

## Federalist Papers Lecture #1 Constitutional Convention

Intro: It's worth reading the great ideas that created the amazing founding documents of America.

Lecture: The Federalist papers were written 1787-1788. Greatest book ever written on political thought.

- They were written as 87 newspaper articles.
- Important because they're great, produced the most successful constitution in the world and important because of those who wrote them.
- Written by John Jay, Alexander Hamilton (wrote most of them) and James Madison.
- Some of the greatest people in political history.
- They helped found the country.
- They wrote the Federalist papers soon after writing the Constitution.
- They studied hard before writing the Constitution and stayed in the closed room from May to Sept to get it done.
- They wrote about why the Constitution was a great document.
- Federalist papers are also important because of those who read them. The people in turn would vote delegates to the convention that would ratify or reject the Constitution.
- Constitution was a result of a great national debate.
- The people in American were given the right to choose their government.

Fundamental principle of Americanism.

- Can the people have the capacity of establish a government? Are they capable enough?
- Are the people to be governed by contemplation and choice or by force?
- Tyrants rule by force NOT by consent of those being ruled i.e. the people.
- In order for tyrants to rule, they have to make war on anything that is excellent or good e.g. God. Because tyrants can't rule if people think there is something higher than them! So they tend to try to corrupt the people.
- Hamilton argued that Americans were unique and if self governance by the people can't be done in America, then it couldn't be done anywhere!
- The claim that American could be governed by law and consent thereby making American stronger!
- Other people wrote Anti-Federalist papers, so there was a wide and fair debate across the country.
- It took 9 states to ratify the Constitution in order for the government to begin operations.
- The founders were men of the people so could be trusted.
- What was the energy behind passing the Constitution?
- In American, the People passed one law directly i.e. the Constitution and then those elected by the people were supposed to carry out the will of the people as written in the Constitution. The elected officials had no authority to go beyond that.
- Division of powers was very important to founders and they also made sure that each branch and the ability through law and budgets to defend themselves from the other

branches of government. They were particularly concerned about giving too much power to the legislative branch.

- Deliberation was central to good governance. Leave emotion out of it. This idea was rooted in Aristotle's teaching. So the country as a whole becomes like an individual's well ordered soul.
- Constitution is the greatest document to protect the nature and rights of man.

## **Federalist Papers Lecture #2**

### **Science of Politics**

Intro: Why is the Federalist Papers essential for understanding the dangers posed by a "living" Constitution? This would change the intent and render it meaningless. Those writing the Federalist papers already considered this point and wrote about it and its dangers of moving in that direction i.e. living document.

Lecture: At the end of the Constitutional convention, Washington sent the document to the Continental Congress and states for ratification.

- There was fear that it would reduce power of the states and produce a centralized tyrannical government. We still fear that today.
- Big question was, can a people govern themselves intentionally by reflection OR outside by accident or force.
- They had Roman and British constitution in mind which came about in response to crisis i.e. by accident. American founders considered all this carefully.
- They believed that if self government failed under favorable conditions on the American continent then it would fail anywhere! The American experiment had global consequences.
- By states unifying avoided war between the States.
- There was fear that Republicanism would fail, because it failed in other areas in the past.
- In 1787 there wasn't anyone that thought that republicanism was better than a monarchy.
- Hamilton called out the 'advocates of despotism'. who are they? Hobbs. He claimed people could never rule themselves.
- Hobbs advocated totalitarian rule.
- But others responded that if the populous were taught and educated properly, then a republic could survive.
- People like Hobbs argued that only 'good' men should be given the power to rule i.e. a special class of people.
- Hamilton wrote that the science of politics has improved greatly so the barriers to a republic form of government could be overcome e.g. separation of powers and checks and balances.
- The Federalist papers when written became the 'Bible' of politically minded men.
- The idea was the larger the Republic the more apt it would tend towards despotism.

## Federalist Papers Lecture #3

### Majority Faction

Intro: How does Publius define a faction? (Publius is just a pen name for all the writers of the Federalist papers.

- A faction is willing to sacrifice the public's good for its own private good. Willing to trample of the rights of smaller less powerful groups.
- Members of factions never admit they're members of a faction.
- Faction is not the same as party affiliation. Parties are wholesome developments whereas factions are very bad and never are wholesome.

Lecture: Will be talking about Federalist paper number 10 discussing the idea of the problem of majority faction.

- First 9 paper written by Hamilton. Number 10 written by Madison.
- # 10 most popular and most read. But also most mis-understood.
- Madison addressed the most key criticism of the anti-Federalists and their feeling that no country the size of N American could be a republic. Just too large. They believed you needed a monarchy for the size of the American continent.
- Madison argued that enlarging the Republic would just the opposite i.e. improve republican government.
- The general population felt that they would only accept a republican form of government and that would preserve what was fought for during the revolution.
- So making the arguments and winning over the populace was critical for getting the Constitution ratified.
- The anti- Federalists had Montesquieu on their side. He made argument that historically republics had only been tried in very small places e.g. city states of Greece and Rome.
- But Montesquieu was also used by Madison to support the Federalist side. Create a Confederate Republic.
- Madison argued that by expanding and enlarging Republicanism, we will be stronger in dealing with affairs of state both externally and internally.
- In #10 Madison argues you can limit causes of Faction but also limit the affects of Faction.
- Faction is in the nature of man so they cannot be totally eliminated. Only way to deal with that is to transform human nature.
- Madison recognized that humans are all diverse. Naturally unequal. This gives rise to Factions.
- Madison argued that we must take human nature into consideration when forming a Republic to deal with the reality of the human condition.
- Sources of Faction are many. Most common being the ideas of religion.
- People tend to attach themselves to certain personalities i.e. Demagogues. Typical of Republics.
- Madison finally states that the unequal distribution of property is the most common reason that gives rise to Factions.

- He argued that it would be unwise or wrong to change human nature, the cause of Factions. Because this would require changing human nature itself. Ancient Republics tried this but failed every time.
- Modern Republics as in the case of the USA, factored human nature into the process of forming a Republic.
- So Madison argued that the best way forward would be the deal with the affects of Factions.
- Majority not Minority factions are the chief problem.
- Madison argued that a Majority Faction would be harder to establish and easier to control because of the diverse views of a large Republic.
- Madison argued that in a true Republic there is no direct rule by the people but through elected representatives. Chief way to deal with problem of Majority Factions.
- It was also argued that in a large Republic, better men would be elected. More virtuous.
- It was also accepted that in a large Republic, representatives would become too distant from the people and not understand their needs.
- Solution would be that Federal government would have limited powers, giving lots of power to the states. That way the Federal government would not take all power.
- Freedom of Religion to avoid them taking power. Many religious sects creates peace instead of them fighting each other.
- Adam Smith argued that there was an economic analogy to the political theory related to religious sects.
- John Calhoun in mid 1800s misinterpreted Federalist 10, which caused a big problem i.e. war. He was trying to argument that slave owners were a minority that needed to be protected as outlined in Federalist #10.
- 1913 Charles Beard was a progressive and made the argument that the Federalists were themselves a Faction. He also argued that all politics is about economic interests.
- The Progressives were the first to question the founding of the USA by questioning the motives of the founders. They had no basis for judging the motives of the founders. Beard's historical basis for making his argument were not accurate.
- Beard was accused of being a Marxist but he claimed he was making his arguments from Madison and Federalist paper #10 i.e. unequal distribution of property.
- But actually Madison was making the opposite argument that Beard was trying to make.
- Madison argued that men are innately not equal, interests, talents and abilities.
- Madison argued you can't change human nature but that government responsibility is to protect the unique rights of each individual. Government should protect the NATURAL diversity of each person not make them equal.
- In early 1900's the people that promoted the New Deal saying Factions are many and competing but government should make the competition fair. Level the playing field.
- Example is businesses got too large, the government would empower the unions.
- Madison then argued that we could cope with little virtue or no virtue in the populous because the Republic and its constitution would be auto correcting.
- But in Federalist #51, it would argued that the end of government would be to promote justice.
- It was argued that virtue was still needed in a Republic.

- In Federalist 55, it was argued that virtue was still needed BUT to a lesser extent. Government could be structured to be able to deal with less virtue in the people.
- Lack of justice destroys government.

## **Federalist Paper Lecture #4**

### **Federalism and Republicanism**

Intro: Why is it important to understand American institutions?

- If you don't get the institutions of Federalism or Republicanism right you'll end up with some other regime e.g. tyranny, oligarchy, overly centralized bureaucratic government which robs citizens of the ability to govern themselves.
- If citizens don't protect their rights then someone else will do that for them. And if they do it for them then they won't do it very well.

Lecture: The founders spent most of their time during the Constitutional convention debating the critical issues of Federalism versus Republicanism. Extremely important topics. Discussing the form of government was central to the whole Constitution.

- What happens when you don't get your forms of government right? For example, Iraq. What are they fighting for?
- For the Regime i.e. the people who rule. The way they'll rule and the way of life of the people.
- The fight is also about the character of the State e.g. big or small, what are the State's boundaries?
- Declaration of independence said we have rights from God. But at constitutional convention, the debate was how would the government secure those rights?
- They believed that if the State did not protect or secure those rights, the people should alter or abolish it to institute new government.
- Government must secure a civil society without infringing on civil rights.
- The government and society must have character i.e. a set of values and policies that are reinforced.
- Energy, stability, liberty and republicanism are necessary for a civil society BUT at the same time are VERY hard to combine.
- Republican liberty means that the people are sovereign, able to govern themselves. Not ruled by the few or many.
- With all the complexities of forming a small government where the people govern themselves, what steps did the founders take?
  1. Source of revenue independent of the states. Otherwise states will tug and pull at the federal government making governance impossible. When feds have their own budget then they can govern the people as a WHOLE. Would use Tariffs
  2. The people must rule by means of self-government. They control.
    - The government has legitimacy only by the consent of the people!
    - Only requires that EVERY state must have a Republican regime.
  3. The government will have a Federal form. This means that the government will have both a central and de-centralized form of government. The people not the states will ratify the constitution because the preamble of the Declaration of Independence states, "We the People" NOT "We the states".

- there was a concern that the power of the Federal government to tax could be used for good or bad i.e. delivers the mail is good but abusing power to kill or destroy is bad.
- This is way the power of the national government was enumerated i.e. spelled out to be limited. Any citizen could read it for themselves.
- Any powers not given to the national government then they belong to the states.
- It isn't true the the 'general welfare' clause of the Constitution grants the federal government MORE power. Not true!!
- To constitute a government is to DEFINE what a government can and cannot do. In the constitution the powers of the national government are spelled out. Period!
- The defines the means by which the federal government can provide for the general welfare of the people.
- If we had an elastic, flexible constitution, then that would put the power into the hands of the government NOT the people.
- However, the founders allowed for the amending of the constitution.
- The US constitution created a government from, by and for the people.
- Compound republic in that it features both national and federal elements in one governing structure.

## **Federalist Papers Lecture #5**

### **Separation of Powers**

Intro: In constituting a new government, the Framers knew that written rules—what Publius calls “parchment barriers”—would not be enough by themselves to protect liberty and prevent tyranny. Instead, Publius looks to the “interior structure” as the best means for keeping the branches properly and effectively separated. Separation of powers, the most important of the Constitution’s “auxiliary precautions,” works to prevent governmental tyranny, and by keeping each branch within its proper sphere of authority allows each branch to do its job well.

- What is separation of powers of fundamental importance?
- The founders of America believed that structure of government was extremely important. Having a written document i.e. constitution wasn't enough to prevent accumulation of power. So they structured government so the government itself would be forced to limit itself.
- Separation does 3 things for the people. 1. Prevents accumulation of power by separating it out. 2. By defining powers i.e. parts of government, into specific areas they are responsible for and not beyond that. 3. Forces those branches to focus on their own functions and to do them well. Those branches would also be forced to compete for power. Forces them to serve the constitution by they doing their duty.

Lecture: Articles of confederation when the US was formed was too weak. So the founders wrote a constitution that was essential for preserving the Union of the States.

- This was for political property i.e. the safety of the people.
- Next question the Federalist papers answered was how the constitution conforms to republican principles?
- The US constitution reflected a republican form or government, justice for all and reflecting the will of the people who are being governed.

- The challenge to the founders was to form a constitution i.e. government that was strong enough to protect the right and liberty of the people while at the same time preventing the government from taking too much power and becoming a tyranny i.e. violating the rights and liberties of the people.
- So Founders took deliberate steps in order to prevent tyranny. So they devised SEPARATION OF POWERS. The mechanism for this can be found in Federalist #51.
- We will investigate why Separation of Powers were essential and sacred to preserve a FREE government by and for the people.
- There are 3 functions of government. 1. Law making, 2. carrying out the Law and 3. enforcing the Law.
- So 3 branches of government were formed. 1. Legislative, 2. Executive and 3. Judiciary. All already seen in the first articles of the Constitution. Each branch was given very specific powers particular to its function. These functions were defined very specifically by the articles that followed.
- Critics of the Constitution said separation of powers blurred and not clear. Needed to be addressed.
- The Separation of Powers were A NEW IDEA NEVER THOUGHT ABOUT IN HISTORY until the American founders proposed and instituted this principle.
- This concept was made possible by the Declaration of Independence that stressed equal rights.
- BECAUSE INDIVIDUALS HAVE RIGHTS THEN THAT MEANS THAT THE PEOPLE THEMSELVES ARE THE SOVEREIGN RULERS OF THEIR COUNTRY.
- Because of this basic understanding i.e. the people are the rulers, now powers can be distributed, in a limited way, to the structures of government.
- Human rights and limited powers of government was a brand new idea and even today, this concept of government is not accepted world wide.
- This now sets the stage to form a republican form of government!
- A frenchman, Montesquieu had the best ideas about this so his writings were read and applied to this challenge.
- Montesquieu's source was the British constitution.
- What the founders observed however in the States, was that they didn't separate powers well BUT what was clear was that the Executive powers if each state were abusing their power, taking more of it to the point that the people were losing their rights.
- They found that any written document was not strong to prevent abuse of power by parts of the government.
- Ultimately, only a few people would have ALL the power.
- If the people were directly consulted on all matters, then that would create a problem too. They could override the constitution by being manipulated and the whims of popular notions.
- The founders instead stressed reason, deliberation and careful and thoughtful argument.
- Reason instead of the PASSIONS of the people ought to sit in judgement of ideas and matters of government rule.
- Reason should control the government but the passions of the people should be controlled by the government.

- To protect the constitution, it needed to be elevated above the will i.e. changing passions of the people.
- So now we see that government by the consent of the people needs to also provide the people with the capacity of self government.
- In separation of powers, each department should have little influence in how the other branches are run or how they get paid.
- So in separation of powers, each branch must have the power and tools to defend themselves from other branches as well as the MOTIVATION to do so.
- The MOTIVATION plays on human ambition. The ambition of one counters the ambition of others or they can work towards both sides gaining benefit i.e. engage in politics i.e. logos.
- We recognize man's sinful nature so it's used against themselves and each other to control their power.
- Federalist 51: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."
- Because of this, government MUST be controlled.
- Self government requires separation of powers because we need checks and balances i.e. limit government. This would keep an eye on the abuse of power by men.
- Men giving power to others to be ruled by men, has a unique challenge to overcome. 1. Need to give enough power to the government to control those that are being governed i.e. be a government that does its job of preserving the rights of the people and 2. those in government need to control themselves.
- The people are the primary controllers of government but the founders also thought other precautions should be taken because things like, good intentions to our constitution, popular appeals, etc, experience shows these are not enough. So other rules and regulations must be put in place.
- Private interests will help protect the people from the government and uphold the constitution.
- A process was set in place where the states check the power of the federal government and vice versa.
- They also encouraged rules against the tyranny of the majority but allowing many opinions to flourish in society so that in the end consensus would be needed to serve the COMMON GOOD.
- So in the end, there was an appeal to justice.
- Fed #51 "Justice is the goal of government. It is the end of civil society. It ever has been, and ever will be, pursued, until it be achieved OR until Liberty i.e. government by the people, is lost in the process."
- The constitution and separation of powers were for the purpose of JUSTICE.
- The SEPARATION OF POWERS does 3 things. 1. Protects against government tyranny but preventing the expansion of power by those in government and by separating it. 2. By keeping power limited to its area of government. This encourages each branch of government to do its job well.
- 3. Replaces the politics of passions i.e. allowing reason instead of emotions to make policy. Required deliberation i.e. logos while also upholding the constitution.

- Unfortunately, the modern form of our government by using "administration" has destroyed our rights and constitution. We are being governed by unelected bureaucrats giving power to the Executive branch.

## **Federalist Papers Lecture #6 House & Senate**

Intro: The Founders understood that the legislative branch is by nature the most powerful in a republican government. Experience of government under the Articles of Confederation, when state legislatures routinely encroached on executive and judicial powers, confirmed this. Thus, the Framers divided the legislative branch into two parts—the House and the Senate. In addition, they differentiated them as much as possible, consistent with the principles of republican government, with the goal of preventing tyranny and encouraging good government.

- What effect has the rise of the administrative state had on the legislative process?
- The administrative state today is making most of the laws BUT they were never elected or are under the constitution.
- Big money i.e. lobbyists have taken over Washington for the purpose of influencing laws through the administrative state.

Lecture: The founders of the US formed a COMPOUND REPUBLIC. This is first the the division of power between the national and state governments. Secondly, they instituted the division of power within each of the governments i.e. state and national.

- "A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some government are deficient in both these qualities: most government are deficient in the first." Federatlis 62.
- During the founding, the people themselves were committed to securing their own liberty and happiness but the government in the Articles of Confederation before the constitution failed at providing a system that secured those rights for the people.
- Founders agreed whole heartedly with John Locke in holding the legislature to be the most powerful branch of government. Most think the executive is the most powerful. Not in the American system.
- A strong legislative branch is always the most powerful over time.
- If executive had the most power then they could make decisions quickly. But legislative is divided so takes longer to make the laws because need to talk and negotiate. Executive then carries out the laws that the legislative branch creates.
- The legislative represents those with the most power i.e. the people themselves.
- In the House, there was a big question of former slaves being able to vote. If they were, then they would be adding representatives to the House that would be pro-slavery, which it turn would make the abolition of slavery much harder!
- According to constitution, all member states were to have a republican form of government. Slave states i.e. southern states, were more list aristocratic in form.
- While in the north states, they were being run like Europe. The founders didn't want that either because Europe was plagued by war all the time.

- This question how to count the slaves to add members to the house of representatives was a very difficult one. In fact so difficult that it ended with a major civil war a few decades later.
- A compromise was struck so that slave states could only count 3/5ths of the slaves to count towards the number of representatives in the House of Representatives.
- The writers of the constitution also said, that a "freed" slave would be fully counted!
- The founders believed that God also created 'slaves' in His image and should be treated as such i.e. fully human.
- Politicians like John Calhoun said that slaves were less than their masters and therefor deserved to be less represented in government while elevating the slave owners.
- The writers of the constitution denied that position, considering slaves 'equal' and should be given FULL citizenship i.e. there should be no such distinction. Civil war ultimately answered the question.
- Set the number of HOUSE members to 535 because too many would make the House just like an ancient democracy, which catered to the passions of the lowest elements in people i.e. act like a mob.
- Representatives needed to represent districts SMALL enough so that the people would know what the issues where. Candidate would also know their districts.
- Terms of office were also deliberately short so they would stay connected to the people they represent and the people's desires.
- Also, the representatives would have to live under the laws that they pass for others.
- The founders believed that that ultimately the people themselves would NOT stand for representatives that did not follow a republican form of government that no longer represented them.
- The House has the power to raise money through taxing the people.
- House designed to represent the people of the US. Senate was designed to be small and selective to represent the federal aspects of the constitution i.e. they are elected by the state legislature to represent the interests of the states! Protect states against the national government.
- Wanted to fight against a single large Republic but wanted to maintain a compound republic where there is division of power between the states and national government.
- Each State would have only 2 senators so that the smaller states would have equal power to the larger states.
- Senators would have longer terms, 6 yrs, in office. This gave stability. Can carry out long term policies.
- The average person that works hard to make a living would not have the time to inform themselves about the issues. However representatives have that job.
- The founders emphasized that men are created to be able to reason and think and speak, reason should them be the basis of sound government, NOT the passions of the people i.e. people making decisions based on emotions.
- People must be RESPONSIBLE. What does that mean? 1. People listen to one another, setting shared goals and talking about how everyone can achieve those goals. 2. Inform the people on the issues and the representatives should be held responsible for the decisions they make.

## Federalist Papers Lecture #7

### Executive

Intro: Following their experience under the Articles of Confederation, and armed with the improved science of politics, the Framers instituted a unitary executive in the office of the president. Unlike the executive office in any previous republic, it was designed so as to ensure energy and responsibility in the executive, which are absolutely essential for good execution of the laws, and therefore for good government.

Lecture: What is unique about the unitary executive?

- Having a single executive in a pure Republic was ground breaking and was never done before. So unique in history that others thought it was dangerous.
- Then why did they decide to do this? Because they believed that it was more dangerous not to do it.
- Philosopher Montesquieu was relied on heavily to decide many political decisions in forming the constitution. He wrote book, "The Spirit of Laws".
- he believed that a republican form of government was only possible in a small political area and could not be extended to large areas like America. His reason came from studying ancient republics like Athen and Sparta etc.
- Later Rome became an example of the difficulties of a Republic. In the end as Rome expanded they became a despotism i.e. a tyranny.
- He argued that republics needed virtuous people/leaders that were also disciplined. Montesquieu believed that these foundational principles could only be maintained in small republics.
- He also believed that having a large republic would automatically require a powerful despotic leader.
- He said that large republics with a large center government would be too distant from the people.
- If a republic was small then they could help each other solve their problems instead of a big central government.
- Founders, built on the ideas of Montesquieu, stating that combining executive and legislative powers would destroy the liberty of the people.
- SEPARATION OF POWERS that clearly defined roles was what was needed to solve this problem.
- Re-emphasized the principle that any law that would touch anyone's lives, as many as that may be, should be involved and have a say on that law e.g. taxes.
- Founders also believed it necessary to separate Judicial (courts) power from the Executive power.
- All states rewrote their state constitutions to include separation of powers. John Adams of Mass wrote the best one!!
- The founders were brilliant in that they realized that people were flawed and easily corrupted. Worse when they gain power. So they devised a form of government where good things happen for the people i.e. defending their liberty , with the minimal amount of virtue needed.
- But if people are virtuous less law is needed.

- Adam Smith's 'Invisible Hand' argument means that as people pursue their own self interested, the unintended consequence would be that the general public i.e. the people as a whole, would benefit.
- The founders were genius in that they played on politicians self interest and pride. They would be given power, status and honor to the extent that they would represent their own country well in issues of foreign policy with other countries. They pridefully wouldn't want to lose their honor. These shallow people would have a false sense of honor but it would also force them to do the right thing.
- This unique idea by the founders was built on the idea that politicians and other powerful people are corrupt!!!
- That said, it forces powerful and ambitious people to still do the right thing.
- For the executive branch i.e. the president, was given power and because of this they were held accountable for their action.
- That said, the founders still wanted virtuous people to lead i.e. president. And the example of a good executive is that they would be able to produce a good and virtuous government.
- They also believed that when the president is given lot of power they would then, due to pride, have a greater sense of duty to do the right thing and would also enhance their reputations!!
- Ultimately they created a republic where there was a single person to run the executive but who was confined to the limits of their office.

## **Federalist Papers Lecture #8**

### **Judiciary**

Intro: In the Declaration of Independence, one charge leveled against King George III was that he had “made Judges dependent on his Will alone.” In framing a republican government, the Founders believed that an independent judiciary was indispensable. Publius argues that the term of life tenure during good behavior and a protected salary ensure this independence.

- Is the supreme court the final arbiter of the Constitution?
- The founders envisioned that every branch of government would read and apply the Constitution, upholding their oaths of office.
- The Judiciary have a special job of interpreting the Constitution in special cases. BUT they do not have the ultimate power to interpret the Constitution.

Lecture:

- If the Founders we living today they would be shocked about how much power the Judiciary branch has in interpreting the Constitution.
- It's a mistake to think that the Founders intended that all questions of law should only be interpreted by the Supreme court.
- In the 1780's, the Judiciary emerged as its own branch. Originally it was part of the Executive branch.

- This was because the Americans didn't want the British system where judges were appointed and controlled by the King. Americans wanted the Judiciary to be independent while upholding the Constitution and defending individual rights.
- The courts in America were another form of checks and balances in defending and supporting the Constitution.
- Judges were appointed for life. This action was the first in political history!!
- Founders believed that the Judiciary would be the least dangerous branch of the government because they would be defending the political rights of the Constitution i.e. individual rights of the people.
- Judiciary has no power to police or enforce.
- Since Constitution was highest law of the land then all other lesser/ordinary laws need to be consistent with the Constitution.
- The unique idea of the American constitution was that it was by the PEOPLE and was designed to force the government to stay within the powers that the people gave them.
- Based on idea that the PEOPLE individually are sovereign i.e. FREE and rights are given them by God NOT by government.
- Federal laws would have more power than State laws.
- The Founders wanted supreme court judges to be people of character, independent and not influenced by politics. Unfortunately judges do give in to political pressure.
- Founders encouraged the recruitment of judges of uncommon intelligence and integrity so they won't become corrupt.
- Judges were appointed for life. GREATEST ADVANCE IN MODERN POLITICAL SCIENCE.
- The Supreme court was essential to preserve Constitutional law across the whole country thereby preserving the union e.g. state laws couldn't be inconsistent with Federal law.
- Also, the court would enforce the laws so that all would conform to the Constitution's values i.e. the states couldn't have their own interpretation of the Constitution. The supreme court would keep everything consistent.
- The supreme court was also expected to protect the rights of individuals within the states according to Constitution when those states abused rights of individuals they disagreed with e.g. anti-slavery people living in slavery states.
- Impeachment was the way Americans designed to remove federal judges.
- The Founders believed that no written constitution could anticipate every situation but through the implementation of the Constitution, the meaning and application would emerge on its own.

## **Federalist Papers Lecture #9**

### **Bill of Rights**

Intro: In *Federalist* 84, Publius writes, “The truth is, after all the declamation we have heard, that the constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS.” In other words, the structure of the Constitution protects the rights of the people. In addition, the American people retain all powers not granted to the federal and state governments.

- Why emphasize the Constitution's structural guarantees of rights?
- When you get away from the Bill of Rights in the Constitution then the government will try to make the Constitution mean whatever the politicians want it to mean e.g. do anything in the name of the "general welfare of the people." When this happens our rights are gone, government becomes a tyranny because the Constitution no longer protects the people from government.

Lecture: The Bill of Rights are inseparable from the Constitution.

- The Bill of Rights were not part of the original constitution but were added later by the amendment process.
- In order to secure and protect the rights of the people as stated in the constitution and the bill of rights, we need a government to protect them.
- In order to have a government to protect our rights, we need politicians that are people of virtue i.e. good, but also institutions that are well designed for project the people.
- Well designed institutions will channel politicians to act in a good way.
- Good institutions will interfere with those that would violate our constitutional and civil rights while at the same time strengthen those who defend those rights.
- Habeas corpus i.e. an official must tell you why i.e. legal reason, you are being arrested, is crucial for our freedom. Can only be suspended during a rebellion that is against the public's safety.
- Everyone also has the right to have a jury trial in the state you live and by people that are your neighbors.
- One also cannot be prosecuted for a crime that you committed when it wasn't against the law.
- Americans also outlawed royal titles to prevent the USA from becoming an aristocratic country like in Europe.
- Our constitution and bill of rights also forbid the government from creating a BROAD definition of TREASON. Americans didn't want the government to make laws i.e. treason laws, that would prevent citizens from criticizing the government at all.
- Historically, Bills of Rights were associated with monarchies. But the king could refuse to protect those rights. But the founders gave the power to the people, not the king, to live up to and protect those rights.
- In a Republic, the people govern themselves with rights given to them by God.
- Americans themselves secure liberties given to themselves, not GOVERNMENT! Stated clearly in the constitution.
- The constitution has built in limits of the federal government. It can't do things not stated in the constitution.
- So if the government tries to do something not stated that they can do, then they can't do it and it's also not necessary to state the things they can't do.
- So the constitution itself is actually a Bill of Rights for the People i.e. citizens of America.
- The Administrative State emerged which undermined the American system. It gave power to bureaucrats to make rules and regulations in violation of the constitution and constitutional institutions.

- This process changed our system. Instead of 3 branches of government, power was centralized in the hands of unelected officials. They became a monarchy!!!
- Administrative state is loyal to the State not the people!!