THE FEDERALIST PAPERS AND THE AUTHORITY OF THE CONSTITUTION

Why Constitutional Authority Rests with the Text and the People,
Not with Supreme Court Decisions

A Comprehensive Study in Constitutional Original Intent
Drawing on Hamilton, Madison, Jay, Jefferson, and Lincoln

INTRODUCTION

The question of who holds final authority over the meaning of the United States Constitution is not merely academic -- it strikes at the very foundation of American self-governance. For more than two centuries, a creeping assumption has taken root in American legal culture: that what the Supreme Court says the Constitution means IS what the Constitution means. This study challenges that assumption at its root, and it does so not through modern political theory, but through the founding documents themselves.

The Federalist Papers -- eighty-five essays written between 1787 and 1788 by Alexander Hamilton, James Madison, and John Jay under the collective pseudonym "Publius" -- represent the most authoritative guide to the meaning and intent of the Constitution ever produced. These were not academic treatises written after the fact. They were written BY the architects of the document WHILE

the ratification debate was actively underway. They are, in the truest sense, the Founders' own commentary on what the Constitution was designed to accomplish and how it was meant to work.

What these papers reveal, when read carefully and honestly, is a vision of constitutional government in which the judiciary occupies a carefully limited role -- one defined by judgment, not will; by interpretation of existing law, not creation of new law; and always subordinate to the supreme authority of the people themselves. **The notion that Supreme Court decisions constitute the final, binding, unreviewable word on constitutional meaning would have been alarming to the men who wrote the Constitution.**

This study presents the case comprehensively: establishing the historical context of the Constitution's creation; examining what the Federalist Papers say about the judiciary and constitutional authority; addressing the historical moment when judicial supremacy was first asserted; engaging the strongest counter-arguments; and examining the modern implications of reclaiming constitutional authority for the people, where it has always belonged.

PART ONE: HISTORICAL CONTEXT

The Crisis of the Articles of Confederation

To understand the Constitution, one must understand what it replaced. The Articles of Confederation, ratified in 1781, created a union of the thirteen states -- but one so weak as to be nearly ungovernable. Congress could not levy taxes directly, could not regulate commerce between states, and could not compel states to honor their treaty obligations or contribute to the national defense. It was, in Alexander Hamilton's words in Federalist No. 15, a government that could make laws but not enforce them -- a government of resolutions, not legislation.

By 1786, the crisis was acute. Shays' Rebellion in Massachusetts -- an armed uprising of debt-ridden farmers -- exposed the federal government's inability to maintain domestic order. Trade wars between states threatened economic ruin. Foreign powers showed little respect for American sovereignty. The Constitutional Convention of 1787, called ostensibly to revise the Articles, instead produced an entirely new framework of government.

The Constitutional Convention and the Ratification Debate

The Convention met in Philadelphia from May to September 1787, in sessions conducted under strict secrecy. Fifty-five delegates represented twelve states. The debates were fierce and the compromises numerous. What emerged was a document of remarkable balance: strong enough to govern effectively, yet limited enough to protect individual liberty.

Ratification was by no means certain. The Anti-Federalists -- led by voices such as Patrick Henry, George Mason, and Robert Yates -- warned that the new government would absorb the states, that the executive would become a monarch, and that without a Bill of Rights, individual liberties were imperiled. It was in this climate of urgent debate that Alexander Hamilton conceived what would become the Federalist Papers.

The Federalist Papers: Origin and Purpose

Beginning in October 1787, Hamilton, Madison, and Jay began publishing essays in New York newspapers. Their immediate purpose was to persuade the delegates to the New York ratifying convention. Their lasting achievement was something far greater: a systematic defense and explanation of every major provision of the Constitution -- its structure, its purpose, its safeguards, and its limits.

Hamilton wrote approximately fifty-one essays, Madison approximately twenty-nine, and Jay five. No subsequent legal opinion, no matter how learned, can claim the same proximity to the text's original

intent. Madison himself confirmed their authority as an interpretive source in an 1821 letter to Thomas Ritchie:

> *"The Federalist may fairly enough be regarded as the most authentic exposition of the text of the federal Constitution, as understood by the Body which prepared and the authority which accepted it."* -- James Madison, Letter to Thomas Ritchie, 1821

PART TWO: THE SOURCE OF CONSTITUTIONAL AUTHORITY

We the People -- Popular Sovereignty

The Constitution opens with three words that settle the question of ultimate authority before a single substantive provision is stated: "We the People." This was not rhetorical flourish. It was a precise statement of constitutional theory: that the authority of this document -- and of all governments created under it -- derives from the consent and delegation of the people themselves, not from any government institution, and not from any court.

Madison addressed this directly in **Federalist No. 49**, acknowledging Thomas Jefferson's proposal that constitutional disputes should ultimately be resolved by appeal to the people through conventions. While Madison raised practical objections to that specific mechanism, his underlying premise was unambiguous:

> *"...the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived."* -- James Madison, Federalist No. 49

This principle -- popular sovereignty -- is the bedrock of constitutional authority. The Constitution does not derive its power from Congress, the President, or the Supreme Court. It derives its power

from the people. All three branches hold delegated, limited power. None is the master of the document from which its own authority flows.

The Constitution as a Limiting Document

The Constitution's fundamental design is one of **limitation**. It does not grant government unlimited power subject to exceptions; it grants limited, enumerated powers with everything else reserved. The Tenth Amendment makes this explicit: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This framing is essential to the judicial supremacy question: a court cannot be the final arbiter of a contract to which it is itself a party and from which it draws its own delegated authority. The Constitution created the courts. The courts did not create the Constitution. The document is superior to every institution it brought into existence.

PART THREE: FEDERALIST NO. 78 -- THE JUDICIARY IN ITS PROPER PLACE

The Least Dangerous Branch

Federalist No. 78, written by Alexander Hamilton, is the founding document most frequently cited by proponents of judicial supremacy as the original justification for courts having the final word on constitutional meaning. A careful, complete reading reveals the opposite.

Hamilton begins by defining what the judiciary fundamentally is:

> *"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. The Executive*

> *not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatsoever. It may truly be said to have neither FORCE nor WILL, but merely judgment."* -- Alexander Hamilton, Federalist No. 78

Hamilton explicitly says the judiciary has "neither FORCE nor WILL, but merely JUDGMENT." It cannot command armies. It cannot control money. It can only render decisions. Hamilton understood those decisions to be bound -- by the Constitution, by logic, and by the intent of those who created both.

Judicial Review vs. Judicial Supremacy

Hamilton does advance in Federalist No. 78 the concept of what we now call "judicial review" -- the power of courts to declare legislative acts that violate the Constitution to be void. But he is scrupulously careful about what this means and does not mean:

> *"The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute."* -- Alexander Hamilton, Federalist No. 78

Note carefully what Hamilton is saying: when a statute conflicts with the Constitution, the Constitution prevails. This is a judicial review of LEGISLATION -- ensuring that Congress does not exceed its constitutional limits. Hamilton is NOT saying that the Court's interpretation of the Constitution is itself final and supreme. He is saying the Constitution is superior to legislative acts. The distinction is critical:

Judicial review means courts can strike down laws that violate the Constitution.

Judicial supremacy means the Court's interpretation of what the Constitution says IS the Constitution.

Hamilton defended the first. The Founders never authorized the second.

The Will vs. Judgment Warning

Hamilton's most prescient passage in Federalist No. 78 is a direct warning against precisely the kind of judicial overreach that has come to define modern constitutional litigation:

> *"It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body."* -- Alexander Hamilton, Federalist No. 78

When courts "exercise will instead of judgment," Hamilton says, they substitute "their pleasure" for that of the legislature and, by extension, the people. This is not the legitimate exercise of judicial power. It is its abuse. Hamilton foresaw the danger with precision.

The People Superior to Both

Hamilton closes the key section of Federalist No. 78 with a passage that definitively subordinates the judiciary to the people -- and that is almost never quoted by those who use this essay to defend judicial supremacy:

> *"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that*

> *where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former."* -- Alexander Hamilton, Federalist No. 78

The power of the people is superior to BOTH the judiciary and the legislature. The Constitution represents the will of the people. Courts enforce the Constitution against legislative overreach -- but they do not stand above the Constitution itself, and they do not claim authority to rewrite it through reinterpretation.

PART FOUR: FEDERALIST NO. 51 -- SEPARATION OF POWERS AND MUTUAL ACCOUNTABILITY

Federalist No. 51, attributed to James Madison, presents the philosophical foundation for the entire separation-of-powers structure. Its famous observation that "ambition must be made to counteract ambition" captures the core theory: no branch of government can be trusted with unchecked power -- including the judiciary.

> *"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. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."* -- James Madison, Federalist No. 51

Madison's point applies with equal force to the judiciary. If judges were angels -- perfectly wise, perfectly impartial, perfectly faithful to constitutional text -- there would be no need to check their power. But judges are human beings, subject to the same ambitions, biases, and errors as legislators and executives. The system of checks and balances was designed precisely because no institution of government can be trusted to police itself.

Madison describes a system in which each department possesses the means to resist encroachments from the others. The executive holds the veto. The legislature holds the power of impeachment, the power of the purse, and the power to define the courts' appellate jurisdiction under Article III. The judiciary holds the power of judgment over the acts of the other branches. Each checks the others. No branch is the final, unreviewable word. The final word belongs to the people, expressed through the Constitution and -- when necessary -- through the amendment process of Article V.

PART FIVE: THE SUPREMACY CLAUSE -- WHAT IS ACTUALLY SUPREME

Perhaps the most commonly misread provision in the judicial supremacy argument is the Supremacy Clause of Article VI:

> *"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."* -- U.S. Constitution, Article VI, Clause 2

Read carefully: what Article VI declares supreme is "This Constitution" -- not the Supreme Court, not its decisions, not its interpretations. The hierarchy established is the Constitution itself, then federal laws made in pursuance of the Constitution, then treaties. Supreme Court decisions are not mentioned anywhere in Article VI. They are not listed as part of the supreme law of the land.

This is not a minor point. Supreme Court opinions are the Court's interpretation of the law. They bind the parties to a case. They establish precedent that lower courts follow as a matter of institutional practice -- a doctrine called stare decisis -- but stare decisis is a judicial convention, not a constitutional

mandate. The Constitution itself does not require any branch of government to treat a prior Court opinion as equal in authority to the constitutional text.

Thomas Jefferson saw this with clarity. In an 1820 letter to William Charles Jarvis, he wrote: "To consider the judges as the ultimate arbiters of all constitutional questions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy." Jefferson recognized that if the Court's word is final and unreviewable, the Constitution has been effectively transferred from the people to nine unelected lawyers -- a form of oligarchy incompatible with self-governance.

PART SIX: ARTICLE V -- THE ONLY LEGITIMATE MECHANISM FOR CONSTITUTIONAL CHANGE

The Constitution provides exactly one mechanism for changing its own meaning: the amendment process of Article V.

> *"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof."* -- U.S. Constitution, Article V

Article V requires either two-thirds of both houses of Congress or a constitutional convention called by two-thirds of the states, followed by ratification by three-fourths of the states. This process is deliberately demanding. The Founders made it so intentionally, to ensure that changes to the fundamental law of the nation reflected deep, durable, popular consensus -- not the passing preferences of a slim majority, and emphatically not the preferences of five justices.

When the Supreme Court issues a decision that effectively changes the meaning of a constitutional provision -- not by applying its plain text but by discovering new meanings, rights, or limitations that the text does not contain -- it accomplishes by judicial fiat what Article V requires the people and their representatives to accomplish through deliberation and ratification. This is not an interpretation. It is amended by another name, accomplished without the consent of the governed.

The twenty-seven amendments to the Constitution tell a powerful story. Each one represents a moment when the American people, through their representatives, determined that the Constitution's meaning needed to change -- and changed it through the proper mechanism. The abolition of slavery (Thirteenth Amendment), women's suffrage (Nineteenth Amendment), the direct election of senators (Seventeenth Amendment), and the extension of voting rights (Fifteenth, Twenty-Fourth, and Twenty-Sixth Amendments) all came through Article V. Constitutional change belongs to the people. It is not a judicial prerogative.

PART SEVEN: THE PROBLEM WITH MARBURY V. MADISON (1803)

The Case and Its Context

The doctrine of judicial supremacy in American law traces to a single case: Marbury v. Madison, decided in 1803 by Chief Justice John Marshall. Understanding this case -- its context, its reasoning, and its limits -- is essential to understanding how judicial supremacy came to occupy such a prominent place in American constitutional culture despite having no explicit basis in the Constitution itself.

The case arose from the political transition between the Adams and Jefferson administrations. In his final days as president, John Adams appointed a number of "midnight judges," including William Marbury as a justice of the peace for the District of Columbia. Secretary of State John Marshall -- the same man about to become Chief Justice -- failed to deliver Marbury's commission before Adams left

office. Jefferson's new Secretary of State, James Madison, refused to deliver it. Marbury petitioned the Supreme Court directly under a provision of the Judiciary Act of 1789 that he argued gave the Court original jurisdiction to issue writs of mandamus compelling executive action.

Marshall's Strategic Maneuver

Marshall faced a political trap. If the Court ordered Madison to deliver the commission, Jefferson would almost certainly ignore the order -- exposing the Court's institutional weakness. If the Court sided with Jefferson, it would appear to capitulate to executive pressure.

Marshall found a third path of remarkable political cleverness: he ruled that Marbury was entitled to his commission on the merits, but that the Court lacked jurisdiction to order its delivery -- because the provision of the Judiciary Act granting that jurisdiction was itself unconstitutional. In a single stroke, Marshall ruled against his political ally Marbury, gave Jefferson nothing to resist, and -- most significantly -- established the principle that the Court could strike down Acts of Congress as unconstitutional.

The problem is that nowhere in the Constitution is this power explicitly granted. Article III defines the judicial power of the United States and establishes the Court's original and appellate jurisdiction. It does not state that the Court has final authority to determine what the Constitution means for all branches and all time. Marshall inferred this power from the logic of constitutional supremacy -- but the inference was his own, and it was not universally accepted.

Jefferson's Lifelong Opposition

Thomas Jefferson never accepted Marbury's implicit claim to judicial supremacy. He recognized that Marshall had not simply exercised judicial review -- he had asserted that the Court's constitutional interpretation bound all other institutions. Jefferson's departmental theory, which Madison largely shared, held that each branch of government has the authority and duty to interpret the Constitution for itself in the exercise of its own functions. He wrote:

> *"The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves."* -- Thomas Jefferson, Letter to Spencer Roane, 1819

Under the departmental theory, the President, when signing or vetoing legislation, must make his own constitutional judgment. Congress, when legislating, must assess constitutionality independently. Courts, when adjudicating cases, make their own constitutional assessment. No branch's interpretation automatically and permanently binds the others. The Constitution remains above all of them.

Lincoln and the Dred Scott Crisis

The most powerful historical repudiation of judicial supremacy came in Abraham Lincoln's response to the Supreme Court's catastrophic 1857 decision in Dred Scott v. Sandford -- widely regarded as the worst decision in Supreme Court history. The Court held that Black Americans could never be citizens and that Congress had no power to prohibit slavery in the territories. Lincoln, in his first inaugural address, directly challenged the notion that Court decisions bound the political branches on all constitutional questions:

> *"I do not forget the position, assumed by some, that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding, in any case, upon the parties to a suit...At the same time, the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court...the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal."* -- Abraham Lincoln, First Inaugural Address, March 4, 1861

Lincoln did not advocate lawlessness. He acknowledged that court decisions bind the parties to a case and deserve serious respect. But he rejected the further claim that a court decision becomes permanent, unreviewable constitutional policy for the entire nation. History vindicated Lincoln completely: the

Fourteenth Amendment, ratified in 1868, overturned Dred Scott through the proper constitutional mechanism -- Article V -- not through another court decision.

PART EIGHT: COUNTER-ARGUMENTS EXAMINED

"Someone Must Have the Final Word"

The most common argument for judicial supremacy is pragmatic: in any system of government, disputes about the meaning of fundamental law must be resolved by some institution. If not the courts, then who?

This argument misunderstands both the Founders' design and the position being challenged here. No serious constitutional scholar argues that court decisions should be casually ignored. The argument is not against judicial review -- the power of courts to resolve cases and controversies, including constitutional questions arising in litigation. The argument is against judicial supremacy: the claim that court decisions are the final, unreviewable, permanent word on constitutional meaning for all branches and all time.

The Founders' answer to "who has the final word" was: the people, through the Constitution and the amendment process. The system is designed so that no branch has the final word on all questions. Congress can pass laws the President vetoes; the President can veto laws Congress overrides; courts can strike down laws both branches passed; Congress can amend the Constitution to reverse court decisions; Congress can define and limit the courts' appellate jurisdiction under Article III; and Congress can remove federal officers, including judges, through impeachment. The system has multiple correction mechanisms because no single institution was trusted with final, unreviewable authority.

"The Amendment Process Is Too Difficult"

A related argument is that Article V is too demanding for practical use, requiring courts to serve as the vehicle for constitutional evolution. This argument proves too much. The difficulty of Article V is not a design flaw -- it is a design feature. The Founders deliberately made constitutional change difficult to prevent constitutional instability, to require broad consensus before altering fundamental law, and to protect minority rights from majoritarian impulse.

If Article V is truly too demanding for a particular change, the proper response is to make the case for that change to the American people over time until sufficient consensus builds -- as happened with women's suffrage, the direct election of senators, and the abolition of slavery. The fact that a social or political goal is desirable does not license courts to achieve it by reinterpreting the Constitution. Good ends do not justify unconstitutional means.

"Courts Protect Minority Rights"

Perhaps the most emotionally resonant argument for judicial supremacy is that courts protect vulnerable minorities from majoritarian oppression. Brown v. Board of Education is typically invoked as the paradigm case: without the Supreme Court, the argument goes, racial segregation in public schools would never have ended.

This argument conflates legitimate judicial review with the theory of judicial supremacy. Brown v. Board of Education was correctly decided -- not because the Court invented a new constitutional right, but because the Equal Protection Clause of the Fourteenth Amendment, properly applied, prohibits state-enforced racial segregation in public institutions. The Court was doing precisely what Hamilton described in Federalist No. 78: enforcing the Constitution against unconstitutional government action.

Judicial supremacy is not required to achieve this result. What is required is faithful constitutional interpretation. The problem with judicial supremacy is not that it sometimes produces right outcomes; it is that it places power beyond accountability. A court that can protect minorities from

unconstitutional discrimination can also -- and historically has -- impose unconstitutional policies of its own, insulated from correction.

PART NINE: MODERN APPLICATIONS

The Living Constitution Doctrine

The contemporary version of judicial supremacy is most often expressed through the doctrine of the "living Constitution" -- the theory that the Constitution should be interpreted not according to its original meaning but according to the evolving values and needs of contemporary society. Under this theory, the Constitution means not what it says, or what its framers intended, but what judges determine is necessary and appropriate for the present day.

The Federalist Papers offer no support for this theory. Hamilton's warning in Federalist No. 78 against courts exercising "will instead of judgment" is a direct rebuke of the living Constitution approach. When a court interprets a provision not according to its text and historical meaning but according to what the court believes contemporary society requires, it is exercising will -- imposing its own preferences -- not judgment -- applying the law as written and understood.

The living Constitution theory, taken to its logical conclusion, renders the amendment process of Article V superfluous. If the Constitution's meaning evolves whenever a majority of nine justices decides it should, then what purpose does Article V serve? The answer that the Federalist Papers give is clear: Article V serves the purpose of keeping constitutional change in the hands of the people, where it belongs.

Originalism and the Federalist Papers

The interpretive approach most consistent with the Federalist Papers' vision is originalism -- the view that constitutional provisions should be interpreted according to their original public meaning at the

time of ratification, informed by the intent and understanding of those who drafted and adopted them. The Federalist Papers are, under this approach, the single most authoritative interpretive source in American law.

Originalism is sometimes caricatured as requiring the mechanical application of eighteenth-century assumptions to twenty-first-century problems. This is a mischaracterization. Originalism does not prohibit the application of constitutional principles to new circumstances; it insists that the principles themselves -- as expressed in the text and understood by its adopters -- govern, rather than the preferences of contemporary judges. The First Amendment's protection of free speech applies to the internet; the Fourth Amendment's protection against unreasonable searches applies to digital data. The principles travel. What does not travel is the power of judges to replace those principles with their own.

Dobbs and the Court's Self-Correction

The Supreme Court's 2022 decision in Dobbs v. Jackson Women's Health Organization, which overruled Roe v. Wade, provides a significant contemporary illustration of the limits of judicial supremacy -- from an unexpected direction. Dobbs demonstrated something the Court has now acknowledged explicitly: prior decisions can be wrong, and the Court can reverse them.

Whatever one's view of the underlying policy question, Dobbs makes a constitutionally significant point: if judicial decisions were truly constitutional law -- rather than interpretations of constitutional law -- they could not be overruled. The Constitution does not change when the Court changes its mind. What changes is the Court's interpretation. This confirms that the Constitution and the Court's opinions about the Constitution are distinct. One is the supreme law of the land. The other is a human institution's best effort to understand it, always subject to correction.

The Court has reversed itself hundreds of times in its history. Each reversal implicitly acknowledges that the previous decision was wrong -- not that the Constitution changed, but that the Court's

reading of it was erroneous. If the Court's interpretation IS the Constitution, then the Constitution has been self-contradictory throughout its entire history. The simpler, more accurate explanation is that the Constitution is what it says, and the Court's interpretations are attempts to discern what it says -- attempts that are sometimes mistaken.

The Role of the People and the States

The ultimate mechanism for correcting constitutional error -- whether by courts, Congress, or the executive -- is the people themselves, acting through their state and federal representatives. The Founders built multiple pathways for popular correction into the constitutional design: elections that change the composition of all three branches; the Senate's confirmation power over judicial appointments; the impeachment power that Congress holds over judges; the Article V amendment process; and the reserved powers of the states under the Tenth Amendment.

An engaged, constitutionally literate citizenry is the final safeguard of constitutional government. The Federalist Papers were themselves an exercise in popular constitutional education -- Hamilton, Madison, and Jay making the case directly to ordinary citizens, not to legal professionals, for what the Constitution meant and why it should be ratified. They trusted the people with constitutional knowledge because they understood that self-government requires it.

CONCLUSION: RESTORING CONSTITUTIONAL AUTHORITY TO THE PEOPLE

The argument of this study is not that courts are unimportant or that their decisions should be casually disregarded. Courts perform an essential function: they resolve disputes, apply the law to specific facts, check the other branches against constitutional limits, and protect individual rights from government overreach. These are precisely the functions Hamilton described in Federalist No. 78.

The argument is that there is a critical and consequential distinction between what courts legitimately do -- exercise judgment to interpret and apply the law -- and what judicial supremacy claims they do -- serve as the final, unreviewable, supreme authority on constitutional meaning for all institutions and all people. The first is fully compatible with the Founders' design. The second is not.

The Federalist Papers are unanimous on the fundamental point: authority over the Constitution belongs to the people. The Constitution is the people's fundamental law, expressing their will and establishing limits on their government. Courts are one instrument for enforcing that law -- they are not its masters. When courts exercise will instead of judgment, as Hamilton warned, the remedy is not deference but accountability: through elections, through the appointment process, through legislation defining court jurisdiction, and when necessary, through the Article V amendment process.

> *"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."* -- James Madison, Federalist No. 47

The concentration of final constitutional authority in an unelected judiciary, insulated from popular accountability and exercising will rather than judgment, is precisely the accumulation of power Madison warned against. Reclaiming constitutional literacy -- reading the Federalist Papers, studying the text, engaging the amendment process, demanding faithful interpretation from all three branches -- is not merely an academic exercise. It is the ongoing work of self-governance that the Founders entrusted to us.

We the People ordained and established the Constitution. We the People retain the ultimate authority to interpret, apply, and when necessary amend it. No institution of government -- not the Congress, not the President, and not the Supreme Court -- is the master of the document from which all governmental power flows. That authority belongs to the people alone.

PRIMARY SOURCES AND FURTHER READING

Primary Sources -- The Federalist Papers

Federalist No. 10 (Madison) -- Factions and representative government

Federalist No. 15 (Hamilton) -- Inadequacy of the Confederation

Federalist No. 44 (Madison) -- Restrictions on state authority; necessary and proper

Federalist No. 47 (Madison) -- Separation of powers and the tyranny of accumulation

Federalist No. 49 (Madison) -- The people as the legitimate fountain of power

Federalist No. 51 (Madison/Hamilton) -- Checks and balances; ambition vs. ambition

Federalist No. 78 (Hamilton) -- The judiciary: will vs. judgment

Federalist No. 84 (Hamilton) -- The Bill of Rights and limited government

Available in full at: Congress.gov, Yale Law School Avalon Project, and the Library of Congress (loc.gov).

Constitutional Provisions Referenced

Preamble; Article III; Article V; Article VI (Supremacy Clause)

Tenth Amendment (reserved powers); Fourteenth Amendment (equal protection)

Founder Letters and Speeches

Thomas Jefferson, Letter to William Charles Jarvis, September 28, 1820

Thomas Jefferson, Letter to Spencer Roane, September 6, 1819

James Madison, Letter to Thomas Ritchie, September 15, 1821

Abraham Lincoln, First Inaugural Address, March 4, 1861

Key Cases Referenced

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)

Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)

Brown v. Board of Education, 347 U.S. 483 (1954)

Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022)

Recommended Secondary Reading

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Levy, Leonard W., and Dennis J. Mahoney, eds. The Framing and Ratification of the Constitution. Macmillan, 1987.
