

THE FEDERALIST DEBATE

"If men were angels, no government would be necessary."

—James Madison, *Federalist* No. 51

The contest to ratify the Constitution was a war of words, fought in the newspapers and in a flurry of tracts and pamphlets. In the pages of *The Federalist*, the Constitution's supporters deployed their biggest guns.

In October 1787, just a month after the Convention sent the Constitution to the states for approval, the bitterly-contested ratification fight was already well underway. Columns attacking the proposed plan of government began appearing in the New York papers. New York was one of the handful of really critical states; if it failed to ratify, the Constitution was probably sunk. Alexander Hamilton organized the Federalist counterattack. Enlisting John Jay and James Madison, Hamilton announced the intention of "Publius" to present a thorough defense of the new Constitution in a series of essays. Theirs has been called the "most famous literary and political partnership in American history," and no less an authority than Thomas Jefferson described *The Federalist* as the "best commentary on the principles of government which ever was written."

In all "Publius" was to submit 85 numbered essays for the consideration of the public. But John Jay ended up writing only 5 of them. Hamilton and Madison carried the project, producing 51 and 29 pieces respectively. The two men turned their essays out at a prodigious rate, in some cases writing them faster than they could be published.

In *Federalist* No. 1, Hamilton set the tone for the series when he declared that

"... it seems to have been reserved to the people of this country, to decide the important question, 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."

Was the American experiment, in other words, really destined to establish a new order of the ages? The essays that followed examined the weaknesses of the Articles of Confederation, the need for a vigorous national government and the republican ideals and practices which had shaped the drafting of the Constitution.

In No. 84, Alexander Hamilton offered *The Federalist's* most persuasive rebuttal to those who claimed the Constitution's lack of a bill of rights endangered the people's liberties. He began by pointing out that several of the states—6 in all—had themselves no bill of rights and that this lack had caused little concern in the past. He then noted that the Constitution in fact protected a number of specific rights, and so he declared, "the truth is the Constitution is itself in every rational sense, and to every useful purpose, a Bill of Rights." He went on to list those protections. They included the right to habeas corpus and to jury trial in criminal cases. A prohibition of titles of nobility and religious test for office holders, a strict definition of treason, and a guarantee of republican governments in the states were also included.

Here, however, Hamilton had stumbled onto treacherous ground. The Constitution's critics had not overlooked its clauses covering personal freedoms. In fact, they had argued that because these rights were protected, other, unspecified rights were by implication unguarded. This error on the part of the framers had made the Constitution's ratification more difficult and the compromise on a federal bill of rights all the more necessary.

Hamilton then articulated the core Federalist argument—that no bill of rights was needed since the Constitution gave the new government no power to violate individual rights:

"For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said, that liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"

In the last essay of the series, *The Federalist* No. 85, Hamilton conceded that a bill of rights could be added to the Constitution, but only after New York had ratified. As in Virginia, there were in New York opponents of the Constitution who insisted on "previous amendment," that is, adding protections of individual liberties before the state ratified. Hamilton countered by arguing that "it will be far more easy to obtain subsequent than previous amendments." In the end the New York ratifying convention did come out for "subsequent amendments." New York ratified in July 1788, the 11th state to do so, and the 5th to ratify with an official recommendation to create a national bill of rights.