The Federalist Papers
In Search of Original Intent

Day 1:
• Background of Constitutional Convention;
• Purpose of Federalist Papers;
• Federalist No. 1

Constitutional Convention
Facts about the Constitutional Convention

- Who – 55 Delegates from 12 of the 13 States
- When – May 25 to September 17, 1787
- Why – initially, to revise the Articles of Confederation.
  - Soon became an effort to restructure the United States Government
### STATE RATIFICATION VOTE

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*With Amendments
Principles of the Enlightenment

- Reason, order, balance, logic, science, separation of church from government, progress, Deism
- "Jefferson Bible"

Federalist Papers

What Were They and Why Were They Written?
What Was *The Federalist*?

- 85 Newspaper Articles, published between October 27, 1787, and August 16, 1788
- Purpose – to explain to the states (particularly NY) why they should ratify the Constitution
- Written by John Jay (5), James Madison (29), and Alexander Hamilton (51) – “Publius”
- Later (1788) published in two bound volumes

Topics in the Federalist Papers

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<tr>
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<tr>
<td>Part I, No. 1</td>
<td>“The Challenge and the Outline” ★</td>
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<td>“The Utility of the Union” ★</td>
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<td>“The ‘Insufficiency’ of the Articles of Confederation”</td>
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<td>“The Minimum ‘Energetic’ Government Requirement” ★</td>
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<td>Part V: Nos. 37-51</td>
<td>“The Great Difficulty of Founding” ★ ★</td>
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<tr>
<td>Part VI: Nos. 52-84</td>
<td>“The True Principles of Republican Government” ★ ★ ★</td>
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What Should We Think About the Federalist Papers?

- Thomas Jefferson – “The best commentary on the principles of government which ever was written”

**But also:**
- “Some men look to Constitutions with sanctimonious reverence . . . . but . . . law and institutions must go hand in hand with the progress of the human mind”
- Robert Dahl – “What is more relevant . . . is the extent to which the members . . . did not know what they were doing.”
Purpose of Federalist Papers
- Topics for discussion in these papers
  - The Union’s importance to prosperity
  - The inability of the current government to preserve it
  - The importance of a strong government to achieve these goals
  - The adherence of this proposal to republican principles
- The similarity of this proposal to state constitutions
- The importance of ratification to your liberty and property

What Did They Mean by “Republican?”
- Based on classical virtues of Greece and Rome
- “Republican” virtues included
  - Limiting corruption and greed
  - Avoiding self-interest in public action
  - Avoiding individual will in public action
  - Virtuous citizens needed to be strong defenders of liberty and challenge the corruption and greed in government
- Only by electing representatives who possessed “republican” virtues could representative democracy work

- 1792–1793 – Jefferson and Madison create the “Democratic-Republican” Party
- 1820s – Democratic-Republicans split, become “Democrats” and “National Republicans,” ultimate Whig Party
- 1854 – new anti-slavery party emerges, called “Republican”
Importance of “Republican” Ideology

- “Republican Motherhood” – idea that the first duty of the republican woman was to instill republican virtues in her children
- Sons, so they would exhibit republican virtue in public life
- Daughters, so they could train the next generation of sons
- In the 1830s, the daughters and grand-daughters of “republican mothers” used the rhetoric of republicanism to push for independence and equality in the workforce

Importance of “Republican” ideology

- Republican virtue
- Protection of property rights against runaway democracy
- Service to country even if it means personal sacrifice
  - Military service an integral duty of the citizen
  - Military service needed to be voluntary and temporary
- Threats to Republican virtues
- Debt
- Majority tyranny

The First Five Federalist Papers
Federalist #1-5
- The failures of the Articles of Confederation make it necessary to consider a new form of government
- A government needs "energy" (power) to secure liberty
- The only alternative to the new government is disunion
- The importance of unity: the people in this country are unified because they have common ancestry, common language, religion, and customs

Federalist #1-5
- The successful revolution built on this sense of unity
- The first government didn’t meet the peoples’ needs; it is necessary to change it
- The best people in the country have come together to create the new government; you should trust them

Federalist No. 1
"Whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force"
Day 2:
• Federalist No 10;
• Federalist No. 39;
• Federalist No. 51

Federalist No. 10
The Union as a Safeguard Against Domestic Faction and Insurrection
November 23, 1787

Context for Federalist 10
► Hamilton’s essay Federalist No. 9 (published two days earlier, on Feb 21)
► Hamilton wrote in response to Montesquieu, who said only a small republic could control “faction,” or the rise of competing political interests
In Federalist 10, Madison picks up Hamilton’s argument to make the case that only a large republic – like, oh, the United States under its new Constitution – can control the evils of faction.

Federalist No. 10:

“Liberty is to faction, what air is to fire, an aliment, without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourish faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.”

Federalist No. 10

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.
Federalist No. 10

- When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens.
- “To secure the public good and private rights against the danger of a [majority] faction, . . . is then the great object to which our inquiries are directed”

Protections of minority rights in the Constitution

- Article I (Congress)
  - The Senate
    - The Structure is not majoritarian (11 states have a majority of population, but they only have 22% of the votes in the Senate)
    - Overriding a presidential veto and ratifying treaties – requires 2/3 vote
    - Impeachment Conviction – 2/3 vote in the Senate
  - The House
    - Overriding a presidential veto – requires 2/3 vote

- Article II (Executive)
  - The Veto
  - Electoral College

- Article III
  - Court can overrule the other branches
Protects of minority rights in the Constitution

- Article V
  - Amendment process – ¾ required for ratification
  - Example – Equal Rights Amendments

Federalist No. 39

The Conformity of the Plan to Republican Principles
January 18, 1788

One of the Federalist Papers that talks about the idea of Federalism – shared powers between the central and state governments

One of the most important issues the Constitutional Convention dealt with

- the representatives of the States were concerned that a new, more “energetic” central government would reduce or even eliminate the power of the state governments.
Definition of a Republic

- Madison, in Federalist 39:
  - A republic is a government which derives all its powers directly or indirectly from the great body of the people . . .
  - . . . and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.

Federalism

- Definition:
  - Federalism is the mixed mode of government, combining a central or "federal" government with regional governments (state governments) in a single political system.
  - Its distinctive feature is a relationship of shared authority between the two levels of government established.

The opposite of a Federal system is a Unitary System

- Government is controlled from the center; local governments can do only what the central government gives them the power to do.
- There are only 10 Federal systems in the world today
  - Russia, Canada, Mexico, Brazil, Germany, Switzerland, Argentina, Australia, India, and the United States.
Federalism

- The issue as argued in Federalist No. 39 is between a National and a Federal perspective (The word “Federalism” is not used at all)
  - National – central government is stronger
  - Federal – state government is stronger
- Madison is arguing that the Constitution is more state-friendly than its critics think it is

How the Constitution Divides Power between Federal and State Governments

Federal Government
- Article I, Section 8
  - Including “Elastic Clause”

States
- Article I, Section 9
- Tenth Amendment

Inherent Conflict

Federalist No. 39

Whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.
Federalist No. 51

The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments
February 8, 1788

“Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.”
“It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature?”

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”
“In framing a government which is to be administered by men over men, the great difficulty lies in this: “you must first enable the government to control the governed; “and in the next place oblige it to control itself.”

Day 3:
- Federalist 68
- Federalist 78
- Federalist 84

Federalist No. 68
The Mode of Electing the President
March 14, 1788
Electoral College (Art. II)

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each, which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate.

... The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed;
...

Electoral College (Amendment 12)

They shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate.

Federalist No. 78

The Judiciary Department
May 28, 1788
Thoughts about Judicial Review

- John Marshall spoke about this power during the Virginia ratifying convention in 1788
- He was the chief justice who delivered the opinion in the 1803 case Marbury v. Madison which announced this doctrine
- "It is emphatically the province and duty of the judicial department to say what the law is."

Thoughts about Judicial Review

- 1798 – Virginia and Kentucky Resolutions that suggested that the states should have the right to overturn laws based on their perceived unconstitutionality – in response to the “Alien and Sedition Acts”
- These resolutions were secretly written by Madison and Jefferson

Thoughts about Judicial Review

- This connects to various nullification crises in 19th century
  - 1815 – Hartford Convention
  - 1830 – South Carolina nullification crisis
  - 1850s–60s – secession
Thoughts about Judicial Review

- Presidential pushback – Andrew Jackson never really said but probably meant:
  - “Marshall has made his decision: now let him enforce it!”
- 1832 case, Worcester v. Georgia, related to relevance of Georgia law to Cherokee Territory, which was under federal jurisdiction

The next time the court asserted its power of judicial review over a federal law was in 1857 with the case Dred Scott vs. Sanford, (which declared the Missouri Compromise unconstitutional, no big deal)

Federalist No. 84
Certain General & Miscellaneous Objections to the Constitution Considered & Answered
July 16, 1788
Topics covered in Federalist No. 84

- Bill of Rights
- Concerns about the expense of a new, more powerful government
- Hamilton dismisses this out of hand --
  - "it is certain that a government less expensive would be incompetent to the purposes of the Union,"

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Bill of Rights

- Introduced by Madison in the First Congress (1789)
- 17 Amendments introduced by Madison and passed in the House of Representatives
- 12 Passed by the Senate and referred to the States for Ratification
- 10 Ratified by the States -- "Bill of Rights"
- 1 additional amendment ratified in 1992 -- became the 27th Amendment
1st 10 Amendments
1. Religion, Speech, Press, Assembly, Petition
2. Keep and Bear Arms
3. Quarter Troops
4. Search and Seizure
5. Grand jury, double jeopardy, self-incrimination, “takings”

Bill of Rights
6. Speedy and Public trial, impartial jury, right to counsel
7. Right to jury trial in civil suits
8. Bail, Cruel or unusual punishment
9. Rights mentioned may be incomplete
10. Powers not delegated to federal govt are reserved to the states