NATIONAL CONSTITUTION CENTER

Madison's Vision and Revisions: Looking Back on the Constitution's Father

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[0:00:00.2] Julie Silverbrook: From the National Constitution Center in Philadelphia, this is We the People. I'm Julie Silverbrook, Chief Content and Learning Officer. The National Constitution Center is a nonpartisan nonprofit chartered by Congress to increase awareness and understanding of the Constitution among the American people. As the center marks the 250th anniversary of the nation, we're taking a closer look at the people, events, and ideas that set the American Revolution in motion and ultimately led to the creation and adoption of the Declaration of Independence and US Constitution. In this episode, we're sharing a recent live conversation exploring James Madison's legacy and his vision for the Constitution with Mary Sarah Bilder of Boston College Law School, Robert P. George of Princeton University, and Jonathan Rauch of the Brookings Institution.

[0:00:54.2] Julie Silverbrook: We want to explore Madison as a thinker who wrestles with disagreement, compromise, ambitions, and the practical challenges of self-government, which we still do today. I want to start with a big question for each of you. What is one aspect of Madison's thinking that you find especially illuminating and one limitation or unresolved tension that most shapes how you understand his legacy? And we'll start with Mary.

[0:01:18.8] Julie Silverbrook: I love that question. And I have to say, luckily I brought my pocket Constitution. I was so...

[0:01:24.9] Julie Silverbrook: And thank you so much for choosing ours.

[0:01:26.7] Mary Sarah Bilder: Well, I was so convinced, I almost didn't pack it because I was like, oh, they always give these away at the NCC. But you didn't.

[0:01:34.9] Julie Silverbrook: Well, no, we don't. We have our special edition ones for America 250.

[0:01:38.5] Robert P. George: Yes, they're around.

[0:01:39.6] Julie Silverbrook: Yeah, they are. Yeah. You have to get an updated one.

[0:01:41.2] Mary Sarah Bilder: It wasn't in the little bag. Anyway, luckily, last time I was down at the NCC doing a teacher's thing, I grabbed one of these free ones. But so for me, I think the Madison piece that I find just incredibly compelling is the language of the Ninth Amendment and his understanding of the Ninth Amendment in the Bill of Rights. And so that's why I pulled it out so I don't mess it up. So Madison was largely responsible for the Bill of Rights. It's one of his great contributions, and I wrote about that for an essay for the NCC. And one of the concerns he had about the Bill of Rights was: the minute you make a list, the problem is what if you don't have everything on the list? And we call it the enumeration problem. My husband's always like, "if you have three fruits, did you want me to get a fourth fruit at the grocery store?" So it's sort of the same

problem. And Madison thought this was actually a deep conceptual problem with writing a Bill of Rights. And so he worried a lot about it. And so in what becomes the... We know as the Ninth Amendment, he literally wrote, and it was then adopted and ratified, "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." And I think so much of his understanding of rights as a culture of rights, as rights not just enforced by the judiciary, but enforced by what people came to believe, is just one of the great understandings that has endured for that time. So that piece of it, not just the Bill of Rights, but specifically the idea that the Bill of Rights is not the entire set of rights we have, I think is so important.

[0:03:30.2] Mary Sarah Bilder: I think the piece of what he thought about that maybe is more of a struggle is he thought that the Senate, the second branch, should be proportional representation. And he didn't mean representation based on what we would think of as proportional representation. He actually, during the convention, suggested that it represent people and with power to every person they enslaved. So he actually thought about it that way. And at the very beginning of the convention, delegates from Connecticut were like, you're just never going to win this. The states have to be represented, and you shouldn't push this too far. And Madison pushed and pushed and pushed. It was a thing that he left the convention disappointed about. And eventually, Jefferson was like, actually, this is kind of a cool idea that you guys got the states represented in the Senate and the people. But I think the question of what is the role of the Senate, who should be represented in the Senate, how do we think about in a democratic republic what the job of the Senate is, particularly as the country has grown larger, I think remains a really important question. And Madison struggled to figure that out. Like, what does representation mean? And I really think that piece of it we don't have figured out today either.

[0:04:54.2] Julie Silverbrook: One thing I want to ask you about before we move on to our other panelists, because you wrote a very interesting book about it, is Madison is not a person locked in 1787. He has a willingness to revise and reconsider some of his ideas throughout his political career. Could you talk a little bit more about that?

[0:05:17.3] Mary Sarah Bilder: Yeah. So rights are a great example of that. At the convention, he did not think the Constitution should have a Bill of Rights. Very famously, when you teach this, I know the front row here knows this. Thank you, front-row teachers. The front row knows this. Near the end of the convention, there was a motion to have a committee to write a Bill of Rights, and it's one of the few unanimous votes no at the convention. Everyone's like, "No, we're not doing that." And Madison agreed with that position. And then in the wake of the convention, came around and changed his mind on that and came not only to be the leading advocate for a Bill of Rights, and the reason we have a Bill of Rights is because Madison introduces it in 1789 and pushes it, but he comes to really, I think, believe very strongly in the way that rights could be motivational for people in terms of believing in a free country of liberty and also used as a sort of way for the judiciary to check power. And he changes his mind on lots of things, but I think that's a really key...

[0:06:26.4] Mary Sarah Bilder: Very few people change their mind completely, make a campaign promise. He had lost the Senate, and he really... He was like, "I'm the great James Madison and the first Congress is going to start and I'm not going to be in it." And they said, "That's because you have been against a Bill of Rights in Virginia." And so he said, "Okay, I'm changing my mind. I have changed my mind." He makes a campaign promise that if he gets elected into the House of Representatives, he will push for a Bill of Rights. And he does, very effectively pushes for the Constitution to be amended.

[0:06:58.1] Julie Silverbrook: Professor George, same question to you. One aspect of Madison's thinking that you find especially illuminating and one limitation or unresolved tension that most

shapes how you understand his legacy.

[0:07:09.9] Robert P. George: Well, thank you, Julie. First, let me say how honored I am to be speaking on this panel under the auspices of the NCC. And I want to congratulate and thank the NCC for the wonderful work that it does in public education about the Constitution. I don't know if it was always this way. I've been teaching for 41 years, entirely at Princeton, with three or four visits at Harvard. So I'm teaching a fairly small segment of students, but they're pretty high achievers, and they come in, and this has been true for all 41 years, knowing almost nothing about the Constitution. The state of civic education in the United States is abysmal and has been abysmal for a long time, and the NCC's doing something about that. And your programming is very effective. Those of you who are donors and supporters, God bless you, because you really are doing the Lord's work. It's great to be on with... John and I are old friends, but to make new friends with Mary and Julie. So thank you very much. Madison and his associates' genius, in my opinion, was understanding something that had at best only vaguely been understood by anybody in the past, and that is that the real protection against tyranny, the real protection of liberty understood as the absence of tyranny, is to be found in structural constraints on power, power checking power, power being rendered accountable.

[0:08:34.9] Robert P. George: That's, as a matter of fact, why he wasn't keen originally on the idea of the Bill of Rights and opposed it. What was going to prevent the collapse into tyranny, which is a real danger, since all previous republics had collapsed and many of them had collapsed into the worst forms of tyranny? So what was going to do it? Not trying to prohibit by a constitutional instrument some powers when power had generally been given to a central government, but rather by ensuring that there was no central government exercising plenary authority, what we call police powers. In other words, the national government would not be a government like the government of England, or like the government of Spain, or like the government of France, a government of general jurisdiction. Rather, it would be a government of delegated and enumerated powers sharing authority with states, which function not as governments of delegated and enumerated powers, but as governments of general jurisdiction exercising plenary authority. That is authority up until the point at which there were prohibitions on that authority, either because the authority had been given exclusively over to the national government, or because there was a specific constitutional prohibition, like the prohibition on granting titles of nobility or enacting ex post facto laws or something like that.

[0:09:52.9] Robert P. George: And I think Madison is fundamentally right about that. The real protection against tyranny are structural constraints on power, making sure that power is checked, making sure that the people exercising power are accountable. And there are really two dimensions of that. One, of course, is the system of federalism that I just described. And the other, of course, is our famous separation of powers on which there was a very big and important decision by the Supreme Court today. You think that's a decision about tariffs? Well, yeah, but only secondarily. It's actually an opinion about the scope and limits of executive power and the relationship between legislative and executive power under our Constitution. What do I think he didn't get quite right, or didn't foresee, or didn't understand? And he can be forgiven for this. A couple of things. One, I think he thought the structural constraints would be more effective than they turned out to be, and especially in two areas. One is the relationship between the states and the national government.

[0:10:58.0] Robert P. George: I don't think he foresaw the ability long-term of the national government to basically overwhelm state authority. And the second thing is I think he thought that those exercising power, offices within the national government would be much more jealous than they've turned out to be, especially when it comes to the legislature, in protecting their own institutional authority and prerogatives. We've seen over time a massive abdication of congressional authority, on the one side to the executive, on the other side to the judiciary. He didn't foresee that,

but it's the reality, and I think it's a problem in our constitutional system. End of sermon.

[0:11:39.3] Julie Silverbrook: You guys are doing much shorter sermons than I thought. I don't have to check you for time at all. Jonathan, same question to you.

[0:11:47.3] Jonathan Rauch: Well, I will do. Thank you. First of all, thank you for having me again. Those of you who saw me this morning, sorry, I'm back. As the Terminator said, "I'll be back." It's an honor to be here and to once again confront you with my inexpert views. I'll do the second question first because it's a short answer, and it's a very common answer, and it's the one everyone gives, which is no shade on Madison, but he did not anticipate the role of parties. And had he anticipated the role of parties, I think the design would have looked something more like a parliamentary system than it does, because we are suffering greatly right now by the effort to pound a parliamentary party system square peg into a presidential constitutional round hole. What he got right, I believe that Madison was a space alien because the insight that I'm about to suggest is so very subtle and unprecedented. So my shortest book is *The History, The Story of Our Constitution* by Jonathan Rauch. It consists of one chapter consisting of one sentence, and here it is: "Jefferson got in an argument with Hamilton, and Madison won."

[laughter]

[0:13:15.5] Jonathan Rauch: So Hamilton wants a large, commercial, aristocratic republic. Jefferson wants a small, agrarian, democratic republic. They both have fundamentally static visions for what the country would be. Madison says, "You're both wrong. We are going to force these two visions into contention with each other and allow it to work out dynamically." And I think that that word "dynamic" is where Madison's genius lies. Unlike, or at least to a greater extent than anyone then, and to a significantly greater extent than I'd argue most people now, Madison solves the core problem of how do you make a republic both dynamic and stable? He studies for months to try to figure this out, and he comes up with the right answer, which is if you divide government in various ways and then force factions into a constant state of negotiation with each other so that they have to compromise all the time to get anything done, you can create not just compromises that split the baby. That's not usually how compromise works. Compromise is a creative, dynamic negotiation in which Robby and I sit down and maybe Mary joins us and we try to figure something out. And we usually come up with a better solution than anyone walked in with because we have to bring in fresh ideas, we have to have workarounds, what about this, what can this other group offer? So by forcing the system into this constant negotiation, we're able for 250 years now to achieve both stability and constant adaptive change. That's an incredible thing, and that, I think, is Madison's greatest contribution.

[0:15:06.7] Robert P. George: You know, John, it's so interesting because, of course, Jefferson was, for all intents and purposes as an American, an aristocrat. And Hamilton was what? Not an aristocrat. But the aristocrat wants a democratic system, and the non-aristocrat wants an aristocracy.

[0:15:27.2] Jonathan Rauch: You weren't here, Robby, but you should know our theme for this meeting has been hating on Thomas Jefferson.

[laughter]

[0:15:33.6] Julie Silverbrook: A lot of Jefferson hating.

[0:15:34.7] Jonathan Rauch: You're welcome to join the party.

[0:15:37.8] Julie Silverbrook: I want to talk a little bit about Madison's view of human nature and

how that informed his thoughts about constitutional design. And I'll start with you, Professor George, for this one.

[0:15:50.8] Robert P. George: Oh, sure. Well, he was educated at Princeton, and that turns out to be important. Princeton, of course, was Presbyterian. The Presbyterians are, of course, Calvinists. He had a particular tutor, what we would today call a professor, who went on to actually be the president of the university. His name was John Witherspoon. He's a Scottish Presbyterian, Calvinist minister, the only minister, the only minister of religion to sign the Declaration of Independence. When you read *Federalist* 10 and you hear Madison's account of how wicked we are, how depraved, as part of his argument for the need for very sharp, strong structural constraints on power, trust nobody. All that stuff about human nature, how greedy we are, rapacious we are, therefore in need of being checked, can't be trusted with power. That's all coming from Witherspoon. That's all coming from that Calvinistic form of Presbyterianism that Witherspoon represented. And his picture of human nature plays a huge role in what Jonathan Rauch called those reflections that he undertook about how to make a republic survive. How you could have a republic, for example, that is both stable and dynamic. Everything in the background of Madison's thought is based on that understanding of human nature. You put in a different understanding of human nature, you're going to get a different outcome. The reason Madison produces what he produces is he's beginning with that understanding of human nature.

[0:17:31.5] Julie Silverbrook: Mary, do you want to weigh in on Madison on human nature?

[0:17:35.6] Mary Sarah Bilder: Well, I don't... I guess I'll just say, so I don't think Madison's the father of the Constitution. I think that...

[0:17:45.5] Julie Silverbrook: Did he take a paternity test?

[0:17:46.4] Mary Sarah Bilder: Yeah. He was the great recorder of the Constitution. He was taking notes, I've argued, mostly for Jefferson, who was in France having a great time. And I think one of the things for me that's interesting about Madison is that he's very typical of what many people believe in this time period about human nature. And the piece that I always find interesting that he believed was, he believed, John Adams believed this, they all kinda believed this. They had an understanding from the classical tradition that human ambition and the desire for power and for money was the great problem. And they understood that there were types of government, and they all had the potential to decay. And so very early on, all of these people had sort of in the back of their minds, including Madison, architecture in which there were, you had the government of the one: monarchy, the government of the few: aristocracy, and the government of the many: democracy. And the great challenge was to put all of those forms together. That's why in some ways they thought the British government in different ways was interesting. But they also had learned from the classical period that all of those forms had a sort of decayed side to them.

[0:19:25.6] Mary Sarah Bilder: And so monarchy would decay to tyranny, aristocracy to oligarchy, and democracy to mob rule. And the great challenge, and that was because ambition and the desire for power were innate. And so the great piece, and I totally agree with this about Madison, was other people had said, "oh, it's just enough to say to everybody, be good people, be virtuous." And Madison, and in this he's very different than a lot of people, but John Adams also believes this, that's insufficient. That you cannot change fundamental human nature. You can tell people that you can have virtue, but you cannot change it. And so what you have to have is, you have very famously, right, ambition has to check ambition. And that's how you solve this long problem. And so, I've recently written, John Adams was in England and very... He and Jefferson thought they were doing what you were supposed to be doing, going off and talking to Europe, and there's this meeting, it's going to be boring. And then they miss out, right? They miss out on the

most important thing that happens. And in some ways, I think the fights in the 1790s come from them not having been at the party in 1787.

[0:20:49.4] Mary Sarah Bilder: But Adams gets his book serialized in the newspaper during the summer of 1787. And one of the things Adams and Madison and many other people come to believe is that the great challenge in the Constitution is developing these mechanisms that will check it so that however human nature is, and they all think men are not going to be angels, the system will structurally work. But I don't think Madison's the only person who thinks that. I think it's widely believed in the framing period. And let me just add to that. That's why one of the interesting things is when the Constitution comes to be ratified, the people who are against the Constitution, they read the Constitution and they say, "Hey, you haven't stopped people from being ambitious. This thing's going to fall apart." And the Federalist response, repeatedly, if you read *The Federalist Papers* and you read all the proponents of the Constitution, is, "Right. The system is going to structurally balance itself." And I so agree with Professor George that one of the great sadnesses for people like me who really think about the structural ways of the Constitution is that that means each branch and each thing has to actually stand up. You actually have a job in standing up and occupying the space that the Constitution gives you, because that's required, because virtue alone, human nature alone, is insufficient.

[0:22:23.3] Julie Silverbrook: But necessary. We need to have... We just released a course on civic virtue, so we're not counting it out, right? But let's talk about that.

[0:22:29.2] Mary Sarah Bilder: But there's a difference between... I think there's a difference between civic virtue coming out of a process aspirationally and insisting that the only check on the system is inside individuals. And I think that's the difference.

[0:22:44.4] Robert P. George: Well, before John answers this question, just on that very point.

[0:22:47.2] Julie Silverbrook: This is what happens when you're on a panel with friends.

[0:22:50.6] Robert P. George: I mean, consider, of course, that Madison and the other Founders, certainly authors of *The Federalist Papers*, are telling us that the structural constitutional constraints are simply auxiliary. Auxiliary means secondary. Well, if that's secondary, what's primary? And actually, it turns out that virtue in the people is primary. But that's not because the people are naturally virtuous. The people are naturally wicked. A philosophy of religion teacher I had in college taught us to understand human depravity in Calvin's view by quoting Calvin as saying, "On the day of judgment, even the elect will be obnoxious in the sight of God." That's how wicked and fallen we are. And yet we can be formed with virtue. We don't have it naturally, but here what matters are the institutions of civil society: family, religion, community. Those have the primary role in forming citizens capable of republican government, capable of self-government. The structural constraints of the Constitution are the auxiliary precautions.

[0:23:57.1] Jonathan Rauch: So my comment is in the nature of a footnote. The best book about the Constitution you have never read or heard of, but which you should all order immediately on leaving this session because I think it's brilliant, is a book by a scholar named Robert Tracy McKenzie. It's called *We the Fallen People*. And it explores how the Founders, the whole generation, as Mary said, was deeply imbued with the Christian idea of fallenness. The notion that we have today, which dates from Andrew Jackson, that the people are wise and good and what the country really needs is a government as good as its people, was not something the Founders believed. And its accession in the populist days of Jackson onto the present, McKenzie argues, is a fundamental distortion of our system and one that we have still not completely recovered from. It's a fascinating book.

[0:24:52.8] Robert P. George: Again, just read *Federalist* 10. It tells you all you need to know about their image of human nature.

[0:24:57.7] Julie Silverbrook: So are we a fallen people?

[0:25:00.8] Robert P. George: All people are fallen. That's the whole point. That's Madison's point. There's nobody who's not fallen through and through. Total depravity.

[0:25:08.9] Jonathan Rauch: Well, not total. We can be shaped.

[0:25:11.6] Julie Silverbook: I'm glad we're sending people out to cocktails after this.

[0:25:14.2] Robert P. George: We can be shaped. That's right. But in ourselves, we are totally depraved.

[0:25:17.0] Jonathan Rauch: Remember the view of institutions...

[0:25:17.5] Mary Sarah Bilder: I was told not to disagree with anyone, so I'm saying...

[0:25:20.4] Julie Silverbrook: No, I didn't say that. No, I never said that.

[0:25:23.1] Mary Sarah Bilder: Yeah, I was told, "Don't disagree, just answer the questions."

[0:25:26.7] Julie Silverbrook: Well, can we talk a little... We did just on Wednesday release a course about civic virtue, and that's a lifelong journey, and we all have to continue to work toward that. We will all fall short in that endeavor. And so maybe just some brief meditations on civic virtues that you think are important for governance of the self and self-government. And I'm going to start with Mary. And if you disagree, go ahead.

[0:25:56.6] Mary Sarah Bilder: I mean, so I'm working on another biography of a woman, Catharine Macaulay, who was a great constitutional thinker, incredibly influential on the Revolution, visited Mount Vernon. Washington loved her, Adams loved her. Every single person read her. And she writes about virtue and she thinks virtue is great, but what she really cares about is ending a world based on monarchical domination. And she's one of the first people to use the phrase "equal rights of men." And the Declaration of Independence, I've argued, in many ways, is largely cribbed from her fourth volume of her history, including the sections on Locke. And she thought virtue mattered and everything, but fundamentally she argued that what really mattered was that people were equal. And what she meant by that was equals in the eyes of God, equal in the capacity to participate in the political system. And actually, she was incredibly... This argument was incredibly powerful in the 1760s and 1770s. And I think the key piece in this period is the decision to end a monarchical government. And what they meant by that was not just ending the king, but ending the rule of one and ending the notion that one person had the right to dominate other people.

[0:27:34.1] Mary Sarah Bilder: They often referred to it as kingly government. And what they meant wasn't that the king was royal, but that the king had power. And I think even though you see virtue in this period, you see it used a lot, I think this desire for words about free and liberty and equality are more present. And they think, a lot of people in this period think, if you have a free government, that's what they all say, a government that's free, what does it mean to have a free government with liberty and equality, then virtue follows as opposed to the other way around. So, I think in this period, people are just so motivated by this piece that we've lost because we do not really understand what it felt like to live under a monarchical government. And I think this framing

generation from the 1760s through the 1780s, that is the most significant thing they're trying to accomplish. What does it mean to end monarchy, end the peace with Britain, but also end the idea that one person rules over other people?

[0:28:47.0] Julie Silverbrook: So you guys can either respond to the monarchical constitution question. I love this because I do this too. I bring up what I want to.

[0:28:56.5] Mary Sarah Bilder: Yeah, I just think virtue is, you see it, I mean, I just think if you word search it, you'd find "liberty" and "free" more than you'd find virtue. "Liberty" and "free" as key words in this period.

[0:29:10.4] Julie Silverbrook: Anyone want to take Mary on?

[0:29:16.4] Jonathan Rauch: Which of us should...

[0:29:17.9] Robert P. George: You go. Go ahead. Yeah, I've jumped ahead of you twice, so I'm going to defer to you this time.

[0:29:22.2] Jonathan Rauch: Well, one could form a list. I think the notion of republican virtue was fundamental to the founders' view, regardless of how many times they may or may not have used that word. They all told us. Washington in the Farewell Address, Madison in the Virginia ratification debate, Adams perhaps most famously. Why was it without virtue in the people? How does the quotation go?

[0:29:46.9] Robert P. George: "Our Constitution was made only for a moral and religious people and will serve well no other kind of people."

[0:29:52.9] Jonathan Rauch: Thank you. I know I brought you here for a reason.

[laughter]

[0:29:58.3] Jonathan Rauch: And I think this was bedrock for them. So what do those virtues consist of? Well, you could form a long list and different things would be on it. I think we know lawfulness would be on it. Lincoln tells us that in his very first speech. I think factfulness, truthfulness should be on it.

[0:30:14.1] Robert P. George: Honesty. Yeah.

[0:30:14.6] Jonathan Rauch: Honesty, civility. And civility doesn't mean politeness. Civility means treating your fellow citizens as your equal in a fundamental way. Some sense of fairness, some sense of forbearance, which is you're not trying to dominate and you don't need to win every election. You're going to try to share the country. And one could go on in this way. I wouldn't pretend to have an exhaustive list here, but I think they saw these things as fundamental. And I think their hope was, and to some extent justified, that although, as we said, humans are by nature fallen and we can't be changed in our nature, that we can be trained and that our institutions can train us in the virtues and inculcate and habituate us in the virtues. I guess that's kind of an Aristotelian view. I have a professor of political theory to my right, so I'm being careful. And I think they were right about that. I think when those institutions function well, we can be trained in the virtues. And that's what they were counting on would happen. And alas, is not happening as well recently.

[0:31:20.8] Robert P. George: We know that Washington quite self-consciously believed that he

had to model virtue, virtues, in order to shepherd the country into a kind of lasting thing so it wouldn't just dissolve. He thought about every step he took. He thought about how he would come across. He thought about his deportment. We praise Washington's honesty. We have the old stories about "I cannot tell a lie, I chopped down the cherry tree" and all that stuff. Well, the story's not true, obviously, but it's true that Washington himself understood that he as a statesman had to model virtue because it was so... The particular virtue of honesty in that case, but the other virtues as well, because if the country, if the people did not appreciate and come to admire and want to actually live out those virtues, republican government couldn't survive.

[0:32:23.9] Julie Silverbrook: Right. So if you don't want to be fallen and you want self-government to continue, please go take our new free course on civic virtue available on our website. Thank you guys so much for creating an opportunity for me to plug that shamelessly.

[0:32:43.3] Robert P. George: Julie, if I can add one more thing.

[0:32:44.7] Julie Silverbrook: Yeah.

[0:32:45.1] Robert P. George: So I think that our Founders conceived of virtue as a matter of self-control, that is government of the self, being master of oneself, being master over one's wayward desires. That if you wanted to have self-government in the political sense, you needed self-governing people in the personal sense. And there was a positive and a negative version of that. So some virtues you need to force yourself, you need to govern yourself and force yourself to do the right thing. Courage is an example of that kind of virtue. On the negative side, sometimes you have to force yourself not to do the wrong thing, tell a lie to get ahead or tell a lie to get yourself out of a jam that you got yourself into or something like that. But whether it's exercising self-restraint or self-control to do something good or to avoid doing something bad, it's still a matter of being a person who possesses personal self-government and therefore is fit to be a participant, a citizen in a self-governing republic.

[0:33:52.9] Julie Silverbrook: I do want to circle back to Madison's views on liberty and equality, which you brought up, Mary. And so if you want to talk specifically about his views on those topics, and then I'll open up to the rest of you.

[0:34:04.5] Mary Sarah Bilder: Oh, let them go first.

[0:34:05.8] Julie Silverbrook: Oh, you want to go first? Okay.

[0:34:06.8] Mary Sarah Bilder: Yeah.

[0:34:07.6] Robert P. George: Oh, on liberty and equality? Yeah, yeah, okay. So one important point on liberty, of course, is the founders were very careful to distinguish liberty from license. Those were two different things. Sometimes in our modern parlance, we think of liberty as well, just being able to do what you want, when you want, with whom you want, as long as there's consent, all that kind of stuff. That's not their understanding of liberty. License is when you abuse liberty to do things that are wrong. Liberty is when you use your freedom in order to accomplish things that are good and that are worth accomplishing and doing so in a morally upright way. What's fundamental about equality is what we might put in terms of these days, it was not their language, what we might in these days put in terms of human dignity. Obviously, they recognized that there were vast inequalities among them. Inequalities of intelligence, of strength, of beauty, of ability, obviously of social rank and class and all that stuff. Charm. Obviously, people are very unequal in charm. So in what respect are they equal? Well, in their dignity. And that includes their right to be full participants, the least brilliant right alongside as an equal with the most brilliant in

making the decisions about how we're going to order our lives together, our decisions about the common good.

[0:35:34.0] Robert P. George: That I think is fundamentally what they meant about equality. That's, I think, what we should be hearing when we hear in the declaration that we hold these truths to be self-evident, that all men are created equal, that they're endowed by their Creator with certain unalienable rights. Equal in what respect? Equal in fundamental standing, status, worth, dignity.

[0:35:56.4] Julie Silverbrook: Hard to top that.

[0:35:58.9] Jonathan Rauch: Yeah, I'll go with that.

[0:36:01.5] Julie Silverbrook: You're going to ditto? We're going to ditto that?

[0:36:04.2] Mary Sarah Bilder: Yeah. I think for me, and I wrote a book on James Madison, and I wrote a book on Eliza Harriet O'Connor. She was the first woman public lecturer in the United States and she lectured in the summer of 1787 to George Washington, who was pretty impressed by her, actually ended up, before he left Philadelphia, bought the books that she had talked about. And I argue she's the reason that the Constitution is written in gender-neutral language, which it is, using "person," "he." New Jersey has women voters in this period. And so I think that this idea of how do we think about these keywords in this period is much more contested. I like to think of this as a framing generation. We're a representative body and we're representative politics and we're aspiring to a democratic republic. And I think in this generation, in the 1760s, 1770s, 1780s into the 1790s, actually on both sides of the Atlantic, people are really trying to think hard about what does it mean to be represented? What does keywords like "liberty," "equality," "slavery" mean if you start moving away from a hierarchical situation and a hierarchical society?

[0:37:28.8] Mary Sarah Bilder: And one of the really wonderful things that you can do now because of the NCC and because of so many things is we can see lots of petitions and documents written using the language of liberty, of equality, by lots of groups of people. And so in Boston, Prince Hall and Black Americans basically start saying, "What does this language mean for us, and what does it mean towards ending slavery?" And the Massachusetts, the Massachusetts Constitution, they have a draft, they don't adopt it. And one of the reasons that the first draft of the Massachusetts Constitution isn't adopted is because it would have disenfranchised Black Massachusetts citizens. And the 1780 Constitution does not do that. And there's arguments, people don't believe this, but there's arguments for women voting. And in fact, in the 1780 constitutional convention for the Massachusetts Constitution, they go back and forth about whether to put "male" in the Constitution or not. New Jersey doesn't. Women vote in New Jersey. And so I think we look back on this period and we don't see what we all know today, which is there's so many people with so many different points of view. And there's many, many people in the early United States who hear words like the Declaration of Independence, like "What does it mean to be equal?"

[0:38:54.6] Mary Sarah Bilder: "What does liberty look like?" And they believe those words apply to them. And we know the long history of how that plays out, but I think the great, amazing thing about this period is a set of documents come into existence that, regardless of what various people who wrote those documents might have imagined, other people hear them as, "That belongs to me. That is also my story." And what it means to be an American is to be part of that story. And I think that really is the great gift from this period with respect to those keywords.

[0:39:30.6] Julie Silverbrook: We only have a couple of minutes left. And as we've said a couple of times, we're celebrating the nation's 250th. And whether he is a father or the father, he certainly has an enduring legacy worthy of reflection. So if there's one element of his legacy that folks here

should reflect on as they leave this panel today, what should that be? And we'll start with Jonathan.

[0:39:56.7] Jonathan Rauch: Well, I will mention two elements of his legacy from that neglected portion of his career, the presidency of James Madison. Madison was a better president than he gets credit for. He was not a damp squib or a mediocrity. And in fact, he effectively won a war that established America's actual independence in the larger world, a pretty remarkable thing, and left, was not only re-elected with a large margin, but left with very high approval ratings. So two things we learned from Madison as president is, first of all, be flexible. This is a president who in the 1790s rails against Hamilton's central bank, thinks it's going to be basically a monarchic institution, and then signs, renews the Bank of the United States. And when asked why, he basically says, "Well, because it's been around and it's been working, and so we can assume it into the Constitution." Now, in a world where people tend to often have very rigid views about the Constitution or a notion of originalism which says it can only ever be one thing, we need to look to Madison's adaptability. A second point about Madison's presidency, which I think is under-examined, is that this was America's first great foreign war.

[0:41:20.9] Jonathan Rauch: It was a great emergency. The White House was burned down. Madison had to flee the White House. You all know the story. And yet, despite this wartime and this national emergency, Madison did not violate the Constitution or stretch presidential powers in any major way. He stayed within the four corners of the Constitution he wrote. Now, ever since Madison, and right now in the present day, I would argue, presidents have been finding ways to use war and emergency to expand their power. And I think we should reflect on Madison's example in specifically not doing that.

[0:41:59.6] Julie Silverbrook: Professor George.

[0:42:02.0] Robert P. George: Yes. I want to put what John said there at the end in italics. I think the thing we have most to learn from Madison and his associates, there were fathers, plural, of the Constitution, I think the thing we most have to learn is to be just very careful about entrusting power to anybody. If you entrust power to people, it's got to be checked power. Power's got to be accountable. Really, at the end of the day, our best protection against tyranny, best protection of our honorable liberties, is in constraints on power, constitutional-level constraints on power. Now, if you do that, you give something up. You do. Unchecked power will enable a really great person, a great president, a great Supreme Court to do really great things. But they can also do really bad things. And we need to be cautious. We need to be willing to give up, especially when there are emergencies, wars, natural disasters, and the temptation is to yield to the guy who comes along and says, "Just give me unchecked power. I'll fix it. I'll make you rich, I'll make you happy, I'll solve your problems, I'll protect you." Don't take the deal. Give that up, knowing you're giving something up in return for the protection that you get with the constraints on power and power's accountability.

[0:43:36.2] Julie Silverbrook: Mary, last word.

[0:43:38.7] Mary Sarah Bilder: This is going to sound like a strange story to answer it with, but this is the thing I actually admire Madison the most for. Jefferson and Adams had died on July 4th, very conveniently and appropriately, as great leaders. And Madison lived longer than almost anybody else in his generation. And at the end of June, when he was dying, he was urged by many, many people to take basically morphine, opioids, so that he would live to die on July 4th like all other great people. And this would hold, I always think this is also a good story if you're ever president, that you should be grateful for Madison about this also. But importantly, they wanted him to live that long so that sort of presidents would become like the Roman emperors, right? Like, this would be the great thing, and then presidents would die. And Madison refused. Madison refused to

be allowed sort of to be forced into this story in which presidents were somehow larger than life and everything like that. And he just said, “I'm going to die like a regular person,” basically before July 4th when I die. And I think just like Washington stepping down, that sort of just enormous personal sense that at the end of the day, what it means in a democracy is that great people are just people, was just the thing I greatly admire him for.

[0:45:11.9] Julie Silverbrook: Well, everyone, please join me in thanking this stellar panel exploring James Madison.

[applause]

[0:45:22.7] Julie Silverbrook: This conversation was recorded live on February 20th, 2026, as part of the NCC’s President’s Council retreat in Miami, Florida. It was recorded by Advanced Staging Productions. This episode was produced and mixed by Bill Pollock, with production support from Charles Sahm. Research was provided by Anna Salvatore, Trey Sullivan, and Tristan Worsham. Please recommend We the People to friends, colleagues, or anyone anywhere who’s eager for a weekly dose of constitutional education and debate. And as always, remember that the National Constitution Center is a private, nonpartisan nonprofit, and we rely on your generosity, passion, and engagement for all of our programming, including this podcast. Please consider donating today at constitutioncenter.org/donate. On behalf of the National Constitution Center, I'm Julie Silverbrook.