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JAMES MADISON AND THE CONSTITUTION

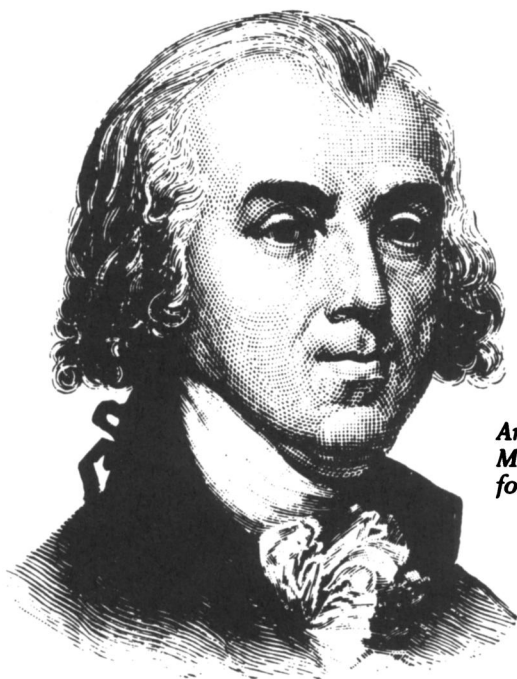
In 1987, Americans will celebrate the bicentennial of their nation's Constitution. Already, the American Historical Association and the American Political Science Association have launched Project '87, a joint scholarly effort to re-examine the work of the Founding Fathers and to encourage "public understanding and appraisal of this unique document." In the spirit of this enterprise, A. E. Dick Howard discusses the life and thought of one of the Constitution's leading architects.

by A. E. Dick Howard

He was not what today we would call a charismatic leader; for strength of personality, it is his wife, Dolley, who comes to mind. He was only five feet, six inches tall and in his early years was often in poor health. He lacked the majestic presence and martial prowess of George Washington. His prose, while copious and competent, had none of the bite of Thomas Paine's pamphlets or the elegance of Thomas Jefferson's letters. In an age when public speaking was a prized political asset, his voice was weak and faltering. He was, in sum, an unlikely candidate for the historic role he played.

Yet, it was James Madison, more than any other Founding Father, who shaped our constitutional system of government—in effect, institutionalizing the American Revolution.

Madison was well aware of his shortcomings. He believed himself to be physically and temperamentally unsuited for both the law and the ministry. But he possessed an alert and agile mind. He was a voracious reader. And, despite early infirmities, he was productive and energetic. As Madison matured, he drew about him a circle of powerful friends who recognized in him a quiet but keen sense of humor, a potential for icono-



An engraving of James Madison (1751–1836), the fourth U.S. President.

clasm, and an unshakable integrity.

“His diffidence,” wrote Edmund Randolph, a friend, “went hand in hand with his morals which repelled vice, however fashionable. In convention debate, his lips were never unsealed except to some member, who happened to sit near him; and he who had once partaken of the rich banquet of his remarks, did not fail to wish to sit daily within the reach of his conversation.”

We are in reach of his conversation still, for Madison’s words transcend the centuries. Much has changed in the United States since the times of the Founding Fathers, but Madison has much to tell us yet. And it may not be idle, from time to time, when faced with thorny issues of governance and equity, to wonder what Madison might have said and done.

James Madison was born to gentry at Port Conway, Virginia, on the Rappahannock River, on March 16, 1751. Shortly after his birth, the Madison family moved west from the Tidewater district to the Virginia Piedmont, at the foot of the Blue Ridge Mountains. This trip to the family plantation, Montpelier, was only 50 miles or so, but in Madison’s day, life and politics in Virginia were heavily colored by differences in outlook

between the “eastern establishment” and the Commonwealth’s more boisterous western counties. Like Thomas Jefferson, who lived not far away and who would be a friend for 50 years, Madison grew up with that strange blend of rustic life and cultivated discourse that marked life among the well-to-do in the Piedmont. And like Jefferson, the young Madison enjoyed the leisure purchased by slavery—a leisure employed in the education of a Virginia gentleman.



In 1769, after years of private tutors and a stint at Donald Robertson’s celebrated Latin school, Madison took a distinctly unusual step for a Virginian. Influenced by one of his tutors, he enrolled in the College of New Jersey (now Princeton University) instead of the College of William and Mary in Williamsburg. The decision to attend Princeton, where Edinburgh-educated John Witherspoon had lately been installed as president, was a momentous one.

Among other things, it brought Madison into contact with the ideas of the Scottish Enlightenment. The young scholar came to appreciate the notion—fundamental among such Enlightenment philosophers as Francis Hutcheson, Thomas Reid, and Adam Ferguson—that the study of history could yield generalizations about human nature, thereby furnishing guidelines for the governance of human affairs. At the same time, Madison became familiar with the writings of Locke, Montesquieu, Harrington, Grotius, and Hobbes. He devoted himself to an intense study of “The Law of Nature and of Nations.” With what he later remembered as the “minimum of sleep and the maximum of application,” Madison completed his baccalaureate studies in less than three years, but he stayed several months longer to study under Witherspoon.

He left Princeton in 1772 with a firm faith in empiricism and common sense. Years later, when the Constitution was up for ratification, Madison would ask Americans to judge the document on the basis not of “custom” or a “blind veneration of an-

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tiquity" but rather of "their own good sense, the knowledge of their own situation, and the lessons of their own experience." Experience, he held, was "the last best oracle of wisdom."

Madison returned to Montpelier to ponder his future. He was soon overtaken by a sudden, debilitating nervous disorder. The illness was complicated by persistent intimations of mortality, prompted in part by the sudden death of a college friend. "I am too dull and infirm now," he confided in one letter, "to look out for any extraordinary things in this world for I think my sensations for many months past have intimated to me not to expect a long or healthy life." But despondency soon gave way to a passionate interest in public affairs.

The first issue to engage Madison's attention involved religion—specifically, local Anglican persecutions of Baptists and other dissenters. Princeton had seethed with revolutionary fervor, and Madison was an ardent patriot. But it was intolerance by a corrupt, established church that truly got him angry. In letters to a friend, William Bradford, during 1773–74, Madison railed against "Knavery among the Priesthood" and asserted that "religious bondage shackles and debilitates the mind and unfits it for every noble enterprize." Religious liberty would be for Madison a lifelong crusade.



Correspondence on political questions eventually drew Madison into active politics. In his first contest for elective office, in 1774, he won a seat on Orange County's Committee of Safety—charged with enforcing the boycott of British goods decreed by the Continental Congress. Two years later, on the eve of revolution, Madison, aged 25, became the youngest member of the upstart Virginia Convention in Williamsburg—the de facto government of the Commonwealth, supplanting the House of Burgesses. In May of 1776, the Convention took a fateful step, instructing Virginia's delegates at the Continental Congress in Philadelphia to introduce a resolution calling for independence from Great Britain. Shortly afterwards, when the Virginia Convention was drawing up a state constitution, Madison drafted the clause guaranteeing "the full and free exercise of religion."

Madison suffered the only electoral defeat of his career a year later, in 1777, by refusing to ply his Orange County constituents with drink—an established election-day custom at the time. But his talents by then were plain to the legislators in Williamsburg. In 1780, Madison was sent to Philadelphia as a delegate to the Continental Congress. For the first time, he was

immersed in national rather than regional politics and would continue to be so for the next three years, until the Treaty of Paris formally ended hostilities.

Returning to Virginia in 1783, Madison found relaxation in intellectual pursuits. As if in training for the task that lay ahead, he made a special study of confederations, ancient and modern. He wrote to Jefferson, then in Paris, asking his friend to send him books, especially those throwing light on the "general constitution and droit public of the several confederacies which have existed"—leagues such as those of ancient Greece and contemporary Switzerland. With characteristic energy, Jefferson saw to it that a procession of books went across the Atlantic to Madison, some 200 volumes in all.

Madison's reading ranged from Plutarch and Polybius to Mably and Montesquieu. In these writings, he found repeated confirmation of what was becoming a favorite Madisonian thesis: A confederacy cannot hold together without a strong central government. One by one, Madison considered the strengths and weaknesses of confederacies down through the ages—the Lycian, the Amphictyonic, the Achaean, the Helvetic, the Belgic, the Germanic. On each of these he penned a monograph, always concluding with a section entitled "The Vices of the Constitution." Ultimately, Madison produced a 40-page manuscript, which he later cannibalized for *The Federalist* (1787–88).



Madison undoubtedly suspected that his scholarly preoccupations were not idle. The 1780s were an uncertain time for the young American nation. The Articles of Confederation had been adopted in 1781, linking the 13 states in a loose federated regime. The defects in the arrangement quickly became apparent. Under the Articles, Congress had neither the power to tax nor the power to regulate commerce. The Articles declared that "each state retains its sovereignty, freedom, and independence," and the several states proved eager to take the document at its word, often at the expense of the national welfare. Economic rivalries were especially sharp, with each state pressing its own special interests—whether trade, agriculture, or manufacturing—and inclined to treat its neighbors as it would a foreign power.

The answer to these problems, Madison concluded, was to give Congress the power to regulate commerce. As he wrote to James Monroe, the states could no more exercise this power separately than "they could separately carry on war, or separately form treaties of alliance or Commerce." In the Virginia legisla-

ture, Madison introduced a resolution calling on the 13 states to meet and consider to what extent uniformity in their commercial regulations might advance their interests and their mutual comity. The resolution passed, and Virginia formally proposed a conclave in Annapolis in September 1786.

Only five states sent delegations. But the men of those five delegations, including Alexander Hamilton and Edmund Randolph, came to a radical conclusion: Merely overhauling the commercial provisions of the Articles was not enough; the Articles as a whole were fundamentally flawed. The men gathered at Annapolis resolved that each state should appoint commissioners to meet at Philadelphia "to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union." In other words, they called for a constitutional convention.



No one who attended the great gathering at Philadelphia in 1787 was better prepared for the job of constitution-crafting than was Madison. In letters to Jefferson, to Randolph, and to Washington, Madison set out his thinking about the nation's constitutional needs. The larger states, he felt, must have fairer representation, and the national government needed enhanced authority—including authority to override state laws in conflict with national legislation. Madison summed up his position in a letter to Washington: "Conceiving that an individual independence of the States is utterly irreconcilable with their aggregate sovereignty; and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for some middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities whenever they can be subordinately useful."

Called ostensibly to draft amendments to the Articles of Confederation, the Philadelphia convention almost at once moved on to more ambitious business—the writing of a totally new constitution.

The advocates of wholesale reform boasted a major advantage: They had in hand a comprehensive constitutional blueprint, the so-called Virginia Plan, shaped largely by Madison. It was adopted as the working model. The Virginia Plan proposed a National Executive, a National Judiciary, and a National Legislature consisting of two houses apportioned according to population and empowered to legislate "in all cases to which the

separate States are incompetent."

The 36-year-old Madison was the dominating spirit of the convention. His winning ways, persuasive powers, and command of constitutional principles deeply impressed the other delegates. Georgia's William Pierce wrote, "Every person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar."



Many of Madison's specific ideas failed to be adopted—for example, his proposed Council of Revision, drawn from both the judicial and executive branches, which could veto laws passed by Congress or state legislatures. But in its essentials, the Constitution eventually agreed upon was the one proposed by Madison. The three branches of government, the separation of powers, the powerful central government—all of these elements survived. As if this were not contribution enough, Madison also served as the convention's chief, though unofficial, rapporteur. Using a self-invented shorthand to speed his note-taking, Madison carefully transcribed the proceedings. As he reported later, "It happened, also, that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, except a very short one." His almost verbatim account of the convention was not published until 1840, four years after his death, because Madison scrupulously observed the vow of secrecy imposed on convention delegates.

As the country turned to the business of ratification, Madison was out in front once more. Together with Hamilton and John Jay, he penned a brilliant series of essays for New York newspapers in support of the new Constitution. Of the 85 essays, collected and published as *The Federalist*, Madison wrote 29.

The Federalist has few competitors as America's most important single contribution to political theory. In *Federalist* No. 10, Madison defines one key task of government, in terms that appear eerily prescient, as being to reconcile rivalries between competing economic groups. The "regulation of these various and interfering interests" suggests the modern notion of the "broker state." Madison was under no illusions about human nature. "But what is government itself," he asks in *Federalist* No. 51, "but the greatest of all reflections on human nature? If men were angels, no government would be necessary."

Above all, Madison was a pragmatist. He treats government not as an abstraction but as an engineering problem. In *Federalist* No. 48, contemplating relations among the three branches of

the central government, Madison dwells on the importance of checks and balances. The experience under the Articles had taught him to be suspicious of mere “parchment barriers.” Since a total separation of powers in the federal branch was obviously unworkable, the only way to avoid an undue concentration of power in any one branch was to have the several branches “so far connected and blended, as to give each a constitutional controul over the others.”

So elegantly and thoroughly was Madison’s defense of the proposed charter marshaled in *The Federalist* that the essays quickly became, and have remained, essential glosses on the Constitution.

After rancorous debate, the Constitution of the United States of America was finally ratified in 1788. Madison led its Federalist proponents in Virginia, ultimately defeating the forces of Antifederalists Patrick Henry and George Mason by a vote of 89 to 79 in that state’s ratifying convention. Virginia’s decision was of great significance. Given the state’s pivotal position in the nation, in terms of wealth, population, and intellectual influence, a rejection of the charter by Virginia might well have prompted other states to follow suit.



The Constitution was ratified, but with implicit strings attached by the Antifederalists. Chief among them was the addition of a Bill of Rights—the first 10 amendments. Madison was uneasy about spelling out Americans’ fundamental liberties. He was concerned, for one, that the list might prove incomplete. He feared that enumerating rights might imply the existence of a parallel set of powers never meant to be delegated to the central government.

Nevertheless, as he explained to Jefferson, a Bill of Rights could serve two powerful objectives. First, “the political truths declared in that solemn manner” would “acquire by degrees the character of fundamental maxims of free Government.” Second, occasions might arise when the existence of a Bill of Rights could prove to be “a good ground for an appeal to the sense of community.”

When the First Congress convened in New York in 1789, Madison, now a congressman from Virginia, led the battle for the Bill of Rights. In June, he brought the issue to the floor, moving for a Committee of the Whole to consider amendments proposed by eight of the state ratifying conventions. Facing considerable opposition, Madison brilliantly engineered pas-

sage of the Bill. He winnowed down the list of amendments, ignoring those that would have enhanced state power at the expense of the federal government. Out of the proposals that remained (essentially libertarian), he crafted a series of amendments remarkably similar to the 10 that were ultimately ratified. He patiently answered the objections of his colleagues and adroitly avoided efforts by opponents to delay the votes or weaken the proposals.



Madison squarely faced arguments that the Bill of Rights would amount to no more than a “scrap of paper.” Once the Bill of Rights was incorporated into the Constitution, he submitted, “independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they [the courts] will be an impenetrable bulwark against every assumption of power in the Legislative or Executive.” This prediction, that the judicial branch would assert the right of judicial review, was borne out in 1803, when Chief Justice John Marshall handed down the Supreme Court’s decision in *Marbury v. Madison*.

With ratification of the Bill of Rights, James Madison brought an end to the most important work of his career. To be sure, he remained in public service for many decades, but those decades have the tenor of anticlimax. In his instructions for his tomb at Monticello, Jefferson wanted only three accomplishments recorded: the writing of the Declaration of Independence (1776), the authorship of the Virginia Statute of Religious Freedom (1785), and the founding of the University of Virginia (1819). There is no mention of his holding high office. Madison, like Jefferson, served as Secretary of State and as President of the United States. And, like Jefferson’s, Madison’s legacy is somehow separate from all of that. It is not too much of an exaggeration to say that Madison would be as esteemed today if he had died in 1790 instead of almost half a century later.

In 1797, James Madison left public life, hoping to spend more time caring for his 4,000-acre Montpelier estate—and for his new bride, the former Dolley Payne Todd, a vivacious and charming woman whose beauty and wit made her a political asset as well as a beloved companion. But the election of 1800 brought Jefferson to the presidency and Madison into the cabinet. In his autobiography, Madison has the following—and only the following—to say about his service under Jefferson: “In 1801 he [Madison] was appointed Secretary of State and remained such until 1809.”

In that year, Madison himself assumed the nation's highest office, spending two difficult terms (1809–17) in a presidency that is chiefly remembered for the War of 1812 and the burning of the White House by British troops. The War of 1812 was an inconclusive tragicomedy that soon lost popular support. But the United States emerged from the conflict with a fresh cadre of heroes (e.g., Oliver Perry, Andrew Jackson), a national anthem ("The Star-Spangled Banner"), and the confidence born of beating off the British in a second war of independence. With peace in 1815, moreover, came unprecedented prosperity. "Notwithstanding a thousand Faults and blunders," John Adams wrote to Jefferson in 1817, Madison's administration "has acquired more glory, and established more Union, than all his three Predecessors . . . put together"—one of whom, of course, was Adams.

Madison left office in 1817 and returned to Montpelier with Dolley. He spent the remainder of his life largely in private pursuits. Like Jefferson, an apostle of scientific agriculture, he urged fellow farmers to abandon practices that were exhausting the soil. He became absorbed by the issue of slavery—a problem that he and his fellow delegates at Philadelphia had failed to deal with in 1787—and accepted the presidency of the American Colonization Society, which encouraged the manumission of slaves and their return to Africa. He had hoped, by provisions in his will, to emancipate and repatriate his own slaves, but he fell deeply into debt. Madison's last public appearance was at the Virginia Constitutional Convention of 1829–30, a gathering that accomplished little of the long overdue constitutional reform that Jefferson and others had been urging for years. Confined to bed by rheumatism during his final years, James Madison died quietly at Montpelier on the morning of June 28, 1836.



A few months earlier, he had dictated a final public message, "Advice to My Country," to his wife. In it, Madison expressed his anxiety about rising tensions between the North and South. He called upon his countrymen to ensure that "the Union of the States be cherished and perpetuated." Ultimately, they would do so, at the cost of over half a million lives lost in a bloody Civil War.

One is tempted to ask, however: By Madison's lights, how has our stewardship been in other respects? If he were here today, what would he think of the way our constitutional system has evolved? Let us consider several Madisonian themes—federalism, faction, self-expression, and religious liberty.

As far as federalism is concerned, Madison would probably be apprehensive. Madison's career reflected a concern for both central authority and states' rights. The Supreme Court was conceived by him to be the arbiter—a "balance wheel" of the constitutional system. In fact, over the years, the Court has shown a persistent bias. It has been far more willing to protect federal interests against state encroachments than vice versa. Meanwhile, in recent decades particularly, the Congress has shown little restraint in enlarging its legislative domain, often ignoring the precepts of federalism. Even that great nationalist, John Marshall, believed that it was the duty of the nation's highest tribunal to oversee Congress in this regard. The Supreme Court no longer does.



On the subject of factions, Madison distrusted their potential, skeptical of the value even of political parties. He lamented in *Federalist* No. 10 that legislative measures "are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and overbearing majority." Regulation of conflicting interests must be the "principal task" of Congress.

On balance, Madison would probably find that the United States has made progress here. The courts have looked scrupulously for ways to protect ethnic and other insular minorities from the "over-bearing majority." Beginning with the Fourteenth Amendment, and quickening after World War II, Americans have come to enjoy an increasingly inclusive set of substantive civil rights. During the 1960s, "one-man, one-vote" rulings curbed the power of legislatures to protect and promote special interests: whites over blacks, the countryside over the cities. State tribunals have taken the lead in overturning laws that restrict access to trades and professions.

Obviously, there are still "vested interests," with allies in Congress and the federal bureaucracy. Political action committees wield undue influence. Madison would have been displeased by this, but not surprised. What *would* have surprised him is the forum in which "factionalism" is most frequently challenged—not the Congress, supposedly meant for that purpose, but the courts.

In the area of personal autonomy, the United States has traveled far beyond anything Madison could have imagined. Madison championed the freedom of conscience and expression. He declared, in 1784, that the "opinions of men, depending only

on the evidence contemplated by their own minds, cannot follow the dictates of other men." But Madison was concerned chiefly with *political* freedom—the freedom of speech, press, and assembly. He and his contemporaries would hardly have argued that the First Amendment could be used to limit the reach of obscenity laws, or that the right to privacy guaranteed access to contraceptives. Today's individual liberty cases owe more to John Stuart Mill than to Madison.

The First Amendment protects more than the right to free speech. It also ensures the free exercise of religion and prohibits the "establishment" of any state religion. Madison, of course, felt strongly about this. Religious persecution had first drawn him into politics. On more than one occasion, he fought in constitutional conventions or legislative bodies to guarantee religious freedom. In First Amendment cases, the Supreme Court has looked repeatedly to Madison for guidance on issues of religion. He would be satisfied to learn that, over the years, the Court has found ways to strengthen the "wall of separation" between church and state.

James Madison was hailed in his own lifetime as the Father of the Constitution. In typical fashion, he declined the honorific. The Constitution was not, he contended, "like the fabled Goddess of Wisdom, the offspring of a single brain" but instead "the work of many heads and many hands." And so it continues down to this day. Each generation of Americans, by means of amendment or interpretation, has left its mark on the nation's charter.

But as we try to sort out our own problems, as we apply our heads and hands to the fundamental law of the land, we would do well to recall the sensible mix of theory and practice, of hope and caution, of patience and good will, that Madison brought to his endeavors on behalf of the new republic. As a public man, he was remarkably selfless; receiving "credit" for his accomplishments mattered little to him. He backed compromise with his forceful pen, even when its terms were not wholly congenial, believing that once agreement was achieved, it was a civic duty to defend the "middle way." He embodied an unusual combination of qualities—qualities that seem more precious today because they are so rarely seen in public men.

