James Madison’s Federalist No. 10 Considered in a Very Large State

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ABSTRACT:
Peter Onuf’s essay in *All Over the Map: The Origins of American Sectionalism* measures the cost of diversity in constituencies: eventually geography tears a nation apart or supplies the preconditions for its destruction. James Madison’s Federalist No. 10 argues that large republics are possible, a thesis (obliquely) opposed to Onuf’s. Our Constitutional Logic investigates.

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“An elegant setting,” Mr. Whitecheese assures us, “and now we await the spectacular arrival of our distinguished guest.”

The assembly scans the sky.

“What’s with the three-cornered hat? And perruck?” I ask. “Who invited Mozart?”

We rush our congratulations on his safe landing.

“Can you guess who I am?” the mysterious stranger dares us. “Allow me to doff my ‘chute, whilst quaaffing the ‘Spenard-fall’ libation my host offers me.”

“I am dumbfounded,” I gasp.

“I’ll give you a hint. I lost my job during the Jefferson administration.”

“1806 marks the fall of the Holy Roman Empire!” Jimmy gasps. “Of which you served as Arch-Treasurer!”

“It’s George the Third,” Dolley introduces our prince. “And, to boot, Prince-Elector to said empire.”

“At your service.”

“It was the uniform,” Dolley signals our King’s magnificent lapels and epaulettes. “Dripping gold braid, natürlich.”

“What brings you to Alaska?” the Governor asks.

“Peace in our time. Hence, this portfolio of parchments.”


“You have to make it matter to Alaskans,” the Governor backs me up.

“Americans improvised during the late war, leaving the initiative to British arms,” our George begins. “Which explains why Gen. Washington’s first monument – in Baltimore – lists his victories, which face Charles Street.”

“North to the future,” Dolley and Sarah agree. “Now we’re getting somewhere.”

“Improvisation might suggest a certain, *je ne sais quoi*, about the whole affair. After all, if Washington and Rochambeau had fought and won...
Yorktown before the Articles of Confederation were ratified,” the King continues, “the British would be obliged to treat with thirteen states.”

“But March 1, 1781 precedes Yorktown, October 19, 1781,” Jimmy objects. “Let’s stick to the facts, sir.”

“The point he was making,” Dolley nudges her husband, “is that Maryland was the last-to-ratify. Kind of like Rhode Island, in 1790.”

“But the first to monument,” Jimmy retorts.

Article I is perused.

“‘His Britannic majesty acknowledges the said United States, viz. New-Hampshire, Massachusetts-Bay’,” Jimmy ‘blah blahs’ the other eleven, “‘to be free, sovereign, and independent states; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, property, and territorial rights of the same, and every part thereof’.”

“But where do we get anything out of it?” Mr. Whitecheese appeals to the assembly. “I mean, the Queen could walk into Anchorage and claim Spenard – as her, I mean, Her Own. Liz didn’t swear off ‘claims to the government, property and territorial rights’ of Alaska. Or, more precisely, her remote forbearer didn’t swear off his claims with that foreswearing binding on her.”

“It’s not like we didn’t exist in 1783,” the Governor sniffs. “And you could see Russia from Alaska back then. So there.”

She and Dolley exchange ‘high fives.’

“If there was a flaw in how the United States was organized,” Jimmy sighs, “I suppose everyone’s going to blame me.”

“But this does explain why January 14th is celebrated throughout America as ‘Ratification Day’,” I interject. “Excepting 1784, when it was celebrated on Wednesday, January 21st.”

“I don’t remember proclaiming any celebration,” the Governor ponders. “Well, Jimmy, you discovered this flaw in the universe,” she adds. “Solve it.”

“Regrettably, it’s a bit larger than that. You see, the Confederation (or Continental) Congress went out of business on March 2, 1789. That’s the last day a delegate showed up for work.”

“In a Manhattan tavern!” Whitecheese chortles. “Saloonkeepers grease the constitutional wheels, as I have always claimed!”

“But Constitution II,” George picks up the thread, “or as you call it the Philadelphia Constitution, did not go into effect until March 4th.”

“A whole day without the federal government breathing down our necks,” the Governor muses. “We should be celebrating March 3rd.”
“But under Article VI of our second constitution, as you call it,” I read from my vest-pocket version, “‘Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.’”

“So if I pay your bills, can I move into your house?” George poses the question. “A stranger to the Treaty of Paris assumes the obligations of one of the parties, without the parties having agreed to bind the successors and assigns of the one going out of business.”

“That is a poser,” the Governor agrees.

“There’s a bigger problem here,” Dolley employs the Governor’s smartphone to access its ‘AoC App.’ “King George agreed that thirteen states were ‘free, sovereign and independent.’ Where does it say that – ”

“In the Articles of Confederation this language appears in Article II,” I recite: “Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.’”

“Then where does it say that,” Dolley asks, “in the next constitution in a row?”

“Instead of those twenty-nine words in the Articles, twenty-eight were crafted into the Tenth Amendment,” Jimmy sighs the quote: “‘The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people’.”

“Boy, is that a problem,” George declares.

“I was cutting the fat out of the Articles.” Jimmy shrugs. “A word here, a word there, and it adds up in a hurry. By 1804 we were using 5,224 words. The Articles only ran to 3,453 words.”

“But you cut out Article II’s declaration that: ‘Each state retains its sovereignty, freedom and independence,’ and you also didn’t write anything into the Philadelphia constitution that even comes close,” I add. “Other than the guarantee of a ‘republican form of government’.”

“And what’s worse,” our George piles on, “there’s the same wording in the Treaty. The benefit of the promise I made as to state sovereignty is not transferable to late-joining states. It’s just plain. Alaska’s not protected from invasion by Great Britain!”

“She’s no worse than Vermont,” the Governor sighs. “They only got admitted as a ‘new and entire member’ of the union. Act of February 18, 1791.”
“Congress should have conferred the benefits enjoyed by the ‘old and existing states’ in the Vermont statehood act.”

“You’re right, Aschenbrenner,” Whitecheese turns to our King. “Forget Alaska, George. You could invade Vermont with impunity.”

“Computing the number of ‘Ice Creame Shoppes’ in the state,” our King replies, “we’ve already conquered the place. By the way,” he turns to the Governor, “just how many victories are listed on Washington’s monument?”

“Trenton and Yorktown,” the Governor consults her tablet.

“You lost a battle thanks to your Hessians,” I guffaw, “and Washington gets ‘Trenton’ in copper letters on limestone!”

“Some of my best friends,” George winks, “are Germans. Still, all things considered, I’d love to get my imperial titles back.”

“We could always make you Emperor of Alaska,” the Governor suggests. “There’s always room for a little nobility around here.”

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