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# James Madison

## Father of the Constitution?

by Harold S. Schultz

James Madison's name probably has popular renown today because of its listing among the American presidents; but it is for his work in framing, ratifying, amending, and interpreting the United States Constitution that historians praise his leadership. As "Father of the Constitution" Madison was able to gain a reputation for statesmanship that is almost impossible to achieve in legislation alone.

Madison never commanded the great popularity and reverence of George Washington, but those who knew him intimately or at close range were invariably impressed by his courtesy, diligence, patience, and selflessness; it would not be amiss to say that his fine character was an equal to Washington's and that it functioned to the nation's advantage in the legislative branch as Washington's did in the executive.

Madison was also endowed with a brilliantly versatile mind. Original, creative, and independent in his thinking, he could theorize, analyze, and construct; could assimilate the meaning of past political experiences and institutional developments, could diagnose the strengths and weaknesses in contemporary institutions, could analyze and estimate current political alignments and forces and their probable combinations, and could gather facts and marshal ar-

guments for public debate.

Men of intellectual genius are rarely suited for parliamentary maneuver and for playing the role of the negotiator or conciliator. Such men too often repel, because their ideas appear unintelligible, futile, or plain boring to all except the most intelligent few. And because their minds form ideas early in a controversy, compromise may be more difficult for them than for those for whom acceptance of ideas from others does not involve displacement of well-defined opinions of their own. Then too, they may exhibit offensive manners that are often derivative of outstanding mental abilities; they may be conceited about their intellectual accomplishments, condescending toward the mediocre, or impatient with slower minds.

Ordinarily we expect that a man of Madison's mental qualities will play the role of conceiving and expounding ideas and that others of a different cast of mind will serve as the middlemen to combine parts selected from competing proposals to form an acceptable compromise. And to be sure Madison was outstanding because of his initiative in advancing and defending his

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own proposals. Nevertheless, his character was described by his associates in terms that are customarily used to describe the conciliator rather than the initiator in politics. So closely did his style and manner resemble the middleman negotiators that they usually treated him as one of their kind.

Madison's combination of mental and character traits, rarely found in the same person, accounts for the special place he has in the history of American statesmanship. Author of theoretical writings on politics rivaled by no more than a half dozen men in American history, he was also able to move from reflective thoughts about political ethics and causation to (1) diagnosing current problems of government to (2) prescribing practical remedies to (3) devising strategies to achieve acceptance for his proposed remedies to (4) narrating and commenting upon this entire process.

At the same time, his temperament and character were such as to enable him to take every step in the process with the utmost tact and diplomacy. Patient and self-controlled, he never gave way to outbursts of anger or displays of petulance. His great learning and dialectical abilities, brought forward with unassumed modesty, conveyed the impression that he was serving a cause and not himself. Even when he despised the arguments of those who differed with him, he never allowed himself to question their motives. He would alter his opinions when persuaded—and even when not persuaded he could acquiesce for the sake of a higher good; but calmly and with no rancor he would continue to make clear that he was merely acquiescent and not convinced. His speeches and writings were totally lacking in demagogic appeals to the emotions or sophistical enticements to the intellect.

Madison was well prepared by practical experience for the role he played in 1787 in drafting the U.S. Constitution. Although only thirty-six years old, he had already served for two years on the council of the Virginia governor, five years in the Virginia legislature, and four years in the Confederation Congress. In every office that he held, he had been known for his serious attention to business. In the Confederation Congress, where absenteeism was notoriously chronic, he seldom missed a session. He was continuously busy in preparing drafts of re-

ports, resolutions, or diplomatic instructions, in making prepared addresses or participating in impromptu debates, or in doing the routine work of a conscientious committeeman. Interested in a wide range of subjects, he became especially informed in financial problems, diplomatic negotiations, Western affairs, and the local origins of voting alignments in the Congress.

Through these experiences as a practical legislator he became a confirmed believer in what David Hume had written about the influence of economic interests on political behavior. The records of the Confederation Congress showed, he argued, that the states voted in accordance with their economic interests. That political divisions in civilized societies grew out of conflicts between the rich and the poor, between those who owned and those who had no property, between creditors and debtors, between the landed and commercial or manufacturing interests, was a refrain that ran through his Philadelphia speeches. His Federalist paper no. 10, notable in the history of American political thought as an early economic interpretation of politics, was a restatement of what he had already said repeatedly in 1787.

Throughout the 1780s Madison was a champion of expanded powers for the Confederation. Convinced that the power to coerce states could be inferred from that clause in the Articles that obligated them to "abide by the determinations of the united states in congress assembled," he nevertheless advocated an amendment that would explicitly confer such a power. He also spoke for amendments to the Articles that would have given the Congress the power to levy import duties and to enact navigation laws. Both in the Virginia legislature and in the Congress he worked for a satisfactory agreement by which Virginia would cede to the Confederation its claims to trans-Appalachian territories north of the Ohio. In 1785, in the Virginia legislature, he drafted the resolutions that led to the Annapolis Convention, to which he was sent as a delegate in September 1786. In both the Virginia legislature and the Confederation Congress he was involved in the steps taken by these two bodies to put into effect the recommendation of the Annapolis Convention that a new convention be held in Philadelphia in May 1787.

Through study, too, Madison had deliberately prepared himself for his great work at Philadelphia. In April 1787, he finished a manuscript entitled "The Vices of the Political System of the United States," in which he analyzed the defects of the existing Confederation. In the previous summer he had completed a manuscript that recorded the results of his investigations of the workings "Of ancient and Modern Confederacies." Information and ideas formed in the course of these studies were to appear many times in his convention speeches and in *The Federalist*.

Madison's influence at the Constitutional Convention of 1787 was due in the first instance to his seizing the initiative. In Philadelphia by May 4, he was the first of the delegates to arrive. On May 17, he began daily discussions with the Virginia delegates, from which came forth the Virginia Plan of Union that was presented to the convention on the second day after it was organized. Since the New Jersey Plan of Union was not introduced until June 15, the Virginia Plan provided the text for debate during the first two weeks.

Edmund Randolph introduced the Virginia Plan, but it is universally assumed that Madison was largely responsible for its contents. Madison himself never claimed authorship of the plan, and only because of its close resemblance to letters that he had written to Jefferson (March 19), to Edmund Randolph (April 8), and to George Washington (April 16), are we safe in deducing his primary role in its formulation. In these letters Madison had proposed that the central government be given an unlimited veto of state laws; the Virginia Plan proposed merely a national veto of state laws in conflict with the national constitution. With this one exception, what Madison had advocated in his letters appeared in the plan presented by Randolph.

A second influence of Madison, which continued throughout the summer of 1787, was in the realm of argumentation. He had something to say in just about every debate of the convention. The notes that Madison kept, our best and fullest source for the debates and proceedings, record his name as a speaker on seventy-one of the eighty-six days in session.

The criteria that governed Madison's thinking at Philadelphia were four: nationalism, republicanism, stability, and protection of private

property rights of individuals.

### **Nationalism**

Above all else, Madison attempted to promote national authority and power. The Virginia Plan stated that "the National Legislature ought to be empowered to enjoy the Legislative Rights vested in Congress by the Confederation"; to "negative" state laws in conflict with the national constitution; to "call forth the force of the Union against any member of the Union failing to fulfill" its constitutional duties; and "moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the U.S. may be interrupted by the exercise of individual Legislation." Once the convention accepted the approach of enumerating the specific powers of Congress rather than granting them by means of a broad general statement, Madison's tactic was to add to the list reported by the Committee of Detail. On August 17 he submitted a list of nine additional powers.

Madison also sought to strengthen the central government by establishing means for preventing state encroachments on national authority and by rendering it independent of the states in its electoral and operational processes. One of the purposes of a national veto of state laws was to prevent state encroachment on federal power. One of the advantages of popular election of senators was to render them less dependent on state government. His high praise for the idea of enforcing federal law on individuals rather than states and his insistence that the central government have a taxing power of its own were based on the desire to make the central government independent of the states in its operation.

### **Republicanism**

Like an overwhelming majority of the delegates at Philadelphia, Madison had a philosophical preference for the republican form of government, and like all (not excluding Hamilton) he recognized that public opinion would demand that this principle be an integral part of any new union government. But Madison also believed that republican governments in the past had shown a tendency toward instability and injustice because of the inconstancy of public opinion and the selfishness of legislative

majorities. The great problem facing the delegates, as he saw it, was to devise a federal republic that would combine a maximum of popular control with constitutional arrangements that would counteract its evil tendencies.

Property-holding qualifications for voting and holding office had some support at Philadelphia but much less support than one would have expected in view of their prevalence in the states. Madison, together with Wilson, was the most outspoken opponent of this means of eliminating the presumed evils of republican government. The Virginia Plan of Union permitted popular election of only one house of the legislature, but as the convention proceeded Madison came, at one time or another, to advocate popular election of congressmen, senators, and presidential electors.

Unyielding devotion to the powers and independence of the central government probably accounts for his increasing advocacy of democratic devices as the convention progressed. After the convention rejected the Virginia Plan mode for constituting the Senate and the presidency, he saw that there was still the possibility of reducing the influence of state governments on these two branches by having them elected directly by the people. In short, democracy became a *means* of promoting nationalism.

### **Stability**

As far as the federal government was concerned, Madison relied on long terms to promote stability. Initially he favored a three-year term for representatives, a seven-year term for senators, and a seven-year term for a president who would be ineligible for reelection. For the federal judges, he always favored life tenure. His national veto of state laws, he thought, would promote stability in the state governments.

### **Protection of private property rights of individuals**

No problem of representative government was more absorbing to Madison than that of preventing legislative injustices to the economic interests of minorities; his diagnosis of this problem is the most original theorizing done by any delegate at the Philadelphia Convention.

Madison was skeptical about achieving a per-

fect solution to the problem through constitutional guarantees, but he did of course give his approval to a basic constitutional structure that incidentally would operate to check national numerical majorities. He recognized and approved the fact that the tenure and powers of the Senate, the presidency, and the Supreme Court provided them with the capacity to defend national minorities, if they so desired, from unjust legislation passed by the House of Representatives. But Madison placed his greatest hope on the statistical probability that a legislative body representing the entire United States would contain a wide variety of interests—so varied and numerous that any given bill would not likely affect directly the interests of a majority. The large bloc of unaffected or neutral legislators having no selfish interests in the outcome, he reasoned, would be in the position of a jury and therefore able to decide justly.

Letters that Madison wrote to Jefferson after the Philadelphia Convention show that he had more faith in a neutral bloc in Congress than in a federal bill of rights. Despite the popularity of the concept of a bill of rights in the states, Madison was skeptical of their value in a republic based on the principle of majority rule. He conceded that a bill of rights could work effectively to stop government officials from oppressing individuals whenever a majority was against the government, and he admitted that it might have some use in establishing a tradition against the abuse of superior power by those who possessed it. But he was dubious about the prospects of government officials acting in behalf of individuals when the majority that put them into office strongly disapproved.

Madison's views on the expropriating tendencies of republican governments were not confined to conjectures about a future national Congress. He was even more concerned about what had recently been done in the states and anxious to use the power of a national government to restrict the states in the future. On June 6 he said that interferences with private rights and "the steady dispensation of justice" in the states were "evils which had more perhaps than

*Extract of a letter from James Madison to Thomas Jefferson, dated October 24, 1787. Papers of James Madison, Manuscript Division, Library of Congress.*



Extract of a letter to Mr. J. - in - dated Oct 20 1797.

It negative in the Genl Gov<sup>t</sup> or Laws of States necessary to prevent encroach<sup>ts</sup> on Genl Gov<sup>t</sup> & maintain stability & harmony in State legislation.



Without such a check on the whole over the parts the system involves the evil of  
 empire on empire. If a complete supremacy some where is not necessary in every society, a controlling power  
 or at least is so, by which the gen<sup>l</sup> auth<sup>y</sup> may be defended as<sup>t</sup> encroach<sup>ts</sup> of the subordinate authorities  
 and by w<sup>ch</sup> the latter may be restrained from encroach<sup>ts</sup> on each other. If the supremacy of the B. Parl<sup>t</sup>  
 is not suff<sup>ic</sup> as has been contended for the harmony of that Empire, it is evident I think that w<sup>th</sup>  
 the Royal prerogative or some equivalent contrail, the unity of the system w<sup>o</sup> be destroyed. The want of  
 some such provision seems to have been mortal to the ancient Confederacy, and to be the disease of the  
 modern of the Lycian Confederacy little is known. That of Sp<sup>a</sup> Amphyl<sup>is</sup> is well known to have been  
 never been rendered of little use whilst it lasted, and in the end to have been destroyed, by the pre-  
 dominance of the federal over the federal authority. The same observation may be made, on the auth<sup>y</sup>  
 of Holyben, with regard to the Achae League. The Helvetic system seems accounts to a confederacy  
 and is distinguisht<sup>d</sup> by too many peculiarities to be a ground of comparison. The case of the U. States  
 is in point. The auth<sup>y</sup> of a Helhold<sup>r</sup>. the influence of a stand<sup>g</sup> army. the same interest in the com-  
 mune possessions, the presence of surrounding danger, the proximity of foreign powers are not suffic<sup>ie</sup>  
 to secure the authority & interests of the generality the established tendency of the provincial legislatures.  
 The former Empire is another example. A hereditary chief, with vast independ<sup>t</sup> resources of wealth &  
 power, a federal Diet with ample power<sup>s</sup> - a regular judiciary establish<sup>t</sup> the influence  
 of the neighboring<sup>s</sup> of great & formidable nations, have been forced unable either to maintain the sub-  
 ordination of the members, or to prevent their mutual contests and encroach<sup>ts</sup>. Still more to the pur-  
 pose is our own experience both during the war and since the peace. Encroach<sup>ts</sup> of the States on U. S. General  
 Authority, sacrifice of national to local interests, interference of the measures of different States, form a great  
 part of the hist<sup>y</sup> of our polit<sup>ic</sup> system. It may be<sup>o</sup> of our new Const<sup>o</sup> is formed on diff<sup>er</sup> premises &  
 will have diff<sup>er</sup> operation. I admit the difference to be material. It presents another the aspect of  
 a federal system of Republics, if such a power may be allowed, than of a confid<sup>t</sup> of independ<sup>t</sup> States,  
 and what has been the progress and event of the federal Const<sup>o</sup>. In all of them a cont<sup>l</sup> struggle between  
 the head & the inferior members, until a final victory has been gained on some instances by one, in others  
 by the other of them. In one respect indeed there is a remarkable variance between the 2 cases. In the first





*will rather effectually an. sev. en. national Madison James Sept. 6. 1787  
 is for, ca. cu. ta. dis. gu. sts; State governments local 9<sup>th</sup> A. 1754. Co/2 a  
 581. 738. which any where 1255. 353. 947. 1127. 1543. apt the 17A. 1517. 609. The  
 grounds of this opinion will be the subject of a future letter.*

*Letter from James Madison to Thomas Jefferson, dated September 6, 1787. The end of the second paragraph reveals that Madison had reservations about the new Constitution for which he argued in The Federalist and in his speeches in the Virginia ratifying convention: "These are the outlines. The extent of them may perhaps surprize you. I hazard an opinion nevertheless that the plan should it be adopted will neither effectively answer its national object nor prevent the local mischiefs which every where excite disgusts against the state governments." Papers of James Madison, Manuscript Division, Library of Congress.*

anything else, produced the convention." On June 19 he said that there was "great reason to believe" that unsatisfactory state laws "had a full share in the motives which produced the present Convention." In his letter to Jefferson, October 24, 1787, he said that state encroachments on individual rights "contributed more to that uneasiness which produced the Convention" than did the "inadequacy" of the Confederation in achieving its national objects.

Madison seems to have been more fearful of state legislatures than of a national Congress because they represented fewer and less varied interests. His solution was therefore simple: let the national Congress, where there would be numerous and varied interests, have the power to veto state laws. The neutral bloc in Congress would thus serve the cause of legislative justice in the states as well as on the national level. Madison's national veto of state laws therefore had a dual purpose. Not only would it operate to prevent state encroachment on the powers and independence of the national government; it would also operate to prevent encroachments by state governments on the private property rights of individuals.

Rejection of the national veto of state laws was a disappointment to Madison. He was convinced that an opportunity had been missed for placing a check on undesirable tendencies of majority rule in the state governments. On no other topic did he argue with greater conviction, tenacity, and originality. When he came to write his long letter of October 24, 1787, in which he summarized the work of the convention for Jefferson, he devoted several pages to justifying his advocacy of the national veto; there can be no

doubt that he felt its omission to be the most serious deficiency of the new Constitution.

Actually, the convention put into the Constitution several provisions which, in combination, could be interpreted to provide an approximate equivalent for what Madison was seeking. These provisions were included in article 6, which bound both *state* and federal officers to take an oath to support the U.S. Constitution and to accept as "the supreme law of the land" the U.S. Constitution, all laws made in pursuance thereof, and all treaties made under the authority of the United States; article 3, which defined the judicial power of federal courts; and article 1, section 10, which enumerated specifically what the state governments were not permitted to do.

On the basis of articles 6 and 3 it was possible for the U.S. Supreme Court to assume the power of "judicial review," that is, the power to decide whether a state law was void because it was in conflict with the U.S. Constitution, a federal law made in pursuance of the Constitution, or a treaty. Under Chief Justice Marshall the Supreme Court handed down a set of notable decisions that demonstrated the capacity of a judicial veto to accomplish the dual purpose of Madison's proposed legislative veto. By defining the limits beyond which state governments could not go without trespassing upon the delegated power of Congress, the Supreme Court was able to prevent state encroachments on federal power, and by its interpretations of section 10 of article 1 it was able to prevent state governments from encroaching upon property rights. *McCullock v. Maryland* (1819) and *Gibbons v. Ogden* (1824) are examples of cases in the first



category; *Fletcher v. Peck* (1810) and the Dartmouth College case (1819) are examples of cases in the second category.

The men at Philadelphia respected delegate Madison. They appreciated the propriety of his manners, the benignity of his virtues, and the virtuosity of his argumentation; they made use of his vast erudition; they were provoked to think more profoundly by his singular proposals; and they sympathized with his concern to protect property rights against the threats of anarchy, autocracy, and democracy alike. But they were not converted to vote for what he championed most earnestly; they rejected his pleas for the congressional veto of state laws, for representation in both houses of Congress in proportion to population, and for popular election of senators.

Madison was not identified with what emerged from the convention as the most distinctive and novel features of the new union, and he was a staunch adversary of two of them. He was not a member of the committee that reported the "Great Compromise," by which the smaller states accepted representation according to population in the House in return for equality of representation in the Senate, and he spoke and voted against its recommendation. The ingenious combination of provisions that made possible a judicial veto of state and federal laws was not the product of his thinking, and he seems to have completely missed its significance.

Early in the convention the proposal of the Virginia Plan to grant an explicit power to coerce the states was rejected in favor of the implied power of enforcing federal laws against individuals. This method of achieving enforcement without the continuous threat of civil war and which had never been tried before by previous confederations was readily and enthusiastically accepted by Madison. It was the only original feature of the new union that received his wholehearted and unreserved endorsement.

The exalted title "Father of the Constitution" exaggerates Madison's influence at Philadelphia. The Constitution that was finally approved in September 1787 was more at variance with his thinking than with that of a majority of the delegates. The great compromises of the convention, so indispensable to its success, cannot be attributed to him, and he neither originated nor

provided arguments for what later came to be thought of as the most ingenious features of the new federal union. His Virginia Plan was a text for debate that gave the initiative to the advocates of enlarged national powers, but it was not used as a blueprint by the men who completed the final structure. Nor is there any evidence that he was the supreme commander to whom the nationalists at the convention looked for direction in their maneuvers.

Madison's failures to shape the Constitution can be described more exactly than his successes. In the final reckoning, one must conclude that his great contribution at Philadelphia rests upon a presumption, namely, that his initiative and dogged persistence in presenting an unyielding case for strong powers lodged in a national government elected by popular vote probably caused the convention to incorporate a larger measure of national power and popular control in the compromises than it would have if no one of his great talents had assumed the role of persevering champion of the more extreme position.

No one delegate had a pervasive influence upon the Constitution, and of the men who first introduced proposals subsequently adopted by the convention or who were most active in debate, perhaps a dozen in number, no one can be cited as significantly more successful or convincing than the others. The Constitution was, as Madison himself wrote many years later, "not the offspring of a single brain" but the "work of many heads and many hands." However, if to his role at Philadelphia are added his contributions to ratification, to adoption of the first ten amendments, to passage of basic legislation in the first Congress, and to the historiography\* of the convention, Madison's place among the Fathers of the Constitution is singularly preeminent.

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\*Madison went to Philadelphia with a determination to provide posterity with the first complete record of the establishment of a new government. Not absent from the convention a single day and taking a seat where he could hear all the speakers, he noted in abbreviated form what was said. After adjournment, almost every day, he wrote up a fuller text of the debates. His reports of the convention proceedings were first published in 1840 and still remain the main source of information for what was actually said by the various delegates.