



# INTRODUCTION: A MADISONIAN CONSTITUTION FOR ALL

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## INTRODUCTION

The National Constitution Center is pleased to present the work of our bipartisan Commission: A Madison Constitution for All. Launched on Freedom Day in 2017, the Commission has brought together constitutional scholars, historians, and commentators from diverse perspectives to explore what James Madison would think of today's presidency, Congress, courts, and media, and how we can restore Madisonian values today. In the essays that follow, each of the eight scholars offer insightful analyses of the Madisonian Constitution, the developments that have undermined its objectives, and possible solutions for its resurrection.

The members of the Madison Commission agree on many significant themes—how Madison understood the objectives of the Constitution he helped to frame; how subsequent political, constitutional, and technological changes have challenged Madison's assumptions and assumptions; and possible ways to answer those challenges. And all eight scholars point to the distinctive mechanisms Madison helped to fashion that were designed to protect against mob rule and promote deliberation on the public good. Among these were the following:

- The concept of federalism itself—having the federal and state governments check each other;
- Limited responsibilities for the House of Representatives, the only aspect of the original constitutional system that allowed for direct election, and its dependence on the Senate to complete almost any action the House decides to initiate;
- The selection processes originally designed for senators and presidents, which depended on cooling mechanisms placed between them and the voting public at large;
- The idea of having factions check each other in the legislative process as a way to prevent any one of them from dominating the entire process;
- The proliferation of news outlets, which would help to educate the public about the most pressing issues of the day; and
- The concept of separation of powers, in which the branches of the federal government kept each other in check.

Our scholars also identify many problems undermining these various cooling mechanisms, which were designed to prevent factional tyranny and to promote careful, dispassionate deliberation on the public good. First, there have been dramatic advancements in technology, spreading information at speeds unthinkable to the Framers, technology that reinforces pre-existing views and allows people to avoid opinions unlike their own. Secondly, the rise and entrenchment of the two-party system has led to increased party polarization in Congress and across the rest of the federal government, including the presidency and the courts. Third, there have been expansions (due in



part to congressional acquiescence) in presidential domination of the federal system and the president's own obeisance to his political party in order to maintain power. Finally, geographical sorting has resulted in people who live closer to people who reinforce their views and farther from those who do not. These developments have helped to produce record levels of voting in Congress strictly along partisan lines, which has led in turn to the appointments of judges and justices who themselves end up voting at unprecedented levels along the party lines of the presidents who appointed them.

## I. OUR MADISONIAN CONSTITUTION

At the age of 26, James Madison played a critical role arguing for a constitutional convention to fix the problems with the Articles of Confederation. The Continental Congress had drafted the Articles of Confederation to serve as the governing document that defined the powers of the fledgling government of the United States immediately after it had declared its independence from Great Britain. Madison wrote one of the most extensive, persuasive essays on the "defects" in the articles. In "Vices of the Political System of the United States," Madison surveyed twelve "defects" in the Articles of Confederation, including the absence of an independent executive to oversee the administration of the laws.<sup>1</sup> Other deficiencies included the absence of a supreme court and a weak federal Congress that lacked the means if not the will to address social unrest, financial debt, and foreign attack. Madison is credited with persuading George Washington to chair the Constitutional Convention.

In May 1787, Madison was one of the first delegates to arrive in Philadelphia for the Constitutional Convention. The previous year he had surveyed the history of failed democracies. He wrote to Thomas Jefferson, who missed the Constitutional Convention while serving as America's representative in Paris, explaining that he was determined to help the convention avoid the fate of those "ancient and modern confederacies," which he thought had fallen prey to rule by demagogues and unruly mobs.<sup>2</sup> The colonists' experiences with the Articles of Confederation convinced Madison that the new country needed a strong national government, which he proposed to the Convention in the form of the Virginia Plan. His reading further convinced him that direct democracies – in which citizens made all the important decisions by majority vote – were destined to fail, because they were vulnerable to the public's uncontrollable passions.<sup>3</sup> In *The Federalist Papers*, written after the Constitution had been drafted, Madison argued, "In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the scepter from reason."<sup>4</sup> While the city-state Athens was renowned as a pure democracy, in which 6,000 of its citizens were required for a quorum, Madison believed that Athens' democracy was destined to fail: "Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."<sup>5</sup> In 1787, the Continental Congress stood by helplessly, doing nothing, as populist rage in Massachusetts led to Shay's Rebellion, in which debt-ridden farmers revolted against the local governments controlled by their creditors.

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<sup>1</sup> James Madison, "Vices of the Political System of the United States, Apr. 1787," in *Selected Writings of James Madison*, ed. Ralph Ketcham (Indianapolis: Hackett Pub., 2006), 35–42.

<sup>2</sup> James Madison, *The Writings of James Madison Comprising His Public Papers and His Private Correspondence, Including Numerous Letters and Documents Now for the First Time Printed*, vol. II ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1901,) 369.

<sup>3</sup> See generally, Jeffrey Rosen, "America Is Living James Madison's Nightmare," *The Atlantic*, October 2018, <https://www.theatlantic.com/magazine/archive/2018/10/james-madison-mob-rule/568351/>.

<sup>4</sup> *The Federalist* No. 55 (James Madison or Alexander Hamilton).

<sup>5</sup> *The Federalist* No. 55.



Madison was far from alone in thinking that the new Constitution had to be framed in ways that guarded against impetuous mobs. In *Federalist* 10, he defined factions as groups “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.”<sup>6</sup> Both he and Alexander Hamilton, the author who wrote most of the essays in *The Federalist Papers*, believed that factions arose when public opinion formed too quickly and spread just as fast. But, Madison and Hamilton believed that factions could be checked if the public took the time to consider the long-term concerns rather than short-term gratification.

The Framers designed the Constitution to prevent factions from threatening individual liberty and making policy on the basis of self-interest rather than the public good. They gave the public no direct control over any part of the federal government. They distrusted direct democracy, which they believed would lead to mob rule, and therefore designed the American Constitution as a representative republic, in which the enlightened people chosen to run the government would serve the public good. The Framers also designed the Constitution with a series of cooling mechanisms to prevent intemperate decision-making. Under the new Constitution, the public directly elected only one chamber of the Congress, the House of Representatives, but the House did not have final say over anything (except for its own internal governance). The lawmaking process also required the Senate’s consent, as well as either the president’s signature or a supermajority of both Houses of Congress. Every state had equal representation in the Senate, whose members would be chosen by state legislatures rather than direct election by the people. The president was chosen by electors rather than direct election by the people. The distribution of powers among the branches was designed to ensure that no single branch could accumulate too much power. The further division of power between the federal government and state governments would ensure that none of the three branches of the federal government could ever claim to solely represent the people. They all did in some way, but each of the three branches kept the others in check.

Although many believed that democracy could not succeed in such a large country, Madison thought it was a good thing that the United States was destined to occupy a huge expanse of territory and therefore to be a large republic, not a small one, which could easily be taken over by a passionate faction. He explained, “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.”<sup>7</sup> Madison hoped that the large expanse of the United States and its sizeable population would make it difficult if not impossible for a passionate mob to take control of the entirety of the republic; the passions would likely defuse over time and space. Madison and Hamilton expected further among the most important safeguards against factional tyranny would be the “circulation of newspapers through the entire body of the people.”<sup>8</sup> Newspapers were almost all partisan in their orientation, but they were also the likeliest sources for the educated elite to express erudite opinions on the issues of the day. Through such publications, the public could be better informed about what they needed to know in order to become useful and responsible citizens.

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<sup>6</sup> *The Federalist* No. 10 (James Madison).

<sup>7</sup> *The Federalist* No. 10 (James Madison).

<sup>8</sup> *National Gazette*, Dec. 19, 1791.

Madison's contributions to shaping the drafting and ratification of the Constitution did not end with his service as a delegate to the Constitutional Convention. In his remarkable three decades of public service, Madison occupied several different positions in the federal government and participated in a number of momentous events in constitutional history. Three of these had especially noteworthy ramifications for American democracy; they are as important for understanding his contributions to the Constitution as his service as a delegate to the Constitutional Convention and as one of the anonymous authors of the *Federalist Papers*, which helped to secure public support for ratification.

The first occurred shortly after he became a member of the House of Representatives. In the Constitutional Convention, Madison had joined with a majority of the other Framers to oppose adding a bill of rights to the new Constitution. They thought a specific set of liberties protected from the federal government was unnecessary as long as the federal government had no express powers over such interests. Yet, Anti-Federalists opposed ratifying the Constitution in part because it lacked a bill of rights. They feared that unless the Constitution specified the set of individual liberties that the federal government could not abridge, the government might claim an unwarranted the power to threaten those liberties. Five states that ratified the Constitution included a list of amendments they wanted to include. In his first campaign for a seat in House—a race against James Monroe, an Anti-Federalist—Madison changed his mind on the necessity for a bill of rights and vowed he would fight for it if elected. Though the House blocked his first attempts to introduce a proposed bill of rights, Madison eventually secured the floor of the House on June 8, 1789. There he delivered a long speech explaining “my reasons why I think it proper to propose amendments, and state the amendments.”<sup>9</sup> He argued that considering his proposed amendments would allow for an important debate among those who ratified the Constitution and those who resisted because of fears of “aristocracy or despotism.” Madison argued that:

It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto distinguished . . . among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in object, is honorable in its motive.<sup>10</sup>

He reminded the members of the House that, “There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes and expressly declare the great rights of mankind secured under the constitution.”<sup>11</sup> Though Madison believed a bill of rights was unnecessary or even dangerous, he argued that the republican values on which the country and its Constitution had been founded demanded respect for the arguments and rights of other faithful, well-meaning citizens. In championing a bill of rights, he placed the interests of the republic over his own personal interests. The House, and later the Senate, agreed to send a dozen of the 19 amendments Madison proposed to the states. And over the course of the next two years, the states ratified ten of those amendments—the Bill of Rights we know today.

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<sup>9</sup> *Annals of Congress*, House of Representatives, 1st Cong., 1st Sess., 448.

<sup>10</sup> *Annals of Congress*, 1st Cong., 1st Sess., 449.

<sup>11</sup> *Annals of Congress*, 1st Cong., 1st Sess., 449.

Following a narrow vote in Congress, the bank's charter lapsed in 1811. The next year, war broke out with Great Britain. The nation's finances rapidly deteriorated as other nations pulled their capital out of the United States and the federal government was forced to rely on loans from the National Bank for its war funding. In 1814, Madison reluctantly agreed with his Treasury Secretary Alexander Dallas on the necessity for re-chartering the bank; but he withdrew his support once peace negotiations began in late 1814 and the imperative to secure loans to finance the war dissipated. However, the economy took a downturn in 1815, and the federal government could no longer rely on state banks to take up the slack left by a weakened national bank to reinvigorate the national economy. Dallas persuaded Madison to rethink his position on the National Bank, and in 1816 he signed the twenty-year charter that established the Second Bank of the United States. After leaving the presidency, Madison explained that, while he believed that the First Bank lacked a constitutional basis at its start, its constitutional legitimacy grew over time through political acceptance: "It had been carried into execution through a period of twenty years, with annual recognition . . . and with the entire acquiescence of all the local authorities, as well as of the nation at large."<sup>12</sup>

Madison's shift of position on the constitutionality of the national bank was a prime example of Madison's following the path he had laid out in *The Federalist Papers* for settling a question of constitutional meaning. In *Federalist 37*, he wrote, "All new laws . . . are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications."<sup>13</sup> In Madison's judgment, the constitutionality of the national bank had been properly "liquidated," or fixed through a series of presidential and congressional actions.

In the time between Madison's advocacy for a bill of rights and authorization of the chartering of the Second National Bank, Madison joined Jefferson in making another decision with significant ramifications for the future of the republic. In *Federalist 10*, Madison had warned that, "The latent causes of faction are . . . sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society."<sup>14</sup> He suggested that, "The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government."<sup>15</sup> He expected that the powers of factions could be diluted by bringing them into the government and then having them check each other. But by 1791, Madison had changed his mind and joined Jefferson in establishing the Democratic-Republican Party in opposition to the policies of the Washington administration, particularly its assumption of states' debts accrued during the Revolutionary War and the establishment of a national banking system embodied in the creation of the First National Bank.

In 1792, Madison acknowledged that, "in every political society, parties are unavoidable," that they were "the language of reason" and through their proliferation spread the spirit of "republicanism," and that parties should be made to be "mutual checks on each other."<sup>16</sup> Four years later, President Washington warned in his Farewell Address that factions in the form of political parties could rip the country apart. He declared, "I have already intimated to you the danger of Parties in the State, with particular reference to the founding of them on Geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the Spirit of Party, generally."<sup>17</sup>

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<sup>12</sup> "Madison's Letter on the Constitutionality of the Bank of the United States, June 25, 1831," in Jonathan Elliot and James Madison, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution: as Recommended by the General Convention at Philadelphia in 1787*, vol. 4 (Washington: Printed for the editor, 1836), 617.

<sup>13</sup> *The Federalist* No. 37 (James Madison).

<sup>14</sup> *The Federalist* No. 10 (James Madison).

<sup>15</sup> *The Federalist* No. 10.

<sup>16</sup> James Madison, "Parties," Jan. 23, 1792, in Philip B. Kurland, *The Founders Constitution* vol. 1 (Chicago: Univ. of Chicago Press, 1987), 15.

<sup>17</sup> George Washington, *Washington's Farewell Address: Delivered September 17th, 1796* (New York: D. Appleton and Co., 1861).



President Washington's warning fell largely on deaf ears. Once it took root, the two-party system has become increasingly entrenched in the United States, both at the national and state or local levels. The Democratic-Republican Party won a string of significant victories at the national level, with twenty-four straight years of control of the White House from Thomas Jefferson through James Monroe. The Jeffersonians also drove the Federalist Party, which had put John Adams into the White House for a single term, out of existence. In the first half of the nineteenth century, the Democratic-Republican Party transformed into the modern Democratic Party, while the opposing party took different names and shapes, beginning with the Whig Party in the 1830s and 1840s and eventually calling itself the Republican Party—whose candidate Abraham Lincoln won the presidency in 1860. Since after the Civil War, the two major parties of the Democrats and the Republicans have consistently dominated national politics and, in doing so, challenged the foundations of the Constitution that Madison helped to frame.

## II. CHALLENGES TO THE MADISONIAN CONSTITUTION

As members of the Madisonian Commission argue in the essays that follow, the Madisonian Constitution rested on several assumptions. Among these were the Framers' expectations about who, or what particular kinds of people, would lead the different branches of the federal government. In the Virginia ratifying convention, Madison explained that, "I go on the great republican principle, that the people with virtue and intelligence to select men [sic] of virtue and wisdom. Is there no virtue among us? If there not be, we are in a wretched situation. No theoretical checks—no form of government can render us secure."<sup>18</sup> The expectation was that there would be virtuous individuals who could "render" the nation "secure" against mob rule and all the destruction that came with it.<sup>19</sup>

Closely linked to its objective of ensuring the right kinds of people led each branch, the Madisonian Constitution was concerned with how people got into office. Madison and the other Framers who championed the Constitution had high expectations for the mechanisms set forth within it for selecting national leaders: direct, popular elections for the House; state legislatures for choosing senators; and presidents who were selected through the Electoral College and whose department heads or cabinet was to be chosen through requirements for presidential nominations and Senate confirmation. The Madisonian Constitution was further concerned with what people did once they got into office. Time and again, Madison stressed that the right kinds of people, once in office, would be inclined to focus on the public good and not just their own parochial, provincial, or personal interests.

As the Madisonian Commission convened for a workshop at the National Constitution Center in Philadelphia last November, our eight scholars identified a number of factors, individually or in combination, which complicated or impeded the Constitution's objectives after ratification. The most important objective was that elections bring into government the right kinds of people who would be focused on the public good. One obvious challenge to this objective was the rise and entrenchment of the two-party system. Madison understood that political parties could be dominated by or comprised of factions; once entrenched, those parties—or factions—would likely be disposed to nominate as candidates for the presidency or Congress people who are beholden or responsive to particular factions, not the general good of the public. Yet, Madison's expectation that the parties could keep themselves in check was largely borne out over the first several decades of the republic. In the 1820s and 1830s, the first political parties actually helped to constrain and temper impassioned or extreme impulses among the electorate by providing institutional frameworks that allowed for the unification of diverse economic and regional interests

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<sup>18</sup> James Madison, "Virginia Ratifying Convention, June 20, 1788," in *The Founders' Constitution* vol. 1 (Chicago: Univ. of Chicago Press, 1987), 13.

<sup>19</sup> Madison, Virginia Ratifying Convention.



through shared, broad reaching constitutional visions. As Princeton historian Sean Wilentz has noted, the most serious movements for constitutional and social change in the nineteenth century—from the abolition of slavery to the Progressive movement—were the products of strong and diverse political parties. To be sure, these movements did not come to fruition without significant outbreaks of violence and mayhem. However, the political parties attempted, although with only varied success, to defuse and to channel into constructive constitutional and political dialogue.

Whatever moderating effects political parties might have had in the aftermath of the Civil War were short-lived. In the twentieth century, those effects were ameliorated through a series of populist reforms, including the direct election of senators through the Seventeenth Amendment, the populist-ballot initiative, and direct primaries in presidential elections, which became widespread in the 1970s. More recently, geographical and political self-sorting have produced factions of voters who select representatives who are willing to support the party-line at all costs. Parties, in short, have expanded their control over both who is chosen for the highest federal offices and how they govern.

As of today, electoral primaries conflate the right kinds of people for office with those who will serve the interests of faction. General elections appear to offer no more than a choice between the representatives of two factions, not necessarily a representative cross-section of the citizenry. Once in office, presidents find themselves almost immediately pressured to focus on their re-elections, which means pleasing the people who put them into office. As a result, presidents feel pressure to choose as their closest advisors or cabinet heads not the people who are most qualified or disposed to be concerned with the public good, but rather with keeping particular factions within the governing party happy.

For House members, direct election every two years intensifies their attachment to party or to the factions they must appease to be re-nominated by their parties and to stay in office. In one of his last public appearances, the late Justice Antonin Scalia suggested that the Seventeenth Amendment had transformed the Senate by altering the means for its election from state legislatures to direct election in their respective states. This transformation made senators more amenable to appeasing well-financed factions to ensure their continued nomination and election. As a result, the general elections for Senate, perhaps like those for the presidency and the House, now give voters a choice between the representatives of two factions. Once in office, House members and senators need party support more than ever to maintain their committee assignments and mount successful re-election campaigns. As a result, members of Congress have been increasingly disposed to conflate their own interests with those of their parties rather than serving the public good. Over the last few decades, this disposition is clearly reflected in the sharp increases in voting in Congress strictly along party lines. For instance, the defining congressional achievements of Barack Obama's presidency and, thus far, Donald Trump's presidency—the Affordable Care Act of 2010 and the Tax Cuts and Job Acts of 2017, respectively—were each passed with no votes from members of the minority party.

The rise in rigid partisanship has not been unique to the Congress. For example, the Electoral College, once thought to be a filter that allowed electors to make wise choices about who should become president, has largely failed in that mission as it fell under the control of the increasingly dominant political parties. Once in office, presidents, at least since Theodore Roosevelt and Woodrow Wilson, have insisted that their authority derives directly from the people. Theodore Roosevelt referred to his office as “a bully pulpit,” by which he meant a unique platform for advocating for his agenda directly to the American people. He further argued that the President functioned uniquely





as a “steward” doing whatever he could for the American people and limited only by his popular support rather than any of the literal constraints set forth in the Constitution.<sup>20</sup> Since the early twentieth century, presidents have moved in precisely the direction that Madison and the other Framers had hoped to avoid: They bypass Congress and the media to make emotional appeals directly to the American people.

Both the constitutional structure and the increasingly sharp partisan divide among the members of Congress and the American electorate have helped to make the presidency stronger. Concerned that Congress had the potential to become the most dangerous branch because of its potential to draw power into its “impetuous vortex,” Madison and the other Framers designed a constitution that makes lawmaking difficult.<sup>21</sup> The lawmaking process set forth in the Constitution is riddled with veto-gates or various points at which a bill may be impeded or precluded from becoming a law. The first step in the lawmaking process is to get a law approved in one chamber of Congress. But most efforts fall short, often before a bill can reach the floor. If a bill makes it to the floor, it may not receive a vote or a majority. If the bill is approved in one chamber, it must be approved in the other. Even after a law is passed by both chambers of Congress, it must be signed by the president or there must be at least two-thirds of each chamber agreeing to override a presidential veto. After that, the law still may be subject to judicial review along with possible complications in its implementation or its construction. In short, the Constitution provides many more chances for a law to fail than for it to prevail.

Though the Framers largely expected the executive and legislative branches to be on equal footing in the lawmaking process (or in the three areas in which the Senate has unilateral judgment<sup>22</sup>), it has not worked out that way. Over time, it has become apparent that, as a lawmaker, the president, not Congress, has the upper hand. If for whatever reason Congress is unable to legislate on a matter, its inactivity leaves a void that president can, and frequently do, move quickly to fill, achieving by executive fiat what he is unable to accomplish by legislation. Once the president has made his move by issuing an executive order or vetoing a bill, then Congress is highly unlikely to override what he has done. Although President Obama vetoed congressional enactments twenty times, Congress overrode only one of those vetoes, demonstrating the high threshold that the Constitution establishes for overriding presidential vetoes. Thus, even if Congress can act first on a matter, there is no guarantee that the will of Congress, as opposed to that of the president, will prevail.

The expanded power of political parties over the choices and activities of the leaders of the three branches has coincided with the erosion of other safeguards that Madison and other Framers had designed to create some distance between national leaders and popular majorities. One of the most important of these mechanisms is separation of powers. In *Federalist* 47, Madison contended that the accumulation of legislative, executive, and judicial powers in the hands of one body or person would be “the very definition of tyranny.”<sup>23</sup> In *Federalist* 51, he explained that “ambition must be made to counteract ambition” by “giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments from the others.”<sup>24</sup> He counterbalanced his concern for the

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<sup>20</sup> William F. Grover, *A Structural Critique of the American Presidency: The Carter and Reagan Years*, Dissertation (University of Massachusetts, Sept. 1987).

<sup>21</sup> *The Federalist* No. 48.

<sup>22</sup> The Constitution empowers the Senate alone to give its advice and consent to presidential nominations to courts and other high-ranking positions, to convict and remove from office someone who has been impeached by the House, and to ratify treaties by at least a two-thirds vote. Article II, Section 2, Clause 2, U.S. Const.

<sup>23</sup> *The Federalist* No. 47.

<sup>24</sup> *The Federalist* No. 51.

potential aggregation of powers with the observation that the practicalities of governance dictate that the legislative, executive, and judicial powers are not entirely separated, but rather blended. The separation of powers is not absolute, but “where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted.”<sup>25</sup> Madison was largely concerned with the ability of each branch of government to check encroachments on its own powers by the others. Concerns about a possible breakdown in separation of powers might arise when a single faction controlled all three branches.

Whatever government does, the public is rarely given unfiltered news about it. Today, the filtering bias of media and other outlooks is far worse than it has been before, but it is not unprecedented. In Madison’s day, there were partisan newspapers rallying their respective bases and spreading opposition to the leaders and policies they did not like. Today, there are far more outlets that feed political prejudices. With countless news outlets to choose from, most people learn their facts from sources that align with their political and social views. That is not the kind of education Madison expected to help democracy thrive.

### III. THE ESSAYS OF THE MADISONIAN COMMISSION

In the eight essays that follow, members of the Madison Commission examine what James Madison would have made of our current presidency, Congress, courts, and media, and what we can do to resurrect Madisonian values of reason rather than passion in a polarized age.

In “From a Fixed, Limited Presidency to a Living, Flexible, Boundless Presidency,” Sai Prakash, of the University of Virginia Law School traces the development of the modern presidency. “Almost every decision within the Convention tilted towards an energetic executive,”<sup>26</sup> Prakash argues. On his reading, George Washington and other delegates resisted the trend in the colonies to create a relatively weak executive because of their fears of the British monarchy and royal governors. Designed to be energetic, independent, and effective, the presidency designed by the Framers had obvious limits, such as the requirements that presidents “had to execute the laws of Congress.” They also “had to honor congressional regulation of the army and navy,” and needed “consent of the Senate to make appointments and treaties”; they “depended upon Congress to create and fund executive offices and departments”; they “had to honor judicial judgments”; and they were obliged by oath to “preserve, protect, and defend the Constitution.”<sup>27</sup> In the years after ratification, presidents expanded their powers to initiate and manage wars and to forge international agreements by means other than treaties. At the same time, Prakash argues, “Modern presidents have become less and less faithful executives. They are more prone to becoming lawmakers as they supplement, misconstrue, and flout” the laws made by Congress.<sup>28</sup> Prakash suggests that presidents have been able to absorb increased power over lawmaking because they have been able to take advantage of other factors: the “unity” in the executive branch, which enables the president to move more quickly and decisively than either of the other two branches; the “technical rules” limiting the extent to which judicial review can meaningful cabin the growth of executive power; and various changes in “conceptions of the office and transformations of society,” including presidents’ declarations of popular mandates to justify their claims of further power.<sup>29</sup>

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<sup>25</sup> *The Federalist* No. 47.

<sup>26</sup> Sai Prakash, “From a Fixed, Limited Presidency to a Living, Flexible, Boundless Presidency,” in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 19.

<sup>27</sup> Prakash, “From a Fixed, Limited Presidency,” 21-22.

<sup>28</sup> Prakash, “From a Fixed, Limited Presidency,” 25.

<sup>29</sup> Prakash, “From a Fixed, Limited Presidency,” 28-30.



Prakash suggests that those who view the growth of presidential power as more of a problem than a blessing can consider several possible fixes. Members of Congress can be “more willing to express their views on matters of constitutional import”; Congress could also create “a war powers act that cuts military spending upon the initiation of conflict”; and it could “adopt a strategy of grow and shrink,” “reduce delegations,” and “reexamine the offices that currently require advice and consent and do away with the obligation for those inferior offices where such consent seems a waste of time.”<sup>30</sup> While Prakash acknowledges that these solutions are imperfect, he concludes that at least “we can certainly expect more from” Congress “than we can from presidents who spoke of the regal pretensions of the incumbent while running for the office.”<sup>31</sup>

In “The Constitution, the Presidency, and Partisan Democracy: Congress Revises the Electoral College, 1803-1804,” Sean Wilentz of Princeton examines how political developments after ratification undermined the Madisonian Constitution by transforming the operations of the Electoral College and the Twelfth Amendment. He examines the origins of the Electoral College, which was designed to ensure that independent, enlightened men would make the final choices on who would be president, noting how “quickly after 1787 the Framers’ system [for selecting the president] gave way to partisan conflict, necessitating an important change in the Constitution [the Twelfth Amendment] less than a generation after the Constitution was ratified.”<sup>32</sup> Wilentz rejects the argument that the Electoral College was devised as a means to protect slavery, but sees it instead as a last-minute compromise to ensure that there would not be direct election of the president. The Framers provided that state legislatures would choose electors. But, Wilentz argues, “The political history of the Twelfth Amendment reveals how rapidly the Framers’ consensual conception of national politics proved inadequate to the realities of their own time. It illuminates how a very different conception of politics, rooted in partisanship and party organization fitfully supplanted what the Framers had originally envisaged” as the purpose of the Electoral College to safeguard against the mob’s choosing a president.<sup>33</sup> Partisan fighting made it impossible for the ideal of the Electoral College ever to be fully realized, and in the aftermath of the hotly contested presidential election of 1800, it needed fixing. The fix was the Twelfth Amendment, which was ratified in 1804 but not without considerable partisan bickering over its terms and implantation. Over the next few decades immediately after its ratification, partisan politics ensured that the Twelfth Amendment, in Wilentz’s view, “pushed the nation’s politics closer to the partisan majoritarianism that defined Jacksonian democracy” or what has become known as majoritarian rule.<sup>34</sup>

In “Revisiting and Restoring Madison’s American Congress,” Sarah Binder of George Washington University examines Madison’s view of Congress and considers whether and how the Congress Madison had envisioned could be restored. She emphasizes “two elements of Article I [that] are particularly important for distilling Madison’s plan for the new Congress.”<sup>35</sup> The first is Madison’s hope “that his constitutional system would channel lawmakers’ ambitions, creating incentives for to remain responsive to the broad political interests that sent them to Congress in the first place.”<sup>36</sup> The second was his expectation “that Congress would dominate the political system.”<sup>37</sup> Yet, Binder argues, the story of how these elements played out is more complex than commonly supposed. On the one hand, “Madison’s

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<sup>30</sup> Prakash, “From a Fixed, Limited Presidency,” 33-34.

<sup>31</sup> Prakash, “From a Fixed, Limited Presidency,” 34.

<sup>32</sup> Sean Wilentz, “The Constitution, the Presidency, and Partisan Democracy: Congress Revises the Electoral College, 1804,” in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 35.

<sup>33</sup> Wilentz, “The Constitution, the Presidency, and Partisan Democracy,” 35.

<sup>34</sup> Wilentz, “The Constitution, the Presidency, and Partisan Democracy,” 44.

<sup>35</sup> Sarah Binder, “Revisiting and Restoring Madison’s American Congress,” in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 45.

<sup>36</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 45.

<sup>37</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 45.

congressional vision was a stunning success.”<sup>38</sup> Binder argues that Congress, commonly supposed to be subject to gridlock, in fact “has played a preeminent role in driving and shaping historical change in the United States, and it remains the world’s longest lasting, popularly elected legislature.”<sup>39</sup> On the other hand, she acknowledges that the two party system may well have broken Congress, as it has produced “steadily rising legislative stalemate, limited oversight of the executive, lack of fiscal discipline, and excessive delegation to the executive and often the courts.”<sup>40</sup> Congress has failed “for some time to incubate, deliberate, and compromise on legislative solutions to major public programs,” she concludes, emphasizing “the degree of legislative deadlock in each Congress since the mid-1940s.”<sup>41</sup>

As for causes of this gridlock, Binder identifies party polarization. She also notes that “presidential subordination to Congress weakened with the rise of nationalized parties with presidents at the helm.”<sup>42</sup> The president become even stronger as Congress (often for partisan reasons) delegated more authority to the executive. Congress may have thought it could recapture the power it surrendered, but parties have not been able to muster the super-majorities necessary to overcome presidential vetoes of any efforts by Congress to recapture its lost authority. “Even if lawmakers ultimately find a way to get their institution back on track,” Binder concludes, “Congress’ difficulties have been costly—both to the fiscal health of the country and to citizens’ trust in government. The economy is regaining its footing, but regenerating public support for a Congress that barely reflects Madison’s ideal will likely prove much harder.”<sup>43</sup>

In “Recovering a Madisonian Congress,” Daniel Stid, Director of the Madison Initiative at the Hewlett Foundation, asks how we can restore “some of the powers [that Congress] ceded the executive”?<sup>44</sup> Stid reviews the various mechanisms that the Constitution designed to curb factional tyranny and to promote good government. Congress was essential to the Madisonian system, since it would “host and foster deliberation on what the federal government should do about important issues facing the nation” and would be not just “a check on executive power” but also become “the generative, law-making body in the new republican system of government.”<sup>45</sup> According to Madison’s vision, “It was only in Congress that the full sweep of ideas, agendas, interests and passions could be represented and reconciled, and it was only in Congress that the legislative alloys in which they would be combined could be forged and tempered.”<sup>46</sup> But, Stid recognizes that the “mischief of factions” have been “spiraling out of control” in Congress for many reasons, including the sharp rise in the political parties’ determination not just to get and keep power, but also not to cooperate with each other, as well as the presidency’s arrogation of power, and the abdication of congressional authority because of partisan and other reasons.<sup>47</sup>

Stid identifies “three potential paths forward” that could help to restore Congress as Madison had conceived of it.<sup>48</sup> First, we could “mitigate[e] the effects of factions, in particular polarization and hyper-partisanship, that too often work to inflame passions and grind things in Congress to a halt.”<sup>49</sup> “Ranked choice voting,” for example, could give

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<sup>38</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 50.

<sup>39</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 50.

<sup>40</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 50-51.

<sup>41</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 51.

<sup>42</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 53.

<sup>43</sup> Binder, “Revisiting and Restoring Madison’s American Congress,” 56.

<sup>44</sup> Daniel Stid, “Recovering a Madisonian Congress,” in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 67.

<sup>45</sup> Stid, “Recovering a Madisonian Congress,” 59-60.

<sup>46</sup> Stid, “Recovering a Madisonian Congress,” 60-61.

<sup>47</sup> Stid, “Recovering a Madisonian Congress,” 61.

<sup>48</sup> Stid, “Recovering a Madisonian Congress,” 66.

<sup>49</sup> Stid, “Recovering a Madisonian Congress,” 66.

“voters more choices and provides a finer-grained register of public opinion, ensures winning candidates are supported by a majority of voters, and – most importantly – gives candidates incentives to forego highly negative and partisan campaigns.”<sup>50</sup> Second, we could strengthen “Congress as an institution in our separation of powers system,” a solution that requires “procedural entrepreneurs” in Congress that are more interested in policy initiatives than partisan fidelity.<sup>51</sup> Third, citizens could “revitalize our understanding of the proper functioning of Congress and do our part to ensure that our representatives and senators reflect this understanding.”<sup>52</sup> Constitutional education, in short, must be undertaken to effect “reawakened citizen engagement with Congress.”<sup>53</sup>

Then there are the courts. In “James Madison and the Judicial Power,” Jack Rakove of Stanford examines Madison’s thinking about the legislative process and the Supreme Court’s role “in maintaining the stability of the entire federal system.”<sup>54</sup> Madison believed that the representation of different factions within Congress would help to dilute the power of any one; and their clashes in Congress, in the long run, would promote deliberation and compromise. He further hoped that the judiciary would be part of a council of revision that would keep both states and the Congress in check. When the Convention rejected his suggestions, Congress and the courts were left as the safeguards against the tyranny of factions. Madison hoped that experienced legislators in Congress would acquire knowledge about the public good. But experienced legislators proved elusive: as Rakove writes: “Even though the Constitution did not require it, rotation in office remained the pervasive practice until the late nineteenth century.”<sup>55</sup> “Indeed,” he writes, “nothing better indicates how much our political world differs from theirs than this basic disparity in the importance of incumbency.”<sup>56</sup> Rakove concludes by wondering whether adopting “Madison’s council of revision,” with judges as members, “would reduce and mitigate the constitutional storms that sometimes rage over legislation, as the post-enactment history of the Affordable Care Act illustrates so amply exemplifies.”<sup>57</sup>

In “The Irrelevance and Relevance of James Madison to Faithful Constitutional Interpretation,” Michael Paulsen of St. Thomas Law School addresses a different question about the American judiciary: the widespread consensus on the “exclusive discretion and judgment of courts, to be exercised in accordance with whatever criteria judges think are most appropriate.”<sup>58</sup> He argues that the consensus on both judicial supremacy and broad interpretive discretion of judges over constitutional interpretation are wrong. Madison himself understood the role of the judiciary differently. Paulsen argues that the Framers did not believe in judicial supremacy, but rather that in a system of separation of powers with no one branch possessing interpretive supremacy or superiority over the others; none being bound by the constitutional judgments of the others; and each using its powers independently “to check the others, in order to hold all accountable and keep the Constitution secure.”<sup>59</sup>

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<sup>50</sup> Stid, “Recovering a Madisonian Congress,” 66.

<sup>51</sup> Stid, “Recovering a Madisonian Congress,” 67.

<sup>52</sup> Stid, “Recovering a Madisonian Congress,” 69.

<sup>53</sup> Stid, “Recovering a Madisonian Congress,” 69.

<sup>54</sup> Jack Rakove, “James Madison and the Judicial Power,” in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 70.

<sup>55</sup> Rakove, “James Madison and the Judicial Power,” 75.

<sup>56</sup> Rakove, “James Madison and the Judicial Power,” 75.

<sup>57</sup> Rakove, “James Madison and the Judicial Power,” 81.

<sup>58</sup> Michael Stokes Paulsen, “James Madison and the Power of Constitutional Interpretation,” in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 83.

<sup>59</sup> Paulsen, “James Madison and the Power of Constitutional Interpretation,” 84.

On the question of constitutional interpretation, Paulsen notes that Madison and the other Framers did not envision authoritative interpreters engaging in a free-for-all in picking and choosing methodologies for interpreting the Constitution. Instead, Madison viewed the Constitution as having, on most matters, a fixed, static, determinate meaning. That meaning consisted of the common linguistic meaning of the words of the document (or, in some cases, the specialized meaning of a well-recognized term-of-art phrase): that is, “the meaning the Constitution’s words and phrases would have had to those using them at the time the document was adopted.”<sup>60</sup> Paulsen quotes with approval Madison’s declaration as a member of the House that, “As the instrument came from [the people,] [the Constitution] was nothing more than the draft of a plan, nothing but a dead letter, until life and validity was breathed into it by the voice of the people, speaking through the several State Conventions.”<sup>61</sup> For the terms of the Constitution that “had an uncertain or indefinite meaning, admitting of a range of plausible readings . . . Madison believed that a long, consistent and broadly accepted interpretation and practice might, over time, settle the understanding of such uncertain terms or phrases as a practical matter.”<sup>62</sup> While Paulsen concedes that Madison was not perfectly consistent over time in his constitutional views over the course of his long public career, he concludes that “he rarely if ever deviated from first principles as to *what properly counts*—and, equally important, what does not—in sound constitutional interpretation.”<sup>63</sup> Paulsen concludes by writing, “It is but a small exaggeration to say that the loss of the Madisonian vision — and the substitution in its place of a practice under which the Supreme Court possesses essentially plenary and exclusive interpretive power, exercised according to whatever criteria the members of the Court think fit — accounts for nearly everything that ails our constitutional law today,” and therefore, “restoring a ‘Madisonian Constitution’ for today is a reclamation project as it concerns the judicial power.”<sup>64</sup>

Finally, there is the media. In “Madison’s Deliberative Republicanism, Political Communication, & the Sovereignty of Public Opinion,” Colleen Sheehan of Villanova, shifts our focus toward Madison’s vision of “deliberative Republicanism” and how advancements in communication undermine Madison’s understanding of the place of public opinion at the federal level. The Madisonian Constitution sought not just to enable factions to keep each in check but also to ensure that representatives focused on the public good. As Sheehan describes the project, “To guard against personal ambition and the threat of governmental tyranny (i.e., minority faction), Madison endorsed a system of prudential devices, including institutional separation of powers, bicameralism, checks and balances, and federalism.”<sup>65</sup> These “inventions of prudence” are intended to “channel, check, and control the self-seeking personal motives of political office holders and thereby enable government to police itself.”<sup>66</sup> But, for Madison, “The primary control on the government . . . remains always with the people. In the final analysis, governmental decisions depend on the will of the society, or in other words, on the will of the majority.”<sup>67</sup> While Madison recognized that factions might find ways to communicate and shape the views of their respective members, he helped to devise a system whose “overall aim was not to stymie the will of the majority, but rather to place obstacles in the path of factions, including majority faction. At the same time, he sought to facilitate the development of a just society, or in other words, the reason of the public.”<sup>68</sup>

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<sup>60</sup> Paulsen, “James Madison and the Power of Constitutional Interpretation,” 85.

<sup>61</sup> Paulsen, “James Madison and the Power of Constitutional Interpretation,” 87.

<sup>62</sup> Paulsen, “James Madison and the Power of Constitutional Interpretation,” 88.

<sup>63</sup> Paulsen, “James Madison and the Power of Constitutional Interpretation,” 94.

<sup>64</sup> Paulsen, “James Madison and the Power of Constitutional Interpretation,” 96.

<sup>65</sup> Colleen Sheehan, “Madison’s Deliberative Republicanism, Political Communication, & the Sovereignty of Public Opinion,” in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 99.

<sup>66</sup> Sheehan, “Madison’s Deliberative Republicanism,” 99.

<sup>67</sup> Sheehan, “Madison’s Deliberative Republicanism,” 99.

<sup>68</sup> Sheehan, “Madison’s Deliberative Republicanism,” 100.

To promote public reason, Sheehan argues, Madison's "goal . . . was to encourage the type of communicative activity that involves deliberation and results in the measured exchange of ideas about public matters."<sup>69</sup> His ultimate aim, Sheehan maintains, was "to establish the conditions in which a certain kind of majority can feasibly form and rule."<sup>70</sup> That ideal majority would be as large as humanly possible and would be informed and abide by "the settled opinion of the community."<sup>71</sup> As Sheehan explains further, "Once formed and settled, public opinion is the operational sovereign in free government."<sup>72</sup> Public opinion itself, if properly informed and shaped, becomes the ideal educator for the people. Sheehan acknowledges many problems have eroded the conditions that have eroded the creation of an informed, virtuous citizenry. These include the rise of "political partisanship" that has effectively "split" the country into two camps—"those who defend the Constitution and the principles of the Founding, including the idea of natural law and natural rights" and those who favor "evolving, inclusive egalitarianism, or its postmodern variant, which rejects natural law and the notion of human nature itself, in favor of social constructs, hierarchies of power, and identity politics."<sup>73</sup> Sheehan associates herself with the former camp, which she also considers to align with Madison's "aspirations for America [which] depended on the capacity of the people to govern themselves, which in turn depended on the willingness of the people to engage in deliberative processes with the aim to—and in the spirit of—finding common ground."<sup>74</sup>

In the last essay, "'The Ultimate Justice of the People': Madison, Public Opinion, and the Internet Age," Greg Weiner of Assumption College examines Madison's central assumptions about space and time in his conception of how public opinion would ideally form under the new Constitution. One assumption was that there would be a spatial, or physical, separation between the public and their representatives in Congress, and another was that "public opinion would be sovereign, but it would form gradually."<sup>75</sup> Madison's scheme, as set forth in the Constitution, which Weiner calls "temporal republicanism," was designed "to separate the formation of public opinion from the decision to act upon it with sufficient time for passions to dissipate."<sup>76</sup> According to Weiner, Madison expected that once in Congress, members would make "a rational calculation . . . to put long-term interests over immediate appetites."<sup>77</sup> And Madison's analysis of faction is rooted in moral objectivity. This is not to say everyone agrees on what is right, but Madison did appear to assume everyone operated in roughly the same universe of facts even if those facts yielded different conclusions.

Thus, Madison's hope that the public and Congress would engage in careful deliberation on the big questions of the day depended on relying on the cooling mechanisms of time and space to prevent citizens from acting immediately upon their passions. Instead, through interaction with people of differing views, they could thoughtfully debate the public good. But, as Weiner argues, "All of these assumptions are in tension with a media and technological environment that has accelerated communication and the formation of public opinion, erased the constitutional distance between representatives and constituents and between constituents and each other, [and] hardened factional

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<sup>69</sup> Sheehan, "Madison's Deliberative Republicanism," 100.

<sup>70</sup> Sheehan, "Madison's Deliberative Republicanism," 100.

<sup>71</sup> Sheehan, "Madison's Deliberative Republicanism," 100.

<sup>72</sup> Sheehan, "Madison's Deliberative Republicanism," 100.

<sup>73</sup> Sheehan, "Madison's Deliberative Republicanism," 104-105.

<sup>74</sup> Sheehan, "Madison's Deliberative Republicanism," 106.

<sup>75</sup> Greg Weiner, "'The Ultimate Justice of the People': Madison, Public Opinion and the Internet Age," in *A Madisonian Constitution for All Essay Series* (Philadelphia, National Constitution Center, 2019), 108.

<sup>76</sup> Weiner, "'The Ultimate Justice of the People,'" 109.

<sup>77</sup> Weiner, "'The Ultimate Justice of the People,'" 108.



alignments as consumers of media on all sides retreat into private and self-reinforcing realities.”<sup>78</sup> As a nation, we have, in other words, become not bigger but smaller, and more fragmented, a nation that is comprised of relatively isolated communities which are resistant to new or challenging information and, therefore, to cooperative deliberation in both the short- and long-term. The “effect of this segmentation is to allow media consumers to live in worlds of their own making, increasingly isolated from opposing views.”<sup>79</sup> This state of affairs is incapable of cultivating the kind of public reason which Madison hoped would guide the lawmaking process. His “particular concept of reason entailed the application of open minds to objective facts. If minds are never open, and facts are always fungible, Madisonian reason cannot operate. If all this is communicated at the speed of light, neither can Madison’s device for dissipating the passions.”<sup>80</sup> Like several other authors, Weiner concludes by emphasizing the importance of civic education.

## IV. THE ESSAYS OF THE MADISONIAN COMMISSION

As all contributors to the *Madisonian Constitution for All Essay Series* recognize, there are at least three kinds of solutions to the problems identified by the Madisonian Constitution. The first is to fix the extent to which websites and social media platforms have undermined public deliberation and discourse. Proposals for fixing these problems include: greater transparency, delaying publication of various kinds of content, or reducing the amount of some content available online. These and other proposed solutions run into two problems. The first is that the platforms themselves are private entities and, therefore, the solutions for improving what they do with respect to how they regulate content online must come from them, and not from the state or the public (unless, of course, the public can exercise influence over what they do through the market or regulation). The companies running the platforms must have the incentives to change. An ensuing complication or salvation, depending on your point of view is, of course, the First Amendment, which forbids the government from censoring hate speech or attempting to micro-manage the deliberations and discussions across the web—and these companies have their own First Amendments right to assert.

A second solution to the breaking down of the Madisonian Constitution may be found in one of the Constitution’s most important safeguards against the tyranny of the mob – the conception of federalism, or the relationship between the federal government and the states. Madison conceived of federalism as a significant bulwark against out-of-control popular majorities by enabling the federal government and the states to check each other. Justice Louis D. Brandeis famously described the states as “laboratories of democracy,” which are tinkering with—and frequently fighting over—providing easier (or more restrictive) access to voting, expanding (or opposing) nonpartisan primaries, pushing for (or opposing) greater transparency in campaign donations, and providing (or opposing) public funding of some campaigns.<sup>81</sup>

The third and most promising way to protect the fundamental ideals and objectives of the Madisonian Constitution is through constitutional education. The Framers believed that the fate of the republic depended on educating the citizenry. President George Washington urged Congress to create a national university in 1796. He declared, “A primary object of such a national institution should be the education of our youth in the science of government.”<sup>82</sup>

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<sup>78</sup> Weiner, “The Ultimate Justice of the People,” 109.

<sup>79</sup> Weiner, “The Ultimate Justice of the People,” 114.

<sup>80</sup> Weiner, “The Ultimate Justice of the People,” 115.

<sup>81</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

<sup>82</sup> George Washington, Eighth Annual Message, Dec. 7, 1796.





Drawing on his studies of ancient republics, which taught that broadly educating the citizenry was the best safeguard against “crafty and dangerous encroachments on the public liberty,” Madison favored having the rich subsidize education of the poor.<sup>83</sup> He believed it was indispensable for combating factions. In defense of the Kentucky legislature’s “Plan of Education embracing every Class of Citizens,” Madison wrote in 1822, “A popular government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.”<sup>84</sup> Subsequently, John Quincy Adams, Henry Clay and Abraham Lincoln were among those who defended the broadening and deepening of public education at both the federal and local levels.

At the National Constitution Center believe, we are committed to expanding constitutional education for all. The faithful implementation of the Madisonian Constitution depends on the ultimate sovereign, we the people, cultivating our faculties of reason by educating ourselves about the Constitution. The concept of virtue, which was important to Madison and the other Framers, required commitment to civil dialogue, to disagreeing without being disagreeable, and to working together on behalf of the public good.

A Madisonian Constitution for All depends on the whole people’s commitment to the enterprise of making government work on behalf of the public good, and that commitment requires rising to the challenges of becoming educated about the most pressing issues of the day. Madison was a partisan, but before that, he was a Founder, and before that, he was a student of constitutional history. Madison may not have been perfect in fulfilling the ambitions he set for himself, the country, and the Constitution. But his ambitions remain the inspiration and model for all Americans to follow in ensuring that the Constitution that Madison helped to create is more than what he called a “parchment barrier” against threats to liberty and public reason. Rather, it must be a code to live by and to inspire future generations to learn about as we strive together “to form a more perfect Union.”<sup>85</sup>

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<sup>83</sup> *Niles’ National Register*, vol. 23, 377.

<sup>84</sup> *Niles’ National Register*, vol. 23, 376-377.

<sup>85</sup> Preamble, U.S. Const.