing themselves completely, and national prejudices had not been able to put down deep roots; more enlightened than the rest of the world, and with that enlightenment equally spread among them, they felt only in a mild degree those passions which ordinarily make people oppose the extension of federal power, and their greatest citizens strove against those passions. As soon as they felt the ill, the Americans firmly thought out the remedy. They amended their laws and saved their country.