

The Papers of James Madison, Volume 5, 1 August 1782–31 December 1782.

Edited by WILLIAM T. HUTCHINSON and WILLIAM M. E. RACHAL. (Chicago: University of Chicago Press, 1967. xxx, 520 p. Illustrations, index. \$12.50.)

The material in the present volume covers the period from August to December, 1782, and includes much the most interesting items thus far. But the immense bulk of Madisoniana, especially in view of the overly generous criteria of inclusion discussed in previous reviews, leads one to wonder in how many volumes it may eventually be encompassed. At the point we now find ourselves Madison is still only a young Congressman with most of his long career ahead of him—and most of his papers!

The documents fall into three principal categories: (1) Madison's notes on the proceedings of Congress ("For one half of the time we have failed in making a House, and the remaining half has been spent on minute

objects.”), communications from the Virginia delegation to Governor Benjamin Harrison, and Harrison’s communications to the Virginia delegation; (2) Madison’s letters transmitting news to Edmund Randolph, fellow member of Congress, then serving in Richmond as Attorney General of Virginia, similar letters to Edmund Pendleton, then a Virginia high court judge, and the replies of these gentlemen to Madison, giving him the news of Richmond; (3) personal correspondence, mostly between Madison and Randolph. The main subjects covered are the prospects for a peace treaty with Great Britain (there was much speculation and little hard news), Virginia’s cession of her Western lands (opposed by states having similar western claims or none at all), the finances of the Congress, including the troubles of the Virginia delegates, and political gossip.

Unhappily there is little evidence of Madison’s vaunted talent as a legislator. Partly, no doubt, this is owing to the inherent weakness of the Congress itself. There simply was not much it could effectively legislate about. But partly, also, it may be that Madison’s skill in phrasing other people’s proposals and ideas may have led to exaggerated notions of his legislative powers.

But there are some signs of developing sophistication. “The consideration of your territorial report,” he wrote Randolph, “has been resumed. The expedient which was to conciliate both sides proved, as often happens, a means of widening the breach. The Jealousies announced on the side mentioned in my last were answered with reciprocal jealousies from the other, & the *report* between the two was falling to the ground when a commitment as a lesser evil was propos’d and agreed to.” It is worth noting that in the report to which Madison refers, Randolph had advanced the first post-Revolution constitutional claim by the United States to the lands west of the Alleghenies: “if the vacant lands cannot be demanded. . . upon the titles of individual States, they are to be deemed to have been the property of his Britannic Majesty immediately before the Revolution and to be now devolved upon the United States.”

Indeed, the quality of Randolph’s mind at this stage is at least equal to Madison’s, and a good deal more interesting. At the time of the present volume, for example, he was arguing a case before the Supreme Court of Virginia which established the rule of treason later adopted into the Constitution of the United States. Under common law, Randolph’s theory ran, a man could be convicted of treason only on the testimony of two witnesses, but they had to be each witness to a separate act. A better rule, both for protection of individual civil liberty and the stability of the state would be to require two witnesses to “the same overt act,” which was adopted by the Court.

And Randolph, unlike Madison, had humor. In a great paragraph he told Madison about “a notorious robber, who escaped from gaol about a twelvemonth ago [and had] associated in his villainies a formidable gang of blacks and whites, supposed to amount to fifty.” This gang, he reports, “disperse themselves judiciously for the accomplishment of their work,

and the elusion of punishment." In view of the "laxness and inefficacy of government," he doubted it had "any means in its power" to "effect the seizure of this man." He himself lives "in the center of the late depredations," Randolph concluded, "and [has] no other hope to avoid their wickedness, than by the awe, which my office may create."

Pendleton appears as the logical mind and tower of moral decency that he was. The rumor, often revived in those days, that Canada might become the fourteenth state in the peace settlement, gave him a chance to reveal his character as well as his principles: "It is my opinion," he told Madison, "that it would be wisdom on the part of Britain to yield Canada as a 14th Member of the Union, since the event at some future period is more than probable, and a War may precede it; yet I cannot but consider the Spontaneous hinting of it in the manner it has been done, as having a deep, insidious intention on our Integrity—to decide what would be right on that head in the Treaty, independent of the Interest of the contracting powers, would seem to be to leave it to the Canadians to choose the party they would be annexed to."

At the same time, both Pendleton and Madison reveal at least as much concern for personal property in slaves as they do for the self-determination of peoples. One transaction, involving Pendleton's appeal to Madison to help in the recovery of a runaway slave and Madison's efforts to comply, lasted from the 6th of August to the 24th of September and is often treated by both men as though it were as important as the pending treaty of peace.

The editorial technique of these volumes, though a monument to historical accuracy and completeness, sometimes leads to a reader's frustration. Cross referencing can, of course, be helpful, but it can be carried to a point of absurdity. From page 268 to page 275, for example, there are at least eight cross references from one to another of the documents encompassed in that span. Thus one is often referred almost immediately to what he has just finished reading, when what he would like is a note of elucidation on matters outside the text to throw light on what is in the text.

Finally, one wonders what Philadelphia readers of this volume in the summer of 1967 must feel when they learn that Joseph Jones and his wife, on their way from Virginia to Congress in August, 1782, did not "propose to come into the City till the salubrity of Germantown shall have enabled them to encounter its noise & polluted atmosphere"!

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