BOOK REVIEWS

WILLIAM T. HUTCHINSON and WILLIAM M. E. RACHAL, Editors: *The Papers of James Madison.* Chicago, The University of Chicago Press, 1962. Vols. 1 and 2.

Of all the scholarly editorial projects now going forward, to collect, edit and publish the complete papers of leading figures in American history, perhaps the project of greatest significance for legal historians involves the papers of the "father of the Constitution." Jefferson, whose collected documents will fill an estimated fifty volumes (seventeen of which have now been published), had universal interests which of necessity relegate his legal achievements, though important, to a relatively subordinate position within the grand outlines of his career. The editors of the papers of Alexander Hamilton and of the first Adams have chosen to edit separate series of their legal papers—publication of which will be eagerly awaited by legal historians. Henry Clay and John Calhoun were essentially political or legislative leaders rather than legal figures. The papers of all of these men have fundamental significance for legal research, but it is to Madison, whose name and career have been so completely identified with the foundations of our constitutional system, that the legal historian turns most eagerly with the inauguration of the present edition of his complete works.

Each decade, it seems, has witnessed the publication of an important new work on this Princeton-educated Virginian, alternately in intellectual rapport with the Federalist Hamilton and the Republican Jefferson. In 1941 there began Irving Brant's monumental six-volume biography which has only recently been completed. In 1950 there was the stimulating study in the history of ideas—Adrienne Koch's *Jefferson and Madison: The Great Collaboration,* which deserves periodically to be re-read. Now come the comprehensive edition of Madison's papers which, the editors believe, will occupy approximately twenty volumes and will bring together for future scholars many thousands of documents by, to and about the fourth President.

The theory of all the current editorial projects on the papers of selected public leaders is that these collections serve "the purpose of providing information not only about our political and military his-

tory but also about our economic, social and intellectual development." [1] Or, as the dean of all of the scholarly editors working in this field has put it, the collections are, "first of all, the record of a man's career," but in proportion to his impact upon his age they are also "in part, a record of the origin, formation and . . . growth of the Republic." [2] This is not a viewpoint peculiar to later generations; as the editors of the present work point out, Edward Everett was hardly alone in urging that Madison, during his lifetime, make his papers available as the basis for "a history of Constitutional Liberty in the U. S. in a broad philosophical sense." Madison himself appreciated the historical significance of many of the documents he had accumulated in the course of an epochal career, and declined Everett's invitation because he already had plans for a posthumous editorial project.[3]

Unfortunately for later editors, the papers of men like Madison were almost automatically dispersed or disarrayed upon their deaths. With the conspicuous exception of the Adams family, which undertook by extraordinary effort to keep their documentary record reasonably complete, scores and hundreds of papers of prominent men have been scattered and—in many cases—lost beyond hope of recovery in generations following their deaths. The job of the modern scholarly editor, accordingly, involves the ninety percent perspiration attributed to genius—"sweating out" a quest for elusive documents which, when and as found, will piece together again the record of a man's lifetime accomplishments and activities.[4]

Several hundred volumes—literally—of documentary materials on leading Americans will be available to researchers upon the completion of these and related projects now under way or reasonably in prospect. The legal historians of the future—and, in many cases, of the present—are thus being endowed with source materials for a wealth of studies in depth on subjects upon which the papers of these great contemporaries will shed substantial illumination. Already, by-products of this work are beginning to manifest themselves, attesting in differing degrees to the importance of the documentary projects which set the related processes into motion. There is, perhaps, a pertinent example in Jacob Cooke's definitive edition of *The*

[1] National Historical Publications Commission, *Report* (Washington, 1954), p. 11.

[2] Boyd, ed., *Papers of Thomas Jefferson* (Princeton, 1950), I, pp. vii, viii.

[3] Hutchinson and Rachal, *Papers of James Madison* (Chicago, 1962), I, p. xv.

[4] Cf. Boyd on "Editorial Method," *loc. cit.*, pp. xxv-xxxviii.

Federalist [5]—and an even more striking one in Lester Cappon's edition of the Adams-Jefferson correspondence.[6]

The extent to which the collected works will ease the task of the biographer has not yet been demonstrated. Obviously, the task of the biographer and the editor are different—the former, even in the case of a multi-volume work, must be fundamentally selective, while the latter, by general definition, is inclusive in his method. Casual comparison of the source materials utilized by biographers whose works were undertaken or completed before the editorial projects on the same men got under way, indicates that usually the biographer has preceded the editor into the most significant source materials. Charles M. Wiltse's three volumes on Calhoun,[7] for example, completed some time prior to the editorial project by Messrs. Merriweather and Hemphill,[8] shows thorough acquaintance with the major documents on his subject. It may be that Carl Van Doren's biography on Franklin [9] and Glyndon Van Deusen's on Clay [10] are not the definitive biographies that their subjects deserve, but both authors uncovered substantially the same reference material that the editors of the current works [11] are now bringing together into integrated editions.

On the other hand, Page Smith's two-volume life of John Adams, as he points out in his preface, was accelerated and enriched considerably by the opening of the massive treasury of the Adams family papers, and the quasi-publication of them in microfilm.[12] Broadus Mitchell's two-volume life of Alexander Hamilton is another, perhaps more telling, illustration: the first of the volumes was published before and the second during the collecting of the Hamilton papers.[13] And perhaps most persuasive testimonial of all is that of Dumas Malone; in 1948 when he published the first volume in his work on Jefferson and his times, he acknowledged that the "magnificent edition" of Jefferson's works then getting under way under Julian

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[5] Cooke, ed., *The Federalist* (Middletown, Conn., 1961), cf. p. x.

[6] Cappon, ed., *The Adams-Jefferson Letters* (Chapel Hill, 1959), I, pp. xxvii, xxix-xxx.

[7] Wiltse, *John Calhoun* (Indianapolis, 1944-51), 3 vol.

[8] Cf. Merriweather and Hemphill, eds., *Papers of John Calhoun* (Columbia, S. C., 1959—).

[9] Van Doren, *Benjamin Franklin* (New York, 1938).

[10] Van Deusen, *Henry Clay* (Boston, 1937).

[11] Bell, ed., *Papers of Benjamin Franklin* (New Haven, 1959—); Hopkins, ed., *Papers of Henry Clay* (Lexington, Ky., 1960—).

[12] Smith, *John Adams* (New York, 1962); Butterfield, ed., *Papers of John Adams* (Cambridge, Mass., 1961—).

[13] Cf. Mitchell, *Alexander Hamilton: Youth to Maturity* (New York, 1957), pp. ix-xv; *Alexander Hamilton: The National Adventure* (New York, 1962), p. viii.

Boyd's editorship "has been a great boon to me, and I take comfort in the thought that anyone who wants to fill the inevitable gaps in my narrative can have recourse to it later on." [14]

Granted that the biographer of the future may be aided to a considerable degree by the editorial collections now taking form, it is rather fortuitous that the first two volumes of the Madison papers should cover almost the same time period as Brant's first volume of his Madison biography. When he opened his comprehensive study, Mr. Brant observed: "James Madison lived to be eighty-five years old. The work on which his fame is built was performed when he was thirty-six . . . When a man rises to greatness in youth, it is with his youth that we should first concern ourselves"—particularly, the biographer continues, considering "his relation to events which so shaped his early life that in the ensuing years he shaped events." [15] That events rushed upon Madison very quickly is reflected in the time span of the first two volumes of his Papers: the first covers twenty-eight years, from 1751 to 1779, while the second covers two —1780 and 1781.

The editors of the Papers, for the projected twenty volumes of their collection, have assembled photocopies and manuscripts of source material from approximately 250 different depositories or individuals,[16] although the vast majority of them came from the 11,000 or more in the Library of Congress and the National Archives. These were the major sources of data for the Brant study as well.[17] The need for a comprehensive edition of Madison material, however, was only emphasized by the nature of the collected works of his which have been published up to now. Three volumes of papers were published at government direction in 1838 (the "Gilpin" edition), and in 1853 the *Selections from the Private Correspondence,* edited by James C. McGuire; both of these revolve around the story of the misfortunes of Madison's widow, Dolly, and the carelessness with which his stepson and various bailees or assignees of Madison documents handled them during this period.[18] In 1865 appeared a collection of *Letters and Other Writings,* and finally in the period between 1900 and 1910 the substantial edition by Gaillard Hunt. But the result of these several efforts has been to account only for "approximately one-sixth of the extant documents by [Madison] and an insig-

[14] Malone, *Jefferson the Virginian* (Boston, 1948), p. ix; and cf. *Jefferson and the Rights of Man* (Boston, 1951), pp. xvi-xix, xxi-xxiii.

[15] Brant, *James Madison, the Virginia Revolutionist* (Indianapolis, 1941), p. 11.

[16] Hutchinson and Rachal, *op. cit.*, I, p. xxvii.

[17] Brant, *op. cit.*, p. 403.

[18] Hutchinson and Rachal, *op. cit.*, I, pp. xviii-xxiv.

nificant fraction of the fifteen thousand or so extant letters addressed to him. Furthermore, the items in these editions often are not printed in full and are documented lightly, if at all." [19]

The editorial procedure in the Madison project is an adaptation of the more or less standard procedure developed by Dr. Boyd in the Jefferson project [20]—a chronological arrangement of all documents which the editors have been able to locate and authenticate, with the supplement of certain later materials when on occasion these are needed to throw fuller light on the earlier item. Each item is introduced with a bibliographic note indicating the source from which it was obtained, sometimes with a highly interesting bibliographical history of various changes of ownership. Frequently, in the case of major items, this will be followed by a general background or historical note; then comes the literal text of the document itself; and finally, there is a section of annotation, often essential to a full appreciation of the original, if only to clarify obscure references therein.

For the legal historian, the excitement of this edition begins with Madison's election to the Virginia General Assembly in 1776 and his immediate and vocal participation in the constitutional debates of that period. The editors have provided the future researcher with a happy succession of documents for this period: the extant text of George Mason's original proposal of religious *toleration* for the Virginia bill of rights; Madison's first proposed amendment on religious *freedom* which was defeated and was followed by his revised amendment to Mason's proposal which was adopted.[21] The young Madison's conduct of himself in this deliberation evidently impressed his associates, for in the Virginia Council of State, provided for in the new constitution, he appears as a member and participates in its business.[22] The first volume concludes with Madison's election to the Continental Congress—and the two years of the second volume are devoted substantially to the young man's first appearance on the national stage at Philadelphia.

The subject-matter of the second volume—actually covering a period of some eleven months, from March 20, 1780 to February 23, 1781—not only documents Madison's rapid progress into a position of leadership but also throws light on the all-too-inadequately studied institution of the Continental Congress itself. Madison appears on the

[19] *id.*, pp. xxiv-xxv.

[20] Cf. Boyd's note on methodology, cited at n. 4 *supra*.

[21] Hutchinson and Rachal, *op. cit.*, I, pp. 172-75. Cf. Brant, *op. cit.*, chs. xii, xiii.

[22] Hutchinson and Rachal, *op. cit.*, I, pp. 214-32; cf. Brant, *op. cit.*, ch. xvi.

scene as the Revolution reaches its climax, and as the last obstacles to national organization—through the ratification of the Articles of Confederation—are being cleared away. Particularly informative to the student of Madison's developing concept of a national state within the Confederation framework is the series of documents on his role in persuading Virginia to the cession of its western lands to the Congress.[23] For those searchers after Madison's early attitudes toward a national union, this passage from a letter to Edmund Pendleton is typical of the evidence they seek:

"Congress have also at length entered seriously on a plan for finally ratifying the confederation. Convinced of the necessity of such a measure . . . they have recommended in the most pressing terms to the States claiming unappropriated back lands, to cede a liberal portion of them for the general benefit . . . How far the States holding the back lands may be disposed to give them up cannot be so easily determined . . . I own I am pretty sanguine that they will see the necessity of closing the union in too strong a light to oppose the only expedient that can accomplish it." [24]

"The States may annex what conditions they please to their cessions, and by that means guard them agst. misapplication," he writes to another correspondent on the same subject.[25] On the other hand, something of Madison's attitude toward future questions of diversity of jurisdictions in the federal system is seen in his reaction to a legal issue arising from Virginia's ultimate decision to approve a cession of her lands. The General Assembly moved to extinguish a charter granted to the Indiana Company, a private colonization project within the territory then claimed by the State. George Morgan, the agent for the company, appealed the action first to the General Assembly and then approached the Virginia delegation in Congress, seeking a possible arbitration between the State and the company. Madison, in a letter to Joseph Jones in Virginia, succinctly describes the reasons for the delegation's rejection of the proposal:

"Mr. G. Morgan . . . after memorializing Congress on the subject has honored the Virginia Delegates with a separate attention. He very modestly proposes to them a reference of the Controversy between the Company & Virginia to arbitration in the mode pointed out in the Confederation for adjusting disputes between State & State. We have given him for answer that as the State we represent had finally determined the question, we could not with propriety attend to his proposition [,] observing at the same time that if

[23] Hutchinson and Rachal, *op. cit.*, II, pp. 72-78; cf., generally, Brant, *op. cit.*, ch. xviii.

[24] Hutchinson and Rachal, *op. cit.*, II, pp. 81-82.

[25] *id.*, II, p. 90; cf. also pp. 136-37.

we were less precluded we could not reconcile with the sovereignty and honor of the State an appeal from its own Jurisdiction to a foreign tribunal, in a controversy with private individuals." [26]

Documents such as this—efficiently cross-referenced by the editors, it should be added, so as to make the facts easily traceable—emphasize the high importance to constitutional and legal historians of the present edition of Madison materials. If, as Brant has written, the great work of Madison was accomplished in the period leading up to 1787-88, the volumes immediately to follow, having the quality of the first two, will be especially valuable contributions to the subject.

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[26] *id.*, II, p. 191; cf. also p. 188.