

# *The Federalist Papers*

The Federalist Papers is a compendium of eighty-five papers written by Alexander Hamilton, James Madison and John Jay between 1787 and 1788. The papers were written to “sell” or explain the proposed form of government to the community that was to ratify the U.S. Constitution. The Federalist Papers is the primary reference for the

*U.S. Constitution.* Most people know of Hamilton and Madison but few are aware

that John Jay was the first Chief Justice of the Supreme Court. Hamilton wrote 51 of the papers, Madison wrote 26, Jay wrote 5 and 3 were a combined effort.

There are several editions of the Federalist Papers currently available in both printed and electronic format. When purchasing a volume for yourself, ensure that all 85 papers are present in that volume. I am aware of at least one edition that has only published 51 of the 85 papers. The edited or missing 34 papers not included in this edition are those papers that do much to explain the Bill of Rights, particularly the Right to Keep and Bear Arms. My preferred version of The Federalist Papers is the one with a forward by Clinton Rossiter, acknowledged as one of the foremost authorities on the U.S. Constitution. This version was available in paperback form from Mentor Books (Library of Congress Card # 61-10757). Take time to read all of the introductory pages. The formal “Introduction” by Rossiter is a wealth of information. He was Senior Professor of American Institutions at Cornell University. His opening paragraphs in the Introduction state, *“The Federalist is the most important work in political science that has ever been written, or is ever likely to be written, in the United States. It is, indeed, the one product of the American mind that is rightly counted among the classics of political theory. The work has always commanded widespread respect as the first and still the most authoritative commentary on the Constitution of the United States.”* These are strong words and well deserved.

The papers are not easy reading and should not be read like a novel where one starts at chapter one and proceeds, one chapter at a time, to the end. Instead, they should be read something like an encyclopedia or reference book. The papers are roughly in sequential sets, each set dealing with a topic of discussion that is of vital importance in the running of this great country. The various papers pertaining to a particular subject should be noted and read together. There is considerable overlap of subject matter between papers. The papers are not just a simple explanation of a subject. In most instances the papers state their purpose and conclusion and derive that conclusion, with a full historical background. Be patient when reading the material in order to gain full meaning of what is written and meant. It is important to remember that the meaning of words as used then may be different to today. The use of a word then may not have the identical or even close meaning as the same word might have today.

Welfare is one such word. That is why it is necessary to read various, contemporary works to formulate the correct meaning of words as implied by the different authors in various contexts.

The Federalist Papers present the theory, explanation and philosophy of the *Unanimous Declaration of the thirteen united States of America, the U.S. Constitution and the Bill of Rights*. They provide, in detail, the running of the U.S. Government and the reasons for the type of government that we have. The Founding Fathers had superb classical educations (many of them had been educated in England, except that both Hamilton and Jay were educated at Columbia, and Madison was educated at Princeton) and studied the various forms of governments that different nations had employed since the beginning of recorded history. They, and probably all of the Founding Fathers, would have been familiar with the works of John Locke and his *2<sup>nd</sup> Treatise of Government*, published in 1690. As we read the papers, we get the idea of the depth of understanding that the Founding Fathers had of human nature. They studied all historical forms of human nature and government over the past 5,000 years, and derived the best form of government that could be had for this new country. Some of the papers are like reading translations from the original Greek history. They did not simply stumble on a convenient form of government, but spent as long as was needed to provide the best form of government that was humanly attainable. They discussed the relative merits of the democracies of the city states of Greece, the Republics of Greece and Rome and the various forms of monarchies throughout the world, historical and contemporary. They spent years of planning, negotiating and deriving the form of government that the new United States was to have. A decade and a half elapsed from the publishing of *the Unanimous Declaration of the thirteen united States of America* to the formal ratification and acceptance of *The US Constitution* with the adoption of the *Bill of Rights*. The final version of government was the very best that the most remarkable group of idealists ever assembled could possibly derive. The United States was to be a Constitutional Republic. This is all explained in the Federalist Papers, numbers 14 and 51.

The ratification of the U.S. Constitution had stalled and there was grave doubt that the document would be ratified in time to prevent the newly independent colonies from splintering into separate political entities. Without the explanation of these papers, the Constitution would possibly not have been ratified and there may well not be a United States today. The State of New York in particular was opposed to the Constitution as it stood. Clinton Rossiter, in his forward of the Penguin edition of the Federalist Papers,

points out that a clear-cut vote against The *US Constitution* was sure to destroy the nascent nation's quest for a people's government. There were many colonials that wanted a loose confederation of states, and not a single union, governed by a centralized, federal government. This gave rise to two sets of contenders for the form of government under consideration for the newly formed country. These were the confederates who wanted only a loose confederation of states with no central government that could become tyrannical and the unionists who wanted a strong union of the states with a central, but controlled federal government. There were two basic sets of documents written. One was the *Anti-federalist Papers* and the other was the *Federalist Papers*. The Unionist prevailed but only after the inclusion of very strong controls and restraints in The Constitution, including the Bill of Rights with its own preamble. This second constitutional preamble needs to be read along with the 2<sup>nd</sup> amendment and Federalist Papers 28, 29, and 46 to understand just how powerful those restraints were. There was strong feeling between these factions which festered for three quarters of a century, until the civil war between the Confederates and the Unionists resolved the contention, for the time being at least.

The form of government derived for the United States is to be a **Constitutional Republic**. It is expressly not a democracy. It is a **Constitutional Republic** as opposed to a simple republic, and all branches of the government must obey the Constitution, or The Supreme Law of the Land. The reasoning and philosophy of a Constitutional Republic are highlighted in Federalist Papers 51 and 13, and 14.

**The philosophical content of the 85 papers is roughly as follows.**

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|----------------|--|
| Paper 1        | Hamilton's Introduction where he outlines his intent for the series of papers. |
| Papers 2 - 5   | Jay - the dangers from foreign force and influence.                            |
| Papers 6 - 7   | Hamilton - dangers of wars between the states                                  |
| Papers 8 - 9   | Hamilton - Internal War and Standing Armies                                    |
| Paper 10       | Madison - Internal War and Standing Armies                                     |
| Papers 11- 13  | Hamilton - Commerce, the Navy and the Republic                                 |
| Paper 14       | Madison - Commerce, the Navy and the Republic                                  |
| Papers 15 - 22 | Hamilton - Attacking The Articles of Confederation                             |
| Papers 23 - 28 | Hamilton - The Case for a Strong, Restrained Federal Government                |
| Paper 29       | Hamilton - The Militia   |
| Papers 30 - 36 | Hamilton - Taxation  |
| Papers 37 - 58 | Madison - Stability and Government - Federal and States Rights                 |
| Papers 59 - 61 | Hamilton - Elections   |
| Papers 62 - 66 | Madison - The constitution of the Senate                                       |
| Papers 67 - 77 | Hamilton - The constitution of the President                                   |

Papers 78 - 83      Hamilton - The constitution of the Judicial Department

Paper 84      Hamilton - Miscellaneous and the Bill of Rights

Paper 85      Hamilton - Conclusion and final argument for a National Government.

### The Fear of Standing Armies

The overriding fear of the Founding Fathers, almost to the point of paranoia, was the threat of standing armies, formed by a power hungry government that could usurp the liberty of the people. Having themselves just fought such a bloody war for liberty against a tyrannical government, the one thing they wanted to avoid was perpetuating this problem. Much is written by Hamilton on this topic in papers 24, 25, and 26.

Paper eight presents a consideration of standing armies. They point out in several additional papers, e.g., 28, 29 and 46, that historically, whenever a standing army had been formed to ward off outside intruders from invading one's homeland, and the army was no longer needed for that purpose, the army was then turned by the controlling agencies, civilian or military, to subjugate the people, and tyranny ensued. Hamilton explains that is why island nations such as Britain that had no standing army, but only a navy for its defense, had produced a free people. It is not possible for a monarch or government to use naval ships or personnel in distant waters to subjugate the people in the hinterland of their nation.

This is why The *US Constitution* calls for temporary armies but a permanent navy, article 1, section 8. At the same time the people were always to be armed with sufficient force of arms to prevent the government from subjugating them. This is the purpose of the 2<sup>nd</sup> amendment.

In Paper 29, Hamilton states, "*If circumstances should oblige the government to form an army of any magnitude, that army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them (the army) in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow citizens.*"

This thought pattern is further accentuated in Paper 46 by Madison, "*Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, . . . (it) forms a barrier against the enterprises of ambition, more insurmountable than any of which a simple government can admit of.*" This is Madison's way of saying that an armed citizenry is the best way of providing a stable government and not permitting an overambitious government from trying to subjugate the people or deny them their God-given rights (inalienable rights as defined in the *Bill of Rights*).

Madison underscores the point by continuing in Paper 46, “*To these (an army under a tyrant) would be opposed a militia amounting to nearly half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties etc. It may well be doubted whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops.*”

Papers 28, 29 and 46 make it quite clear that the intention was to provide for both an unorganized militia (as opposed to a disorganized militia) and an organized militia. The unorganized militia is comprised of all able bodied citizens and is to prevent the government from becoming totalitarian. In times of international strife, when the National Army would be drafted to be sent abroad to fight a foreign national army, the organized militia would be called into being from a small portion of the unorganized militia for national defense while the national army was on foreign soil and unable to provide this defense. The unorganized militia was always to be available for service to prevent a totalitarian government from gaining absolute or total control, thus preventing tyranny, as highlighted in papers 28, 29, and 46.

### The Restraint of Government Authority

Much is written by Madison concerning the limits to the authority of a central government. One of the reasons that The *US Constitution* took so long to draft and ratify was that there was, as explained earlier with reference to the ideas of a loose confederation of states, an all pervasive fear that a strong, centralized government would become too powerful and so negate the effort and result of the War of Independence. This was the philosophy of a great number of the early patriots because they feared the power of a large, central government. They thought that a loose confederation of states, without a centralized, federal government, was to be preferred. The loose confederation of states would never be sufficiently powerful to subjugate the people. If one of the states tried to do so, the residents could move to another, less totalitarian state. It was therefore of the utmost importance for the Founding Fathers to address and pacify the fears of those who held the confederation theory. If the Founding Fathers were to get the Constitution accepted and ratified by the believers of the confederation theory, the Constitution would have to provide the same safeguards as the confederation theory to prevent a central, federal government from becoming too powerful.

Madison was prompted to write in paper 45,

“*The powers delegated by the proposed Constitution to the federal government are few and defined.*”

(e.g. *The U.S. Constitution*, article 1, section 8, which allows for only 17 topics of authority). “*Those which are to remain in the States governments are numerous and indefinite. The former (federal government) will exercise principally on external affairs, as war, peace, negotiation, and foreign commerce; with which the last power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.*” If the “Powers Delegated” are not “Defined” (written in the Constitution) they are not constitutional.

This is a very important part of the republican philosophy, as it directs that the federal government should not interfere with the daily routine of the lives of the people. The federal government should be dealing primarily with international affairs. The legislation to allow the daily routine of living is to be left to the States.

There is too much to be copied here, but it makes good reading and should be studied. Compare what is stated here by Madison in paper 45 with the 10th amendment to the *Bill of Rights*. You will see remarkable agreement.

We can sense in paper 83 what was happening at the time of the ratification, during the decade or so that the Founding Fathers sweated and pored over the wording of the Constitution, endeavoring to derive a form of government that would provide all that they could possibly want. In paper 83 we can read the frustration of Hamilton as he tries to point out to the casual reader that just because a right is not specifically mentioned in the Constitution, it does not mean that it will not always be available to the people. Here he is talking about trial by jury, particularly as it applies to civil law. This process dates back to Magna Carta in English common law. In 1215 the Barons of England forced King John, at sword point, to sign a document giving the people of England certain fundamental, human rights which are also the basis of U.S. law. Many people feared that future governments would not honor the philosophy of the Founding Fathers, and trial by jury, along with many other rights, would be lost unless specifically mentioned. This thought process gave rise to the *Bill of Rights*.

Hamilton writes, “*The mere silence of the Constitution in regard to civil causes is represented as an abolition of the trial by jury, and the declamations to which it has afforded a pretext are artfully calculated to induce a persuasion that this pretended abolition is complete and universal, extending not only to every species of civil but even to criminal causes. To argue with respect to the latter would, be as vain and fruitless as to attempt the serious proof of the existence of matter, or to demonstrate any of those*

*propositions which, by their own internal evidence, force conviction when expressed in language adapted to convey their meaning."*

In other words, trial by jury was so fundamental to the people of the day that Hamilton found it difficult to believe that anybody could think otherwise, and that such rights could never be infringed or denied. Trial by jury was an inalienable right and a jury of 12 peers or equals had stood for centuries. Civil juries in some states shrank to 6 jurors for economic reasons? How many constitute a jury? How much further will they shrink because of cost?

Despite the protestations of Hamilton, a Bill of Rights was appended to the U.S. Constitution so that future governments of the United States would know that they had to recognize these inalienable rights endowed by our Creator as stated in the *The unanimous Declaration of the thirteen united States of America.* Thus the *Bill of Rights* was appended to *The Constitution* and the latter was accepted.