

THE FEDERALISTS: POWER, CONSTITUTION AND FREEDOM

The construction of the Modern Constitutional State finds in "Os Federalistas" (The Federalists) one of its most relevant intellectual moments. Published between 1787 and 1788 by Alexander Hamilton, James Madison, and John Jay under the common pseudonym of Publius, the eighty-five essays were designed to advocate ratification of the United States Constitution, but they have largely outgrown that historical circumstance and become a reference for understanding democratic institutions.

Hamilton, Madison, and Jay realized that the central problem of a Constitution is not limited to the formal distribution of powers among State agencies. It consists, above all, in building structures capable of conferring effectiveness to political power and, at the same time, establishing mechanisms aimed at preventing that power from becoming an instrument of discretion. It is in this permanent tension between authority and freedom that "The Federalists" remain current.

Madison understood that democracy could not depend solely on the virtue of rulers. The institutional architecture itself should contain control mechanisms, capable of limiting the excesses of majorities and political factions. From this conception emerge the separation of powers, checks and balances, federalism and representation as instruments of balance among different centers of power.

Hamilton, especially in the essays devoted to the Judiciary, maintained the independence of the courts as an essential element for preserving the Constitution. By assigning to the Judiciary the function of protecting constitutional limits against possible excesses of political powers, its reflection contributed to consolidate one of the bases of contemporary constitutionalism. Jay, for his part, stressed the importance of Federation unit to the stability, security and very survival of the Republic.

The strength of "The Federalists" lies precisely in recognizing that power is indispensable to the organization of collective life, but it also represents a permanent risk to freedom. Therefore, constitutionalism cannot rely only on the intentions of the rulers: it needs institutions, procedures and limits capable of transforming the exercise of power into public responsibility.

More than two centuries later, the question posed by that generation remains: How to build institutions strong enough to govern and simultaneously constrained to preserve freedom?

Returning to Hamilton, Madison and Jay means revisiting one of the central ideas of the constitutional democracy: no democratic order is sustained by the will of majorities alone. Its durability also depends on the independence of institutions, respect for the rules of the constitutional game, mutual restraint among powers and a political culture committed to freedom, responsibility and the Constitution.

Doctor Professor Marco Villas Boas

Justice of the Court of Justice of the State of Tocantins (TJTO), General Director of the Superior School of the Judges of the State of Tocantins (Esmat) and President of the Permanent College of Directors of State Schools of the Magistracy (Copedem).

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