

James Madison's Vision of Liberty

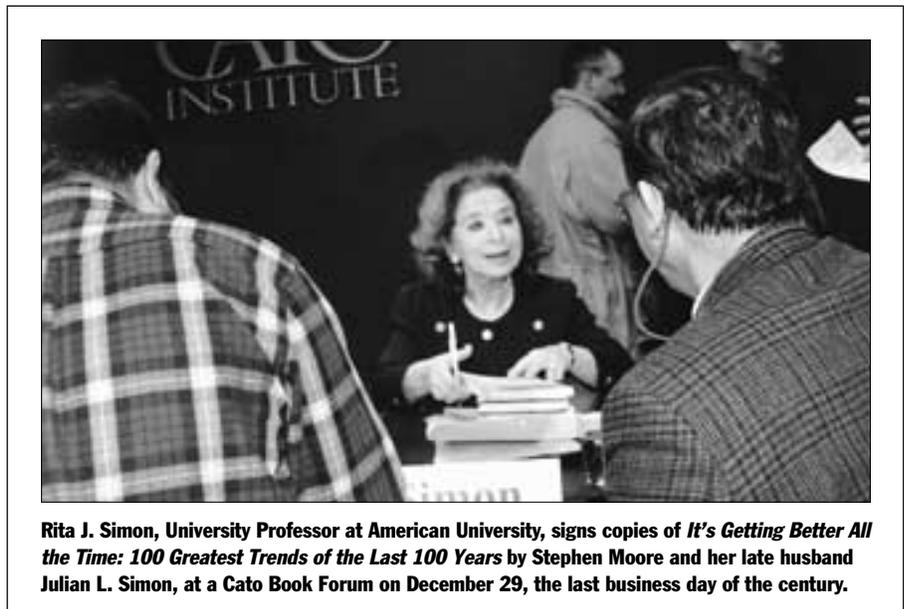
by John Samples

James Madison once remarked that the Constitution of the United States was the work of many minds and many hands. He was being too modest. Madison, more than anyone else at the Constitutional Convention that hot summer of 1787, developed the ideas embodied in our fundamental law and crafted the actual wording of the document. Moreover, James Madison was a persistent and powerful friend of liberty. All friends of freedom have good reason to celebrate the 250th anniversary of his birth on March 16, 1751.

We are familiar today with intellectuals and politicians. Intellectuals we know frequently as pure theorists, if not irrelevant utopians, cosseted by tenure and politically irresponsible. Politicians are often demagogues with an eye on the polls and a talent for short-term thinking. In contrast, Madison and many of the other Framers of the Constitution were engaged intellectuals, men whose political experience both constrained and ennobled their constitutional thinking. By 1787 Madison was no innocent. He understood that, as we say today, politics is hardball. However, that fact was not an excuse for cynicism but rather a sound foundation upon which to build a constitution that would perdure.

Madison's life before the Constitutional Convention prepared him well for his great task. At Princeton he was a devoted student who completed his degree in two years and stayed on to study Hebrew and philosophy with the president of the university. (Time did not make him less of a "grind": an ungenerous critic called the 30-year-old Madison "the most unsociable creature in existence.") He remained proficient in Latin and Greek throughout his

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Rita J. Simon, University Professor at American University, signs copies of *It's Getting Better All the Time: 100 Greatest Trends of the Last 100 Years* by Stephen Moore and her late husband Julian L. Simon, at a Cato Book Forum on December 29, the last business day of the century.

life and returned again and again to ancient authors.

Four years out of Princeton, he began his political career as a delegate to the Virginia Constitutional Convention of 1776. Thereafter, he twice served as a member of the Virginia House of Delegates and a member of the Continental Congress. During his second stint in the Virginia body, he blocked a proposed tax to support the teaching of Christianity and brought about the passage of a bill that both decriminalized heresy and abolished the religious test for public office.

As flaws in the Articles of Confederation became more evident, Madison believed constitutional reform was inevitable. Two years before the Constitutional Convention of 1787, he repaired to the family estate, Montpelier, and prepared to play a major role in the second founding of the United States. He devoured histories of republics, ancient and modern, and read the most advanced theorists of his day. He impor-

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“The powers enumerated in the Constitution placed a limit on what government could do legitimately.”

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tuned his closest friend, Thomas Jefferson, then serving as minister to France, to send him crates of works by European authors. In sum, no man ever came better prepared than Madison to the task of writing a constitution.

At the convention itself, he took notes of all that was said and of the votes taken; his account remains essential to understanding what happened in Philadelphia. During the ratification struggle, he wrote, along with Alexander Hamilton and John Jay, the famous *Federalist Papers* defending the new Constitution. His contributions tell us much about what he had learned from his formal and political education.

Madison once wrote: “It has been said that all Government is an evil. It would be more proper to say that the necessity of any Government is a misfortune.” Men are not angels and will not live together in peace and freedom without some government. Yet government is a double-edged sword. The power to deter and coerce criminals can be transformed into the power to restrict individual liberty, take property, and impose tyrannical government. How to control government? Elections, in the first instance. But Madison did not share the naïve faith so common today that the people can do no wrong. He knew that majority rule, like all unconstrained political power, posed its own dangers for individual freedom.

Madison on Majority Rule

Madison’s justly famous 10th *Federalist Paper* offers a brilliant practical solution to controlling government. He begins with a tough-minded analysis of the dangers of faction in a republic. People tend, he says, to divide themselves into groups or factions on the basis of wealth, occupation, or religious commitment and seek to dominate others. Protecting against factional domination thus became a central problem for a government founded on majority rule.

If a faction were a majority, it would pose a grave political danger to any republic. Moved by passion or greed or righteous visions, a majority would violate the

rights of a minority. The idle might plunder the industrious. Religious sectarians might seek legal privileges or bans on other faiths. Madison and his colleagues wrote the new American Constitution to prevent such abuses of power and to realize the goods of liberty and security.

Madison argued that the sheer size of the new American republic made such injustices less likely. In pure democracies, such as ancient Athens, individuals quickly discovered common interests, formed factions, and oppressed their fellow citizens. The great diversity of interests and groups in the new American republic worked against a mob acting in unison. A farmer in Massachusetts and another in Virginia might not agree that creditors were Satan’s henchmen. Even if they did share that thought, acting on their common hope of renouncing debts would be immensely complicated.

Madison worried about majorities abusing minorities; he did not fear that minorities could exploit “the greater number.” Here Madison erred. Every day in the United States small minorities—for example, those who benefit from owning or working for the sugar industry—extract millions of dollars from the mass of consumers by virtue of trade protection. Striving for such privileges is so common that scholars have given it a name, rent seeking. Madison did not see that minorities could exploit majorities when the benefits of government action to those minorities were huge and the costs to each individual in the majority were small.

Madison emphasized that the United States would have a representative government rather than a pure democracy. He had little sympathy for the “theoretic politicians” who supported the direct rule of the people. In pure democracies nothing would limit the majority’s abuse of a “weaker party, or the obnoxious individual.” Madison’s indictment is stark: “Such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general been as short in their lives, as they have been violent in their deaths.”

The delegation of the people’s power to representatives, on the other hand, would “refine and enlarge the public views” and

dampen the vicious passions that had destroyed so many republics of the past. Giving the people an indirect voice in making the laws, Madison concluded, would more likely serve the public good than would direct democracy.

Madison also spoke of the need for “auxiliary precautions” in the Constitution to limit government and protect freedom. The most important one was the division and balancing of powers. Madison and the other Framers of the Constitution feared the gradual concentration of power in one branch of government. His solution to this danger was entirely pragmatic: the leaders of each branch must have “the necessary constitutional means, and personal motives, to resist encroachment of the...others. Ambition must be made to counteract ambition.” Madison’s invitation to struggle among the branches has worked imperfectly in recent years. Congress has partially restrained the “imperial presidency” of Kennedy and Nixon; the states have done less well at restraining an “imperial” Washington establishment. Congress has delegated too much of its authority to the executive branch where unaccountable bureaucrats make policy outside the rule of law.

Madison also insisted that the people retained all rights not expressly delegated to the new government of the United States. The powers enumerated in the Constitution thus placed a limit on what government could do legitimately. In Madison’s day, as in our own, some people contended that the federal government had implicit powers to attain the goals stated in the preamble to the Constitution, especially the goal of promoting the general welfare. Madison disagreed strongly. Such a theory would “convert the government from one limited as hitherto supposed, to the enumerated powers, into a government without any limits at all.” We may well wonder whether today we live under a government “without any limits at all.”

In Madison’s opinion, an essential right retained by the people was liberty of conscience in matters of religion. Some of his earliest letters denounce religious intolerance in Virginia. His Christian faith cannot be doubted, nor can his unyielding

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resistance to mixing politics and religion. For Madison, bringing religion into the public realm corrupted both faith and government.

We might close by recalling Thomas Jefferson's assessment of his friend: "I can say conscientiously that I do not know in the world a man of purer integrity, more dispassionate, disinterested, and devoted to genuine Republicanism; nor could I in the whole scope of America and Europe point out an abler head." The passage of time has amply confirmed Jefferson's judgment. Madison's ideas, his life, and his great accomplishment should now inspire us to reclaim the American legacy of liberty and limited government.

Political Insights from Madison

Madison once said, "Knowledge will forever govern ignorance; and a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." In that spirit, I offer the following insights from Madison's political thought.

Ambition

"Ambition is so vigilant, and where it has a model always in view as in the present case, is so prompt in seizing its advantages, that it can not be too closely watched, or too vigorously checked."

Letter to Thomas Jefferson,
December 25, 1797

Balance of Powers

"But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

Federalist no. 51,
February 6, 1788

Civil Liberty and Property

"In a free government, the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects."

Federalist no. 51,
February 6, 1788

"As a man is said to have a right to his property, he may be equally said to have a property in his rights. Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions."

National Gazette essay,
March 27, 1792

Commerce

"I own myself the friend to a very free system of commerce, and hold it as a truth, that commercial shackles are generally unjust, oppressive and impolitic—it is also a truth, that if industry and labour are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened legislature could point out."

Speech in Congress, April 9, 1789

Civic Virtue

"Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks—no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them."

Speech in the Virginia Ratifying
Convention, June 20, 1788

Enumerated Powers

"This is not an indefinite government deriving its powers from the general terms prefixed to the specified powers—but, a

limited government tied down to the specified powers, which explain and define the general terms."

Speech in Congress,
February 6, 1792

War

"The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it."

Letter to Thomas Jefferson,
April 2, 1798

Faction

"The latent causes of faction are thus 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. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have in turn divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to co-operate for their common good."

Federalist no. 10,
November 22, 1787

Government

"It has been said that all Government is an evil. It would be more proper to say that the necessity of any Government is a misfortune. This necessity however exists; and the problem to be solved is, not what form of government is perfect, but what of the forms is least imperfect."

Letter to an unidentified
correspondent, ca. 1833

Legislation

"It will be of little avail to the people that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or

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“If industry and labour are left to take their own course, they will generally be directed to those objects which are the most productive.”

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undergo such incessant chances that no man who knows what the law is today can guess what it will be tomorrow.”

Federalist no. 62,
February 27, 1788

Passion in Politics

“In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.”

Federalist no. 55,
February 13, 1788

Majority Rule

“Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents.”

Letter to Thomas Jefferson,
October 17, 1788

Power

“All men having power ought to be trusted to a certain degree.”

Speech in the Constitutional
Convention, July 11, 1787

Property

“Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own.”

National Gazette essay,
March 27, 1792

Public Servants

“If neither gratitude for the honor of the trust, nor responsibility for use of it, be sufficient to curb the unruly passions of public functionaries, add new bits to the

bridle rather than to take it off altogether. This is the precept of common sense illustrated and enforced by experience—uncontrolled power, ever has been, and ever will be administered by the passions more than by reason.”

“Political Reflections,”
February 23, 1799

Religious Freedom

“Religious bondage shackles and debilitates the mind and unfits it for every noble enterprise.”

Letter to William Bradford,
April 1, 1774

Republicanism

“When the people have formed a constitution, they retain those rights which they have not expressly delegated. It is a question whether what is thus retained can be legislated upon. Opinion are not the objects of legislation... . If we advert to the nature of republican government, we shall find that the censorial power is in the people over the government, and not in the government over the people.”

Speech in Congress,
November 27, 1794

Slavery

“We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man.”

Speech at the Constitutional
Convention, June 6, 1787

Military Establishments

“A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defence against foreign danger, have been always the instruments of tyranny at home.”

Speech at the Constitutional
Convention, June 29, 1787

Liberty at Home

“The fetters imposed on liberty at home have ever been forged out of the weapons provided for defence against real, pretended, or imaginary dangers from abroad.”

“Political Reflections,”
February 23, 1799 ■

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want Pennzoil 10W30?” Well, most of us are rationally ignorant about motor oil. Despite that, we get a choice of motor oil.

Let’s take something that’s much more important than motor oil, the education of children. Unfortunately, education is a public good. You are stuck with the public schools in your neighborhood whether you like them or not. If you want to make a choice and go outside that system, the cost can be prohibitively high. So we remain rationally ignorant about choices that we can’t really exercise. Unfortunately, health care, like education, is primarily distributed as a public good in this country.

You will notice that we have our priorities upside down. About the things that are the least important in our lives, like our motor oil, we have the most choices. About the things that are the most important, like the education of our children and our health, we have limited choices, if any.

Our health care system serves best those who have the least interest in and place the least value on their health. Consider the business consequences of rationally ignorant health care. Essentially, employers are giving their employees the company credit card, with no spending limit, to buy items that have no price tags on them. How many businesses or households operate that way? Yet that is the way we are operating at least 90 percent of our health care economy.

So, what is the road to recovery? We need to repeal the Employee Retirement Income Security Act and put choices about health care back on the individual level where they belong. What is more personal and private than your health care?

We also need to repeal the Internal Revenue Code. Not only are we segregating our money through the Internal Revenue Code; we are segregating it a second time by making our employers responsible for making health care decisions for us.

Clemenceau noted that “war is too important to be left to the generals.” Likewise, the education of your children is too important to be left to the government, and your health and health care are way too important to be left to your employer. ■