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This image depicts James Madison's copy of what is now known as "The Federalist Papers." Madison was one of three drafters of the essays, contained in this work, which supported ratification of the proposed U.S. Constitution. Image online via the Library of Congress.

Tom Jefferson (who could not attend the Constitutional Convention because he was serving as Minister to France) was concerned about a new constitution which could give too much power to a central government. He closely followed efforts to ratify the existing draft and read Publius' essays.

Reasonably sure who had actually written the various *Federalist* papers, the principal author of the Declaration of Independence noted who wrote what in his copy. He correctly surmised that number 78 was written by Alexander Hamilton.

Early in that essay, Hamilton asserts:

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them.

Today, individuals and scholars who believe the federal judiciary (including the United States Supreme Court) ought to be "originalists" (or "strict constructionists") - interpreting the American Constitution the way the framers intended it to be understood (and not expanding the Constitution to suit a changing political or cultural landscape) - disagree that federal courts are "least in a capacity to annoy or injure" anyone.

Anti-federalists of the 18th century, strongly opposed to the Constitution as it was drafted, were of a similar mind.

While the Federalists were running essays in New York papers *supporting* the Constitution, Anti-federalists, like Robert Yates - a New York Supreme Court justice, original delegate to the Philadelphia Constitutional Convention (who withdrew when he believed the convention was exceeding its instructions) and the likely author of opposition essays known as Letters of Brutus) - were publishing articles strongly against it.

Not the least of *their* concerns was the power of appointed federal judges who serve for *life*. As Brutus notes (in Letter 15):

But the judges under this constitution will controul the legislature, for the supreme court are authorised in the last resort, to determine what is the extent of the powers of the Congress; they are to give the constitution an explanation, and there is no power above them to set aside their judgment...There is no power above them, to controul any of their decisions. There is no authority that can remove them, and they cannot be controuled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself.

George Mason, of Virginia, was one of the most fervent opponents of the new Constitution. "It has no declaration of rights," he said, to protect the people from a government which could overstep its bounds.

As a result, on 17 September 1787, when most delegates had approved the Constitution "with all its faults," Mason was one of three who did not. (Scroll down about 70%.)

Weeks later, in an October 7th letter to George Washington (who served as President of the Constitutional Convention), Mason sent an essay - The Objections of the Hon. George Mason, to the Proposed Federal Constitution - outlining his concerns.

As to the proposed power of a federal judiciary, Mason notes his fear that federal courts could disregard, and thereby eliminate, the independence of state courts:

The judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several states; thereby rendering laws as tedious, intricate, and expensive, and justice as unattainable by a great part of the community...

James Madison, on the other hand, was an advocate of the new Constitution. He believed the success (or failure) of its passage "would decide forever the fate of republican government."

In New York, where Federalists and Anti-federalists were in the midst of a publishing frenzy to sway the people toward their respective points of view, the future of the proposed Constitution was *far* from certain.

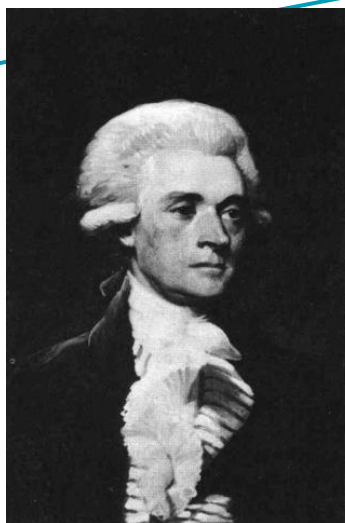
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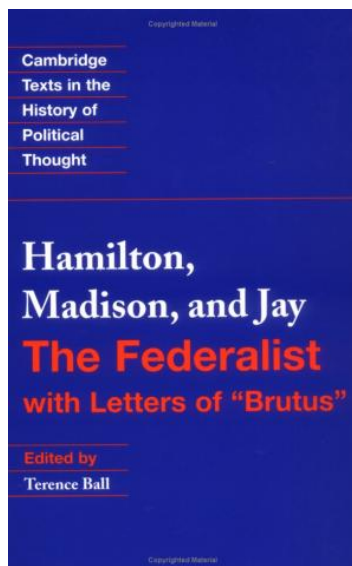
Thomas Jefferson - Time of Constitutional Convention

Image online, courtesy U.S. National Archives.

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The Federalist - With Letters of Brutus

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