

*The Papers of James Madison*, Retirement Series, volume 3

Edited by DAVID B. MATTERN, J. C. A. STAGG, MARY PARKE  
JOHNSON, and KATHARINE E. HARBURY

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James Madison's retirement writings cover one of the most fruitful periods of his life, yet the Founder's winter has produced only one

full-dress scholarly study—Drew R. McCoy’s *The Last of the Fathers: James Madison and the Republican Legacy*—and drawn a relatively limited range of discrete commentary, most recently from Jeremy D. Bailey’s *James Madison and Constitutional Imperfection*. The University of Virginia Press’s steady effort to publish his papers from this period, which reaches its third installment in this volume, covering March 1823 through February 1826, should provide ample fodder for further study by students of both American political thought and American history and culture. Spanning both theoretically incisive topics such as political parties and constitutional interpretation as well as historically rich events like the internal-improvements controversy and the founding of the University of Virginia, it has as its most striking feature the extent to which it shows Madison continuing to grapple—largely consistently—with the issues that preoccupied him throughout his active political life.

The more conventional understanding is that Madison the officeholder departed from the nationalist views of his founding youth under the pressures of partisan politics, only to return to them in his retirement, prompting Chief Justice John Marshall to remark in 1830 that “Mr. Madison is himself again” (Beveridge 557). Yet in this volume we find Madison the elder statesman still playing the partisan, writing in 1823 as he had in the *National Gazette* in the 1790s that the essential distinction between the early American political parties lay in a difference “in [their] confidence . . . in the capacity of Mankind for self-government” (58). We see the elder Madison still the unyielding proponent of separating church and state, so much so that he opposed a theology chair at the University of Virginia (16), a stance consistent with his earlier opposition to public funding for Christian religious instruction in his 1785 Memorial and Remonstrance and his opposition in the first House of Representatives to a congressional chaplain maintained at public expense. We see Madison reprising his turn as Publius, the pseudonymous author of *The Federalist*, reasserting the extended-republic theory of *Federalist* 10 as the best, indeed the only, reliable safeguard against majority abuses in a free society:

In Govts. where the will of the people prevails, the danger of injustice arises from the interest real or supposed which a majority may have in trespassing on that of the minority. This danger in small Republics has been conspicuous. The extent and peculiar structure of ours, are

the safeguards on which we must rely, and altho' they may occasionally somewhat disappoint us, we have a consolation always in the greater abuses inseparable from Govts. less free; and in the hope also that the progress of political Science, and the lessons of experience will not be lost on the national Councils. (240–41)

Similarly, he opposes unicameralism in an 1824 letter because it produces “laws passed under transient impulses, of which time & reflection call for a change” (394), just as in *Federalist* 63 he had said a function of a senate was temporarily to inhibit impulsive measures that “the people . . . themselves will afterwards be the most ready to lament and condemn” (Carey 327).

In 1825, as the debate over internal improvements such as roads and canals that recurs in these pages continues, Madison returns to a theme that preoccupies much of his career, both preceding and following the period covered in this volume: the inevitability of majority rule. As president, a veto of an internal-improvements bill had been Madison's last official act. He continued to support improvements on policy grounds but to oppose them constitutionally. In December 1825, he writes that mistakes in constitutional interpretation might arise from two sources: the government usurping powers against the public will or a majority of the public usurping powers over a minority of the people, using the mechanism of government as “the Organ of its will” (648).

Crucially, in either instance, the proper remedy lies in an appeal to the majority itself and not to an antimajoritarian institution such as the courts. “In the first case,” he argues, “nothing is necessary but to rouse the attention of the people” as the Jeffersonians did in the case of the Alien and Sedition Acts, something Madison calls a constitutional resort. Significantly, though, in the second case—an abusive popular majority—“the appeal can only be made to the recollections, the reason, and the conciliatory spirit of the Majority of the people agst. their own errors” (648). This reasoning should be familiar to careful readers of Madison, who will recall that he had made similar arguments against the Jay-Gardoqui Treaty in 1786, in favor of the legitimacy of the Missouri Compromise in 1821, and against nullification in 1833 (for these episodes, among others, see Weiner).

Madison's underlying belief in majority rule was one reason for his opposition to the mechanism of breaking Electoral College ties in the House of Representatives through a Byzantine process of voting by state

delegation. It appears in these pages as a political accommodation to the hard necessities of the Constitutional Convention, but one that Madison regards as a lingering and potentially dangerous mistake. He flags it as such in 1823, nearly eighteen months before that procedure was triggered to resolve the 1824 election (108), returning to the theme in 1824 in a letter to Jefferson (201–02) and again in 1826 (677–78). In this last case, while supporting reform of the process of presidential selection, he defends the Electoral College and opposes direct election of the chief executive, something he had advocated at Philadelphia in 1787.

Historians will take a particular interest in these observations. They will also be interested in Madison's counsel to President James Monroe, and his correspondence with others, on the 1823 invasion France staged of Spain to restore the latter country's monarchy. Madison argues on multiple grounds for American coordination with Great Britain to resist "the enterprize of France agst. the Spanish Constitution." He writes to Richard Rush in July 1823:

The principles proclaimed by France ought to excite universal execration, and the alarm of every free people not beyond the reach of her power and that of her Associates. She not only revives the obsolete and impious doctrine of the divine right of Kings, but asserts a right in every Govt. to overturn a neighbouring one which reproaches its corruption by the precedent of a Reformation. (98)

If, indeed, the French are justified in overturning a government because its republican principles offend, surely Great Britain and the United States could ultimately be in the crosshairs, Madison tells Monroe. Madison's tone verges on the ideological, almost the bellicose, although he is scrupulous in urging Monroe to follow "the spirit & form of the Constitution in every step taken in the road to war, which must be the last step, if those short of war should be without avail" (149).

There are intriguing insights into the Madisonian personality in this period. Almost obsessively, Madison corresponds with Monroe and others in an attempt to establish a history of the War of 1812 that he believes does justice to his legacy and that corrects errors he fears are developing in common accounts (75–76, *inter alia*). He pleads with his wayward stepson John Payne Todd to come clean about his finances and to make contact with his mother (634, *inter alia*). On behalf of various correspondents, he passes

along requests for introductions or considerations for positions while always scrupulous never to vouch for more than his personal acquaintance can justify.

Tensions in Madison's thought are present in this volume too. On the one hand, he calls for constitutional "orthodoxy," which seems to venerate the past; on the other, we see him insist—albeit by way of affirming Thomas Jefferson, a posture that often brought out Madison's more radically democratic side—that the purpose of the Declaration of Independence had been to assert "new truths," not to discover old or extant ones (120–21). He seems to show little flexibility in constitutional construction on some occasions, "concur[ring] in the propriety of resort to the sense in which the Constitution was accepted and ratified," in which "sense alone it is the legitimate Constitution" (339); yet on another he speaks of "a less strict rule of interpretation" (for the Virginia constitution) where the public good is at stake and within the general ambit of the document (62).

These are, of course, the tensions inevitable when statesmanship and scholarship converge. The scholar has the benefit of pure consistency but not experience; the statesman has experience but not the ideas that enliven it with meaning. The convergence, on display in these pages, is precisely what makes Madison—whether in the vigor of a young Founder or the winter of an elder statesman—as enduringly interesting as students of this new volume will continue to find him to be.

GREG WEINER *Assumption College*

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