

## James Madison

### On Constitutional Interpretation

*During the 1820s Madison was often pestered to release his notes from the Constitutional Convention, which he resisted for the duration of his life (consenting to their posthumous release). Madison justified this refusal by turning to an argument that he had long made (most notably to Congress when discussing the Jay Treaty). For Madison, the definitive and binding meaning of the Constitution should not be discerned from the secret writings of those who drafted the Constitution at the Convention in 1787 but instead from the public meaning as understood by the state ratifying conventions and citizenry at large.*

#### **Debate in the House of Representatives, *Annals of Congress* (April 6, 1796)**

... whatever veneration might be entertained for the body of men who formed our Constitution, the sense of that body could never be regarded as the oracular guide in expounding the Constitution. As the instrument came from them it was nothing more than the draft of a plan, nothing but a dead letter, until life and validity were breathed into it by the voice of the people, speaking through the several State Conventions. If we were to look, therefore, for the meaning of the instrument beyond the face of the instrument, we must look for it, not in the General Convention, which proposed, but in the State Conventions, which accepted and ratified [it].

#### **[Letter to John Jackson, his brother in law, December 28, 1821]**

... [w]hatever might have been the opinions entertained in forming the Constitution, it was the duty of all to support it in its true meaning as understood *by the Nation* at the time of its ratification. No one felt this obligation more.... The departures from the true & fair construction of the Instrument have always given me pain; and always experienced my opposition when called for.

The attempts, in the outset of the Govt. to defeat those safe if not necessary, and those politic if not obligatory amendments introduced in conformity to the known desires of the Body of the people, & to the pledges of many, particularly myself, when vindicating and recommending the Constitution, was an occurrence not a little ominous. And it was soon followed by indications of political tenets, and by rules, or rather the abandonment of all rules, of expounding it, which were capable of transforming it into something very different from its legitimate character as the offspring of the national Will. I wish I could say that constructive innovations had altogether ceased.

Whether the Constitution, as it has divided the powers of Govt. between the States in their separate and in their united capacities, tends to an oppressive aggrandizement of the General Govt. or to an anarchical Independence of the State Govts., is a problem which time alone can absolutely determine. It is much to be wished that the division as it exists, or as it may be made with the regular sanction of the people, may effectually guard against both extremes: For it can not be doubted that an accumulation of all power in the General Govt. would as naturally lead

to a dangerous accumulation in the Executive hands, as that the resumption of all power by the several States, would end in the calamities incident to contiguous & rival Sovereigns...

**[Letter to Thomas Ritchie], September 15, 1821**

. . . As a guide in expounding and applying the provisions of the Constitution, the debates and incidental decisions of the Convention can have no authoritative character. However desirable it be that they should be preserved as a gratification to the laudable curiosity felt by every people to trace the origin and progress of their political Institutions, & as a source perhaps of some lights on the Science of Govt. the legitimate meaning of the Instrument must be derived from the text itself; or if a key is to be sought elsewhere, it must be not in the opinions or intentions of the Body which planned & proposed the Constitution, but in the sense attached to it by the people in their respective State Conventions where it rec[eived] all the authority which it possesses. . . .

**[Letter to Henry Lee] June 25, 1824**

...I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no Security for a consistent and stable, more than for a faithful exercise of its powers. If the meaning of the text be sought in the changeable meaning of the words composing it, it is evident that the shape and attributes of the Government must partake of the changes to which the words and phrases of all living languages are constantly subject.

What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense. And that the language of our Constitution is already undergoing interpretations unknown to its founders, will I believe appear to all unbiassed Enquirers into the history of its origin and adoption. Not to look further for an example, take the word "consolidate" in the address of the Convention prefixed to the Constitution. It then and there meant to give strength and solidity to the Union of the States. In its current & controversial application it means a destruction of the States, by transfusing their powers into the government of the Union...