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Fifteen Curious Facts about The Federalist Papers

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Most of us have learned a bit about The Federalist Papers at some point along the way. We may recall the papers were a series of essays written by Alexander Hamilton, James Madison and John Jay, under the pen name “Publius,” to promote ratification of the Constitution. Probably, however, we remember little more.

In fact, these three great statesmen crafted 85 essays in the wake of the Philadelphia Convention.

These writings, which were first printed in a period that spanned October 1787 through May 1788, ranged across many subjects.

They addressed broad concepts, such as the importance of the separation of powers, the nature of federalism and the built-in safeguards against majority oppression generated by large republics.

They also dealt with discrete issues, including the most suitable terms of office for House members and presidents, and the proper allocation of state and federal responsibilities for overseeing the local militia.

In essence, while the Constitution set forth a series of rules, The Federalist Papers provided an exposition of reasons for those rules the framers had endorsed in our national charter.

It is difficult to overstate the significance of the essays. Thomas Jefferson deemed them “the best commentary on the principles of government which was ever written.” And throughout American history, the tracts have provided a critical starting point of discussion – among lawyers, among judges, and in general public discourse – about the meaning of our Constitution.

I have addressed the content of the papers – as well as the historical context in which they were written and their post-publication legacy – in a recently published book.
Here, my ambitions are more limited. I offer a simple listing of 15 curiosities about The Federalist Papers:

1. To begin with, *The Federalist Papers* is a misnomer, though many modern collections of the essays carry that title.

   In fact, the essays were written for publication in New York newspapers, and those newspapers did not identify the essays as *The Federalist Papers*.

   Rather, the essays were preceded by headings that read “The Federalist, No. 1,” “The Federalist, No. 2,” etc.

   During 1788, two book volumes that collected the essays appeared. (The first volume, published on March 22, 1788, included Nos. 1 through 36; the second volume, published on May 28, 1788, included Nos. 37 through 85.) These books were titled simply *The Federalist*.

   In short, Hamilton, Madison and Jay wrote *The Federalist*; they did not write *The Federalist Papers*.

2. In addition, Hamilton, Madison and Jay actually wrote only 84 essays, not 85.

   So why do modern books reproduce 85 tracts? The reason is that, when the first book volume appeared, the publisher (with Hamilton’s concurrence) split the lengthy 31st newspaper essay into two separate free-standing pieces and renumbered the essays accordingly.

   The book publisher also relocated the 29th newspaper essay to a position following the 34th newspaper essay, apparently to create a more logical sequence in the treatment of subjects.

   The result of these moves is that the numbers assigned to the essays in both early and modern book publications do not match the numbers assigned to exactly the same essays as originally published in New York newspapers.

3. While John Jay is rightly identified as one of the authors of *The Federalist*, his contributions were very limited.

   In particular, after Hamilton penned No. 1, Jay wrote Nos. 2 through 5. Then, he fell seriously ill, and thereafter he produced only one more *Federalist* essay, No. 64, which was printed on March 5, 1788.

   Following the distribution of this tract, Jay may have failed to contribute anything more in part because he took a hit from a brick during a New York street riot in early April 1788. The blow was so serious, according to Jay’s wife, that it put “two large holes in his forehead.”

   Whatever the reasons for Jay’s limited role in the *Federalist* project, Professor Jacob E. Cooke – the most influential modern scholar of the essays – has written that “an accurate title page of *The Federalist* should attribute authorship to Alexander Hamilton and James Madison, with the assistance of John Jay.”
4. Hamilton, who organized the writing of *The Federalist*, invited at least two partisans other than Jay and Madison to make contributions.

Gouverneur Morris declined Hamilton’s offer, thus missing the chance to go down in history as one the world’s greatest political writers.

William Duer did try out to be a member of the team, but his work did not meet Hamilton’s exacting standards. Duer’s essays were later published separately under the moniker “Philo-Publius.”

5. It is unclear to what extent the identity of Publius was known among readers as the essays circulated in New York.

The first formal proclamation of authorship seems to have come in 1792, with the publication of a French-language edition of the essays. That book, titled *Le Fédéraliste* identified the authors as “MM. HAMILTON, MADISSON, e GAY.”

Like other early book editions, this volume identified the three authors only in collective fashion, without attributing the authorship of particular essays to any one of them.

6. In fact, with few exceptions, each of the essays was written by one of the three authors with no or virtually no aid from either of the others.

This fact gives rise to the greatest of all curiosities about *The Federalist*. During the lifetimes of Hamilton and Madison, the two men made conflicting claims of authorship as to 15 separate essays (Nos. 18-20, 49-58 and 62-63).

To this day, it is not definitively known who wrote each of these tracts, although the prevailing modern view (driven in part by computer-based analysis of word choice patterns) supports Madison’s claim that he wrote all 15.

7. It is indicative of the prescience of *The Federalist* that its treatment of the federal courts specifically anticipated the central issues presented in three of the most prominent Supreme Court decisions of the post-ratification period: *Marbury v. Madison* (considering the power of judicial review), *Martin v. Hunter’s Lessee* (considering the authority of the U.S. Supreme Court to overturn judgments of state tribunals) and *Chisholm v. Georgia* (considering the availability of the sovereign immunity defense in federal-court actions brought against states, such as actions brought by holders of state bonds).

In both *Marbury* and *Martin*, the Supreme Court reached the same result advocated by Publius, and closely tracked his reasoning as well.

In contrast, the Supreme Court in *Chisholm* eschewed the argument, made by Hamilton in No. 81, that the state sovereign immunity defense should carry over to federal actions. The result in that case proved so controversial and disruptive, however, that the nation quickly endorsed the Hamiltonian position by approving the 11th Amendment.

8. Notwithstanding the brilliance of *The Federalist*, the essays contained some material of a highly dubious nature, at least when viewed from a modern perspective.

In the newspaper version of No. 77, for example, Hamilton asserted (reasoning by way of a questionable reference to the Appointments Clause) that a president’s removal of executive officers “at any station” – even cabinet officers selected by a previously sitting president – would require approval by a Senate majority.

Hamilton himself retreated from this position in a later edition of the essays, writing in a footnote: “this construction has since been rejected by the legislature; and it is now settled in practice, that the power of displacing belongs exclusively to the President.”

It is also no badge of honor that *The Federalist* vigorously defended the Philadelphia Convention’s decision not to include in the Constitution any Bill of Rights.

Each of the three authors of *The Federalist*, however, later served as a delegate to his own state’s ratification convention and in that capacity agreed to support a post-ratification addition of a Bill of Rights by way of constitutional amendment.

9. Madison’s participation in the writing of *The Federalist* almost certainly resulted from the happenstance that New York City served as our national capital in 1787 – following its location, earlier in the same decade, in Philadelphia, Princeton, Annapolis and Trenton.

Why? Because James Madison was a Virginia representative to the national Congress and, for this reason, found himself in New York
following the Constitutional Convention as Hamilton contemplated potential collaborators.

It is telling, in this regard, that Madison returned to Virginia following the printing of his essay No. 63 on March 1, 1788, and thereafter made no further contributions to the essay-writing project.

(It is also noteworthy that the location of the national capital in New York contributed to that state’s eventual, begrudging ratification of the Constitution. Even the keenest antifederalist ratification convention delegates knew, after all, that New York’s failure to approve the Constitution would ensure relocation of the nation’s capital to another state.)

10. Citation to The Federalist in U.S. Supreme Court opinions has mushroomed in recent years, as demonstrated by the following table, which reports the number of cases that have generated mention of The Federalist by the justices on a decade-by-decade basis:

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It is unclear why this pattern has emerged.

One possibility is that the recent appointment of so-called “originalists” – particularly Justices Antonin Scalia and Clarence Thomas – to the Supreme Court has kindled a heightened interest in The Federalist.

On the other hand, citations to the essays began to swell long before the Scalia and Thomas appointments, and one study suggests the “[i]deology and interpretive approach have little bearing on how often a justice appeals to the essays” because “John Paul Stevens, Sandra Day O’Connor and Antonin Scalia are all among the heaviest users.”

An increase in the overall number of Supreme Court decisions also does not explain the dramatic rise in references to The Federalist because the number of Supreme Court decisions in argued cases in fact has diminished sharply in recent years – from 175 in 1983 to 73 in 2003.

In the end, we are left to speculate why citations to The Federalist have appeared with much-increased frequency in the writings of the justices over the past eight decades.

11. What are the most-cited of the essays?

The Federalist No. 78 (which deals with judicial powers, including the power of judicial review) recently passed No. 42 (which focuses on non-military congressional powers, including the power to regulate interstate commerce) as the paper that has found its way most often into written opinions of the justices. (Thirty-seven opinions cite No. 78; 34 opinions cite No. 42.)

The most studied of the papers among modern scholars is no doubt No. 10, in which Madison discusses interest groups, or “factions,” and argues their self-serving behavior gives rise to a greater risk of tyrannical majority behavior in small republics than in large ones. Despite its fame and importance, No. 10 was never cited in a Supreme Court opinion until 1974. Since then, however, citations to it have come in 14 cases, making it the fourth most-cited of the essays during that time frame.

12. Citation to The Federalist is not limited to judicial opinions. For example, in 2004 alone, 821 law review articles and notes made reference to at least one of the essays.

Additionally, following President George W. Bush’s appointment of John G. Roberts Jr. to the U.S. Supreme Court, there were eight separate comments on the essays – made by either then-Judge Roberts or Senate committee members – during the nationally televised confirmation hearings.

13. The modern canonic significance of The Federalist was hardly foreseeable by the three authors themselves, particularly because their immediate task involved churning out what were in effect newspaper editorials – and doing so at a breakneck pace.

Especially impressive is the fact that Hamilton appears to have
written his 51 essays (which occupy 352 pages in the leading modern book edition) entirely on the side while maintaining a full-time law practice and while also serving as New York’s elected delegate to the federal Congress during a period in which about half his essays were written.

In later years, Madison wrote of the extraordinary time pressures under which the essays were composed. There was, he reported, “seldom … time for even a perusal of the pieces by any but the writer before they were wanted at the press, and sometimes hardly by the writer himself.” He added that sometimes, even “whilst the printer was putting into type parts of a number, the following parts were under the pen.”

Chancellor James Kent would later praise The Federalist for “the sagacity of its reflections, and the … elegance with which its truths are uttered and recommended.”

Hamilton had a different view. In the preface to the first book volume, he observed that “[t]he particular circumstances under which these papers have been written, have rendered it impracticable to avoid violations of method and repetitions of ideas which cannot but displease the critical reader.”

14. It is generally assumed the essays of Hamilton, Madison and Jay played a prominent role in the ratification struggle throughout the 13 states. This is not true.

The essays themselves were addressed “To the People of the State of New York,” and they were published in their entirety solely in New York City.

The first 19 essays were republished in Philadelphia journals and (with one exception) also appeared in some upstate New York papers. Otherwise, however, there was almost no newspaper republication of any of the essays following their initial appearance in New York City; indeed, as to essays published after No. 19, there was – with apparently only four exceptions – no republication anywhere at all.

From all appearances, no republication of even a single one of the 85 essays occurred in any newspaper in Connecticut, Delaware, Maryland, New Jersey, North Carolina, South Carolina or Georgia.

In addition, prior to the publication of No. 1 through No. 36 in book form on March 22, 1788, six states had already ratified the Constitution, and two more states ratified before the final eight essays – including Hamilton’s key treatments of the federal judiciary and the Bill of Rights – even made their first appearance on May 28, 1788.

It has been noted that New York newspapers did circulate to some extent in other states, so that opinion leaders may have had access to at least some of the writings of Publius.

The markedly limited circulation of The Federalist, however, suggests it probably played little or no role in shaping the views of the vast majority of ordinary citizens who participated in the ratification process.

15. Most ironically of all, the authors of The Federalist failed miserably in their own chosen mission.

The essential purpose of the papers was to sway New York voters to choose state ratification convention delegates who would support, rather than oppose, the newly proposed Constitution.

In the end, however, state voters opted overwhelmingly for so-called “antifederalist” candidates over pro-Constitution “federalist” candidates, sending 46 antifederalists and only 19 federalists to the state ratification convention.

As John P. Kaminski, a leading historian of the ratification period, has written, “[d]espite the significant place The Federalist has assumed in American political thought, its impact on New York’s reception of the Constitution was negligible.”

Whatever the impact of The Federalist in its own time, its modern status as an American icon cannot be denied.

It is telling in this regard that, during 1980, three scholars published The Federalist Concordance, which (tracking similar treatments of no less significant texts than the Hebrew and Christian Scriptures) exhaustively lists every word that appears in the 85 essays, together with the page numbers and lines on which each listed word appears.

The very existence of such a work confirms what Jacob Cooke wrote in its foreword: “The Federalist, the authoritative exposition of the Constitution, occupies an unrivaled place in our national political literature.”