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Extract from Dan T. Coenen's The Story of The Federalist: How Hamilton and Madison Reconceived America citing Tillman's The Federalist Papers as Reliable Historical Source Material for Constitutional Interpretation

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THE STORY OF
THE FEDERALIST

HOW HAMILTON AND MADISON RECONCEIVED AMERICA

By

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How could sensible citizens resist ratification, Madison asked, when “most of the capital objections urged against the new system, lie with tenfold weight against the existing Confederation”?

This is not to say that all of Publius’s arguments themselves reflected perfect common sense. Hamilton, for example, erred in
139. Id.

automatically to be appointed if of the nomination."106
Also look for opportunities to ...107 For instance, columnist No. 10 to oppose proposed that the political parties that serve to "moderate factions" 108 He also found support in n to impeach President Clinton sition. Will reasoned that "Re-partial ethic—its categorical t take comfort from the fact ssness has a pedigree that runs the perils that make republics The Federalist was "frequently t the notion that the framers majorit... rule—adopted by the Repub- of the so-called "Contract fifths vote to pass any increase surfaced with particular fre-cial appointments.112 The Sen- on the confirmation of John xed States, for example, gener-ences to the essays. Publius and sometimes by then-Judge erly limited role, in trumpet-dicial precedent, in highlight-constitutional system, and in icial and legislative powers.113 s high-visibility setting leaves undational text in our politi-

Madison would have thought ional among contemporary he essays, after all, were never

Relying on modern historical research, some scholars have urged that the limited and localized distribution of The Federalist renders it poor evidence of dominant thinking at the state ratification conventions,126 particularly given the diverse range of participants involved in those proceedings.127 Other skeptics have argued that: (1) Publius may have been unjustifiably elevated among "dozens, if not hundreds, of writers who defended the Constitution,"128 (2) the papers should not be treated as "holy writ" because they contain a number of factual errors,129 and even (3) The Federalist should count
for little because its main purpose was to "fill up space in the New York 'federal' newspapers and thereby to make less obvious the exclusion therefrom of opposing views." A recurring line of argument questions the relevance of centuries-old essays in a world that has "changed far beyond anything that the authors of The Federalist could have known." As Yale Law Professor William Eskridge has asked, "why should the views of Madison, who would have found the modern regulatory state inconceivable, offer guidance as to issues of modern administration . . .?"
to believe the reaction would have been uniform across states, for their interests were very different. Some states had large war debts, and some did not; some states relied on import duties (the impost), and some could not; some states farmed tobacco, whereas others made beeswax and potash. Whatever one thinks a New Yorker might have thought of The Federalist, there is no reason to think that a Georgian or a resident of Massachusetts would have had a similar reaction.

McGowan, supra note 116, at 831.


130. CROSKEY, supra note 120, at 8–9. A separate question is whether, assuming the legitimacy of invoking The Federalist, it has been used in actual practice in a properly principled and neutral fashion. For some suggestions that the Court has not, see McGowan, supra note 116, at 874–881 (arguing that, in Alden v. Maine, 527 U.S. 707, 726 (1999), the Court selectively invoked Hamilton’s work to make the strong nationalist seem to support a broad conception of state sovereignty); Tillman, supra note 129, at 618 (objecting to self-serving “textual cherry picking” in the use of The Federalist by the Supreme Court); Wilson, supra note 73, at 811–3 (noting that the Court sometimes ignores or gives little weight to The Federalist despite its relevance); see also J. Christopher Jennings, Note, Madison’s New Audience: The Supreme Court and The Tenth Federalist Visited, 82 B.U. L. REV. 869–73 (2002) (criticizing the Court’s use of No. 10 in a variety of opinions).