

A portrait of James Madison, showing his face and upper torso. He is wearing a dark coat and a white cravat with a large, ruffled bow. His right hand is visible at the bottom, holding a piece of paper. The background is dark and indistinct.

MARY SARAH BILDER

MADISON'S
*H*AND

Revising the
Constitutional
Convention

MADISON'S HAND

*Revising the
Constitutional Convention*

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ABOUT MADISON'S NOTES

This book uses simple numerical references for Madison's Notes. The absence of page numbers in the manuscript long has caused difficulties. In the 1790s, when John Wayles Eppes was copying the manuscript for Thomas Jefferson, a sheet containing part of the September proceedings appeared to be missing. Eppes wrote "there appears to be wanting in this place part of a days debate." But the absence of page numbers left Eppes uncertain.

I refer to the manuscript as if Madison numbered every folded sheet of paper. Madison later referred to his pages as "sheets." He folded a large sheet (a paper size called post, approximately 9 inches high and 15 inches wide). The fold created four writable pages. After using a sharp point to rule margin lines, Madison placed the fold on the left. He began writing on that first page. He then opened the sheet, wrote down the left and then right side. He closed the sheet and finished writing on the back. While many sheets remain intact, a number have been torn at the center margin and are in two pieces. On others, the inside margin is adhered together at the fold—likely the result of hinges used by earlier archivists.

Although specialists refer to sheets as *bifolia*, for greater accessibility to a general reader, *sheet* is employed in the text. The manuscript references, however, have been numbered as *bifolia*. The manuscript consists of 136½ bifolia. The first sheet of the manuscript is b.1. The last bifolium of the Convention proper is b.132. Each page of the sheet is referred to in the order in which it was written. The first sheet has four pages: b.1-1, 1-2, 1-3, 1-4. As an example, the first May 14 entry appears on b.1-1; the last sentence of the September 17 entry appears on b.132-4. A slip of paper added by Madison to the manuscript is referred to by the page on which it was attached. Slips are numbered in order of their sequence on the page.

For example, Madison inserted the list of delegates on slip 1, b.1-1. As part of the manuscript, the sheets containing Madison's copies of Hamilton's plan and Randolph's July plan are included. The catalogue in the Evidence section lists the bifolia and slips. Adding 10 to these numbers will produce the current Library of Congress numbering system with two exceptions: the first two sheets and two sheets currently out of order.

Most specific references are to the manuscript or the transcript in *The Documentary History of the Constitution*. I have provided citations for specific information; general facts evident from any edition of the Notes are not cited. Sentence-terminating ellipses have been omitted. Letters have been silently capitalized or de-capitalized to read in accord with the surrounding sentences.

“ . . . when men put a machine into motion it is impossible
for them to stop it exactly where they would choose . . . ”

—*George Washington as recorded by Thomas Jefferson (1793)*

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INTRODUCTION

James Madison's record of the Constitutional Convention in Philadelphia in the summer of 1787 is the single most important source for the Convention. Politicians, judges, and scholars rely on the record, which was printed posthumously in 1840. The Library of Congress classifies the manuscript as a "Top Treasure" among the written documents it holds "in trust for the American people." This record—Madison's Notes—has acquired iconic status. But, in the process, the Notes have become misunderstood. This book is the story of the making of the Notes. It is a biography of the Notes. It is inevitably also a history of James Madison's mind, of the politics of the Constitutional Convention, and of the gradual emergence of the Constitution.¹

Madison's Notes are the most complete and detailed description of the Constitutional Convention. An official record of the Convention was compiled by its secretary, William Jackson. In addition, notes survive from over ten other delegates. Madison's Notes, however, are the only ones that cover every day of the Convention, beginning on May 14 and ending on September 17, 1787. No other notes are as long. The manuscript is comprised of 136½ sheets of paper, folded in half with four pages of writing—over five hundred pages. In one modern printed edition, the Notes cover over 550 pages. Even a recent, significantly abridged version comes close to 150 pages. And no other notes depict the Convention as Madison's Notes do: as a political drama, with compelling characters, lengthy discourses on political theories, crushing disappointments, and seemingly miraculous successes.²

To a remarkable degree, Madison's Notes created the narrative we inherit of the Convention. Over a century ago, Gaillard Hunt, the editor of the first modern scholarly edition of Madison's writings, proclaimed

that Madison's record "outranks in importance all other writings of the founders of the American Republic." Another noted editor, Max Farrand, concurred. When the Notes appeared, "at once all other records paled into insignificance." As a leading expert on ratification, John Kaminski, commented, "More than any other source, Madison's notes of the debates have remained . . . the standard authority for what happened in the Constitutional Convention." Two relatively recent reprints confirm this status.³

As a reliable source, however, Madison's Notes are a problem. They were revised; indeed, this book will suggest, revised to an even greater extent than has been recognized. Yet revision has long been intertwined with the Notes. The first printed edition described the Notes as having been revised. In the initial edition in 1840, the editor included a letter from Dolley Madison explaining that Madison had "them transcribed and revised by himself." A doctored reproduction of a partial page with revisions was reprinted in that edition. In the 1890s, the government published a lengthy transcript showing the visible revisions. In 1911, the influential publication, *The Records of the Federal Convention of 1787*, included selected revisions. In the 1930s, after discovering Madison's copy of the official journal of the Convention, Yale professors Roy Keller and George Pierson declared, "the *Debates* were pretty extensively revised within a few years after the Convention closed."⁴

Scholars have shied away from exploring the significance of the revisions. Their reluctance may arise from an anxiety about being perceived to accuse James Madison of manipulating the Notes. As James Hutson explained, "there has been an undercurrent of skepticism about their accuracy" ever since the 1840s, when Alexander Hamilton's son, John C. Hamilton, alleged that Madison inaccurately portrayed his father's positions. More provocatively, in the mid-1950s, William Crosskey, a law professor at the University of Chicago, argued that Madison had forged pages in the 1820s. Madison biographer Irving Brant and James Hutson, chief of the Library of Congress's Manuscript Division, rejected the forgery claim based on watermark and paper evidence. The existence of revisions has been known but nonetheless largely unexamined.⁵

The revisions do not detract from the manuscript's significance; they enhance it. The story of Madison's composition of the Notes emphasizes his inability—and that of his fellow delegates—to perceive the extraordinary document that the Constitution would become. Tracing Madison's

decade-long composition of the Notes guides us back to a moment when the substance and fate of the Constitution remained uncertain.

Madison did not take his notes because he wanted to have a record of the proceedings of the Convention that wrote *the* Constitution. This implicit assumption that his audience must have been us appears in accounts of the Convention and of the Notes. As a recent introduction explains, “Inspired by a keen sense of history-in-the-making, he decided to keep detailed notes of the entire proceedings.” But Madison did not know that they were going to write *the* Constitution. The delegates were writing a constitution a decade after an earlier effort at a constitutional document, the Articles of Confederation, had been drafted. Madison knew that the meeting was important—he wanted to keep notes—but he was not taking notes in the summer of 1787 in anticipation that those notes would be read 225 years later as the founding narrative of our Constitution. One purpose of history is to remind us that those in the past could not see the future. Historian Bernard Bailyn has written that what “impresses” the historian “are the latent limitations within which everyone involved was obliged to act; the inescapable boundaries of action; the blindness of the actors.” Madison’s Notes recorded one man’s view of the writing of a constitution in which the politics and process of drafting the document deferred comprehension of the Constitution as a unified text. Madison’s Notes, in the form they existed in the summer of 1787, revealed this indeterminacy.⁶

I suggest that Madison took his Notes first for himself, but also with the belief that the Notes would be read by Thomas Jefferson. To focus on Madison and Jefferson as readers does not mean that Madison was unaware of the possibility of a future, public audience. But the Notes were not taken *for* the public. They belonged initially to a genre of legislative diaries, kept by political figures in the era before official reporters and recorders kept accounts of the speeches and strategies of legislative proceedings. Madison kept such notes when he served in Congress in the early 1780s. Jefferson read those notes and praised Madison for them. During the summer of 1787, Madison wrote to Jefferson, who had been in Paris since 1783, that he had taken lengthy notes. Madison began composing the Notes because he had previously taken notes, and with the awareness that Jefferson would be a likely reader. Indeed, only with Jefferson’s impending return to the United States in 1789 did Madison feel the need to complete the Notes. In famously referring to the relationship

between Jefferson and Madison as “the great collaboration,” historian Adrienne Koch focused on the period after the Convention. The story of the Notes suggests that Jefferson’s absence from the Convention, Madison’s notetaking, Madison’s revisions, and Jefferson’s reading of the Notes were a foundational aspect of their later collaboration and influenced Jefferson’s interpretation of the Constitution.⁷

Madison’s Notes were not originally an attempt at an objective record. As Hutson emphasizes, “they are far from a verbatim record of what was said in the Convention.” Prior scholars have warned of two obvious limits. First, with the delegates meeting often for six hours a day, Madison’s record was highly selective. In 1905, the reporter for the House of Representatives, Frederic Irland, speculated that Madison copied “no more than one-tenth of all that was said.” Second, as Hutson also notes, “Madison could not speak and record at the same time.” Madison rarely kept notes for his own speeches and did not speak from a prepared text. The notes created a record of what Madison stated in the Convention. As historian Richard Beeman appropriately observes, “Madison’s diligence was in some measure self-serving.” Madison’s record of his speeches inevitably diverged from the versions that others heard. In the Notes, Madison created his own version of his comments and those of others.⁸

As Madison wrote the first original pages of the Notes, he was shaping his understanding of the Convention. Madison’s eventual title emphasized that they were by *James Madison, a member*. He was always a participant. As he continued his entries, the pages reflected different distances: in some instances, Madison wrote his entry a few hours after the event; for other entries, it was days; and in some places, it was years. After the first weeks, Madison composed the Notes by rewriting and revising rough notes taken with his personal style of abbreviations. How much of substance did Madison alter even in his initial version? Did he omit things said by himself or others? Did he slightly shift or shade others? Did he reorder discussions? Did he change motivations and reasons? The Notes were never a neutral record of the Convention. I have come to believe that Madison understood his revisions as repeated efforts to create a record—his record—of what he saw as significant in the Convention. Yet each revision increased the distance between Madison’s Notes and the actual Convention.

This book explores this distance through three questions. First, how did Madison originally write the Notes and what story did they tell? Second, how and why did he revise the Notes in subsequent years? Third,

how does recognition of the original Notes and their revision alter our understanding of the Convention and the Constitution? Because a complete answer would require a variorum edition and a tome on constitutional interpretation, the book seeks to sketch answers by following Madison as he wrote and revised his notes. The narrative focuses on the first two questions. Madison revised the manuscript far more extensively than has been realized. Evidence suggests that Madison wrote most of the first two-thirds of the manuscript over the summer of 1787; however, he did not finish it until sometime after the fall of 1789. Eventually, he completed the post–August 21 section and substituted a small number of new sheets containing his own speeches. The manuscript was likely complete by the time that Thomas Jefferson became vice-president in 1797, and Madison’s revisions after that point are visible. I leave the final question—the significance for modern constitutional interpretation—largely to the reader. For myself, I believe that the Notes indicate the impossibility of the delegates’ fully comprehending the final text of the Constitution in its entirety in September 1787 and the degree to which the understandings of the significance of the Constitution, apart even from its multiple meanings, developed in the years after 1787.

Madison’s practice of writing the Notes shaped his understanding of the decisions, controversies, and strategies. The book is a story about how Madison composed the Notes and also about the way in which the Notes reveal Madison’s shifting understandings. This view raises questions about aspects of the traditional narrative of the Convention. In recounting Madison’s composition of the Notes in the summer of 1787, this book addresses questions that interested me. To what degree did the small states care about state sovereignty? The Notes indicate more concern about large state political dominance than an ideology of state sovereignty. What role did Pinckney’s alternative plan play? The Notes suggest the plan may have remained a strategic counterproposal throughout June and July. Was Hamilton serious about his suggestions concerning an executive on good behavior? The Notes hint that Hamilton’s speech was, in significant part, a political strategy to make the Virginia plan appear moderate. Were the particular compromises reached over slavery inevitable? The Notes suggest Madison’s troubling role in creating the dynamic that permitted constitutional protection for slavery. What influence did Pinckney’s proposal for rights have on Madison? The Notes raise the possibility that Madison’s initial succinct rendering of rights may be the source of the distinctively broad and simple eventual language.

The purpose of the book, however, is not to advance these interpretations as independent theses, but to show the importance of reading a primary document such as the Notes with consideration of context, genre, audience, and subsequent provenance. Madison's original Notes and revisions reopen many debates in constitutional history. The Notes deserve their place as a foundational text once we appreciate that they are both text and artifact.

A biography of the Notes is inevitably a biography of James Madison. The process of reconstructing the original Notes from the summer of 1787 introduced me to a James Madison slightly different from the moderate, unemotional man often depicted. In the original Notes, particular adjectives, brief characterizations, even the rhythm of composition made Madison appear on occasion catty, aggravated, frustrated, annoyed, and even furious. Madison's revisions, by altering or excising these words and comments, obscured this aspect of the Notes. Read as a legislative diary, the Notes illuminate a private side of his personality at the Convention; read as the revised debates, the Notes confirm a public persona of dispassionate, analytical demeanor. What a text suggests about an author's psychological state is open to many interpretations. History and biography can never recover a true self from the paper remnants of a person's life. Although I do not share historian Lance Banning's view of Madison, he perceptively noted that "our interpretive container simply would not hold the founder's understanding of himself." Madison's understanding of himself was itself an intellectual and literary construction.⁹

The biography of the Notes intersects also with Madison's intellectual exploration of American federalism. Here again, I tell a story drawn from the Notes that differs in some respects from prior accounts. The founding generation sought to reconcile practical politics that favored republican government with theoretical and historical understandings about the struggles faced by such a government. In an era in which prominent political thinkers suggested that only a small republic could prosper, Madison became identified with the prediction that an extensive American republic could thrive. Indeed, in modern political science and law, Madison is almost synonymous with the idea that the large size of the republic cures majoritarian government's inherent tendency to empower certain interests and oppress other legitimate minority interests. Although this idea appears in *Federalist* 10, an essay written during the ratification debates over the Constitution, the origins of the idea has been traced to other Madison notes made before the Convention, and also his June 6

Convention speech. In reconstructing the Notes, I have come to believe that Madison did not have this idea clearly delineated prior to the Convention and that the process of writing down his speeches and recording other speakers was essential to its development. In the spring and summer of 1787, Madison seems to have wanted a specific structural solution rather than an assertion that the problem simply would not arise. Later revisions to the Notes rearranged the chronology. This story may help explain the puzzling observation of certain scholars that Madison's supposed famous theory seemed to have little influence at the Convention. Scholars in history, law, and political science, more well-versed than I about modern theories of political science and federalism, may disagree with the way I align the dots. Regardless of the details, however, I hope to persuade that Madison was not the intellectual father of the Constitution; instead, his constitutional ideas were nurtured through participation in Convention discussions and the endeavor of taking and revising the Notes.¹⁰

One political narrative emerged more strongly than any other in the original Notes: Madison's quest to establish a national government with proportional representation in both houses. Over the last two centuries, certain terms—"national," "state," "federal"—have become increasingly politically contested. Terms such as "national" and "state" were inherently entangled with the realities of political power. The Notes depict Madison's advocacy of a government that was expansively national in power and theoretically committed to proportional representation rather than state suffrage—and yet, nonetheless potentially politically dominated by one state, Virginia. The Notes emphasize Madison's dismissal of smaller state delegates' anxieties about Virginia's future power and conversely his willingness to promote slave state delegates' desires to protect slavery in his quest for bicameral proportional representation.

Virginia's possible dominance in future national politics came from size and slavery. The Convention delegates used rough estimates of population. There were three large states: Virginia, Pennsylvania, and Massachusetts. Of the three, only Virginia had a significant enslaved population. The later 1790 census offers useful comparative figures: 454,983 nonslave inhabitants in Virginia; 430,636 in Pennsylvania; 475,327 in Massachusetts. Virginia was the location of an additional 292,627 enslaved people. In fact, nearly half of the enslaved population in the United States was in Virginia. Virginia's potential future political power rested on incorporating enslaved people into the representation calculation by some means.

Debates over political representation necessarily related to the future legitimacy of slavery. If enslaved people—despite being denied freedom, legal autonomy, voting, and political rights—were counted, Virginia would be the single largest political power in national politics. Every other state would have to build a coalition even to equal Virginia's votes. On issues that affected Virginia's interests, the state's representatives might exert undue influence over United States politics. And the issues that the Virginians might be relatively unified on ranged from slavery to navigation of the Mississippi to the location of the national capital. This possibility haunted the decisions at the Convention.¹¹

In exploring this story, I have been indebted to a vast body of scholarship on Madison, the Convention, and the early republic. Archivists and editors have worked to compile and elucidate the documentary record of the Convention and of the Notes. The indispensable *Papers* of the central figures and early Congresses have collected and made understandable the larger context. Historians and political scientists have explored the relationship of the Convention to the social, economic, and political culture. Legal scholars and legal historians have explored how the framing generation thought about the interpretation of the Constitution. Narrative accounts of the Convention have conveyed the complexity of the proceedings and its underlying politics. Recent years, in particular, have seen an outpouring of writing on James Madison and his colleagues. With specific respect to the revisions, this book builds on insights by Irving Brant, Max Farrand, James Hutson, Gaillard Hunt, John Franklin Jameson, Roy Keller, George Pierson, Leonard Rapport, and the editors of the Madison and Jefferson papers. In particular, this book agrees with prior work proving that some revisions incorporated material from a copy by Madison of the official Convention journals and the published notes of Robert Yates. Lastly, this book is animated by history of the book scholarship's consideration of the creation, storage, and transmission of the text as a physical artifact.¹²

In the prior scholarship on Madison's Notes, understandable errors occurred. Earlier studies sought to date the manuscript by examining watermarks in the Notes and Madison's correspondence. In the process, some watermarks were misinterpreted, and differences among them were overlooked. Some verification in Madison's correspondence was mistaken. Comparisons were made to Jefferson's copy of the Notes but the extent of its missing sections was miscalculated. Of equal importance, the implications of Madison's 1789 copy of the official journals (identi-

fied first in 1930) was obscured by continued scholarly reliance on the 1911 edition of Farrand's *Records*. The cumulative effect of these assumptions has placed the Notes outside of the ordinary practice of repeated reinterpretation of historical texts.

A variety of relatively inexpensive new technologies have made this book possible. For much of the past century, the need to protect and preserve the manuscript complicated efforts to study it. Throughout the twentieth century, the pages of the manuscript were attached by hinges in large volumes. By the twenty-first century, the Notes had been disassembled. The pages are now stored separately, flat in mylar sleeves. Disassembly has had a significant benefit for this study. For the first time, the sheets can be compared side by side. Microfilm, digitized microfilm, and digital photography allow the comparison of sources at different institutions. Pages can be digitally enlarged and compared. Light tables and digital technologies provide rapid, inexpensive images of watermarks. For my endeavor, the Library of Congress and other repositories generously provided images of the watermarks and helpful access to the various manuscripts.¹³

Technological advancements and future research will continue to expand information about aspects of the Notes, such as additional watermarks and illegible passages. Perhaps new documents will be found: Madison's rough notes from the Convention; his original sheets before he made substitutions; or missing pages from Jefferson's copy. Perhaps information from the publication of the retirement series of the Papers of James Madison will cast further light. Perhaps other notes will be discovered or reinterpreted. Efforts to produce high-quality digital images, to check watermarks, and to trace provenances will continue to add to our understanding.

To facilitate further historical scholarship in this area and, inevitably, reinterpretations, I have attempted to be transparent about the underlying evidence. In instances of more speculative suggestions, I have sought to describe evidentiary limits. A section entitled "Evidence" follows the book chapters and offers a detailed discussion of the six manuscripts and a catalogue of each sheet with available watermark information.¹⁴

The arc of the Notes spans nearly a half century. In 1787, Madison started the Notes as a thirty-six-year-old Virginian with passionate commitments to reconfigure the power of the state legislatures in order to establish a functional national government. He had no certain income