Figure 1.1  U.S. Congressman James Madison by James Sharples, c. 1796–1797. (Courtesy of Independence National Historical Park.)
Chapter One

James Madison’s Political Thought: The Ideas of an Acting Politician

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Introduction

James Madison’s stature as America’s greatest political thinker is dominated by the leading role he played in the adoption of the federal Constitution of 1787 and the subsequent amendments that Congress proposed to the states in 1789. On both occasions, his agenda for political action was strongly shaped by his 1787 analysis of the “Vices of the Political System of the U. States,” a title which covered fundamental problems of federal and republican government (PJM, 9:348–57). Madison’s reputation as a political thinker is also tied more directly to the critical essays that he wrote to support his political goals, particularly his 29 contributions to The Federalist during the ratification debates of 1787–1788. Scholars generally regard these essays as the strongest, most original statements of the underlying theory of the Constitution. They represent an American answer to the work of Charles de Secondat, Baron de Montesquieu, with his paradigmatic views of the optimal size of republics and the separation of powers. Madison made Montesquieu, “the celebrated oracle” of eighteenth-century political science, his effective target in Federalist 10 and again in Federalist 47–51. By arguing that an extended, socially diverse national republic could better protect personal liberty and the public good than the small homogeneous polities that Montesquieu idealized, Madison rebutted one of the standard arguments of early modern political theory. Similarly, his discussion of the separation of powers moved away from the rigid division between legislative, executive, and judicial branches that many readers found in Montesquieu, opening the way for a scheme of checks and balances that better accords with the framers’ ideas of a constitutionally balanced government.

Commentary on these essays and Madison’s other contributions to The Federalist sustains a cottage industry of scholarship. Academics often write of “the Madisonian
Constitution,” as if the decisions of 1787 were distinctively his legacy, and they treat The Federalist essays as the authoritative exposition of the document’s meaning (Thomas, 2008). Because Madison has attained this status, scholars often focus their attention on the public statements of his ideas, as the mature expression of his thoughts and the sources most likely to influence others. Yet Madison arguably did his most creative thinking, not to convince others, but to shape his own course of political action. He was not, to borrow his own words in Federalist 37, merely “an ingenious theorist” conjuring “a constitution planned in his closet or in his imagination.” He did not regard himself as a political philosopher writing in the abstract, but as a political actor who sought to understand how the deliberations and decisions of government reflected deeper patterns of republican politics. “He had a historian’s mind, which was a great intellectual advantage,” the late political theorist Judith Shklar aptly observed. “It enabled him to penetrate to the logic of collective action even when on the surface there seemed to be nothing but random irrationality and partisan wrangling” (Shklar, 1991:6). To understand Madison’s political thought, it is essential not merely to know what he wrote in his various papers, but to see how the questions he pursued emerged from the specific crises he faced.

Broadly speaking, there were three major phases in Madison’s political thinking. The first and arguably the most creative phase began in the mid-1780s, when he assessed lessons drawn from service in the Continental and Confederation Congresses and the Virginia legislature to fashion the agenda of constitutional reform he pursued in 1787. During this period, Madison focused on the problem of legislative misrule within the states, which he traced not only to the parochial qualities of lawmakers, but also to the influence placed on their deliberations by the people themselves. The second major phase in his thinking began in the early 1790s, as Congressman Madison and his close friend and ally Secretary of State Thomas Jefferson moved to oppose the financial and foreign policies of President Washington and Secretary of the Treasury Alexander Hamilton. During these years, Madison thought far more seriously about the nature of executive power than he had done previously. Equally important, he reconsidered the role of public opinion in republican government, moving beyond his fearful views of the 1780s to ask how the public could be mobilized to maintain constitutional norms. This phase of his political thinking culminated with the Republican electoral victories of 1800–1801. Over the next 18 years, Madison played much more the role of statesman than political thinker. After retiring from the presidency in 1817, however, he spent the remaining two decades of his life contemplating the meaning of the American experiments in republicanism and federalism. Though he wrote no published treatise during these years, his papers and other memoranda often discussed the Constitution and the political values it represented.

Revolutionary Experiences

Already a serious reader, young Madison left the family plantation near Orange, Virginia, in 1769 to attend the College of New Jersey (now Princeton University). Then 18, Madison entered college at a relatively late age, which proved an intellectual advantage. He formed a close relationship with the college’s new president, John Witherspoon, who both invigorated the college’s Presbyterian identity and advanced
the broader learning of Scotland’s great period of Enlightenment. Some observers think that Madison’s views of human nature grew from Calvinist roots at Princeton, but the evidence for this is flimsy, and Madison never wrote directly about his religious convictions (Sheldon, 2001). After he returned to Virginia in 1771, however, he saw religious belief as an absolute natural right, not a liberty to be extended at the discretion of the state.

Madison entered politics as a delegate to Virginia’s Fifth Provincial Convention in the spring of 1776. He secured an amendment to Article XVI of the Virginia Declaration of Rights. As drafted, the article offered religious toleration on behalf of the state; with his amendment, it instead recognized a right to free exercise inherently belonging to the citizens of Virginia. Madison returned to the new legislative assembly in the fall of 1776, where he first met Jefferson. Although defeated for re-election the next spring, Madison was soon appointed to the state executive council. In March 1780 he joined the Virginia delegation to the Continental Congress. He served three and a half years there without a leave before he was term-limited out of Congress under the Articles of Confederation. After returning to Virginia, he represented Orange County in the House of Delegates for three terms (1784–1786).

These two sustained rounds of deliberative politics – first in Congress, then in the Virginia legislature – provided the experience upon which Madison fashioned his critique of American federalism and republicanism. Federal concerns originally dominated his thinking. He formed an unfavorable impression of Congress when he first arrived in March 1780, but over time he came to appreciate the dual difficulties under which it labored (PJM, 2:6). For Congress to act effectively, it first had to attain internal consensus, which proved hard enough with members frequently absent and individual delegates sometimes seeking to hamstring its deliberations. But even after achieving consensus, it still had to persuade the state legislatures to fulfill their obligations to the federal Union, a nearly impossible task because Congress had no influence over state politics. After he returned to Virginia, Madison became a dominant figure in the assembly, where he worked hard to promote pro-federal attitudes. But the longer he served, the more disillusioned he grew over the narrow provincialism of ordinary legislators. Moreover, by 1785 he found the poor quality of republican governance within the states troubling. In his increasingly jaundiced view, legislative demagogues and hacks whose standards of political judgment fell far below the high ideals of republican theory dominated state politics. Not only were they indifferent lawmakers; they were also all too vulnerable to the passions and interests that swirled through state politics. Over time, this “disgust” with the internal government of the states became at least as important a stimulus to Madison’s thinking as his original concern with the weakness of the general government.

From these experiences, Madison began to rethink the dual problems of federalism and republicanism. To make the Articles of Confederation work required legislators in each of the states to develop more informed attitudes about the provincial stake in the collective national interest. Within each of the states, he wanted to see representatives acquire a capacity to deliberate and to appreciate the process of framing legislation. At first glance, these issues seemed to be discrete. But the more Madison thought about them in the mid-1780s, the more he believed that the collective problems of federalism and republicanism could be tied to a common set of causes.
One early expression of Madison’s thinking came in 1785, when a college classmate’s request for advice on a constitution for Kentucky prompted Madison to record his thoughts about the state constitutions written in the mid-1770s. Madison began with a sharp critique of the lack of “wisdom and steadiness” in state legislation. The states sorely needed, he thought, true senates capable of checking impulsive legislation, committees that were technically qualified to draft legislation, or an institution like the joint executive-judicial council of revision in New York, which held a limited negative over legislation. Properly constructing the judiciary posed another concern; indeed, in Madison’s view, the judiciary mattered far more than the executive. Rejecting a popular republican maxim that “Where annual elections end, slavery begins,” Madison thought that three-year terms would not only insulate representatives from impulsive public opinion, but allow lawmakers who ordinarily served only a term or two to learn their business (PJM, 8:350–57).

Yet by 1785–1786, the problem of federalism was becoming far more urgent. Like many supporters of a stronger Union, Madison hoped that the adoption of individual amendments to the Articles would demonstrate that Americans could give Congress additional power without reducing the essential autonomy of the states. But as the revenue and commercial amendments proposed in 1783 and 1784 languished short of unanimous approval, Congress was disparaged as an “imbecile” body. Any further reforms it proposed seemed likely to fail. Overcoming some early misgivings, in January 1786 Madison supported a resolution in the Virginia assembly to invite the other states to attend a convention to discuss giving Congress authority over commerce. Elected a commissioner, Madison prepared for the meeting at Annapolis in September by beginning to rethink basic questions of republican and federal governance.

During this period, working with a “literary cargo” of books that Thomas Jefferson shipped from Paris, Madison began a course of study on the history of “ancient and modern confederacies” (PJM, 8:501). Madison came away from this reading convinced that the recurring flaw in most unions was their failure to accord adequate authority to the central governing institutions. The inherent problem confederations repeatedly faced was not that they encouraged a dangerous flow of power to the center, but rather that member states retained too great a check on how these confederations operated. That diagnosis easily fit the American situation in the 1780s, but the works Madison consulted provided no ready solution to the evils they diagnosed (PJM, 9:4–24).

The sharp sectional division within Congress over the Mississippi River, which Spain had closed to American navigation in 1784, heightened Madison’s concerns about American federalism. Madison found this regional split ominous for another reason, implying as it did that a Union of 13 states could devolve into several regional confederacies. Equally important, it encouraged him to consider a broader problem: whether majorities which had the right to rule in republican governments should do so when their decisions violated the basic public good. In a private letter to James Monroe in October 1786, Madison casually remarked that he had been wondering whether “the interest of the majority is the political standard of right and wrong” (PJM, 9:141). Republican government was premised on the principle of majority rule. But should those majorities retain that power when they pursued policies inimical to the fundamental rights and interests of minorities, whether of states or the people themselves?
By the time Madison wrote to Monroe, the Annapolis Convention had met and adjourned, with too few delegates present to act. But rather than depart empty-handed, the commissioners instead called for a second meeting of the states to consider the general failings of the Confederation. Returning to Virginia, Madison took the lead, first in stopping at Mount Vernon to inform George Washington of this stratagem, second in shepherding through the assembly a resolution inviting the other states to appoint delegations, and third in assuring that Virginia’s delegation would testify to the gravity of the meeting by appointing a prestigious delegation that included Madison and three eminent Georges: Mason, Wythe, and, most important, Washington.

Setting the Constitutional Agenda

Madison gave himself one further momentous task: to prepare a working agenda for the Convention set to meet at Philadelphia in May. The preparation of this agenda marked a distinctive, even unique, moment in the history of political thinking, certainly for the United States and arguably for modern constitutionalism. In this enterprise, Madison combined his scholarly reading with the reflections he drew from his own political experience and from knowledge of events in other states. The process began at the family home at Montpelier, where the room we now think was his study looked directly west to the Blue Ridge Mountains and the expanding republic that lay beyond. But the conclusions appear to have come together in the early spring of 1787, in New York City, where Madison had regained his seat in Congress.

A great deal of academic debate has concentrated on the sources of Madison’s originality, particularly his hypothesis that an extended national republic embracing an array of interests would better secure liberty and the collective public good than the smaller, moderate-sized republics of the separate states. The inspiration for this debate came from essays published by Douglas Adair in the 1950s. Adair rejected the predominant Progressive view, grounded in Charles A. Beard’s *Economic Interpretation of the Constitution* (1913), which used Madison’s ideas to argue that economic interests provided the motivating force behind the Constitution. Adair argued instead that Madison’s real concern was to challenge the fundamental tenet of political theory which held that republics could operate only in small homogeneous societies, where citizens could maintain the self-regulating civic virtue – the capacity to subordinate private interest to public good – that stable republics required. First before the Convention, and then in *Federalist* 10, Madison rejected this premise. The inspiration for this challenge came, Adair suggested, from Madison’s reading of the political writings of David Hume, particularly his essay, “Idea of a Perfect Commonwealth” (1957).

Adair’s essays liberated the analysis of Madison’s political thinking from the materialist economic framework favored by Beard and his followers. Interpreters came to understand that Madison was speaking the language of republican political thinking that had flourished in Europe since the early sixteenth century. Measuring exactly how closely Madison had followed Hume has remained a subject of some dispute, with no tidy resolution. Adair treated Madison’s recourse to Hume almost as a eureka-moment of revelation. But the idea that Madison had a sudden literary *aperçu* hardly does justice to his thought process. The central problem that Madison faced in imagining what course the Convention would take was not primarily concerned with
slaying the conceptual ghost of Montesquieu. It was rather to diagnose the deficiencies of republican and federal government, and then to ask which changes would best attain the two great ends of republican governance: securing the public good while protecting the private rights of citizens.

Madison developed his agenda in four documents. One, the 12-point memorandum on “vices of the political system of the United States,” he wrote essentially for himself. Here Madison concisely analyzed not only the basic collective-action problems of the federal Union, but also a quite different set of evils that he labeled the “multiplicity,” “mutability,” “injustice,” and “impotence” of state legislation (PJM, 9:353–57). The other texts were letters to three friends and allies: Jefferson, Virginia governor Edmund Randolph, and Washington. Here he laid out the rudimentary outlines of a constitution, beginning with the proposition that representation in the national legislature should be apportioned among the states on the basis of population, rather than the one state, one vote rule of the Confederation. The reconstituted federal Union would be a government in the full sense of the term, with a structure similar to the three branches that operated in all the states. To deal with improper and unjust legislation within the states, Madison proposed to give the national legislature a negative on state laws, to operate “in all cases whatsoever” (PJM, 9:317–19, 369–71, 383–85). That phrase came heavily freighted in American political language, because Parliament used exactly the same term in its Declaratory Act of 1766 to define its jurisdiction over America. Madison borrowed this idea from the king’s prerogative power to veto laws passed by the colonial legislatures.

The decision to link the defects of state lawmaking with the inadequacies of national authority reveals just how expansive an agenda Madison contemplated. Short of abolishing the states altogether, this was as radical a program as anyone in 1787 could imagine. It also required merging two distinct subjects, national issues and state-based problems, both demanding urgent reform. But in Madison’s view, the defects of federal and state governance under the Articles of Confederation were ultimately tied to one common source: the incapacity of state legislatures to deal responsibly with their complementary duties both to external national governance and to internal self-governance. When it came to describing federal vices in the memorandum, Madison did not direct his complaints against decision-making within Congress or the formal lack of congressional authority per se. Instead he repeatedly faulted the state legislatures for their inability to perceive and comply with a just notion of the collective public good.

The culmination of this analysis came in the seventh item of the memorandum, subtitled “want of sanction to the laws, and of coercion in the Government of the Confederacy.” Here Madison attacked the fundamental premise of the Confederation, which held that the states would faithfully implement congressional resolutions and requisitions. Madison began this remarkably concise analysis by recalling why the “compilers” of the Articles, working amid the republican enthusiasm of the mid-1780s, naively assumed that “sound policy” and “virtue” would convince the states simply to do their duty. Experience had since taught a different lesson. Even in wartime, “external danger” had not supplied the defect of better motives, and in peacetime, the incentive had declined even further. “How indeed,” Madison then asked, “could it be otherwise?” Madison then stated three structural reasons why a federal system depending on the voluntary compliance of the states with national measures
would always fail. First, states had different interests on many questions, and would rarely have a uniform incentive to comply with national decisions. Second, some group of ambitious politicians within the states would always have reasons to oppose compliance. Third, even where the states collectively agreed on a common policy, “a distrust of the voluntary compliance of each other may prevent the compliance of any.” “Here are causes & pretexts,” Madison concluded, “which will never fail to render federal measures abortive” (PJM, 9:351–52).

This concise analysis is remarkable for two reasons. First, it dramatically illuminates the character of Madison’s thinking. The analysis begins with two historical questions: What went awry in the mid-1770s? And what have we learned since? But it then theorizes those concerns in more abstract terms. The analysis is latently game-theoretic in nature, envisioning American federalism as a game in which the players (member states) have different incentives to enforce or shirk national decisions. Second, by defining the structural failings of this form of federalism, Madison concluded that some other form of governance was necessary. The most obvious alternative was a national government capable of ruling, not through the states, but directly on the American population. That would be a government of law, not resolutions, enacting, enforcing, and adjudicating its own statutes. Such a government would have to follow the republican form as closely as possible, meaning that the delegates to the Philadelphia Convention could review and improve upon the practices of the state constitutions adopted a decade earlier.

Madison’s “Vices” returned to the failings of the state assemblies two items later, when he took up the “multiplicity, “mutability,” and most important, the “injustice” of state legislation. Together, these defects cumulatively called “into question the fundamental principle of republican Government, that the majority who rule in such Governments, are the safest Guardians both of public Good and of private rights.” Madison now applied to the internal governance of the states the same concern he had voiced to Monroe. Madison again asked a non-rhetorical question: “To what cause is this evil to be ascribed?” His first answer lay “in the Representative bodies” themselves. But Madison dispatched this point fairly quickly, listing several factors that explained why “ambition” and “interest,” along with the inexperience of many lawmakers, negated their concern for the “public good.” His deeper target of analysis lay in the second source of republican misrule, which lay “among the people themselves” (PJM, 9:353–54).

Here Madison first refuted the essential premise of 1776, which made the civic virtue of ordinary citizens, monitoring their representatives through annual elections, the chief security of a republic. In a republican government, where the majority necessarily ruled, what “motives” would operate, Madison asked, to check the force that “an apparent interest or common passion” could exert over the majority? There were three possibilities, Madison suggested: a general regard for the public good, which went “too often unheeded”; an individual’s respect for character, which was diluted by the force of public opinion; and religion. None of these restraints functioned effectively, Madison concluded. Instead he proposed the critical hypothesis that marks his key contribution to American political theory, and which received its famous public exposition in Federalist 10 and 51. The best security for rights would be gained by “an enlargement of the sphere” within which a republic operated. The smaller the polity, the easier it would be for unjust majorities to form. But in an extended
republic, even though the same unjust passions would still exist among the population, the “greater variety of interests, of pursuits, of passions” would make the formation of narrowly self-interested majorities far more difficult. “Contrary to the prevailing theory,” which said that republics should be small and homogeneous, Madison proposed that size, diversity, and a candid acceptance of the self-interested, opinionated nature of citizens’ behavior offered the means to a stable republic (PJM, 9:355–57).

This insight did not come primarily from his reading, helpful as that was. It developed instead from the dissatisfaction Madison felt with the behavior of his fellow legislators in Virginia. His concern with the quality of legislative deliberation had not receded. Yet now he qualified it by the broader recognition that legislatures only reflected the popular interests and majorities forming “out-of-doors.” When legislators unjustly enacted laws injurious to the rights of minorities, they did so not as avaricious power-seekers, but rather as the agents of opinionated or self-seeking interests in the larger society. In a republic, Madison realized, the real threat to rights did not involve the concentrated power of the government acting arbitrarily upon the people. It flowed instead from the desire of popular majorities to impose measures inimical to the just rights of individuals and minorities.

In rejecting the conventional views of republics, Madison also challenged another premise of the Articles of Confederation. When he spoke of the opinions, passions, and interests of citizens as the driving force of politics, he also implied that the proper basis of participation in a republic should rest upon individuals, rather than upon the member states of the federal Union. In a national republic acting directly upon citizens, not upon states, representation in both houses of the new legislature should be based on state population, perhaps with some allowances made for property. The Virginia Plan that Madison and his colleagues drafted, presented to the Convention by Edmund Randolph, eliminated the equal state rule of the Confederation.

Madison’s animus against the states also led to his most radical proposal – to give the national legislature a negative on state laws. Ideally, Madison wanted this negative to cover two categories of state lawmaking: acts interfering with national measures, and laws adverse to the rights of minorities and individuals within the state (Hobson, 1979). Madison also proposed creating an executive-judicial council of revision armed with a limited negative on national legislation – another example of his continuing concern with the quality of legislative deliberation. Such a council, he believed, would help prevent improper legislation from being adopted. That would be better than the emerging idea of judicial review, which held that courts should retrospectively overturn wrongful measures. Like other delegates, Madison recognized that courts had the power to overturn unconstitutional legislation. But his concern lay more with acts that were unwise, and which deserved better consideration, than with those that were constitutionally suspect.

**The Case for Ratification**

The proposals for bicameral proportional representation, a council of revision, and the negative on state laws formed the heart of Madison’s agenda for Philadelphia. He lost all three. Those defeats make it possible to ask whether the Constitution really was “Madisonian,” and how Madison ultimately reconciled himself to the other
delegates’ refusal to accept his analysis. Madison went to Philadelphian hopeful that he could convince small-state delegates to relinquish their equal vote, an advantage that he believed they neither deserved nor really needed. But his opponents remained impervious to reason. When other delegates objected that the negative on state laws would be impossible to conduct or enforce, Madison had no effective answer. Nor did his belief that judges could assist in the formation of legislation resolve the objections that courts should consider statutes only in properly judicial situations.

Some commentators believe that Madison moderated his views as the Convention proceeded, listening open-mindedly to reservations he had not fully appreciated. Madison did assume, all along, that the states would remain essential units of domestic lawmaker, not hollow jurisdictions, which is why the negative on their laws would be so important (Banning, 1987). Yet Madison still believed that he had analyzed the vices of state lawmaking correctly, and that dissatisfaction with the state governments, rather than the manifest shortcomings of the Confederation, had made the Convention possible. In a lengthy letter to Jefferson written after the Convention adjourned, Madison persisted in defending his negative as the best solution to the problems of republican government within the states (PJM, 10:209–14). His dominant concern about the protection of rights had not shifted. The greatest difficulties arose within the states, and republican liberty would remain insecure so long as the state legislatures and the popular majorities they represented were not effectively restrained.

Four weeks later, Madison published Federalist 10, his first contribution to the essays organized by Alexander Hamilton to support the ratification of the Constitution in New York. Although the two men had served together in Congress in 1782–1783, Madison was not Hamilton’s original choice as co-author. Had Madison returned to Virginia in the fall of 1787, rather than continue to attend Congress, his best-known writings in constitutional theory would never have occurred. Fortunately for history and constitutional theory, Madison agreed when Hamilton turned to him. Writing under the pen-name Publius, their division of labor accurately reflected their particular interests. Hamilton wrote about the imperative needs of effective national government, Madison about federalism and the separation of powers. Hamilton examined executive and judicial power under the Constitution, while Madison discussed Congress.

Among the 85 essays of Publius, Federalist 10 is now regarded as the most innovative and influential (although originally it received no special attention). Modern interpreters agree that its importance inheres in Madison’s reconsideration of the relation between citizens’ passions and interests and the stability of republican governments. The key issue addressed in Federalist 10 was the problem of faction, a term he ingeniously applied to majorities and minorities alike. This was a novel definition, because the idea of a factious majority seems to contradict the basic premise of majority rule. Yet Madison had been rethinking that exact premise since 1786. Majorities should have the authority to rule only when their decisions pursued the true common good and respected minority and individual rights. Assuming that interest, opinion, and passion drove republican politics, Madison asked which level of government was more likely to remedy the “mischief of faction”: the smaller polities of the states, or an extended national republic? The answer, of course, was the new national polity the Constitution would reform. Not only would it make the formation of factious
popular majorities difficult, it would also, Madison hypothesized, encourage the election of a superior class of deliberative lawmakers, as petty politicians somehow canceled each other out and merit became easier to recognize. It also broadened the pool of candidates, allowing for greater talent to prevail.

Taken by itself, Federalist 10 was not a constitutional theory proper. It simply stated conditions that made the case for national republican government more plausible than the traditional view allowed. In a sense, Madison’s opening Federalist essay marked his conversion from an active advocate of his preferred scheme of reform into a spokesman for the new constitutional order. The same theme informed his next essay, Federalist 14, written in a strikingly different voice. This essay closed on a bold note, asking why Americans should remain the intellectual prisoners of 1776, when experience had shown the need for constitutional reform.

Madison returned to the nature of good political sense and the epistemology of political reasoning in Federalist 37. In this revealing essay, Madison urged his readers to understand the inherent difficulties of the framers’ political reasoning, so that they could exercise the “moderation” necessary to judge the completed Constitution on its merits. Madison detailed the difficulties and uncertainties facing the Convention. There were no useful precedents for the kind of deliberation in which the framers had engaged. Nor did they have any easy formula for combining the Americans’ attachment to liberty with the pressing need for energetic government. But then Madison moved further by comparing the science of politics to other forms of knowledge. Much of constitution-making, Madison suggested, involved drawing lines – or more precisely, boundaries – between the respective authority of national and state governments or the duties of different departments. This process inevitably produced a significant measure of uncertainty. In nature, one assumed that the divisions among different phenomena were “perfectly accurate” – that is, they really existed, and only the failings of human powers of observation prevented their discovery. But no similar clarity existed in politics. Not only was human judgment fallible, but the political objects it studied lacked the fixed qualities of animate and inanimate matter. The shortcomings of language itself introduced further sources of uncertainty, given the multiple meanings for the key words around which political discussion revolved.

Madison’s strictures on political reasoning were both a reflection on his own experience and a cautionary lesson to informed readers. The hard work of constitution-making often combined principled stands and expedient interests; and the results at Philadelphia involved innovations and compromises that departed from the received wisdom of 1776. For Americans to make sense of the Constitution, they had to grasp these difficulties and departures. No simple formula, no uncritical appeal to the tenets of Montesquieu, could accomplish this task. Instead, in his remaining essays, Madison assessed how the system might function. In Federalist 39, for example, he answered the recurring Antifederalist claim that the Constitution would inevitably produce an improper “consolidation” of national authority. Madison eschewed the simple categories of national or state sovereignty. Instead he set a five-pronged calculation of its essential characteristics, ultimately concluding that the Constitution proposed an unprecedented amalgam of “partly federal, partly national” features, which could only be understood on its own terms.

Federalist 37 also marked a significant transition within the larger series of essays, from a general discussion of the advantages of effective national government to a
focused analysis of specific clauses of the Constitution. In *Federalist* 41, Madison began a set of essays examining the powers that the Convention vested in Congress. But the broader question he asked was whether “the entire mass of [these powers would] be dangerous to the portion of jurisdiction left in the several States?” In answering that question, particularly in *Federalist* 45–46, Madison distinguished the formal authority of institutions from the political forces swirling through society. Like other Federalist writers, he explained why each power delegated to the national government was reasonable in itself. But the formal granting of authority could not alone account for its political exercise. Nor could one assess the relative strength of national and state governments merely by comparing their powers. True, national jurisdiction, Madison argued, would be directed to a few leading objects, while most ordinary governance would remain with the states. He thus refuted the idea that the Constitution would consolidate all legislative authority in the new Congress. But the basis of this conclusion, Madison added in *Federalist* 46, rested on a more powerful fact. The states, not the national government, already enjoyed and would long retain the political affection of the American people. Should that advantage ultimately fade, it would result not from the naked assertion of national power, but instead from the people’s desire to mobilize national authority for their own ends. The national government would gain superiority only by persuading Americans of its competence, not by asserting its legal authority.

Madison again made this distinction between formal authority and the popular sources of political behavior in *Federalist* 47–51, his classic essays on the separation of powers. Relying on the logic of *Federalist* 37, Madison used examples drawn both from the British constitution that Montesquieu admired and from American practice to prove that governmental power need not be tightly cabined within rigid legislative, executive, and judicial categories. The objective was not to separate the powers rigidly, but to prevent dangerous concentrations of authority. Some combinations of power between departments would be permissible, Madison concluded, if they helped to secure the greater goal of maintaining a balanced constitution. Indeed, such combinations were all the more essential once one realized that the dangers to the separation of powers did not arise equally from all three departments. In a republic, he explained in *Federalist* 48, the greatest threat came from the “impetuous vortex” of the legislature, particularly the lower house, with its close association with the people.

Instead of assessing exactly how the Constitution had separated the powers, Madison’s remaining essays took a different path, discussing the role of the people in maintaining the separation of powers. One possibility, he noted in *Federalist* 49 and 50, had been suggested by Thomas Jefferson. This was to allow two departments of government to summon a popularly elected convention to review and amend constitutional “encroachments” launched by a third department. Such an approach, Madison conceded, would honor the people’s sovereignty as the source of the powers of government. But in his view the practical dangers badly outweighed the theoretical benefits. Believing that the people’s elected representatives would most likely violate the constitutional scheme of separation, and that lawmakers would likely act in conformity with the people’s own wishes, Madison doubted that Jefferson’s remedy would prove adequate.

The best solution, Madison concluded in *Federalist* 51, could not rely on the people directly to enforce the separation of powers. Instead, he expected that
officeholders in each branch of government would protect the constitutional rights of their institutions. “Ambition must be made to counteract ambition,” he wrote. “The interest of the man must be connected with the constitutional rights of his place.” But Madison said little specifically about how these attachments would form. The closest he came, in a single paragraph, was to suppose that the Senate, “the weaker branch of the stronger department,” would form a tacit alliance (through their shared powers over diplomacy and appointments) with the executive, “the weaker department,” to withstand potential abuses from the popularly elected House of Representatives. Madison embedded in this formula the same political distinction between formal authority and political effectiveness that he had applied to federalism.

In terms of power, the Senate was not a weaker institution than the House. If it had less influence, that was only because the House represented the people directly. Equally important, Madison closed his entire discussion of the problem of separation of powers, not by discussing any scheme of checks and balances among institutions, but by restating the basic argument of Federalist 10. The security for personal liberty that the separation of powers provided would be enhanced, Madison argued, by two further considerations: the federal structure itself, dividing power between state and nation in a “compound republic”; and the political benefits of “a multiplicity of factions” in the extended republic.

A significant part of Madison’s genius at this crucial founding moment in American history thus pivoted on his dual vision of republican politics. As a constitutionalist concerned with the role of institutions, he was intent on improving the quality of legislative deliberation. Though disappointed by the Convention’s key decisions over the election of the Senate by the state legislatures and the equal state vote in that body, he still hoped that the upper house would brake impulsive legislation. He justified the two-year term given to members of the House, not to insulate representatives from public opinion, but as a mechanism for allowing them to develop significant knowledge over the course of a single term. He anticipated as well that in the expanding United States society, interests would actively use legislative power to advance their own goals. Legislatures existed not to protect the people against the abuse of executive power, as English constitutional theory long held, but to wield legal authority actively. Madison thus contemplated the nature of the interests swirling through society, and the ways in which opinion, passion, and economic interest would establish the framework of republican politics. His sociology laid the basis for an understanding of politics that proved far more sophisticated than the old story of the rulers and ruled, the few and the many, or the idea that residence in a small or large state could adequately identify the interests of citizens.

The Challenge of Constitutional Interpretation

This view of the relation between popular desires and legislative politics dominated Madison’s thinking through much of Washington’s first term as president. The critical test of his concern came early in 1791, when Hamilton, as part of his plans for establishing national public credit, asked Congress to incorporate a national bank. In 1787 the Convention had rejected Madison’s proposal to give Congress an explicit power to issue charters of incorporation. But did that mean, as Madison supposed,
that such a power did not exist at all? Or was it possible that such a power could simply be subsumed under other clauses of Article I, including the “necessary and proper clause” that Madison himself defended in Federalist 42, and which Hamilton, as well as other Convention delegates now sitting in Congress, cited as the obvious source of congressional authority? After learning Madison’s views, and soliciting briefs from Jefferson, Hamilton, and Attorney General Edmund Randolph, President Washington signed the bank legislation. With some reservations, Madison and Jefferson accepted this decision. But the broad reading of the Constitution on which it rested struck Madison as a dangerous formula that would make Congress the judge of its own authority.

By 1792, the success of Hamilton’s agenda, and the perception that members of Congress were speculating too freely in the new instruments of federal credit, led Jefferson and Madison to launch an opposition movement to administration policies. They did not limit this movement to factional conflict within the government. Together the two Virginia leaders recruited Madison’s Princeton friend, the poet Philip Freneau, to edit an opposition newspaper, and Madison soon became one of its early contributors. In a series of concise essays, quite different in form from his contributions to The Federalist, Madison sketched out a platform for the emerging Republican party. Equally important, the purpose of these “party press” essays (as scholars call them) was to inform and appeal to popular opinion, both as participants in elections but also, ultimately, as guardians of the Constitution. Such a position carried Madison a significant distance from his concerns in the 1780s. In one especially revealing letter to Edmund Randolph in January 1788, Madison bluntly indicated that on complicated public questions – such as the adoption of the Constitution – most ordinary citizens were incapable of independently forming intelligent decisions (PJM, 10:354–56). Madison now rethought this question, as he began considering whether republican politics could reach beyond deliberations within government to mobilize public opinion as an active factor in politics (Sheehan, 2009). Madison gave a decisive answer to the question posed in his concluding essay, “Who Are the Best Keepers of the People’s Liberties?”: “The people themselves” (PJM, 14:426–27).

This reconsideration of the basic question that troubled Madison so much in the late 1780s was only part of a broader adjustment to the emerging contours of politics under the Constitution. In Federalist 10, Madison hypothesized that elections for the extended republic would produce a higher quality of lawmaker than he had observed in the Virginia assembly, but early observations of his colleagues in the House of Representatives left him doubting that proposition (Rakove, 1987:286–94). In the debates of 1787–1788, Madison understood that implementing the Constitution would require further interpretation; now he asked, more precisely, how that interpretation would occur. By 1796 he was prepared to endorse the mode of constitutional interpretation that is today known as originalism, holding that the understandings of the ratifiers of the Constitution – although not the intentions of its framing authors – established proper guidelines of interpretation (Rakove, 1996:339–65). Two years later, drafting the Virginia Resolutions of 1798 protesting the Alien and Sedition Acts, Madison proposed allowing the states to reclaim some residual role in constitutional interpretation, if only by acting politically to voice opposition to problematic decisions of the national government.
Arguably the one issue that most affected Madison’s political thinking after 1789 involved reckoning with the political influence and authority of the presidency. Previously, he had not been a keen student of executive power. Like other framers of the Constitution, he found it difficult to imagine how much political authority a national republican executive would enjoy. Doubtless he and Jefferson were disappointed that Washington’s relations with Hamilton proved more potent and durable than the president’s ties to his fellow Virginians. But the real issue was less Washington’s use of presidential power than the authority of the presidency itself. This was especially the case after 1793, when foreign policy issues driven by the French Revolution and the ensuing European war came to the forefront of American politics. In these disputes Madison recognized the enormous institutional advantage of the presidency in its ability to react quickly and unilaterally to events. When Hamilton, writing as “Pacificus,” justified the president’s unilateral declaration of United States neutrality in the war between Britain and France, Madison, replying as “Helvidius,” held that these arguments invoked British conceptions of executive power, rather than the decisions embodied in the text of the Constitution or the state ratification convention debates. Madison’s interpretation followed the political reasoning laid down in *Federalist* 37. But Hamilton’s grasp of the potential advantages of executive power left Madison struggling to formulate an effective response. In Madison’s view, issues of war and diplomacy were properly matters in which Congress (or the Senate) should enjoy at least an equal say with the presidency. But the reality required decisive initiative and discretion in the executive.

**Later Thoughts**

Madison’s adjustments to these developments are often described as exposing a basic tension, if not downright inconsistency, between the constitutionalist of the 1780s and the party leader of the 1790s. *Federalist* 10 was written, after all, to cure “the mischiefs of faction,” yet here Madison, as captain of the Republican opposition in Congress, was working to forge a majority faction. In 1787 Madison wanted to give Congress a negative on state laws; a decade later, he argued that states retained some residual role as guardians of the Constitution, and in terms that ardent states’ rights exponents later venerated. In 1787 Alexander Hamilton thought, on the basis of personal conversation, that Madison would be a firm friend to the program of establishing the nation’s public credit; within a few years Madison became Hamilton’s leading congressional critic.

Perhaps Hamilton had cause to be aggrieved, but their divergent views of public credit owed more to Madison’s ideas about political economy than to any sudden departure in his views. Hamilton and his supporters admired the success of the eighteenth-century British state in developing institutional means and practices to sustain a global empire. Banks, taxation, an efficient customs and excise service, a standing army and navy were the basis of Britain’s imperial power. Madison and Jefferson, by contrast, were heirs to the British opposition tradition, and they viewed these instruments of national power as devices to subvert essential constitutional values established after the Glorious Revolution. As their own policies after 1801 suggested, Jefferson and Madison did not believe that American governance should be modeled on British examples. It should instead remain consistent with republican values, and
above all, avoid the growth of executive power to which Hamilton’s preferences and politics of war and diplomacy led. Scholars have deservedly found much to criticize in the conduct of their respective presidencies: Jefferson for the disastrous Embargo of American commerce from 1807 to 1809, Madison for leading an unprepared nation into the War of 1812 and mismanaging the conflict. Yet Madison left the presidency in 1817 a popular figure, not least because Americans understood he waged the war without violating republican values. In the era of Napoleon, a self-proclaimed emperor on a colossal European scale, this was not a minor accomplishment.

With his retirement to Montpelier in 1817, Madison might have performed a great service by preparing his own treatise on republican constitutionalism. Alas, he did not. Yet recalling his own historical researches in 1786–1787, he remained sensitive to the needs of history. Madison believed that the records of the Revolutionary era – and especially everything relating to the adoption of the Constitution – would offer lessons that no other nation could match, and from which they could all learn. The best evidence would be the daily notes of debates at the Federal Convention that Madison had assiduously kept, and which he edited first in the early 1790s and again in his retirement. After concluding that these records should not be used to assist in constitutional interpretation, Madison decided to publish his notes posthumously, as an intellectual and political gift to posterity.

From early in his retirement until his declining days, Madison received many requests to comment on public affairs, particularly when constitutional controversies arose. When he first returned to Montpelier, disputes over the nationalist jurisprudence of the Supreme Court riled politics. Several Virginia jurists, led by Spencer Roane, argued that state and federal supreme courts possessed equal power to judge disputes over the boundaries of federalism. Although critical of key aspects of the jurisprudence of Chief Justice John Marshall, notably his Hamiltonian reading of the necessary and proper clause in *McCulloch v. Maryland* (1819), Madison clung to the position he sketched in *Federalist 39*, which recognized the Supreme Court as the arbiter of constitutional disputes over federalism. The southern states had an interest, he now understood, in maintaining the Court’s jurisdiction, for in defiance of his own expectations from the 1780s, population growth and expansion favored the North and would leave the South a permanent minority in Congress (JMW, 733–37, 772–79).

Concerns about the political balance of the regions also shaped the Missouri Crisis of 1819–1821. Since 1787, Madison recognized one great and potentially unsolvable objection to his argument for an extended republic. The diversity of factions across the republic would only work, he believed, so long as the potential conflict between free labor and chattel slavery did not move to the forefront of American politics. At the Convention he had reminded the delegates that the slavery issue, rather than the immediate quarrel between the large and small states, represented the greatest lasting danger to the Union. Madison understood the danger that the Missouri Crisis, the first full-blown example of how explosive the slavery question could become, posed to his general theory. “Should a State of parties arise, founded on geographical boundaries and other Physical & permanent distinctions which happen to coincide with them,” he asked one correspondent in 1819, “what is to controul those great repulsive Masses from awful shocks ag[ain]st each other?” (JMW, 744)
Madison spent the rest of his life worrying about this problem. Between the Missouri Crisis and the Nullification Crisis of 1832–1833, the intellectual tenor of southern political thinking moved sharply in a states’ rights direction. To Madison’s intellectual embarrassment, states’ rights advocates took the Virginia and Kentucky Resolutions of 1798 as a founding document for their erroneous cause. Madison patiently explained that neither he nor Jefferson ever contemplated anything like the nullificationist language emanating from South Carolina. But increasingly the idea took hold in the South that the states retained some original elements of sovereignty that their ratification of the Constitution had not wholly erased. Madison deplored that this “colossal heresy” continued to muster recruits in a South that was growing increasingly alarmed over the constitutional security of slavery (JMW, 862).

On a deeper level, however, Madison insisted that arguments drawn from blunt appeals to the sovereignty of either the Union or the states mistook the nature of the federal system. In his old age, as in Federalist 39, he believed that a system as complex as American federalism could only be maintained if its participants thoroughly understood it. Here again he laid down the Federalist 37 formula for political reasoning. The American system was not borrowed or derived from examples set by other nations. “Our political system is admitted to be a new Creation – a real nondescript,” he observed in 1833. “Its character therefore must be sought within itself; not in precedents, because there are none; not in writers whose comments are guided by precedents” (JMW, 864). In his old age, as in Federalist 51, he regarded the constitutional system as a “compound republic,” neither a confederation of sovereign states nor a consolidated national government, but a unique hybrid that had to be “its own interpreter, according to its text & the facts of the case” (JMW, 842).

Madison hoped the records of how the Constitution had been written and ratified would be his intellectual and political legacy to the American republic. His last public document made a final plea to Americans “that the Union of the States be cherished and perpetuated” (JMW, 866). Tragically, this injunction could not overcome the one question Madison had long privately contemplated yet rarely discussed: slavery became the active fault line on which the federal Union finally sundered, a quarter century after his death.

**FURTHER READING**


