

**JUSTICE IN A
CONSTITUTIONAL
DEMOCRACY**

Section B

Jan 11, 2008

CHRONOLOGY

- Declaration of Independence, July 6, 1776
- The War of Independence, 1775—1783
- The Second Continental Congress, 1787
- The Constitutional Convention, 1787
- Drafting of the Constitution of the United States, Sept. 17, 1787
- The Debate on Ratification (Federalists v. Anti-federalists): Publius, October 1787—May 1788
- Ratification, 9/12 by July 26, 1788
- First Congress of the United States, March 4, 1789
- Adoption of the Bill of Rights, 1791
- The Fourteenth Amendment, 1868

HISTORICAL DEBATE INTENTIONS OF THE FRAMERS

Federalists



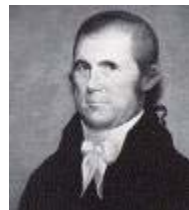
Hamilton



Jay



Madison



Marshall

Anti-federalists

Jefferson



Mason



Henry

ANTI-FEDERALISTS' OBJECTIONS

- The Proposed Constitution and its Republican Form of Government Will not Preserve Liberty and Justice.
- Montesquieu's warning (French Philosopher)
- Fear of Factions; the Possibility of a Majoritarian Tyranny
- Fear of Concentrated Power in the Central Government

FEDERALIST #10

James Madison

- Real Danger in Pure Democracy, not in Republics
- Factional majorities are best controlled in a republic
- Extend the Sphere
 - Montesquieu's warning was incorrect

FEDERALIST #51

James Madison

- Human Condition: “If men were angels, no government would be necessary.”
- Separation of powers: “Ambition is made to counteract ambition.”
- The Union (federal system) is “a compounded republic”:
 - Separation of powers
 - Division of powers between the national government and the states

FEDERALIST # 78

Alexander Hamilton

- Independent Judiciary that limits the abuse of power by the government and safeguard liberty
- Weakest of the three branches (no threat to the popular will)
- The power of judicial review: “No legislative act . . . , contrary to the Constitution, can be valid.”

FIRST CONGRESSIONAL ELECTION

- Anti-federalists were not persuaded
- When running for Congress from Virginia, James Madison promised that if elected, he would draft the Bill of Rights and propose to add it as an amendment to the Constitution. Hence, the first 10 Amendments.

THE extended BILL OF RIGHTS

- A1: Freedoms
- A2: Keep Arms
- A3: No Quartering of Soldiers in any House
- A4: Unreasonable Search & Seizure
- A5: Due process; No Takings of Private Property
- A6: Criminal Justice & Jury trial
- A7: Civil Justice & Jury Trial
- A8: No Cruel and Unusual Punishment
- A9: Not Enumerated Rights
- A14: Citizenship; Federal Guarantee of Due Process & Equal Protection for Citizens in the States

Readings for Monday

- Section II: Interpreting the Constitution
William Rehnquist, “The Notion of a Living Constitution”