

Is There A James Madison Problem?

Gordon Wood

WEEK 8
Wood

IT IS LAMENTABLE that Americans do not remember Madison as well as they should, especially when we reflect on who he was and what he achieved: The major architect of the Constitution; the father of the Bill of Rights and one of the strongest proponents of the rights of conscience and religious liberty in American history; the coauthor of *The Federalist*, surely the most significant work of political theory in American history; the leader and most important member of the first House of Representatives in 1789; the cofounder of the Democratic-Republican party in the 1790s; the secretary of state in Jefferson's administration; and the fourth president of the United States—all this, and still he does not have the popular standing of the other founders, especially that of his closest friend, Thomas Jefferson.

Madison seems unable to escape from the shadow of Jefferson, and he

seems smaller than his Virginia colleague in every way. He was after all only about five feet six inches tall compared with Jefferson's six-two or -three, and somehow that difference in height has carried over into the different degrees of popular esteem that the country has paid to these two founders. Jefferson has a huge temple erected in his honor in the nation's capital, but until 1980, with the naming of a new Library of Congress building after him, James Madison had no such memorial. Jefferson's ringing statements on behalf of freedom and democracy are inscribed everywhere, but very few of Madison's are anywhere in public view. Jefferson's home, Monticello, has been restored to Jeffersonian perfection and for decades has been a shrine, visited by thousands of people every year. By contrast Madison's home, Montpelier, has only recently been opened to visitors.

James Madison was born in 1751 into that class of Virginia slaveholding planters who dominated their society as few aristocracies have. Although his father was the wealthiest landowner in Orange County, Virginia, he was not far removed from the raw frontier, and young Madison, like most of the founding fathers, became the first of his family to attend college. In Madison's case it was the College of New Jersey (later Princeton), where he was introduced, through the president John Witherspoon, to the enlightened ideas of such eighteenth-century Scottish thinkers as Francis Hutcheson, Adam Smith, and David Hume. In college he revealed an intellectual intensity and earnestness that he never lost. His father's plantation wealth enabled Madison, who complained endlessly of his poor health, to return home to study and contemplate participating in the provincial politics of colonial Virginia. The Revolution of course changed everything.

In 1776 Madison at age twenty-five was elected to Virginia's provincial convention and became caught up in the revolutionary movement. His first great liberal passion was religious freedom, and through that concern he became friendly with Jefferson, who, eight years his senior, was already a major force in Virginia's revolutionary politics. It was the beginning of a lifelong friendship.

It is not immediately obvious why the friendship was so intimate and long-lasting. The two men after all had very different temperaments. As we've seen, Jefferson was high-minded, optimistic, visionary, and often quick to grab hold of new and sometimes outlandish ideas. Although he could be a superb politician at times, acutely sensitive to what was possible and workable, he was also a radical utopian; he often dreamed of the future and was inspired by how things might be. Madison, by contrast, had a conservative strain; he valued legitimacy and stability and was more willing than Jefferson to accept things as they were. He was often prudent and cold-eyed, if not pessimistic, analytical, and often skeptical of utopian schemes, especially if they might unleash popular passions. He never assumed an idea without questioning it, and as we've noted, he never possessed the kind of uncritical faith in the people that Jefferson had.

Both Jefferson and Madison, for example, were suspicious of governmental power, including the power of elected representative legislatures. But Jefferson's suspicion was based on his fear of the unrepresentative character of the elected officials, that they were too apt to drift away from the virtuous people who had elected them. Madison's suspicion, in contrast, was based on his fear that the elected officials were only too representative, only too expressive of the passions of the people who had elected them. Jefferson worried about the rights of the majority; Madison worried about the rights of the minority.¹ As far as Jefferson was concerned, the people could do no wrong. When Madison was wringing his hands in the late 1780s over the turbulence of Shays's Rebellion, Jefferson was writing blithely from France about the value of the spirit of popular resistance to government and the need to keep it alive. "I like a little rebellion now and then," he said. It was like a storm in the atmosphere; it cleared the air.²

In 1779, at age twenty-eight, Madison was elected to the Continental Congress, where he was confronted with a number of national problems besetting the Confederation. The Articles of Confederation under which Americans were conducting their Revolution had not created a real gov-

ernment. In fact the Confederation resembled more of an alliance among closely cooperating sovereign states than a single government, something not all that different from the present-day European Union. Each state annually sent to the Confederation Congress a delegation (called by some states "our embassy"), and each delegation had only a single vote. Under the Articles the crucial powers of commercial regulation and taxation—indeed all final ordinary lawmaking authority—remained with the states. Congressional resolutions continued to be, as they had been under the Continental Congress, only recommendations that the states were supposed to enforce. And should there be any doubts of the decentralized nature of the Confederation, Article 2 stated bluntly: "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled." The Confederation therefore was intended to be and remained, as Article 3 declared, "a firm league of friendship" among states jealous of their individuality. The "United States of America" were plural and possessed a literal meaning that is hard to appreciate today.

Almost immediately after the Confederation was created, many Americans, including Madison, came to see that it was much too weak to do what they wanted. By the 1780s the problems were severe and conspicuous. The Congress could not tax and pay its bills. It could not feed, clothe, or supply the army. It could not levy tariffs to regulate trade or to retaliate against the mercantilist European empires. It was even having trouble gathering a quorum to conduct business. Attempts to revise the Articles and grant the Congress the power to levy a 5 percent impost on imported European goods were thwarted by the need to get the unanimous consent of all thirteen states. Internationally the United States were being humiliated. In the Mediterranean the Barbary pirates were seizing American ships and selling their sailors into slavery, and the Confederation was powerless to do anything. It was unable even to guarantee the territorial integrity of the new nation. Great Britain continued to hold posts in the northwestern parts of United States territory in defiance of

the peace treaty of 1783. In the southwest Spain was claiming territory that included much of present-day Alabama and Mississippi and plotting with American dissidents to break away from the Union.

These glaring weaknesses of the Articles of Confederation convinced Madison and many others that some sort of reform of this first national constitution was needed. Throughout the early 1780s Madison wrestled with various schemes for overhauling the Confederation. At one point he even toyed with the idea that the government might have to make war on the states in order to compel compliance with the Congress's resolutions. By the mid-1780s almost the entire political nation was ready to change the Articles by granting the Congress a limited authority to tax and to regulate commerce. This widespread willingness to do something about the central government gave Madison and others an opportunity to do more than add a couple of powers to the Congress. By 1786 he had become convinced that the crisis of the 1780s involved more than the weaknesses of the Confederation. The real crisis lay with popular politics in the separate states.

He reached this startling conclusion not merely from poring through the bundles of books that Jefferson was sending him from Paris. More important in convincing him that the states were the source of the problems of the 1780s was his membership in the Virginia Assembly. In 1784 he was forced by the term limits for congressmen under the Articles to retire from the Congress and enter the Virginia legislature, where he spent four sessions between 1784 and 1787. They were perhaps the most frustrating and disillusioning years but also the most important years of his life, for his experience as a Virginia legislator in the 1780s was crucial in shaping his thinking as a constitutional reformer.

Although Madison in these years had some notable legislative achievements, particularly by shepherding into enactment Jefferson's famous bill for religious freedom, he was continually exasperated by what Jefferson years later (no doubt following Madison's account) referred to as "the endless quibbles, chicaneries, perversions, vexations, and delays of lawyers and demi-lawyers" in the assembly. Really for the first time Madison discov-

ered what democracy in America might mean. Not all the legislators were going to be like him or Jefferson; many of them did not even appear to be gentlemen, never mind enlightened. The Virginia legislators seemed parochial, illiberal, small-minded, and most of them seemed to have only "a particular interest to serve." They had no regard for public honor or honesty. They often made a travesty of the legislative process and were reluctant to do anything that might appear unpopular. They postponed taxes, subverted debts owed to the subjects of Great Britain, and passed, defeated, and repassed bills in the most haphazard ways. Madison had enlightened expectations for Virginia's port bill in 1784, but the other legislators got their self-serving hands on it and perverted it. It was the same with nearly all the legislative proposals he sought to introduce, especially those involving reform of the legal code and court system. "Important bills prepared at leisure by skillful hands," he complained, were vitiated by "crudeness and tedious discussion." What could he do with such clods? "It will little elevate your idea of our Senate," he wrote in weary despair to Washington in 1786, to learn that the senators actually defeated a bill defining the privileges of foreign ambassadors in Virginia "on the principle . . . that an Alien ought not to be put on better ground than a Citizen." Those today who have to contend with New Yorkers' complaining about the parking privileges of UN diplomats might appreciate Madison's vexation.³

This was not what republican lawmaking was supposed to be. Madison continually had to make concessions to the "prevailing sentiments," whether or not such sentiments promoted the good of the state or nation. He had to agree to bad laws for fear of getting worse ones, and to give up good bills "rather than pay such a price" as opponents wanted. Today's legislators are used to this sort of political horse-trading, but Madison was not yet ready for the logrolling and pork barreling that eventually became the staples of American legislative politics.

He had "strong apprehensions" that his and Jefferson's hope of reforming the legal code "may never be systematically perfected." The legislature was simply too popular, and appealing to the people had none of the beneficial effects good republicans had expected. A bill having to do

with court reform, for example, was "to be printed for the consideration of the public," but "instead of calling forth the sanction of the wise and virtuous," this action, Madison feared, would only "be a signal to interested men to redouble their efforts to get into the Legislature." Democracy was no solution to the problem; democracy was the problem. Madison repeatedly found himself having to beat back the "itch for paper money" and other debtor relief measures "of a popular cast." Too often Madison had to admit that the only hope he had was "of moderating the fury," not defeating it.⁴

Madison, like other enthusiastic revolutionary idealists, emerged from his experience with democratic politics in the mid-1780s a very chastened republican. It was bad enough, he wrote in his working paper "Vices of the Political System of the United States," that legislators were often interested men or dupes of the sophistry of "a favorite leader" (like Patrick Henry). Even more alarming for the fate of republican government, however, was the fact that such legislators were only reflecting the partial interests and parochial outlooks of their constituents. Too many of the American people could not see beyond their own pocketbooks or their own neighborhoods. "Individuals of extended views, and of national pride," said Madison (and he knew whom he meant), might be able to bring public proceedings to an enlightened cosmopolitan standard, but their example could never be followed by "the multitude." "Is it to be imagined that an ordinary citizen or even an assembly-man of R. Island in estimating the policy of paper money, ever considered or cared in what light the measure would be viewed in France or Holland; or even in Massts or Connect.? It was a sufficient temptation to both [the citizen and the assemblyman] that it was for their interest."⁵

Madison's experience with the populist politics of the state legislatures was especially important because of his extraordinary influence on the writing of the federal Constitution. But his experience was not unusual; indeed, the framers of the Constitution could not have done what they did if Madison's experience had not been widely shared. Many of the delegates to the Philadelphia Convention were ready to accept Madison's

Virginia Plan precisely because they shared his deep dislike of the localist and interest-ridden politics of the state legislatures. "The vile State governments are sources of pollution which will contaminate the American name for ages. . . . Smite them," Henry Knox urged Rufus King, sitting in the Philadelphia Convention, "smite them, in the name of God and the people."⁶

Not only Virginia but other states as well had been passing various inflationary paper money laws and other debtor relief legislation that were victimizing creditor minorities. All this experience during the 1780s sparked new thoughts, and Madison began working out for himself a new understanding of American politics, one that involved questioning conventional wisdom concerning majority rule, the proper size for a republic, and the role of factions in society. All these new ideas fed into the Virginia Plan, which became the working model for the Constitutional Convention that met in 1787. Crucial to this plan was the Congress's power to negative or veto all state legislation that in its opinion violated the articles of the Union.

Jefferson had no such plan in mind. During the 1780s Jefferson was minister to France and from his distant position in Paris did not share Madison's experience in democratic state politics. Although Jefferson accepted the need for a new federal government, he continued to think of the United States as more of a decentralized confederation than did Madison. Give the national government control over foreign policy and foreign trade, he urged, but leave all domestic affairs, including taxation, with the separate states. "To make us one nation as to foreign concerns, and keep us distinct in Domestic ones," Jefferson told Madison in 1786, "gives the outline of the proper division of powers between the general and particular governments."⁷

By the early 1790s Jefferson had not changed his views at all, but Madison had. By 1792 Madison had become fearful of the very government he had done so much to create. This change has created a "Madison problem." Just as scholars used to see two different Adam Smiths, creating an Adam Smith problem, so do they see two different James Madisons.

The Adam Smith problem, or as the German scholars liked to call it, *das Adam Smith Problem*, arose out of the presumed discrepancy between the Adam Smith of the *Theory of Moral Sentiments* and the Adam Smith of the *Wealth of Nations*. Smith seemed to be two different persons with very different views of human nature. While his *Moral Sentiments* seemed to ascribe human actions to sympathy, his *Wealth of Nations* seemed to ascribe them to self-interest. Much scholarly time and energy were spent trying to account for the apparent difference between the two books. Eventually, however, more recent scholarship has shown that the problem was a figment of our scholarly imaginations and that the two books can in fact be reconciled.⁸

Can we do the same for James Madison? Can we reconcile the apparently two different Madisons?

There is the Madison of the 1780s, the fervent nationalist who feared the states and their vicious tyrannical majorities and wanted to subject them to the control of the central government. Although he did not want to eliminate the states, he seems to have wanted to reduce them to what at times are little more than administrative units that, he said, might be "subordinately useful."⁹ This is the Madison who has become the so-called father of the Constitution.

By contrast there is the Madison of the 1790s, the strict constructionist, states' rights cofounder of the Democratic-Republican party who feared the national government and its monarchical tendencies and trusted the popular majorities in the states. By 1798 he was even willing to invoke the right of the states to judge the constitutionality of federal acts and to interpose themselves between the citizens and the unconstitutional actions of the central government. For the early Madison, popular majorities within states were the source of the problem; for the later Madison, these popular majorities in the states became a remedy for the problem. It is hard to see how these two seemingly different Madisons can be reconciled.

The first Madison is the author of the Virginia Plan. We often forget what an extraordinarily powerful and sweeping national government the

Virginia Plan proposed. According to Madison's plan, both branches of the bicameral national legislature would be proportionally representative, thus eliminating all semblance of state sovereignty from the national government. Moreover, this national legislature would have the power to legislate in all cases in which the separate states were incompetent and the power to negative all state laws that in its opinion contravened the Union. Madison thought this curious veto power to be "absolutely necessary and to be the least possible encroachment on the State jurisdictions."¹⁰

During 1789, when the new Washington administration was getting on its feet, Madison still seemed to be the quintessential Federalist—"a great friend to strong government," concluded South Carolina Federalist William Loughton Smith in August 1789.¹¹ Although a member of the House of Representatives, Madison was President Washington's closest confidant. He helped shape the legislation that created the departments of government and was very important in establishing the executive's independence from Congress. Even his support for a bill of rights that dealt only with individual rights and liberties was seen as a means of subverting or diverting the Anti-Federalist demand for many more substantial limits on the national government—a "tub for the whale," as the Anti-Federalists called his bill of rights.¹²

Only slowly did Madison seem to change. Although he reluctantly recognized the need for funding the national debt, he was not happy with Hamilton's proposal in January 1790 to pay only the current holders of the government's bonds. Hamilton's plan for the national government to assume all the state debts angered him even more. Finally, with Hamilton's proposal for a national bank, Madison's criticism of the secretary of the treasury's plans became even more vehement, and the political elite became severely divided.

Hamilton was not surprised by opposition to his financial plans. He knew that state and local interests would resist all efforts to strengthen national authority. But he was surprised that his harshest critic in the House of Representatives was his longtime ally Madison. He thought that Madison had desired a strong national government as much as he had.

He could not understand how he and Madison, "whose politics had formerly so much the *same point of departure*," could have diverged so dramatically.¹³

In the House Madison argued not only that the bank bill was a misguided imitation of England's monarchical practice of concentrating wealth and influence in the metropolitan capital but, more important, that it was an unconstitutional assertion of federal power. He urged a strict interpretation of the Constitution, claiming that it did not expressly grant the federal government the authority to charter a bank.

By the end of 1790 Madison and other Virginians were openly voicing their alarm at the direction the national government was taking. By 1791 Madison was privately describing the supporters of Hamilton's program not only as speculators but also as Tories, a loaded term that suggested the promoters of royal absolutism.¹⁴ By 1792 Madison and Jefferson were emerging as the leaders of what Madison called the Republican party in opposition to what seemed to them to be Federalist efforts to establish a consolidated British-style monarchy. But so much was the Republican party the result of Madison's efforts alone that it was often referred to as "Madison's Party."¹⁵ By May 1792 Hamilton had become convinced "that Mr. Madison cooperating with Mr. Jefferson is at the head of a faction decidedly hostile to me and my administration, and actuated by views in my judgment subversive of the principles of good government and dangerous to the union, peace and happiness of the Country."¹⁶

With the coming of the French Revolution and the outbreak of war between republican France and monarchical Britain in 1793, the division between the Federalists and the Republicans deepened and became more passionate. The future of the United States appeared to be tied up in the outcome of the European struggle. "None of the Republicans," writes historian James Morton Smith, "was more committed to the concept of the revolution in France as an extension of the one in America than was Madison."¹⁷

By this point Madison was convinced that Hamilton and the Feder-

alists were bent on making a "connection" with Great Britain and "under her auspices" were determined to move "in a gradual approximation towards her Form of Government." Until his retirement from Congress in December 1796 Madison remained the undisputed leader of the Republican party in the Congress and its most effective spokesman in the press. When the crisis of 1798–99 came to a head, it was not surprising that Madison and Jefferson emerged as states rights' advocates against the consolidationist tendencies of the Federalists.

What happened? What could account for this apparently remarkable change of sentiment? From being the leader of the nationalist and Federalist movement in the 1780s, Madison became the leader of the states' rights and Anti-Federalist movement in the 1790s. Explaining this change seems to be a major problem, one that has bedeviled Madison's biographers and historians of the founding era.

Most biographers and historians have concluded that Madison did indeed change his mind about national power and offer a variety of explanations for his shift from being a proponent of a strong national government to a defender of states' rights. Some have described his "sudden turn" in 1790 as a matter of "political expediency," designed as "the opening move in a resumption of state-oriented politics."¹⁸ Others have stressed his awakened loyalty to the sentiments of his Virginia constituents. Taking off from this new consciousness of Madison's Virginianess, still others have pointed to his inability to comprehend bond markets and mercantile affairs and have emphasized that his objection to Hamilton's program seemed to rest on his disgust with northern speculators and moneyed men.¹⁹ Others have talked about his friendship with Jefferson and his willingness to defer to his older colleague, ready "always," as he told Jefferson in 1794, to "receive your commands with pleasure."²⁰ Still others have stressed that he "thought as a working statesman," shifting his opinion in accord with his perception of where the threats to liberty and republican government lay.²¹

Those few scholars who have stressed Madison's consistency through the 1780s and 1790s have done so by playing down his nationalism in the

1780s. They contend that he wasn't really a full-blown nationalist at the time of the Constitutional Convention.²² But the evidence of Madison's nationalism in 1787 seems too overwhelming for this contention to be persuasive. In the 1780s Madison was very much a fervent nationalist, eager to create a national government that would control certain kinds of behavior in the states. Yet he was not the kind of nationalist that other Federalists such as Hamilton were. When he came to realize what kind of consolidated national government Hamilton was trying to create, he naturally went into opposition. His conception of what the national government ought to be was not being fulfilled.

Trying to discover consistency in a politician who lived a long life in a rapidly changing society may be a foolish and unnecessary project. Does it really matter if Madison changed his views? He certainly thought so; to the end of his life he always maintained that he was consistent in his beliefs and that it was Hamilton who had abandoned him.²³ Certainly we can never escape from the fact that the later Madison is different in many ways from the early Madison. No doubt he was a nationalist in the 1780s and a states' rights advocate in the 1790s. Yet at some basic level Madison remained in harmony with himself throughout his career. There were really *not* two James Madisons.

How to explain the consistency in Madison's thinking? First of all we have to get back to the eighteenth century to understand exactly what he was trying to do in 1787. It may be that we scholars have been attributing far more farsightedness to him than he was in fact capable of. In our eagerness to make Madison the most profound political theorist not only in the revolutionary and constitution-making period but in all American history as well, we may have burdened this eighteenth-century political leader with more theoretical sophistication than he or any such politician can bear. We want him to be one of the important political philosophers in the Western tradition. If the English have Hobbes and Locke, and the French have Montesquieu and Rousseau, then we Americans at least have Madison.

Convinced of the originality and sophistication of Madison's ideas,

many scholars have been stumbling over themselves in their desire to explore the implications of his political thought, less, it seems, for understanding the eighteenth century than for understanding our own time. Since Madison was central to the creation of the United States Constitution—the founding, as we call it—he and his ideas have come to bear an exceptional responsibility for the character of American politics and society.

Political scientists have been especially eager to treat Madison as America's foremost political philosopher and have compiled a small library of works analyzing his (and Hamilton's) contributions to *The Federalist*. According to many political theorists, to understand Madison is to understand American politics. So, in Robert A. Dahl's formulation, Madison is the pluralist who unfortunately concocted our fragmented structure of government in order to protect minority rights at the expense of majority rule. Or according to Richard K. Matthews, he is the symbol of a coldhearted American liberalism that promotes a selfish individualism that has no sense of benevolence and cares only for material wealth and property. Or in Gary Rosen's hands, he is the innovative theorist of the social compact that is the foundation of natural rights and our limited constitutional government.²⁴

As these studies by political scientists and political theorists become more and more refined and precious, they seem to drift farther and farther away from Madison's eighteenth-century reality. Whatever his creativity and originality may have been, we have to keep in mind that Madison was not speaking to us or to the ages. His world was not our world; indeed, our world would have appalled him. Thus, in our efforts to relate his very time-bound thinking to our present predicaments, we run the risk of seriously distorting his world and what he was trying to do. Moreover, despite all his achievements, we run the risk of exaggerating his creativity.

If we are to recover the historical Madison, we have to soften, if not discard, the traditional idea that he was the father of the Constitution. He was certainly the principal force behind the calling of the Philadelphia

Convention which drafted the Constitution in the summer of 1787. He was also the major author of the Virginia Plan, which formed the original working model for the convention. During the meeting not only did he participate vigorously in the debates, but he also took it upon himself to keep voluminous notes of the discussions; mainly because of these notes we know so much about what went on in the convention. But the Constitution that emerged from the Philadelphia Convention was not at all what he had wanted. With good reason he always contended that it was "the work of many heads and many hands."²⁵

To understand Madison, we have to remove from our minds any notion that the Constitution we Americans have now or even had in the 1790s was the one he had intended to create with his Virginia Plan.

The Virginia Plan, which he introduced to the convention on May 29, 1787, was certainly original and nationalistic, but it was a quirky, even visionary kind of originality that it expressed, one that proved unacceptable to most Federalists. The Virginia Plan had grown out of Madison's view of what was really wrong with America in the 1780s. For him the weaknesses of the Confederation, which nearly everyone seemed to acknowledge, seemed secondary to the vices within the several states. Not only did the self-interested behavior of the states weaken the Union, but more important, popular politics within the states threatened the revolutionary experiment in self-government. Ever since independence, said Madison, the states had passed a host of laws whose "multiplicity," "mutability," and "injustice" called "into question the fundamental principle of republican Government, that the majority who rule in such Governments, are the safest Guardians both of public Good and private rights."²⁶ By 1787 Madison was convinced that these problems within the states contributed more to the calling of the Philadelphia Convention than did the obvious weaknesses of the Confederation. It was this conviction that led Madison to the peculiarities of his Virginia Plan—not only the sweeping legislative authority granted to the Congress but, more important, the extraordinary power granted to the federal government to oversee state legislation. The Virginia Plan gave the Congress the power to veto all state laws contra-

vening the articles of union. It also created a council of revision, modeled on that of New York, composed of the executive and a convenient number of the national judiciary, to participate in legislation. It had the power not only to examine and veto all congressional laws unless the Congress re-passed them but also to examine all state laws before a congressional rejection of them would be final.

Of course there were many Federalists who shared Madison's disgust with what was happening in the states and agreed with his remedy of establishing an elevated national government. But many of them did not agree with the strange judiciallike manner in which he hoped to deal with the factional politics he found in the states, a manner very much influenced by his conception of how the Privy Council of the British Crown had, or should have, operated under the empire.

Madison's proposals for checking legislation were truly odd. In the weeks leading up to the meeting of the Philadelphia Convention he imagined the national government's possessing even a stronger veto over state laws than the one that ended up being incorporated in the Virginia Plan, and in private correspondence he revealed just how much experience under the British Empire was affecting his thinking. "A negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative," he told Washington a month before the meeting in Philadelphia, was "absolutely necessary" and "the least possible encroachment on the State jurisdictions."²⁷ As historian Jack N. Rakove has pointed out, this was an extraordinarily reactionary proposal.²⁸ Moreover, not only was it reactionary, but it was also bizarre. It brought to mind the infamous phrase of the British Declaratory Act of 1766 that Parliament had the right to legislate for the colonies "in all cases whatsoever." It also evoked the royal veto of colonial legislation that Jefferson had bitterly denounced in the Declaration of Independence. Madison's proposal for this national congressional power to negative all state legislation was a measure of just how eccentric his thinking actually was.

Madison envisioned a very strange kind of national government. He wanted one that was principally designed to evade popular majoritarian

politics in the states in order to protect individual liberties and minority rights. He had little or no interest in creating a modern state with a powerful executive. In fact he seems to have never much valued executive authority in the states as a means of countering legislative abuses, and his conception of the executive in the new national government remained hazy at best. As late as April 1787 he told Washington that he had "scarcely ventured as yet to form my own opinion either of the manner in which [the executive] ought to be constituted or of the authorities with which it ought to be clothed."²⁹ Through much of the convention he assumed that the powers over appointment to offices and the conduct of foreign affairs would be assigned not to the president but to the Senate. Only later, after the so-called Connecticut Compromise, when Madison and other nationalists became alarmed by the states' gaining equal representation in the Senate, were these powers taken away from the state-dominated Senate and granted to the president. Certainly Madison in 1787 had no inkling of the kind of presidency that Washington and Hamilton would create in the 1790s.

During the convention all Madison seemed to care about was maintaining a centralized national control over harmful state laws. When on June 6 the convention voted down his proposed council of revision, eight states to three, he became even more determined to hold on to his congressional veto over state legislation. Then the convention began undercutting his Virginia Plan in several important respects. On July 16, after a lengthy and ferocious battle, the convention agreed to the Connecticut Compromise, which gave each state two senators. For Madison this was no compromise but a serious defeat. Since he had desperately wanted proportional representation in both houses of the legislature, he was deeply depressed. Because the states commanded so much of the people's emotional loyalty, he thought giving them explicit representation in the new government and allowing their legislatures to select the senators would eventually vitiate the new central government. He even caucused the next day with his fellow Virginia delegates over whether or not to withdraw from the convention.

The next day, July 17, things got even worse, as Madison frantically sought to fend off efforts to do away with his congressional veto over improper state legislation. "A power of negating the improper laws of the States," he declared, "is at once the most mild & certain means of preserving the harmony of the system." As a measure of his desperation he even invoked the example of "the British System" under the empire to justify his proposal. "Nothing could maintain the harmony & subordination of the various parts of the empire," he claimed, "but the prerogative by which the Crown stifles in the birth every Act of every part tending to discord or encroachment." Madison admitted that the prerogative of the king's Privy Council to disallow colonial legislation had been "sometimes misapplied thro' ignorance or a partiality to one particular part of the empire," but this, he said, was unlikely to happen in the United States, where knowledge of particular interests was more widespread.³⁰

Since his odd and impractical proposal for a congressional veto over all improper state laws, as Gouverneur Morris pointed out, "would disgust all the States," it did not command much support, and on July 17 it lost, seven states to three. Madison was now deeply disheartened and convinced that the Constitution was doomed to fail. Indeed, just before the convention adjourned, he told Jefferson that the new federal government would accomplish none of its goals. The Constitution, he said, "will neither effectually answer its national object nor prevent the local mischiefs which every where excite disgusts against the state governments."³¹ This extraordinary statement gives us some idea of how little the final Constitution resembled his original intentions.

Depressed as Madison may have been on July 17 over defeat of his congressional veto over state laws, he had not given up hope that some kind of revisionary power on harmful legislation might be salvaged. On July 21 he seconded and vigorously supported an effort by James Wilson, who was as concerned as he with bad popular legislation, to open up once again the question of allying the judiciary with the executive and granting them a revisionary power over legislation. In defeating the earlier motion to es-

tablish such a revisionary council, some delegates had maintained that the judiciary by itself could control improper legislation. But Wilson thought this might not be enough. "Laws," he said, "may be unjust, may be unwise, may be dangerous, may be destructive; and yet not be so unconstitutional as to justify the Judges in refusing to give them effect." (This is an indication of how rudimentary in 1787 was much of the thinking about what came to be called judicial review.)

Madison quickly endorsed Wilson's argument. Since losing the issue of proportional representation in the Senate, he was now increasingly wary of the power of a Congress in which the states as states would have such an important role. Although he mounted every argument he could think of to justify his council of revision, it was the fear of legislative power that obsessed him. He believed deeply that "experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex" and that this tendency was "the real source of danger to the American Constitutions." Although many delegates agreed that a check on legislation was necessary, his council of revision raised other concerns. Opponents pointed out that such a council would mix the judicial and executive powers and give the expositors of the laws a role in framing them, "making Statesmen of the Judges." Again Madison's council of revision was lost, but this time by a narrower margin, four states to three, with two states divided.³²

Madison clung tightly to these proposals for checking legislative power because of his conception of the judiciallike role he expected the new federal government to play in the nation, a role graphically revealed in his unusual discussion of American politics in *The Federalist*. Madison wrote twenty-nine of the eighty-five papers of *The Federalist*, and his *Federalist* No. 10 has become the most famous document in the history of American political thought. In his analysis of the sources of interest and faction in this paper, Madison seems at first to be very much the cold-eyed realist. Interest group politics, he wrote, was an ineradicable part of American social reality. People inevitably had interests, and because they wanted to protect those interests, they divided into political factions. The causes

of faction, he said, were quite simply "sown in the nature of man." It was naive to expect most people to be virtuous and put aside these interests for the sake of some nebulous public good. Moreover, to try to eliminate these interests would be a denial of liberty. He thus realized that the regulation of these private factional interests was becoming the principal task of modern legislation, meaning that the spirit of party was in the future likely to be involved in the ordinary operations of government.

Even though many other Americans in 1787 were saying the same thing at this point, we scholars have generally applauded Madison for his hardheaded realism, for his unsentimental willingness to question the utopianism of some of his fellow republicans, who had hoped in 1776 that the American people would have sufficient virtue to transcend their interests and act in a disinterested manner. Yet when he continues with his analysis in *Federalist* No. 10, we begin to realize that he is not as cold-eyed and practical as we may have thought.

No government, he wrote, could be just if parties—that is, people with private interests to promote—became judges in their own causes; indeed, interested majorities were no better in this respect than interested minorities.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be,

themselves the judges; and the most numerous party, or in other words, the most powerful faction must be expected to prevail.³³

Since the popular colonial assemblies had often begun as courts (it is still the General Court of Massachusetts) and much of their legislation had resembled adjudication, Madison's use of judicial imagery to describe the factional and interest group politics in the state legislatures may appear understandable.³⁴ But it was not entirely practical and does not seem forward-looking; it tends to point back toward the colonial world, not toward our world at all.³⁵ For all the brilliance of Madison's diagnosis of interest-ridden popular politics in the states, his remedy for dealing with that politics was very traditional and perhaps ultimately just as utopian, just as visionary, as the views he was contesting. Madison's conception of the new national government was not modern at all. It was idealistic and in many respects harked back to older conceptions of government that prevailed in the colonial period. Madison hoped that the new federal government might transcend parties and become a kind of superjudge and arbiter. It would become, as he put it, a "disinterested & dispassionate umpire in disputes between different passions & interests" in the various states.³⁶ Although Madison had been unable to include in the national government an institution that resembled the British Privy Council under the empire, he continued to draw parallels between the new federal government and the British Crown. In fact he hoped that the new government might play the same superpolitical neutral role that the British king ideally was supposed to play in the empire.³⁷

Madison very much desired to transcend the states and build a nation in 1787, but he had no intention of creating for this nation a modern war-making state with an energetic and powerful executive. Instead he wanted a government that would act as a disinterested judge, a dispassionate umpire, adjudicating among the various interests in the society. That is why he, unlike his friend Jefferson, eventually came to value the position of the Supreme Court in American political life; it was the only institution that

came close to playing the role that in 1787 he had wanted the federal Congress to play.³⁸

With this conception of the new national government as a neutral disinterested umpire, Madison becomes something other than the practical pluralist that many scholars have believed him to be. He was not offering some early version of modern interest group politics. He was not a forerunner of twentieth-century political scientists like Arthur Bentley and David Truman. He did not envision public policy or the common good emerging naturally from the give-and-take of hosts of competing interests. Instead he turned out to be much more old-fashioned and classical in his expectations. He expected that the clashing interests and passions in the enlarged national Republic would neutralize themselves in the society and allow liberally educated, rational men—men, he said, “whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice”—to decide questions of the public good in a disinterested adjudicatory manner.³⁹

Madison, in other words, was not all as realistic and as modern as we often make him out to be. In his view, not everyone in government had to be a party to a cause. He clung to the great dream of the Revolution that virtuous politics might be possible in America. He believed that there were a few disinterested gentlemen in the society, men like Jefferson and himself, and he hoped that his system would allow these few to transcend the interest-mongering of the many in the society and be able to act as neutral judges or referees in the new national Congress. As “an auxiliary desideratum” to his scheme, Madison predicted that the elevated and expanded sphere of national politics would act as a filter, refining the kind of men who would become these national umpires.⁴⁰ In a larger arena of national politics with an expanded electorate and a smaller number of representatives, the people were more apt to ignore the illiberal, narrow-minded men with “factionous tempers” and “local prejudices” who had dominated the state legislatures in the 1780s and instead elect to the new federal government only those educated gentlemen with “the most attractive merit and the most . . . established characters.”⁴¹

His theory did not seem to have much practical effect on the character of the new national government; in fact by March 1789 Madison was already predicting that the elevated Congress would behave pretty much as the vice-ridden state legislatures had behaved.⁴² In the Congress we do not hear any more talk about his notions of an extended Republic and the filtration of talent. These notions turned out to be as unrelated to reality as his idea of a congressional power to veto all state laws had been. He had other ideas now that turned out to be equally impractical. The truth is Madison was not as hardheaded a realist as we have often thought him to be. Despite the often curious and probing quality of his mind, he was at heart a very idealistic, if not a utopian, republican, perhaps in some respects not all that different from his visionary friend and colleague Jefferson.

Madison began to reveal his peculiar conception of what the national government ought to be when he gradually became aware in the early 1790s of the kind of government that Washington, Hamilton, and other Federalists were actually creating. It was not a judiciallike umpire they were after but a real modern European type of government with a bureaucracy, a standing army, and a powerful independent executive. Like Madison, other Federalists may have been concerned about too much majoritarian democracy in the states, but they had much grander ambitions for the United States than simply controlling popular politics in the states and protecting minority rights. Hamilton and his fellow Federalists wanted to emulate the state-building process that had been going on for generations in Europe and Great Britain.

As we've seen, if any of the founders was a modern man, it was not Madison but Hamilton. It was Hamilton who sought to turn the United States into a powerful modern fiscal-military state like those of Great Britain and France. Madison may have wanted a strong national government to act as an umpire over contending expressions of democracy in the states, as his Virginia Plan suggests, but he had no intention of creating the kind of modern war-making state that Hamilton had in mind. That is why he had no sense of inconsistency in turning against the state that Hamilton was building in the 1790s.

The great development of the early modern period in the Western world was the emergence of modern nation-states with powerful executives, states that had developed the fiscal and military capacity to wage war on unprecedented scales. Over the past several decades scholars have accumulated a rich historical and sociological literature on state formation in early modern Europe.⁴³ From the sixteenth century through the eighteenth century the European monarchies had been busy consolidating their power and marking out their authority within clearly designated boundaries while at the same time protecting themselves from rival claimants to their power and territories. They erected ever-larger bureaucracies and military forces in order to wage war, and that was what they did through most decades of three centuries. This meant the building of ever more centralized governments and the creation of ever more elaborate means for extracting money and men from their subjects. These efforts in turn led to the growth of armies, the increase in public debts, the raising of taxes, and the strengthening of executive power.⁴⁴

Such monarchical state building was bound to provoke opposition, especially among Englishmen who had a long tradition of valuing their liberties and resisting Crown power. The country-Whig-opposition ideology that arose in England in the late seventeenth and early eighteenth centuries was essentially proto-republican. It was resisting just those kinds of monarchical state building efforts taking place belatedly in England. When later-eighteenth-century British radicals like James Burgh and Thomas Paine warned that the lamps of liberty were going out all over Europe and being dimmed in Britain itself, it was these efforts at modern state formation that they were talking about.⁴⁵ Madison, Jefferson, and many other Americans had fought the Revolution to prevent the extension of these kinds of modern state-building efforts to America. They were not about to allow Hamilton and the Federalists to turn the United States into a modern fiscal-military state burdened by debt and taxes and saddled with an expensive standing army. Such states smacked of monarchy and were designed for the waging of war. "Of all the enemies to public liberty," wrote Madison in 1795, "war is, perhaps, the most to be

dreaded, because it comprises and develops the germ of every other [enemy]." As "the parent of armies," war, he said, not only promoted "debts and taxes" but also meant that "the discretionary power of the Executive is extended; its influence in dealing out offices, honors, and emoluments is multiplied; and all the means of seducing the minds, are added to those of subduing the force, of the people."⁴⁶ These sentiments, which Madison never ceased repeating, were the source of the Republicans' sometimes hysterical opposition to the Hamiltonian Federalist state-building schemes of the 1790s.

Many American revolutionaries, including Jefferson and Madison, wanted to end this kind of modern state building and the kinds of international conflicts that it promoted. Just as enlightened Americans in 1776 sought a new kind of domestic politics that would end tyranny within nations, so too did they seek a new kind of international politics that would promote peace among nations and indeed that might even see an end to war itself. Throughout the eighteenth century liberal intellectuals had dreamed of a new enlightened world from which corrupt monarchical diplomacy, secret alliances, dynastic rivalries, standing armies, and balances of power would disappear. Monarchy, unresponsive to the will of the people, was the problem. Its bloated bureaucracies, standing armies, perpetual debts, and heavy taxes were the consequence of its perennial need to wage war. Eliminate aggrandizing monarchies and all their accoutrements, and war itself would be eliminated. A world of republican states would encourage a different kind of diplomacy, a peace-loving diplomacy, one based not on the brutal struggle for power of conventional diplomacy but on the natural concert of the commercial interests of the people of the various nations. If the people of the various nations were left alone to exchange goods freely among themselves without the corrupting interference of selfish monarchical courts, irrational dynastic rivalries, and the secret double-dealing diplomacy of the past, then it was hoped international politics would become republicanized, pacified, and ruled by commerce alone. Old-fashioned diplomats might not even be necessary in this new commercially linked world.⁴⁷

Suddenly in 1776, with the United States isolated and outside the European mercantile empires, Americans had both an opportunity and a need to put into practice these liberal ideas about international relations and the free exchange of goods. Commercial interest and revolutionary idealism thus blended to form the basis for American thinking about foreign affairs that lasted well into the twentieth century. To some extent this blending is still present in our thinking about the world.

Trade would be enough to hold states together and maintain peace in the world. Indeed, for Madison, Jefferson, and other idealistic liberals like Thomas Paine, peaceful trade among the people of the various nations became the counterpart in the international sphere to the sociability of people in the domestic sphere. Just as enlightened thinkers foresaw republican society held together solely by the natural affection of people, so too did they envision a world held together by the natural interests of nations in commerce. In both the national and international spheres monarchy and its intrusive institutions and monopolistic ways were what prevented a natural and harmonious flow of people's feelings and interests.

These enlightened assumptions lay behind the various measures of commercial coercion attempted by Madison, Jefferson, and other Republicans throughout the 1790s and the early decades of the nineteenth century. The Republicans knew only too well that if republics like the United States were to avoid the consolidating processes of the swollen monarchical powers—heavy taxes, large permanent debts, and standing armies—they would have to develop peaceful alternatives to the waging of war. Madison was not a complete utopian. He feared, as he wrote in 1792, that "a universal and perpetual peace . . . will never exist but in the imaginations of visionary philosophers, or in the breasts of benevolent enthusiasts." Nevertheless, because war was foolish as well as wicked, he still hoped that the progress of reason might eventually end war, "and if anything is to be hoped," he said, "every thing ought to be tried."⁴⁸

The ideal, of course, was to have the world become republican—that is, composed of states whose governments were identical with the will of the people. Jefferson and Madison believed that unlike monarchies whose

wills were independent of the wills of their subjects, self-governing republics were likely to be peace-loving, a view that Hamilton had only contempt for. Madison did concede that even republics might occasionally have to go to war. But if wars were declared solely by the authority of the people and, more important, if the costs of these wars were borne directly and solely by the generation that declared them, then, wrote Madison, "ample reward would accrue to the state." All "wars of folly" would be avoided, only brief "wars of necessity and defence" would remain, and even these might disappear. "If all nations were to follow [this] example," said Madison, "the reward would be doubled to each, and the temple of Janus might be shut, never to be opened again."⁴⁹ In other words, Madison believed that a republican world might be able to close the door on war forever.

In a world of monarchies, however, Madison concluded that the best hope for the United States to avoid war was to create some sort of peaceful republican alternative to it. This alternative was the use of commercial discrimination against foreign enemies backed ultimately by the withholding of American commerce; these measures were, he said, "the most likely means of obtaining our objects without war."⁵⁰ In other words, Madison proposed the use of what we now call economic sanctions, something that even today we often desperately cling to as an alternative to the direct use of military force. Given the importance Republicans attached to commerce in tying nations together, it made sense to use it as a weapon in international politics.

This republican idealism—this fear of the modern fiscal-military state and this desire to find peaceful alternatives to war—is the best context for understanding the thinking of Madison and other Republicans. It helps explain not only their attitude toward modern state power but also their resort to trade discrimination against Great Britain in the early 1790s. Madison and the other Republicans were outraged by Jay's Treaty in 1795 because it took this essential weapon away from the United States. In the same way this context helps explain Jefferson and Madison's policies in the years following the lapse of Jay's Treaty in 1806, the several nonim-

portation and nonintercourse acts against the two European belligerents, Britain and France. These efforts came to a climax with what Jefferson called his "candid and liberal" experiment in peaceful coercion, the Republicans' disastrous embargo of all American trade in 1807 and 1808, surely the most extraordinary example in American history of ideological principles brought directly to bear on a matter of public policy.⁵¹ (Hamilton must have turned in his grave.) Actually Madison believed in the coercive purpose of the embargo even more than Jefferson. To the end of his life Madison remained convinced that the embargo would have eventually worked if it had not been prematurely repealed.⁵²

Probably the most convincing evidence of Madison's being a idealistic republican seeking to avoid a strong federal government and the state-building processes characteristic of the modern European monarchies was the way he and the other Republicans prepared for and fought the War of 1812. *Prepared for* are hardly the words to use. The Republicans in Congress talked about war, but at the same time they proposed abolishing the army. They cut back the War Department and defeated efforts to build up the navy. They abolished the Bank of the United States on the eve of hostilities, and in March 1812 they very reluctantly agreed to raise taxes, which were to go into effect, however, only if an actual war broke out.

Historians often harshly criticize Madison and the Republicans for the inept way they prepared for and conducted the war. But this criticism misses the point of what Madison and the Republicans were most frightened of. As Jefferson said in 1806, "our constitution is a peace establishment—it is not calculated for war."⁵³ War, the Republicans realized, would lead to a Hamiltonian monarchical type of government, with increased taxes, an overblown bureaucracy, heavy debts, standing armies, and enhanced executive power. Since war was a threat to republican principles, the Republican party and administration were determined to wage the war that began in 1812 in a manner different from the way monarchies waged war. As Secretary of the Treasury Albert Gallatin pointed out at the outset, the Republicans' dilemma was to conduct war without pro-

moting "the evils inseparable from it . . . debt, perpetual taxation, military establishments, and other corrupting or anti-republican habits or institutions."⁵⁴

Madison remained remarkably sanguine during the disastrous events of the war. Better to allow the country to be invaded and the capital to be burned than to build up state power in a European monarchical manner. Even during the war he continued to call for embargoes as the best means for fighting it. He knew that a republican leader should not become a Napoleon or even a Hamilton. Calm in the conviction that in a republic strong executive leadership could only endanger the principles for which the war was fought, he knowingly accepted the administrative confusion and inefficiencies and the military failures.⁵⁵

So even though the war settled nothing, it actually settled everything. It vindicated the grand revolutionary experiment in limited republican government. As the city of Washington declared in a formal tribute to the president, the sword of war had usually been wielded at the expense of "civil or political liberty," but this had not been the case with President Madison in the war against Britain. Not only had the president restrained the sword "within its proper limits," but he also had directed "an armed force of fifty thousand men aided by an annual disbursement of many millions, without infringing a political, civil, or religious right." As one admirer noted, Madison had withstood both a powerful foreign enemy and widespread domestic opposition "without one trial for treason, or even one prosecution for libel."⁵⁶

Historians living in a very different world, one dominated by theories of preemptive war, a vast federal bureaucracy, a sprawling Pentagon, an enormous CIA, huge public debts, taxes beyond any the founders could have imagined, and well over a million men and women under arms, may not appreciate Madison's achievement, but contemporaries did. "Notwithstanding a thousand Faults and blunders," John Adams told Jefferson in 1817, Madison's administration had "acquired more glory, and established more Union than all his three Predecessors, Washington, Adams, Jefferson, put together."⁵⁷

We historians have become so used to praising Madison the author of the tenth *Federalist* and denigrating Madison the president that we assume they must be two different Madisons. But there is no "Madison problem," except the one that we have concocted. Maybe we ought to spend less time investigating Madison the author of the tenth *Federalist* and more time investigating Madison the president. His conception of war and government, whether we agree with it or not, might help us understand better the world we have lost.

Chapter Six

The Relevance and
Irrelevance of
John Adams

