

FIRST PRINCIPLES

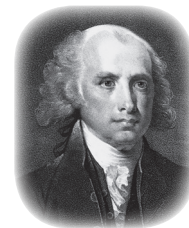
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James Madison: Father of the Constitution

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James Madison is generally regarded as the father of the United States Constitution. No other delegate was better prepared for the Federal Convention of 1787, and no one contributed more than Madison to shaping the ideas and contours of the document or to explaining its meaning.

In 1787 and 1788, Madison authored, with Alexander Hamilton and John Jay, the *Federalist Papers*, a penetrating commentary on the principles and processes of the proposed Constitution. In 1789, as a member and leading voice in the House of Representatives in the new Republic, Madison introduced a series of constitutional amendments that would form the basis of the Bill of Rights. A few years later, he and Thomas Jefferson organized the opposition to Alexander Hamilton's administrative policies, thereby founding the first political party in America.

Winston Churchill once said that a man must choose either a life of words or a life of action. Like

Churchill, Madison demonstrated that rare individuals could be both scholars and statesmen. His scholarly quest to discover the means by which popular government could also be just government was not merely academic; his dedication to finding a “republican remedy” to the problems that had always plagued popular government was meant to answer the “sighs of humanity” throughout the ages.¹

Madison believed that he and his generation of American Founders had discovered the way to rescue popular government from its past failures, but that its ultimate success depended on the great experiment in self-government entrusted to the hands of future generations. The destiny of republican government, Madison believed, is staked on the vigilance of the American people to tend “the sacred fire of liberty.”²

Life

James Madison, Jr., was born in 1751 in Port Conway, Virginia. At the age of 18, he entered the College of New Jersey, now Princeton University, where he studied history, classics, moral philosophy, politics, and law. Called “Jemmy” by some of his friends, he was five feet six inches tall, of slight build, quiet voice, serious demeanor, and scholarly habits. He was also plagued with ill health in his youth and intermittently throughout his life. Nevertheless, on more than one occasion, Madison worked himself to exhaustion despite the protests of his dearest friends.

This paper, in its entirety, can be found at <http://report.heritage.org/MAPT-08>

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James Madison

Born

March 16, 1751, in Port Conway, King George County, Virginia, to James Madison Sr. and Nelly Conway Madison.

Education

Studied under private tutors and was graduated from the College of New Jersey (now Princeton) in 1771.

Religion

Episcopalian.

Family

At the age of 43, married Dolley Payne Todd on September 15, 1794; they had no children.

Highlights

- Committee of Safety for Orange County, Virginia, 1774.
- Delegate, General Assembly of Virginia, 1776.
- Member, Virginia House of Delegates, 1776-1777, 1784-1786.
- Delegate, Virginia Council of State, 1778-1779.
- Delegate, Continental Congress, 1780-1783, 1787-1788.
- Delegate, Annapolis Convention, 1786.
- Delegate, Constitutional Convention, 1787.
- Co-author, *The Federalist Papers*, 1787-1788.
- Member, United States House of Representatives, 1789-1797.
- Secretary of State, 1801-1809.
- President of the United States, 1809-1817.
- Co-chairman, Virginia Constitutional Convention, 1829-1830.
- Rector of the University of Virginia, 1826-1836.

Died

June 28, 1836, at his home, Montpelier, in Virginia, where he is buried.

Last Words

"Nothing more than a change of mind, my dear."

During the Revolutionary years, Madison served in the General Assembly of Virginia, the Continental Congress, and the Congress under the Articles of Confederation. In the mid-1780s, he served in the Virginia House of Delegates, and in 1786, he attended the Annapolis Convention, the precursor to the Federal Convention. Soon thereafter, he began to prepare for the Federal Convention, to be held in

Philadelphia the following summer, by combing ancient and modern texts that might contribute to an understanding of stable and effective federal government and to solutions to the problems faced by popular government over the ages.

Madison arrived early in Philadelphia and used the time before the Convention commenced to meet with fellow delegates from Virginia and Pennsylvania

1. James Madison, *Federalist* No. 10, in Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter, intro and notes Charles Kesler (New York: Penguin, 2003), p. 79.
2. George Washington, "First Inaugural Address," April 30, 1789, http://www.archives.gov/exhibits/american_originals/inaugtxt.html.

to formulate the opening agenda. Though introduced by Madison's friend and then governor of Virginia, Edmund Randolph, the "Virginia Plan" was largely the brainchild of James Madison. Calling for a stronger central government and a bicameral legislature, the Virginia Plan became the basis for subsequent discussions and debate at the Convention and laid the groundwork for the Constitution of 1787.

Throughout the long, hot summer in Philadelphia, Madison took extensive notes on the proceedings, and it is primarily this record that has provided us with a knowledge of the speeches and debates of that propitious gathering. During the New York ratification debates, he collaborated with Hamilton and Jay on a series of essays in support of the proposed Constitution. Their combined efforts produced the *Federalist Papers*, generally considered the most definitive exposition of the tenets of American republicanism.

Madison served four terms in the U.S. House of Representatives in the late 1780s and 1790s and then served as Secretary of State under President Thomas Jefferson, after which he succeeded Jefferson in the office of the chief executive, serving two terms as the fourth President of the United States. During the War of 1812, sometimes called "Mr. Madison's War," he and his wife Dolley were forced to flee the White House in Washington, D.C., as the British destroyed it and its contents in a devastating fire.

Following his presidency, Madison retired to his family estate at Montpelier, only a partial day's ride from his closest friend's residence at Monticello. The road between the homes of James Madison and Thomas Jefferson is today fittingly named "Constitution Way," linking the two friends and their greatest achievements in an uninterrupted ribbon leading from the ideas of the Declaration of Independence to the principles of the American Constitution. Together, Jefferson and Madison worked on founding the University of Virginia,

where, they hoped, the "true doctrines of liberty" might be inculcated in future statesmen.³

During his twilight years, as "the last of the founders" remaining on the American scene, Madison became increasingly disturbed by the secessionist theories of Senator John C. Calhoun of South Carolina. When Calhoun attempted to use the political thought and writings of Jefferson and Madison to defend his theories, Madison clarified his position that the union of the states was justly founded on the consent of the people of the several states and can be altered only through the prescribed constitutional processes. There is no constitutional basis, he argued, for the right of secession in the compact of a free people.⁴ Madison's last public writing—the "advice to my country" nearest to his heart and deepest in his convictions—urged that the American union be cherished and perpetuated.⁵

Having served his country for more than 40 years and taken part in the founding "epochs of its destiny," Madison had dedicated himself throughout his life "to the cause of liberty."⁶ He died "as quietly as the snuff of a candle goes out" on the morning of June 28, 1836, at the age of 85.⁷

The Extended Republic and Representation

Madison believed, along with his contemporaries, that the great danger to popular government is faction. A faction, Madison explained in *Federalist* No. 10, is a number of citizens "united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."⁸

In a free society, factions that consist of a minority of the citizens are not constitutionally dangerous because, given the principle of majority rule, they cannot legally gain their ends. However, if a majority composes a faction, might pretends to determine right, and the very purpose of government and the

3. James Madison, letter to Thomas Jefferson, February 8, 1925, in *The Writings of James Madison*, ed. Gaillard Hunt (New York: G. P. Putnam's Sons, 1900), Vol. 9, <http://oll.libertyfund.org/title/1940/119243>.

4. James Madison, letter to Daniel Webster, March 15, 1833, in *The Writings of James Madison*, Vol. 1, <http://press-pubs.uchicago.edu/founders/documents/v1ch3s14.html>.

5. James Madison, "Advice to My Country," 1834, <http://www.milestonedocuments.com/documents/view/james-madisons-advice-to-my-country/text>.

6. *Ibid.*

7. Paul Jennings, *A Colored Man's Reminiscences of James Madison* (Brooklyn: George C. Beadle, 1865), p. 19.

8. Madison, *Federalist* No. 10, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 72.

fabric of freedom are threatened with destruction. The problem is that the causes of faction and injustice are “sown in the nature of man.”⁹

Since the causes of a faction cannot be removed without coercing people’s minds and destroying liberty, Madison advocated a system of government that could control the effects of faction and deter the formation of an unjust majority.

Factions stem from self-interest and prejudice, which in turn tend to influence people’s opinions and views. Since the causes of a faction cannot be removed without coercing people’s minds and destroying liberty, Madison advocated a system of government that could control the effects of faction and deter the formation of an unjust majority. His proposed remedy included establishing a popular government over a large territory and instituting the principle of representation.

The size of the territory matters, Madison argued, because in a small republic it is easy for a majority to communicate and unite on the basis of selfish interest or prejudice and thereby oppress the minority. In an extensive republic, however, there will be more people, a greater diversity of interests and views, and a greater distance over which those views must be communicated. This will make it more difficult for a majority to form on the basis of a narrow interest or harmful passion. In a large society, a *coalition* of the majority will be necessary in order to achieve an authoritative status, and its demands will have to pass muster with a great variety of economic, geographical, religious, and other groups in society.

In effect, Madison was the first in America to celebrate the benefits of a diverse population, welcoming the differences that freedom of conscience,

freedom of thought, freedom of choice of occupation, and display of talents bring forth.

This did not mean for Madison, however, that the American people have no need to be guided by a common purpose. Dedication to the principles of freedom also meant a common commitment to the idea of responsibility and the practice of self-government. This is the cornerstone of Madison’s vision of the “new and more noble course” of free government in the modern world.¹⁰ The purpose of the principle of representation, Madison argued, is to “refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations.”¹¹

Like the effects of the extended republic, representation is another crucial factor intended to prevent narrow interests and unjust views from determining public decisions. The job of the representative is not to follow daily polls or raise a finger to the wind to decide how to vote; sudden breezes in popular opinion, Madison taught, are too often the result of prejudice and partial interests. Rather, the task of the representative is to promote a consensus grounded in justice and the common good.

The achievement of this consensus requires deliberation within the legislature as well as a two-way process of communication between the representatives and their constituents. When the people are “stimulated by some irregular passion, or some illicit advantage,” the good representative will place duty above personal ambition.¹² Rather than flattering the people’s prejudices in order to curry their immediate favor, he will check their misguided demands so that “reason, justice, and truth, can regain their authority over the public mind.”¹³

The goal, Madison argued, is to achieve public decisions based on the “cool and deliberate sense of the community.”¹⁴ Accordingly, the duty of the representative is both to listen to the concerns of

9. Ibid., p. 73.

10. Madison, *Federalist* No. 14, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 99.

11. Madison, *Federalist* No. 10, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 76.

12. Madison, *Federalist* No. 63, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 382.

13. Ibid., p. 383.

14. Ibid., p. 382.

his constituents and to promote among them an enlarged view of the public interest. Within this milieu of public communication and deliberation, a kind of civic education takes place. It contributes to forming and settling public opinion on the basis of right, and it justifies “the respect due from the government to the sentiments of the people.”¹⁵

The Madisonian process of refinement and enlargement of the public views can be seen throughout the broad workings of the legislative process today, from public hearings on political matters in home districts to the deliberative proceedings on the House or Senate floor, from the contest and compromise of interests in legislative committees to the representatives’ open newsletters to their constituents, from the necessity to defend their public stances and votes during re-election campaigns to the honor felt by representatives whose “faithful discharge of their trust shall have established their title to a renewal of it.”¹⁶

Separation of Powers and Checks and Balances

Though Madison hoped the representatives of America would be wise and virtuous, he was not naïve about the temptations of power and the charms of ambition that accompany political office. He well knew that “enlightened statesmen will not always be at the helm.”¹⁷ Some representatives will be weak of mind or lacking in backbone. Some may possess the ambition and political skills of a demagogue and be able to work their wiles on less clever and weaker colleagues. Even the most philosophic and patriotic representatives, Madison warned, should not be given a blind trust, for the political scenes in which they must operate often distract their reasoning “and expose it to the influence of the passions.”¹⁸

“The accumulation of all powers [of government]... in the same hands...[is] the very definition of tyranny,” Madison wrote in the *Federalist Papers*.¹⁹ To

guard against the danger of governmental tyranny, Madison endorsed a system of prudential devices, including separation of powers, checks and balances, bicameralism, and federalism, which are intended to divide and channel the self-interest and ambitions of officeholders and enable government to control itself.

Accordingly, the Constitution separates the government into three distinct branches: legislative, executive, and judicial. However, Madison argues, it is not sufficient to establish separation of powers on parchment only. Because men are not angels—because they are so often actuated by private interest and ambition—these very motives themselves must be employed to keep the departments of government within their limited, constitutional boundaries. “Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.”²⁰

Because men are not angels, “Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.”

In essence, Madison advised his fellow citizens to be wary of the heat generated by politics and the allurements of political power. Madison thus proposed a system of checks and balances that would incorporate the less than sterling side of human nature into the very workings of government. To accomplish this, the powers of the three branches of government are partially blended, enabling each branch to guard against usurpations of power by the others and safeguard its own constitutional province. Examples of constitutional checks and balances include the executive veto of legislative bills, the legislative override of the executive veto, the required

15. James Madison, “Public Opinion,” December 19, 1791, in *The Papers of James Madison*, ed. William T. Hutchinson et al. (Chicago: University of Chicago Press, 1962), Vol. 1, <http://press-pubs.uchicago.edu/founders/documents/v1ch2s26.html>.

16. Madison, *Federalist* No. 57, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 350.

17. Madison, *Federalist* No. 10, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 75.

18. Madison, letter to Doctor Rush, March 7, 1790, in *Letters and Other Writings of James Madison* (Philadelphia: J. B. Lippincott & Co., 1865), Vol. 1, p. 510.

19. Madison, *Federalist* No. 47, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 298.

20. Madison, *Federalist* No. 51, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 319.

Senate confirmation of presidential appointments to the Supreme Court, and judicial review.

In essence, Madison wanted the different branches of government, as well as the two houses of Congress and the national and the state governments, to check each other in the exercise of power, thereby guaranteeing the diffusion of governmental power and the protection of the people's rights and liberties.

Madison termed these safeguards against governmental tyranny "auxiliary precautions."²¹ The primary control on the government, he emphasized, remains always with the people. In the final analysis, governmental decisions depend on the will of society. If liberty is to be preserved, the will of the people must be grounded in the principles of justice and informed by the precepts of moral responsibility. In arguing for constitutional and institutional safeguards for liberty, Madison never lost sight of the fact that the preservation of freedom ultimately depends on the citizens and their exercise of personal and political responsibility.

Freedom and Responsibility

Madison's contributions to the American Republic are best summarized by his lifelong dedication to the principles of freedom and responsibility. These principles go hand in hand and constitute the cornerstone of republican self-government. Together, they protect the citizens in the free exercise of their faculties. The individual's free exercise of his or her mind and talents is the most basic of all rights, from which all our civil rights and liberties are derived. These include freedom of conscience, freedom of speech, freedom of assembly, freedom of the press, and the rights of property.

A staunch supporter of the separation of church and state, Madison argued that the religion of every person must be left to his own conscience and cannot rightly be forced by the dictates of other human beings. In promoting the doctrine of religious freedom, his intent was not to privilege the secular over the religious or in any way to diminish the realm of

the latter, but rather to protect men's religious convictions against the intrusion of the state.

The obligation of every human being to God, Madison argued, is higher than his duty to country. Freedom of conscience is an inalienable right because "what is here a right towards men, is a duty towards the Creator."²² Before human beings are members of civil society, they are subjects of the "Governor of the Universe," and not even a majority in society has the legitimate right to interfere with a man's allegiance to divine authority.²³

Madison's claim for religious freedom is thus an aspect of his understanding of the hierarchy of obligations and responsibilities of human beings. "A just government," he wrote, will protect "every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property."²⁴

When government dictates arbitrary taxation or the taking of property from one class of citizens to benefit another, freedom is assailed because the right of property is simply the natural and necessary extension of the free use of one's faculties.

When government interferes with the freedom to derive the fruits of one's talents and labors, it violates the principle of human equality by subjecting some to peculiar burdens and others to particular exemptions. When government dictates arbitrary taxation or the taking of property from one class of citizens to benefit another, freedom is assailed. This is because the right of property is simply the natural and necessary extension of the free use of one's faculties.

A just government, Madison teaches, will protect the citizens in both their rights of property and their property in rights.²⁵ A person's "opinions and the

21. Ibid.

22. James Madison, "Memorial and Remonstrance Against Religious Assessments," 1785, http://religiousfreedom.lib.virginia.edu/sacred/madison_m&r_1785.html.

23. Ibid.

24. Ibid.

25. James Madison, "Property," March 29, 1792, Heritage Foundation *Primary Sources*, <http://www.heritage.org/initiatives/first-principles/primary-sources/madison-on-property>.

free communication of them” is a no less sacred form of property, from which freedom of speech, assembly and press are derived.²⁶ “Government is instituted to protect property of every sort,” Madison asserts, “as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which *impartially* secures to every man, whatever is his *own*.”²⁷

We are all familiar with the Bill of Rights as a document listing our protected freedoms. Madison hoped it would in time become much more than a parchment barrier against oppressive acts. Over time, a bill of rights becomes sanctified and incorporated in public opinion, and its principles exert an influence on the actual views and sentiments of the people. The guardianship of our constitutional rights is immeasurably strengthened when those rights and the responsibilities that flow from them are written not just on paper, but on the minds and hearts of the citizens.

Self-control, by the individual citizen and by the majority, is the essence of Madison’s dream of republican self-government.

In all free governments, Madison claimed, public opinion is sovereign.²⁸ Public opinion is the authority that ultimately determines governmental measures; it is the spirit behind the laws. The arena of public opinion is the sphere in which a coalition of the majority takes place on any given issue. Majority opinion in a republican polity is constantly in the process of constructing itself within an intellectual, moral, and psychological milieu larger than itself. Consequently, the things that influence public opinion are of critical importance to those who are concerned with the stability, character, and future of the political order.

To foster the formation of a citizenry who will respect the rights of others and exercise the

responsibilities that come with freedom, Madison promoted a national bill of rights, a free press circulating throughout the land, educational establishments to encourage learning and cultivate public manners, and representatives who take seriously their duty to encourage the enlargement of the public viewpoint. His aim was to construct a society in which the people are truly capable of governing themselves.

Madison’s advocacy of the formation of a deliberative and just public opinion was part of his sustained attempt to solve the problem of majority opinion in a manner fully consistent with the form and spirit of popular government. Three-quarters of a century later, Abraham Lincoln would echo Madison’s republican convictions. On the brink of civil war, Lincoln reminded the American people that “a majority, held in restraint by constitutional checks, and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people.”²⁹

Self-Control

Robert Frost, perhaps the greatest of American poets, captured in homely phrases the simple charms of the American countryside. His poems are landscapes of snowy lanes and winter’s quiet, of uncharted paths through amber woods, of fences of privacy that promote neighborly bonds and mutual respect. Even more than the actual land Americans inhabit, Frost’s words capture the tenor and timbre of the American way of life. They are quiescent reminders of the resounding majesty of the American dream.

“I wonder what the dream is, or why... I wonder who dreamed it,” Frost once wrote.³⁰ “Did Tom Paine dream it, did Thomas Jefferson dream it, did George Washington dream it? Gouverneur Morris?”

After putting the question down and then picking it up again and leaving it and returning to it yet again and again, Frost thought he had come to understand the dream. He decided that “the best dreamer of it was Madison.” “Now I know—I think I know...—what Madison’s dream was,” Frost wrote. “It was just a dream of a new land to fulfill with

26. Ibid.

27. Ibid.

28. Madison, “Public Opinion.”

29. Abraham Lincoln, “First Inaugural Address,” March 4, 1861, http://avalon.law.yale.edu/19th_century/lincoln1.asp.

30. Robert Frost, speech given at the 28th annual Commencement at Sarah Lawrence College, Bronxville, New York, June 7, 1956.

people in self-control. That is all through his thinking.... To fulfill this land—a new land—with people in self-control.”³¹

Frost’s plain words, used to capture the vision behind Madison’s complex system of government, could not have been better chosen. Self-control, by the individual citizen and by the majority, is the essence of Madison’s dream of republican self-government.

Like Madison, Frost understood that in the end, after all has been done to institute a system of institutional checks and safeguards, to establish formal laws protecting this or preventing that, the destiny of the American Republic would be decided by the people’s willingness and ability to cherish their own rights and to respect the rights of others. The “new

and more noble course” of freedom, Madison taught, is a road worthy of our choosing.³² Its path is marked out and lit for us by our very humanity and the eternal challenge of self-government.

Robert Frost had the acuteness to hear Madison’s gentle plea. He has reminded us that the Father of the Constitution, in his soft and quiet voice, speaks to each of us across the ages: “*You* are the tender at the sacred hearth of liberty, and of the noble aspirations that are the American dream.”³³

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31. Ibid.

32. Madison, *Federalist* No. 14, in Hamilton, Madison, and Jay, *The Federalist Papers*, p. 99.

33. Frost, speech given at the 28th annual Commencement at Sarah Lawrence College.