



THE MADISONIAN PERSUASION TODAY

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By George Will, Syndicated Columnist

It's very humbling as a columnist to realize that the columnist profession peaked a little early, with the Federalist Papers, one of whose authors was James Madison.

This morning, as I do every morning when I'm in town, I went for a walk with Madison. He's a thirteen-year-old Brittany spaniel. I bought him in Virginia and wanted to name him after a famous Virginian, and I decided that Jefferson and Washington, the first and third presidents, have had more than their due and so I named him after James Madison. I seem to be haunted by Madison.

When I finished at Princeton, intending to teach, as I did briefly, my first job was at Michigan State University where I was one of the founding faculty members of a college and then university called, it will not surprise you to learn, James Madison College.

I wear mostly Brooks Brothers clothes and they have various kinds of suit styles. The one I wear is called "the Madison," because Brooks Brothers, the iconic American men's clothing store, is located on Madison Avenue.

The ladies are looking, with admiration, and the men with envy, at my neck tie, which is the neck tie of the Federalist Society, and regardless of what your traditional philosophy is, you must admire the profile of James Madison.

I was thinking driving up here, when I came to Washington in 1970, 38 years ago, there was no Madison "thing" in Washington. This building had not been built. The only thing named after Madison at that point was the Madison Hotel, which was then, before the Willard was refurbished and the Four Seasons built, lobbyist central. And some people who don't quite understand Madison thought that was altogether suitable because Madison was then thought to be, and I'll come back to this subject, the defender of special interests. Factions as he called them. As I said, I will come back to this in due time.

It is a delight to be with people who care so much about calling the country's attention back to the most neglected and most important of the Founders -- for those of us who are Constitutionals. I don't know how many of you have been to the Constitution Center in Philadelphia and been to the room where they present the participants of the

Constitutional Convention in life size statues. There is a diminutive statue of the man of whom it has been well said that nowhere in the history of political philosophy is there such a high ratio of mind to mass.

We are going through a period in our country, a welcome period, during which the American people have had an insatiable thirst for biographies of the founding fathers. We've had Hamilton and many of Washington and lots of Jefferson. David McCullough of course, if we could only get him to take up Madison the way he took up John Adams, we would have a lot more. I think I shall suggest this to David.

I think the reason for this is as follows: The United States is well described as the only nation in history founded on a good idea. And founded indeed. That is, we know when America began, about noon July 4, 1776, and we know why, because we had such articulate people there to say what it was about. And there is in the American people today a healthy nostalgia. Now, nostalgia is not always healthy, and as I watch the politics this year it seems to me the politics of 2008 are almost the politics of dueling nostalgias.

Conservatives want to live in the 1950s, before the cultural ferments that so many of them find upsetting. Liberals went to work in the 1950s, before the insecurities and churning of dynamic market capitalism became so unsettling.

But there is a real nostalgia in America that is a creative force. It is nostalgia for the excellence that happened to gather in Philadelphia in what must surely be a miracle -- that we had a Constitutional Convention, and out of a population of four million people, eighty percent of whom lived within twenty miles of Atlantic Tidewater, we managed to not only have in that population, but get them to Philadelphia, the delegates of the Constitutional Convention. The most important of whom was, of course, Madison.

About his Constitution, I hope you will teach visitors there certain interesting facts, one of which has just occurred to me is this. Recently, at this marvelously restored place, you had the chief justice speak, on Constitution Day. I'm here to tell you in my capacity as the tenth justice of the Supreme Court, that Constitution Day, properly understood, is unconstitutional. That is, I think Madison, better than anyone, understood that our federal government, as he intended it, was a government of limited and delegated, because enumerated powers. He might say, "Where in my document do you find the authority for congress to be establishing 'days' for the country?" Well, it's a lost battle, but much has been lost. I mean the idea that there are things the federal government can not do is itself hopelessly anachronistic, I say with some regret.

Someone once asked James Q. Wilson, the great political scientist, whether the government will now do something new? He replied that it's theoretically impossible for the federal government to do something new because there is no area of American life into which it has not seeped.

I think the final seepage was what resulted in a Supreme Court case titled *Wickard v. Filburn* in 1942. Poor Mr. Filburn was an Ohio farmer who raised some wheat and other seed, not for interstate commerce. It entered commerce nowhere. It stayed on his farm.

He fed it to his poultry and livestock. And the federal government in its majesty descended upon him to say you have to report this and count it against your production quotas under the New Deal program. And he said: Why? It's not interstate commerce. His case went all the way to the Supreme Court, which said: Well, actually if you weren't feeding the homegrown feed to your chickens, you might buy feed from interstate commerce, therefore it has an "effect" on interstate commerce, therefore the federal government can regulate it.

That was, in one sense, the last nail in the Madisonian understanding of our Constitution as the foundation of a government of limited, delegated and enumerated powers. The Filburn ruling was roughly akin to the chaos theory under which the flapping of the wings of a butterfly in Brazil, can somehow affect the weather in Detroit. Some of us consider this abandonment of the Madisonian theory a kind of institutional derangement, and not the only institutional derangement.

Driving up here today, I was so struck by the fact that we met here on a day when the Congress has been told that it must pass a three page bill, that's all it is, to give the treasury secretary, Hank Paulson, otherwise known as the fourth branch of government, \$700 billion to use as he pleases in decisions that, it says on the third of these three pages, shall not be reviewable by any other agency or any court. Now this is a derogation through delegation of the responsibilities of the legislative branch.

Mr. Madison's document, if you look at it in the great rotunda of the archive building, is covered by four panels of glass. Two of them cover the language pertaining to the legislative branch. The legislative branch, is in my judgment, and certainly in Madison's, the first branch of government, for a reason. It is Article I for a reason. It is the vitality of the legislative branch that James Madison believed in. And it is worth recalling that in a presidential year.

Madison, our fourth president, was not, it is generally conceded, a successful president. I don't care. Because I think we are, as a people, far too presidentcentric. I'm reminded of this forcibly in years divisible by four. We have allowed the presidency to become an unnaturally swollen office so unnaturally invested with unrealistic hopes and aspirations and duties and responsibilities that every president, by the time that he, or someday she, becomes president, is set up for failure.

Presidents come to Washington as shiny as new dimes and leave Washington generally battered and disappointing. And it's not all their fault. It's partly their fault, but it is primarily the fault of our abandonment of the sense of balance and restraint and realism that Madison exemplified. This has led us into investing presidents with responsibility for everything.

Franklin Roosevelt, the first president to use skillfully the mass media, said to the listening nation in one of his fireside chats, "Tell me your troubles." Now, I ask you: Can you imagine that austere farmer from Mount Vernon, George Washington, asking anyone to tell him his troubles? He would have thought it not only presumptuous for a

political officer of the government to ask people to do that, but vaguely insulting to the American people to think that they would abandon the reticence, natural in noble citizens, to confess their troubles to politicians.

John Fitzgerald Kennedy was the first of the modern presidents to be called charismatic. It's interesting because that is a term that comes directly from religion. He said the president should be the center of moral leadership. I would be satisfied if presidents would administer the executive branch of government with at least minimal competence and leave moral leadership to others.

When someone asked Harold MacMillan, as he became prime minister of Britain in the 1950s, if he would give the British people a "sense of purpose," he said if they wanted a sense of purpose they should see their bishops.

In 1992, Bill Clinton ran for office promising a new covenant. Which promise formally put the federal government in the place of Yahweh.

In 1992, in a debate involving Ross Perot and Bill Clinton and George Herbert Walker Bush—that was the debate when George Herbert Walker Bush famously looked at his watch, indicating: this is boring me to tears; I've never admired the man so much. This was the debate in which normal Americans were invited to ask the candidates questions. One normal, I regret to say, American rose and asked the following question; "How can we, as symbolically the children of the future president, expect the three of you to meet our needs?" Now, I'm sorry, but that is not a wholesome, not a republican approach to the government of this Republic.

Vice President Gore said in one of his campaigns: Government should "be like grandparents, in the sense that grandparents perform a nurturing role." Again, what are we saying about the American people when we say they need elected parents or grandparents installed in Washington?

Part of the problem that has come upon the presidency, and that has taken us far from James Madison's understanding of the role and function of government, is that we have developed what has been called a rhetorical presidency. We're so plied and belabored by our candidates with non-stop rhetoric, provided to us by twenty-four-hour-a-day saturation journalism, that we tend to forget how relatively recent the "rhetorical presidency" is in American history -- the phrase comes from a book by that title by a superb political scientist, Jeffrey Tulis at the University of Texas at Austin.

Until Theodore Roosevelt, presidents rarely spoke to the country. Presidential communication was between the president and the legislative branch, and it was almost entirely in writing. Do you know how many popular speeches, that is direct to the general public audience, George Washington gave? In an entire presidency, three. John Adams gave one. Thomas Jefferson gave five, which is odd because Thomas Jefferson so disliked the sound of his voice, and considered it monarchical to address the Congress, that he stopped giving the State of the Union address to Congress. He wrote it out and sent it up, which is all that is required by the Constitution.

That was a wonderful tradition, until Woodrow Wilson, who did not dislike the sound of his own voice, restored the habit of delivering the State of the Union address orally to Congress. We reached the point now of today's State of the Union circuses with the members of the party in power braying like sheep their approval, and the other party pouting histrionically in their seats, with various heroes being introduced from the balcony.

This is not what we had in mind when we designed the presidency.

Madison, who presided over a war, in which the White House was burned, gave zero speeches during his presidency, in the sense of popular speeches to a general political audience. Monroe gave five a year. John Quincy Adams one a year. Andrew Jackson, the first populist president, the first in a sense, "popular president," who claimed that his power derived from the fact that he was the only official of the federal government -- save the vice president, who didn't count in those days -- to be generally elected gave one speech per year. This wasn't just because the technology of mass communication did not yet exist; it was because popular oration by presidents was considered unseemly.

The word "leader" appears fairly frequently in the Federalist Papers, but only once as a term of praise. Generally, they thought that presidents who tried to lead the public, who tried to shape public opinion, were not doing something wholesome.

You may remember that when Lincoln went to Gettysburg to dedicate a cemetery he was distinctly, the secondary speaker. The star attraction was Edward Everett, who spoke for two and half hours. Lincoln spoke as he was expected to, for about two minutes and fifty seconds. That was fine with people then.

Andrew Johnson, Lincoln's successor, spoke often. And got impeached for it.

One of the charges -- I'm not kidding -- in his impeachment was inappropriate rhetoric unsuited to the office. They said he did "make and declare with a loud voice certain intemperate, inflammatory, and scandalous harangues" indecent and unbecoming of the chief magistrate of the United States. And this brought the high office of the presidency of the United States into contempt, ridicule and disgrace.

Now, of the twenty-four presidents, between George Washington and McKinley, half of the general audience speeches given by those twenty-four presidents were given by just three of them: Benjamin Rutherford Hayes, Benjamin Harrison and William McKinley.

Harrison, however, didn't really say anything. Harrison at one point was addressing an audience and said, "You ask for a speech. It is not very easy to know what one can talk about on such an occasion as this. Those topics that are most familiar to me because I am brought into daily contact with them, namely, public affairs, are in some measure prohibited to me."

Prohibited.

This was a country still devoted to the Madisonian vision of congressional supremacy. Where policy was to be made by the legislative branch and executed by the chief

executive. McKinley, the last pre-modern president, which is to say the last president before Theodore Roosevelt, gave no speeches at all on the sinking of the Maine, on the Spanish American war, on the passage of Jim Crow laws in the South, or on our protracted troubles with our engagement in the Philippines. None.

All that changed with the arrival of that cowboy -- Teddy Roosevelt. In 1906, with railroads becoming a source of great division in our country and railroad regulation a hot issue, Congress was considering freight rate regulations. Teddy Roosevelt went on the road to campaign for what was called the Hepburn Act, which began the policy of rate regulation. It was considered an astonishing, almost a regime-level change, and indeed it was. Because the presidency was to never be the same.

Speaking of mass communication, TR was the first person ever to be president who was filmed by motion picture camera. The film was actually before he became president. When he went out to campaign for the Hepburn Act, he made it his business, and the business of all presidents since, to put a saddle and bridle on public opinion and ride it.

Then along came TR's nemesis, Woodrow Wilson. He supplied a theory for Teddy Roosevelt's practice. It is not surprising that the first and so far only professor of political science to be president of the United States would be rich in theories.

It was mentioned in the introduction of me that I went to the Princeton graduate school. You may not know this but the most important decision taken in the 20<sup>th</sup> century was where to locate the Princeton graduate school. Woodrow Wilson was president of Princeton at the time. He wanted it located down on the main campus among the quadrangles with the undergraduates. Dean West and others opposed this. They defeated Wilson. He had one of his characteristic tantrums, resigned, went into politics and helped destroy the 20<sup>th</sup> century. But that's a long story.

Woodrow Wilson was the first president ever to criticize the Founding Fathers. And it wasn't peripheral criticism. It went straight to the Madisonian design, the Madisonian project. Woodrow Wilson believed, and he was not alone in this, that the Constitution of the United States had been all very well in its day, but the coming of railroads, the coming of the telegraph and the coming of a national, indeed a continental market, had in some ways made the Constitution, with its checks and balances and all that, an impediment to good government. Wilson thought the Constitution was a garment the nation had outgrown.

This was before, mind you, mass communication. It was before the jet air plane. Wilson simply thought that the system of checks and balances, separation of powers and all that impeded strong presidential leadership had to be treated as an anachronism. Wilson said it is the job of the president to intuit the unexpressed yearnings of the American people and to become the vessels of dreams and aspirations, even dreams and aspirations that they can not articulate and do not know they have. This was the beginning of a mental disorder that many presidents have suffered. It is called ASN, acquired situational narcissism. A sign of ASN is presidents and presidential candidates sounding delusional.

I can give you lots of examples. John Edwards, when he was thrashing around in the underbrush of Iowa, said then, when he is president, every school will be an outstanding school. Now, think about that. If they're all outstanding, what do they stand out from?

Now presidents' spouses do this. Michelle Obama said not long ago, "Barack will never let you go back to your lives as usual, uninvolved and uninformed." But we don't hire these people to change our lives in that way.

Whoever wins in November will be pressured by my profession, the press, to say what they are going to do in their first hundred days. We got that fixation from Franklin Roosevelt, who had in 1933 a very hyperactive first hundred days. Now all presidents think they must have an exciting first "100 days." The first time the phrase "100 days" was used concerned Napoleon, after he escaped exile and landed in France, and had his vigorous hundred days that ended, as I wish more presidents would remember, at Waterloo.

What we have done by having a rhetorical presidency, and by the eclipse of the legislative branch, is to acquire the politics of the permanent campaign, erasing the distinction between campaigning and governing. This happened, this inflation of the presidency, and the eclipse of the legislative branch, because of war.

In about 1920, a fine American thinker named Randolph Bourne said in a memorable phrase, "war is the health of the state." He wasn't adding anything to what Madison understood when he said that, "war is the true nurse of executive aggrandizement."

What Madison would recoil from most if he saw America today, and what I hope visitors to Montpelier will be taught to think about, is the fact that we have become so presidential-centric and so disrespectful of the legislative branch that we are suffering an institutional derangement of that fine mechanism that Madison developed. It was a system so finely balanced that, in his judgment, we didn't really need a Bill of Rights. He understood the necessity of promising it to get the Constitution ratified, but he felt that the guarantee of rights was in the structure of the document itself. That it was so finely crafted in its wonderful equipoise between the branches of government that it would secure liberty in order.

For all the talk about the bitterness of American politics today, it interests me that Barack Obama and John McCain are in complete agreement on three points. One is that there's too much of what John McCain calls partisan rancor. Second, both vigorously deplore gridlock in Washington. And third, they are both stern censorious denouncers of special interests.

Speaking as a Madisonian, I would like to say a few words in praise of partisan rancor, gridlock and special interests. First, partisan rancor. It was on the famous botanizing trip that Madison and Jefferson began the development of our party system. The Founders of course never anticipated that we would have a party system. It soon became clear that we would, and there's a reason for that. People differ and people cluster. There is a liberal sensibility; there is a conservative sensibility. The liberal/conservative argument changes

over time; it's going through an interesting adjustment today. But it's alive and well. So we have these two parties for a reason. Today, the liberal/conservative argument is defined by tension between the two polar values of western political thought, freedom and equality. Both important, both real, both valuable, both always being adjusted.

Today, liberals, by and large, tend to favor equality over liberty and equality sometimes at the expense of liberty. They tend to understand equality as equality not just of opportunity but of condition, of social outcome. They particularly stress equality as related to the entitlement system we have developed in a welfare state -- more and more people, equally dependent on common sorts of rights and provisions. This is an ethic of common provision. It is perfectly defensible, although it is not my ethic. Many people subscribe to it; intelligent men and women of goodwill advocate it.

Conservatives tend to stress freedom over equality, are therefore are willing to accept larger disparities of social and economic outcomes, and to regard the multiplication of entitlements as inimical to the attitudes and aptitudes that conservatives think are vital to a vigorous, individualistic, entrepreneurial society. It's a perfectly healthy argument. It's recognizable over the years. And it's the reason, again, that we have two parties and why we have, and should have, partisanship.

Gridlock, in the Madisonian view, is not a problem. Rather, it is an American achievement. When the framers went to Philadelphia in that hot summer, they locked the windows, stifling themselves, lest someone get wind of what they were doing, and bring them under gust winds of political pressure. They did not go to Philadelphia to establish an efficient government -- the idea would have appalled them. Rather, they went to devise a safe government.

They had a catechism and the catechism is related to the third point -- special interests, or factions as they were then called. The catechism went like this: What is the worst outcome that politics can produce? The answer is tyranny. What form of tyranny is democracy prone to? Tyranny of the majority. Solution: Don't have majorities. Don't have, that is, stable and therefore potentially oppressive majorities. Have instead only majorities that are unstable, constantly shifting, coalitions of minorities. That way you cannot have a constant oppressive presence. That's why Madison was a great believer in augmenting national power: Because states, being smaller, were apt to be more homogenous, and therefore were more apt to give rise to oppressive, durable majorities. He was, of course, recoiling, as many people were, from state legislators under the Articles of Confederation in the 1780s that were abolishing debts, canceling contracts and generally behaving irresponsibly.

He conducted a revolution in democratic theory, an astonishing achievement. Before Madison, all political philosophers who had believed that democracy was possible, and there were not many of them, had believed that democracy would be possible if but only if it were practiced in a small face-to-face society, one you could walk across in three hours. Rousseau's Geneva, Pericles' Athens, small homogenous societies that would be free of factions, which were thought to be the bane of popular government. Madison

turned this on its head. He said that what we want is a saving multiplicity of factions. We want constant social churning and turmoil that would prevent the great evil to which democracies are prey -- stable, oppressive, tyrannical, majorities. So as he said, in his two great papers, Federalist 10 and Federalist 51.

He said in Federalist 10 that the great object of government is to protect the different and unequal capacities of acquiring property. Different and unequal, both important because they would guarantee different interests. Mechanics, farmers, shippers, commercial people, different and unequal, the more the merrier. That's one of the reasons why he wanted an "extensive republic." Which is one of the reasons why his boon companion, the third president of the United States, Thomas Jefferson, leapt at the chance to make the Louisiana Purchase. By adding all this land, in which we could have a saving multiplicity of factions grow, we would generate a tumultuous politics that would make up in safety what it lacks in beauty.

This is not to say that Madison was indifferent to virtue, indifferent to good motives. He was a small "r" republican, which is to say he understood the fundamental principle of republican government to be representation.

Under democracy, the people decide issues; under republican government, the people decide who will decide. Elections are always about, not whether elite shall rule, but about which elite shall rule. And that is what the Founders wanted. Madison understood that while we wanted a system that could work without depending on the ascendance of good motives, there was plenty of room for public spiritedness. He spent his life in public service.

He understood what the ancients understood; he bridges the gap between the ancients and the moderns. The ancients approach to political philosophy was to say that we should take our bearing in government from the best which mankind is capable. Mankind has built within him aspirations and capacities and we should try to use government to lead people to the sunny uplands of virtuous living. The moderns, who probably began with Machiavelli, say: That's all very well, but you cannot rely on virtue. You must take your bearings from the strong and universal attributes of people, which are passions and appetites.

In order to have what Madison called a new science of politics you need what science relies upon, that is regular laws of behavior. Take your bearings, said our Founders, from the steady, the predictable and the reliable. Which is interestedness.

Understand that these strong and steady passions are not always pretty, but they are strong and steady, and therefore predictable, and therefore you can govern using them.

The Madisonian persuasion does not despair of nobility. Abraham Lincoln, in 1859, when war clouds were lowering over the United States, gave a speech at the Wisconsin state fair, in which he told the story of an oriental despot who summoned his wise men and challenged them to come up with a statement to be carved in stone, to be forever in view and forever true. The despot's wise men came up with a five word preposition: "This

too shall pass away.” And yet, said Lincoln, although that is chastening in times of pride and consoling in times of hardship, let us hope that it is not true. Let us hope that if Americans will cultivate their inner lives as assiduously and imaginatively as they cultivate the physical world around them, that the United States might, as he was to say at Gettysburg, long endure. That was not just compatible with, it was an extension of, the Madisonian vision.

That is to say, don't rely exclusively on the best from people, but don't give up on it. Design a government for people who will not always act well, but we can hope that there will be many people like our Founders. Like James Madison. You people are now creating a great educational resource to bring people into real communion with the most neglected Founder. When the chief justice said, “If you seek his monument, look around at modern America,” he was absolutely right. And it's not a bad thing to be, the father of modern America. Our Constitution endures because of the unsentimental realism of its principle architect, James Madison. I thank you for allowing me to come here and to express my admiration for him and for you, who have gone far toward reviving the nation's appreciation of him.