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Review Essay

"James Madison Problems": Three New Works

GREG WEINER

The Mind of James Madison: The Legacy of Classical Republicanism. By Colleen Sheehan. (New York: Cambridge University Press, 2015. Pp. 275. Cloth, $95.00.)

James Madison and Constitutional Imperfection. By Jeremy D. Bailey. (New York: Cambridge University Press, 2015. Pp. 181. Paper, $29.99.)

Madison's Hand: Revising the Constitutional Convention. By Mary Sarah Bilder. (Cambridge: Harvard University Press, 2015. Pp. 358. Cloth, $35.00.)

The long-running debate over what Gordon Wood called the "James Madison problem" centers largely around the status of public opinion in Madison's thought: whether, in other words, it was to be regarded as an object of concern or a salutary force, whether Madison changed his mind on that question between helping to frame the constitutional order and serving within it and, finally, whether, if he did so, his motives were opportunistic.[1] More recent scholarship on Madison has sought strands of consistency that transcend Wood's problem.[2] Still, the theoretical

1. Gordon S. Wood, *Revolutionary Characters: What Made the Founders Different* (New York, 2006).

2. See, *inter alia,* Alan Gibson, "Madison's 'Great Desideratum': Impartial Administration and the Extended Republic,'" *American Political Thought* 1, no. 2 (2012), 181–207; and Greg Weiner, *Madison's Metronome: The Constitution, Majority Rule and the Tempo of American Politics* (Lawrence, KS, 2012).

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standing of public opinion remains challenging terrain for interpreters of Madison. Of course, that Madison's thought might have evolved need not scandalize, but if it did change, it would be helpful to understand exactly how and why. Three new books help to shed light on that question, among others.

Colleen Sheehan's *The Mind of James Madison: The Legacy of Classical Republicanism* exegetes his "Notes on Government," uncovering the classical roots of what she argues was his belief, at least as of 1791, in a regime that helps to give public opinion shape. Jeremy Bailey's *James Madison and Constitutional Imperfection* is a wide-ranging and often surprising exploration of several untreated aspects of Madison's thought, including his alliance with Thomas Jefferson and what Bailey sees as his use of public opinion to complete the constitutional project. Finally, Mary Sarah Bilder's *Madison's Hand: Revising the Constitutional Convention* asserts that Madison's *Notes* of the Philadelphia convention as we have them today are the product of a lifelong modification designed to shape public opinion, largely public perceptions of Madison himself.

These works come amid a recent renewal of historiographical interest in Madison, including a spate of biographies from Lynne Cheney, Jeff Broadwater, and Kevin R. C. Gutzman, among others. Andrew Burstein and Nancy Isenberg's definitive *Madison and Jefferson* has plumbed new depths of the Founding's most enduring intellectual and political partnership.[3] These, combined with the University of Virginia's publication of the first in a projected seven volumes of Madison's content-rich retirement papers, have stoked new interest in the Virginia scholar–statesman. This trio of new books from Sheehan, Bailey, and Bilder are turning that interest back toward his political thought.

Sheehan sees the "intellectual journey" of the "Notes" as "a retrieval of the ancient quest to vindicate republican government" (13). Madison's guide on the journey is Jean-Jacques Barthélemy, the French author of *Voyage of Anacharsis,* which Jefferson sent to Madison on the eight-volume work's publication in 1789. Sheehan suggests that Madison regarded the ancient and modern solutions to the internal stability of

3. Lynne Cheney, *James Madison: A Life Reconsidered* (New York, 2014); Jeff Broadwater, *James Madison: A Son of Virginia and a Founder of the Nation* (Chapel Hill, NC, 2012); Kevin R. C. Gutzman, *James Madison and the Making of America* (New York, 2012); Andrew Burstein and Nancy Isenberg, *Madison and Jefferson* (New York, 2010).

republics—the former as the education of public opinion via singular institution, the latter taming it with institutional arrangements and self-interest—as something of a false dichotomy. "In carefully investigating the various influences on government and, particularly, the powerful effect of public opinion on the operations of government in an extensive, federal republic, Madison believed he had discovered a way in which the safety and the liberty of citizens, including their participation in the active sovereignty of the regime, could be achieved" (17).

The key to this is communication. Thus in the "Notes," Madison, reflecting on the problem of size, counsels that a republic cannot be too small—because, as he had noted in Federalist 10, it would be consumed by faction—but also not too large, because public opinion could not form. Devices that facilitate communication—roads, newspapers, commerce, and the like—counter the otherwise diluting effect of territorial sprawl. This public opinion, in Sheehan's account of Madison, must do more than aggregate individual views. "Instead, it must be transformed to become the 'reason of the society'—or, in other words, impartial decisions about the public good" (42). So conceived, public opinion, as Madison would later write in the *National Gazette,* not only "sets bounds to every government," it is also "the real sovereign in every free one" (49).

Yet size presented unique challenges, especially to "the classical notion of a genuinely participatory and free citizenry." Madison's discovery in the "Notes," Sheehan argues, was "a way to achieve political liberty in a large republic" by supplementing Montesquieu's idea of liberty as security with the ancient idea of "the citizen's liberty, which is manifest in the citizen's active participation in the sovereignty" (62–63). The core of the idea was the sovereignty of public opinion. Sheehan writes, "Derived from the will of the society, public opinion is the result of a process of public communication and deliberation that refines, enlarges, and transforms public views into the reason of the society. In turn, the reason of the society operates on the understanding and interest of the society" (64). The task in Madison's eyes was to "educat[e] public opinion in the moral principles of republicanism, thereby establishing a political system in which the will of the society is based on the reason of the society," which depended not on institutions, but rather on "the soundness of public opinion" (71).

This pedagogical process, which is the rub, occurs through what Madison calls the "commerce of ideas," including cultural influences,

religious teachings, customs and mores, and public morality (84–85). Representation and political devices—the Bill of Rights, for example—could also serve pedagogical functions. Similarly, federalism, by splitting the public into local polities, facilitates the formation and collection of public opinion.

The difficulty is that the "Notes"—which are, after all, an outline, not a completed work—are strikingly devoid of detail on how precisely this process of public education is to operate. They constitute, in that sense, more a hope than a solution. To be sure, this is less a problem with Sheehan's analysis than with the incomplete state of Madison's project. Nonetheless, before the "Notes" is elevated to the canonical status she advocates, more work on this question might be done. That is, while we might be persuaded that communication can facilitate the formation of public opinion in an extended territory, why, exactly, should we expect the "commerce of ideas" to produce the *right*—that is, morally upright—ideas? Why should it not be just as likely a mass commerce in ideas would dilute moral rigor? Perhaps a proper "republican distribution of citizens" (258), as the title of one chapter in the "Notes" holds, would help, but here again we are saddled with more aspiration than strategy.

Sheehan's book also raises the question of the place of the "Notes" in the Madisonian corpus. Sheehan sees it as central, and once one enters that space with her, her exegesis—especially her excavation of its roots in ancient sources as refracted through Barthélemy—is excellent. But in this book, the "Notes" are largely extracted from Madison's larger work. This leaves the sense that Madison is an unadulterated Aristotelian, which, in turn, never comes to grips with competing strands in his thought. It is, of course, not Sheehan's stated ambition to deal with the whole of Madison, and the depth with which she explores this piece of him is a valuable contribution. It may nonetheless be truer to say there are Aristotelian influences on or strains in Madison than to say he is an Aristotelian simply. In any case, future commentators will be compelled to incorporate or refute the Madison of the "Notes" into their scholarship thanks to the extent to which Sheehan has made it the centerpiece of hers.

Bailey treats a much broader Madison by means of unsettling some of the most widely held—one is tempted to say "venerated"—assumptions about him, the result of which is an invaluable contribution to Madison scholarship. Bailey takes his bearings from dissatisfaction with the traditional bifurcation between Madisonian constitutionalism, which mediates

popular will, and Jeffersonian republicanism, which channels it. The reality, he notes, is that Madison spent the bulk of his career helping Jefferson mobilize public opinion. Bailey explores this puzzle through the prism of constitutional imperfection, by which he means "the gaps that necessarily arise because no constitution can anticipate every contingency and opportunity" and "the flaws that derive from the errors of the founders" (1).

Bailey's treatment of this problem repeatedly upends conventional wisdom. He complicates, for example, Madison's widely hailed case for constitutional veneration in Federalist 49, noting that in an "underappreciated" 1785 letter to Caleb Wallace discussing a constitution for Kentucky, Madison recommended scheduling a "revision" after a generation (22–23). Why, then, warn against such a revision in the case of the federal constitution? Drawing on correspondence, Bailey upsets consensus views of Madison that see him as preferring the deliberative rule of elites. Such views do not properly distinguish, Bailey argues, between ordinary and founding politics. Madison was specifically and clearly skeptical "of deliberation among leading politicians during moments of founding. . . . [T]he source of concern for Madison was not the men who would be doing the discussing, but rather the subject matter itself" (34).

Madison thus suggests, amid his catalog of constitutional imperfections in Federalist 37, that a diversity of factions might help to administer a government but would complicate the task of forming it. "In this remarkable discussion, Madison went as far as to narrow the applicability of his famous discovery, the extended republic as a solution for faction" (36). On Bailey's reading, Madison's task in Federalist 49 was not to make an unqualified case for veneration—which his "confession" of imperfections in Federalist 37 would have complicated—but rather the immediate imperative of dissuading Edmund Randolph and other moderates from insisting on a second convention. Veneration, Bailey asserts, even provides a "veneer" of democratic legitimacy to founding moments in which deliberation is not always possible (46).

Bailey is more open to the idea of deliberation during times of ordinary politics, but he notes Madison's significant omission of the word in *The Federalist* after his use of it to describe foundings of ancient republics. Even in the closest case, Federalist 63's argument that the Senate will facilitate the prevalence of the "cool and deliberate sense of the community," it is the community's sense, not that of the elites, to which

Madison refers—and even then, Bailey believes Hamilton wrote the essay under consideration (46–47). "In the view of this author," Bailey writes, "there is very little evidence that Madison ever expected that members of either house of Congress would engage in deliberation" (48).

Bailey further complicates the case for Madisonian institutionalism as a source of stability with his insightful treatment of the First Congress's debate over the removal power—a case of constitutional imperfection in the sense of a silence that had to be filled in. In that debate, Bailey shows, Madison opposed involving the Senate in the removal of executive officials because doing so would entail excessive stability and because Madison "was well on his way to seeing the president as accountable to a national electorate" and thus to public opinion (61). The importance of the much overlooked removal debate is that it represented the working out of a constitutional imperfection that involved "the balancing of stability and republican responsibility, a difficulty Madison discussed at length in *Federalist* No. 37" (68).

Bailey plows his newest ground by attending to what he calls "the middle Madison," the period between Madison's service as secretary of state and the eruption of retirement writings in the 1820s. The "central problem in understanding Madison's political thought over his career," Bailey writes, is why he became and remained a Jeffersonian (115). Bailey explores this by seeing Jefferson's "Revolution of 1800" as "a practical solution to the problem of constitutional imperfection" (116). He notes that Madison suggested an extra-constitutional, opinion-oriented resolution to the electoral crisis of 1800, one in which Jefferson and Aaron Burr would jointly call Congress into session to resolve the choice of president. Bailey sees Madison as somewhat tempering Jeffersonian prerogative but nonetheless serving as "a loyal foot soldier, a faithful son, and a central adviser in Jefferson's transformation of the political order" (140).

Bailey's assessment of Madison's decision to compile his notes of the Constitutional convention calls scholarly attention for the first time to a letter Madison sent the Virginia legislator and judge John G. Jackson. In it, Madison acknowledged two flaws in the Philadelphia Convention's deliberations: first, being, in Bailey's words, "overly influenced by current events" (167), such as Shay's Rebellion; and second, rushing to complete its work. "[M]adison said he would have qualified his preference for stability had he had more time for 'reflection' during the Convention" (167–68).

In all, Bailey's urging that scholars look from "Madisonian constitutionalism" to his republican impulses as seen through the problem of constitutional imperfection is a persuasive and welcome corrective. It has, at moments, its limits. Madison's concern with institutions remains evident throughout his career, as Bailey is scrupulous to note. Both institutions and opinion may be necessary ingredients of a regime; there is not an inherent dichotomy between them. Nor, in fairness, does Bailey suggest one, but he at times verges on it. His downplaying of Congressional deliberation is one such instance. Federalist 55 does indicate, as Bailey notes, that all large assemblies "of whatever characters composed" will behave like mobs, but this not a surrender to the inevitable, it is a defense of Madison's institutional solution: a small House. (Indeed, Madison's wish that he had himself had more time for "reflection" at the Convention suggests at least a desire for deliberation.) Still, even to the extent the chief contribution of this book lies in dismantling conventional wisdom—and it is likely to be succeed in forging some new wisdom as well—the result is a landmark enterprise.

Bilder, too, seeks to dismantle conventional wisdom, which holds that Madison's *Notes* of the Constitutional Convention of 1787 are the most reliable source of the interior workings of that endeavor. Utilizing the skills of both a literary and historical detective—she has both excavated clues in the text and subjected the original notes to rigorous physical examination, observing, for example, differences in paper, ink, and watermarks—Bilder concludes in this well-written and engaging work that Madison revised the *Notes* over the course of his life.

Among the more provocative and significant of Bilder's assertions is that the eleventh item in Madison's pre-convention "Vices of the Political System of the United States" memorandum—the one that prefigured the extended republic thesis of Federalist 10—may have been added after the Convention, calling the originality of the theory into question. Similarly, she argues that his famed June 6 speech on factions—again presaging the argument of Federalist 10—was composed after the Convention and inserted into the notes retrospectively (73). The strong suggestion is that he cribbed it from Gouverneur Morris's speech on July 19 (117).

Bilder also records Madison as replacing or revising speeches to shape opinions of himself. Most significantly, Bilder argues that Madison attempted after the fact to conceal the extent of his support of slavery. Noting striking similarities between Madison's and Luther Martin's condemnations of slavery, Bilder wonders whether, after the Convention,

Madison inserted statements of his own late in the record of the debates. This is partly because she establishes that Madison's *Notes* after August 21 appear to have been composed in the fall of 1789, and thus these entries, including his own speeches, may be tinged with retrospective wishes and contemporary politics.

All these are useful insights. Yet Bilder also repeatedly imputes motives to Madison with scant external evidence. In one illustrative if not central example, she devotes a paragraph to suggesting that Madison may have misspelled delegates' names—which she acknowledges was common in the period's correspondence—to poke fun at those he disliked. Bilder speculates, also without evident basis: The fact that letters are missing after more than 225 years acquires the sinister connotation that Madison "might"—only "might"—have divulged confidential information that led to their destruction (56). She records changes in copying the *Notes* that possess no seeming significance, such as excluding "Mr." from names (185).

Even setting such deficiencies aside, this question remains: Supposing every conclusion Bilder draws is true, then what? That is, if—as certainly appears to be the case—her physical evidence of revision is unimpeachable, in what significant ways does it change our understanding of Madison? That his views on slavery were unsatisfactory and even hypocritical was already known. That he was a politician concerned with perceptions of himself is equally unsurprising. As to the originality of his theory on factions, its outlines were latent as early as his April 1787 correspondence with George Washington. This book, in the end, has historical value as what Bilder calls it: a "biography of the Notes." But the extent to which it provides insight into Madison's mind in addition to his hand is less clear. Still, the revisions Madison used that hand to make are nonetheless intriguing, even if not as theoretically significant as Bilder suggests. Especially given the paucity of historical work on the *Notes* themselves as opposed to their content, the research underlying this book remains a valuable contribution.

All told, the Madison who emerges from these three works is more variegated and complicated than the one we knew before. While Bilder raises questions about the canonical and unadulterated standing of the convention notes, Sheehan deepens our understanding of the "Notes on Government," raising important questions about whether they are accorded adequate weight in treatments of Madison. Bailey's unsettling of seemingly settled questions is a relentless delight for the Madison

scholar on the hunt for new corners of the founder's thought to explore. The combined result of all three works—a new series of "James Madison problems," in the sense of new Madison questions—makes this a challenging, and therefore promising, time for Madison scholars.

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