

THE LEGACY OF *THE FEDERALIST PAPERS*

In the fall of 1787, the fate of the proposed Constitution lay with the ratifying conventions of the thirteen states. One of the pivotal states in the ratification battle was New York. Alexander Hamilton enlisted James Madison and John Jay to assist in convincing the citizens of New York that the form of government forged in Philadelphia would preserve and perpetuate America's newly-won liberty. Under the pseudonym "Publius" taken from the famous Roman lawgiver, the three supporters of the Constitution jointly wielded the power of the written word with almost unparalleled eloquence and force of reason in 85 letters that appeared in New York City newspapers from October, 1787 to August, 1788. The letters, which became known as *The Federalist Papers*, combined the lessons of history, the teachings of the world's great philosophers, and the practical experience gained under the Articles of Confederation to create a work of intellectual advocacy aimed at persuading the people that the most steadfast course for the fledgling nation was with the Constitution. In February, 1992, over two hundred years after Americans adopted the Constitution that Publius supported, the Federalist Society held this symposium at the University of Texas School of Law to discuss the continuing vitality of *The Federalist Papers*.

The first panel addresses the "Philosophical Foundations of *The Federalist*: The Nature of Law and the Nature of Man." As Publius stated in *The Federalist Number 51*, "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."¹ History taught the Federalists that the ambitious nature of man produced tyranny when combined with substantial governmental power. Furthermore, as observed in *The Federalist Number 10*, the raging plague of "faction" was inherent in direct democracies. Accordingly, the panel examines Publius's use of the philosophies of Montesquieu, Hume, and Locke in the argument for "a republican remedy for the diseases most incident to republican government."²

The second panel's theme is "To Govern and be Governed: *The Federalist's* Vision of Representative Democracy." *The Feder-*

1. THE FEDERALIST No. 51, at 320, 322 (James Madison)(Clinton Rossiter ed., 1961).

2. THE FEDERALIST No. 10, at 77, 84 (James Madison)(Clinton Rossiter ed., 1961).

alist Papers argued that the proposed constitutional structure would reduce the danger of faction and produce more responsible leadership. The panel analyzes the nature of representation under the American system of government, the “checking function” performed by the republic, and whether the Founders’ ingenious system for controlling faction still works well today.

The third panel focuses on “Liberty and Constitutional Architecture.” Realizing the danger of placing great power in the hands of governmental representatives, Publius argued that the best method of controlling such abuse was to separate the functions of government into distinct departments. In *The Federalist Numbers 46 through 51*, Publius asserted that the nation should divide the three departments of the federal government by more than mere “parchment barriers”;³ the people must vest each department with the power necessary to protect itself against the encroachments of the other departments. By pitting ambition against ambition through a carefully crafted system of checks and balances, the unamended Constitution relied on structure to transpose the lust for governmental power into protection of individual liberty. The panel analyzes how well the Constitution’s structure and the Bill of Rights—an addendum to the Constitution made after *The Federalist Papers*—have checked federal power over the last two centuries.

The fourth panel brings Publius’s philosophy into the modern context by debating “*The Federalist* and the Contemporary Debate on Term Limits.” The panelists assess whether term limits would enhance the responsiveness of representatives to their constituencies and break the “Iron Triangle” of government—Congress, the federal bureaucracy, and interest groups—which is responsible for the plethora of special-interest legislation promulgated in the last half of this century.

The fifth panel provides a retrospective on the critics of the original Constitution in “The Anti-Federalists after 200 Years: Pundits or Prophets?” The Anti-Federalists adopted pseudonyms such as “Cato” and “Brutus,” symbolizing two Romans who had fought ardently for the Republic against the rising tyranny of Caesar, in order to portray themselves as the defenders of liberty and the Federalists as power-seeking politicians. The Anti-Federalists feared an all-powerful central government and believed that the best way to control government was to vest

3. THE FEDERALIST No. 48, at 308, 308 (James Madison)(Clinton Rossiter ed., 1961).

power in local democracies. Several panelists suggest that contrary to Publius's prediction in *The Federalist Number 46* that the states could adequately resist the "ambitious encroachments of the federal government,"⁴ even the most ardent Anti-Federalist could not have foreseen the size and scope of modern federal government. The panel addresses the Anti-Federalist arguments in light of this loss of state power to the modern federal government and the effects of this shift of power on Americans' freedoms.

As the published remarks of the symposium suggest, *The Federalist Papers* are an enduring source of enlightened political and legal theory. Publius's letters also provide valuable insights into whether the federal government has perpetuated individual liberty in the manner that many of the Founders had envisioned. The articles that follow provide a contemporary and thoughtful analysis of the philosophical, legal, and political wisdom that is "The Legacy of *The Federalist Papers*."

Ed R. Haden
Symposium Editor

4. THE FEDERALIST No. 46, at 294, 298 (James Madison)(Clinton Rossiter ed., 1961).

