

## Introduction

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### THE PROBLEM OF AUTHORSHIP

For well over a century, the authorship of the individual essays of *The Federalist* was a matter of great uncertainty. The initial source of this uncertainty simply reflected the conventional practices of eighteenth-century political writing, when most polemical pieces, especially those appearing in newspapers, were published pseudonymously. When Alexander Hamilton, the instigator and chief author of *The Federalist*, chose Publius as the penname, he was paying homage to Valerius Publius Publicola, the sixth-century BCE aristocrat who was a chief founder of the Roman republic. His two co-authors, James Madison and John Jay, would have welcomed his choice. Madison in particular would have saluted Publius's distinguished republican credentials. A major part of Madison's preparations for the Federal Convention of 1787 involved his comparative study of "ancient and modern confederacies" and his thorough assessment of the failings of popular government recorded in his famous memorandum on the "Vices of the Political System of the United States." Madison returned to that project shortly after the Convention adjourned on September 17, 1787. Within the next few years, he developed an even more ambitious plan – apparently never fulfilled – consulting writings either from antiquity or about it to provide the framework for a study of modern republican government.<sup>1</sup>

The early readers of *The Federalist* would not have cared which author wrote any particular essay. The great cause of ratification was what dominated their concerns. But as political party tensions emerged and quickly escalated in the early 1790s, the question of individual authorship did begin to matter, first to Hamilton and Madison, then to

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a larger audience. A critical turning point came in 1804, which led to the deeper confusion over the authorship of individual essays that persisted for nearly a century and a half afterward. Shortly before his fatal duel with Aaron Burr on July 11, Hamilton compiled a short list identifying the authors of the eighty-five essays, and he conspicuously deposited this document in the bookshelf of Egbert Benson, his friend, supporter, and fellow New York City lawyer. Benson was no stranger to the identity of Publius. Back in June 1789, when Representative William Loughton Smith of South Carolina cited *Federalist* 77 to argue that the consent of the Senate would be necessary for the removal of cabinet officers, Benson let their colleagues in the House know “that *Publius* had informed him since the preceding day’s debate, that upon mature reflection he *had changed his opinion* & was now convinced that the President alone should have the power of removal at pleasure.” There should be no doubt who wrote *Federalist* 77, Smith wrote John Rutledge: “He is a candidate for the office of Secretary of Finance!”<sup>2</sup> Though Madison and Hamilton had both let George Washington know of their involvement in *The Federalist* as soon as the first essays began appearing, the first published confirmation of authorship occurred only with the French translation of 1792.

In his list, Hamilton allotted five essays to Jay, gave Madison credit for twelve others, noted that he and Madison had co-written the three papers devoted to the history of other confederacies, and claimed the remaining sixty essays for his own pen. Madison survived Hamilton by a near third of a century, and he stated his own counter-claims to the authorship of twenty-nine essays in the Gideon edition first published in 1818. This discrepancy remained largely unresolved until 1944, when Douglass Adair published a famous essay on “The Authorship of the Disputed Federalist Papers.”<sup>3</sup> Reviewing the entire controversy, Adair concluded that the twenty-nine essays Madison had claimed as his own in 1818 were indeed justly his. Nearly every scholar writing since then has accepted Adair’s analysis. His findings were further vindicated by a pioneering work in the quantitative analysis of literary material published in 1964.<sup>4</sup>

The problem of the authorship of *The Federalist* takes a different face, however, when modern scholars have to decide which name they wish to use when identifying a particular *Federalist* essay. Should one speak of Publius as a coherent intellectual personality, the collective author of all eighty-five essays? Or is it more appropriate to identify the individual author of any particular essay or set of essays? How one answers these questions may reflect the distinctive emphases of scholarly disciplines. Political theorists are more comfortable speaking of Publius when their underlying concern is to articulate the core ideas they associate with the founding in general, or to distinguish an eighteenth-century science of politics from the modern academic discipline of political science, or to understand Publius on his own chosen terms. Historians, by contrast, are born contextualists, and naturally incline to be as specific as they possibly can. Why make Publius the author of *Federalist* 10 when that essay was the culminating statement of a set of ideas that Madison had been developing for the past eight months, perhaps longer, and which he was still actively musing over four years later? Why not explicitly recognize Hamilton as the author of *Federalist* 78, with its defense of the judicial review of the constitutionality of legislation, when we know that Hamilton had argued the precursor case of *Rutgers v. Waddington* in 1784 and would play the same role in the seminal case of *US v. Hylton* in 1796?

The diverse concerns and approaches of the disciplines of history and political science are reflected in this volume. Seeing *The Federalist* through a multifaceted lens contributes to bringing the text and its arguments into focus for twenty-first-century readers. Yet this difference in perspective on how one identifies the author(s) of *The Federalist* also reflects concerns more fundamental than the mere accident of scholarly discipline. It is also, to borrow a phrase used in the first paragraph of *Federalist* 1, a matter of “reflection and choice,” and that choice has important implications for the ways in which we analyze the philosophical, political, juridical, historical, and even moral dimensions of *The Federalist*. Thus, as conventional as the

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diverse disciplinary treatments of *The Federalist* have become in our time, it is critical to recognize that they also illustrate an array of substantive political and constitutional perspectives.

The importance of scholarly perspective on *The Federalist* is paralleled by the important place that the founding and the revolutionary era – rival terms for the same general phenomenon – occupy in American political culture. The more one regards *The Federalist* as the best exposition of the original meaning of the Constitution, the more weight one might give to the political consensus that permitted its approval at a precise historical moment. That view is also consistent with the originalist theory of constitutional interpretation, which argues that the meaning of the text is derived from the general understanding of the sovereign authority that approved it – the people themselves, acting through the state conventions that ratified the Constitution. Respect for the sovereignty of the people requires attention to the constitutional compact proclaimed by the will and authenticated by the seal of the sovereign people, as a matter of republican right and public trust.<sup>5</sup>

Many historians would view this question differently. They could appreciate the ingenious tactics that allowed the framers and their Federalist supporters to produce an unequivocal decision in favor of ratification a bare ten months after the Federal Convention adjourned. Yet they would also skeptically question whether or how well the ratification decisions of 1787–88 accurately reflected the real state of public opinion. Even more important, they would doubt whether the ideas prevailing at any set moment of historical time can definitively ascertain or fix the meaning of a document, even if *The Federalist* is read as an exemplary commentary, an authoritative *midrash*, on the original sacred text. The legal fiction of originalism might have its uses within the courts of constitutional jurisprudence, but it could never provide an adequate way to assess the true meaning of the Constitution.

For historians the clock of constitutional time never stops running. The expectations that shaped the agenda of the Convention, the

debates at Independence Hall, the rhetoric of ratification, the early decisions about implementing (or in Madison's phrase in *Federalist* 37, liquidating) the meaning of the text: these represent the four successive phases of the development of constitutional ideas and practices, and each has to receive its due to obtain a just result. Such an approach will prefer treating the two main authors of *The Federalist* individually, and will ask how their concerns and ideas evolved over time. Publius may make an occasional appearance (especially during a putative Act III, the ratification struggle) and even have a prolonged soliloquy now and then. But Hamilton and Madison, those two "young men of the Revolution," remain the central characters. Their contributions to *The Federalist* matter not only in their own right, but also as key moments in the continuing evolution of their political thinking and purposes.

Originalists are often criticized for holding that the textual meaning of the Constitution was locked into the document at the moment of its adoption. Yet many originalists regard its interpretation as a dynamic process, but one that has to recognize the Constitution's unique status as fundamental law anchored in a unique expression of popular sovereignty. To use the historians' clock metaphor, because the doctrine of "constitutionalism" is derived from and justified by the sovereign authority of the people, it might be said that the strike of midnight has a special significance for originalists. It is the start of the day and the point that sets the instrument's measure. Like the ratification of the Constitution, it is both a beginning point in time and the setting of a principle – *ab initio* and *a principio*.<sup>6</sup> Certainly, time brings novel challenges and may require new applications of constitutional powers, or perhaps new and different constitutional measures, but the legitimacy of the latter is contingent on adhering to the constitutionally prescribed modes of alteration. This is requisite not because the Constitution is fixed in time, but because changes in the fundamental law must be sanctioned by the sovereign authority.

These two perspectives characterize many of the essays that comprise this volume, and they thus invite readers to ask which stance

they find more convincing. Of course, one might well choose to take seriously both the historical and the constitutional considerations that inscribed the work of Hamilton, Madison, and Jay. In doing so, we are led to ask further if *The Federalist* still has meaning for us today, and if so, what is the guidance it provides us. Should we perhaps take Publius seriously when he pronounced that the “prudent enquiry in all cases, ought surely to be not so much *from whom* the advice comes, as whether the advice be *good*” (*Fed.* 40, 267).

#### THE AGENDA OF REFORM

In making this comparison between the one-voice Publius and the multifaceted author, it is also helpful to consider how the authors divided their labors. There are two obvious ways to divide or categorize the contents of *The Federalist*. One approach would divide the eighty-five essays into two somewhat uneven halves. The first thirty-six essays make the case for a reconstituted union and a national government fully capable of pursuing its delegated duties and responsibilities. The remaining forty-nine papers are devoted to an exposition of the Constitution itself, with subseries of essays devoted to the federal structure, separation of powers, the legislature, the executive, and the judiciary. The McLean edition of 1788 followed this division exactly, treating Hamilton’s *Federalist* 1 and Madison’s *Federalist* 37 as parallel introductory essays to its two volumes. This division of labor conveniently reflected the particular interests and experiences of the two main authors. Madison was first and foremost a student of legislative deliberation and a critic of the potential misuse of legislative power. It made sense therefore that he focused on Article I and on the separation of powers. Hamilton was a greater enthusiast for executive power and already, barely past the age of thirty, one of the nation’s ablest attorneys. It was similarly appropriate that he should take charge of the essays devoted to Articles II and III.

Yet there is another way to distinguish Madison’s and Hamilton’s respective contributions to *The Federalist*. Madison was an

avowed “votary” of the cause of republican or “popular” government. On the eve of the Convention, while analyzing what he entitled the Vices of the Political System of the United States, he had fretted that the evils of the “multiplicity,” “mutability,” and (worst of all) “injustice” of state legislation were calling “into question the fundamental principle of republican Government, that the majority who rule in such Governments, are the safest Guardians both of public Good and of private rights.” He self-consciously saw his constitutional labors of 1787–88 as an effort to discover, as the final paragraph of *Federalist* 10 declared, “a republican remedy for the diseases most incident to republican government.” Any constitution that was not “strictly republican,” *Federalist* 39 announced, would not “be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government.” The animating spirit of his twenty-nine essays was his effort to explain how the new Constitution truly represented a superior form of republican government. On this point, Madison was an enthusiast – and so we read his essays still, even if many modern commentators often emphasize the cautions he raised about the dangers of popular misrule.

Hamilton’s enthusiasms lay elsewhere. His accommodation with republicanism, if not grudging, rested on the same recognition Madison voiced in *Federalist* 39: this was the genius of the American people. But the admiration for the British constitution that he expressed in his Convention speech of June 18, 1787, was hardly an affirmation of republican principles. Hamilton’s deeper admiration for the British system was grounded less in some lingering affection for a balanced constitutional monarchy than in his frank appreciation of the advantages wielded by the British fiscal–military state, a state that had developed the mechanism of public credit needed to mobilize the nation’s resources with the aim of projecting enormous economic and political power abroad. That admiration in turn rested on the harsh lessons that Hamilton and his fellow officers in the Continental Army had learned from waging a long and costly war. While the Continental

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Congress and the states struggled from one year to the next to keep their army in the field, General George Washington's military "family" – his closest aides and subordinates – chafed at the feebleness of the American republics. By the early 1780s, Hamilton and many of his fellow officers were becoming proponents of constitutional reform. In their view the real challenge Americans faced was not to find republican remedies for republican diseases, but to give the national government the legal authority it needed to project American power effectively, converting the revolutionary confederation into a modern nation-state. As Hamilton once put it, if America is a Hercules, she is yet "a Hercules in the cradle."<sup>7</sup>

Yet Hamilton also took constitutional ideas quite seriously. The conceptions of executive and judicial power that he expressed in essays like *Federalist* 70 and 78 were visionary, and they accurately anticipated important developments in the workings of the Constitution. Still, Hamilton was more a state-builder than a constitutionalist. Some of his best insights as Publius appear in essays, now little studied, discussing the military priorities of the nation or methods of raising revenue and establishing public credit. When these essays are set against Madison's famous statements of the theory of the Constitution and his ideas of republican government, they demonstrate that Publius had a broad array of political purposes. Although we reject Alpheus T. Mason's suggestion that Publius had "a split personality,"<sup>8</sup> we are vividly aware that Madison and Hamilton did have their particular concerns and distinct viewpoints. In Hamilton's coldly realistic perspective, there was nothing ambiguous about the international challenges that Americans faced in a dangerous Atlantic world where the empires of Britain, France, and Spain wielded enormous power. Creating a continental republic and forming a modern nation-state were two sides of one common project.

#### LASTING LEGACIES

Yet the dominant strain in the modern interpretation of *The Federalist* remains far more Madisonian than Hamiltonian, far more

concerned with the creation of a federal republic than with the institutional organization of an internationally powerful American nation-state. *Federalist* 10 and 51 remain the ur-texts of American constitutional theory, and the prevailing supposition that the United States still lives under a Madisonian constitution rests largely upon those two essays. That does not mean that Madison got every aspect of the story right. It is easy to criticize the famous hypotheses of *Federalist* 10 and 51. The existence of a multiplicity of factions in an extended republic can make it easier for particular or “special” interests to lobby their way to success, because the majority will, if it exists at all, lies dormant and inert.<sup>9</sup> So, too, the idea that the separation of powers will work when the “interest of the man ... [is] connected with the constitutional rights of the place” assumes a commitment to institutions that is often overpowered by the loyalty that officials feel to their political party.<sup>10</sup> Even so, when modern commentators stipulate that Americans live under a Madisonian constitution, the famous passages of these two essays retain their paradigmatic authority.

That conviction in turn justifies the enormous scholarly labor that has gone into recovering the sources of Madison’s ideas and in tracing his ongoing reflections on American constitutionalism. One significant question involves the intellectual origins of Madison’s key positions. Like other members of the founding generation – Thomas Jefferson, John Adams, John Dickinson, George Mason, James Wilson, and of course Hamilton – he was deeply learned, spending long hours reading history, politics, law, and theology. In the utter quiet of his Montpelier study, with its commanding view of the Blue Ridge, Madison’s preparations for the Federal Convention included working his way through the “literary cargo” of political and historical works that Jefferson, the American minister to the court of Louis XVI, had shipped him from Paris. The notes on ancient and modern confederacies that he began compiling in 1786, which later provided the basis for *Federalist* 18–20, mark one notable illustration of his scholarly temperament.

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As Publius, Madison applied the conclusions of his intense studies to the models of the most influential political writers of his age: Charles Secondat, Baron de Montesquieu and David Hume. As the author of *The Spirit of the Laws*, arguably the greatest work of eighteenth-century political science, Montesquieu was associated with two principles or convictions that *The Federalist* had to address. One was the familiar idea that stable republics had to be small in extent, socially homogeneous, and peopled with citizens who shared a common sense of civic virtue. The other involved Montesquieu's flattering portrait of the eighteenth-century mixed British constitution and its doctrine of separation of powers, which he studied closely during his visit to England in 1731. Montesquieu was the first thinker to clearly distinguish judicial and executive power and thus to imagine a modern moderate government resting on the trifold existence of legislative, executive, and judicial authority.

"The celebrated Montesquieu," as Madison referred to him, was thus the source of a conventional wisdom about republicanism and separated powers that *The Federalist* (and Federalists more generally) had either to challenge or coopt. Some writings of David Hume, the great Scottish philosopher and historian, potentially provided solutions to that challenge. Hume was much less a scientist of politics than Montesquieu, but he wrote with a facility, clarity, and a breezy familiarity with British history that the baron lacked. Beginning with two enormously influential articles by Douglas Adair on the origins of the Tenth *Federalist*,<sup>11</sup> many scholars have debated the extent to which Hume's political essays, most notably including "Idea of a Perfect Commonwealth," inspired Madison's theory of the extended republic. On another side of the equation, one could also ask whether Hume's candid discussions of "The Independency of Parliament" supported a Hamiltonian approach to the Constitution that recognized that executive influence over Congress – patronage or, in eighteenth-century terms, "corruption" – was essential to making the whole system of government work.