

# Michigan Law Review

---

Volume 117 | Issue 6

---

2019

## Review by Justice John Paul Stevens (Ret.)

John Paul Stevens  
*United States Supreme Court*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Legal Biography Commons](#), and the [Legal History Commons](#)

---

### Recommended Citation

John P. Stevens, *Review by Justice John Paul Stevens (Ret.)*, 117 MICH. L. REV. 1019 (2019).  
Available at: <https://repository.law.umich.edu/mlr/vol117/iss6/4>

<https://doi.org/10.36644/mlr.117.6.review>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## REVIEW BY JUSTICE JOHN PAUL STEVENS (RET.)

*Justice John Paul Stevens\**

THE THREE LIVES OF JAMES MADISON: GENIUS, PARTISAN, PRESIDENT. By *Noah Feldman*. New York: Random House. 2017. Pp. xvi, 628. \$35.

Too often biographers become so enraptured by their subjects that they overlook their flaws, presenting instead accounts of superhumans whose exploits seem beyond the reach of mere mortals. Harvard Law Professor Noah Feldman<sup>1</sup> avoids that pitfall in his refreshingly circumspect biography, *The Three Lives of James Madison: Genius, Partisan, President*. The Madison that emerges from Feldman's scholarly research is all too human. But it is that humanity that underscores, in my mind at least, Madison's remarkable contributions to our country.

The three lives captured in the book's title roughly correspond to Madison's role in drafting the Constitution (pp. 3–241), his participation in the formation of what was originally the Republican Party (pp. 245–440), and his leadership of the country during the War of 1812 (pp. 443–609). The first of those three lives does not contain as much unfamiliar material as the later account of his disagreements with Patrick Henry, Alexander Hamilton, John Adams, and George Washington, or his arguably successful leadership during the war against Great Britain. Along the way, Feldman offers fresh insight into a man who played an outsized role in our nation's founding as well as a lucid account of the history of those years.

That the first of the lives recounted in Feldman's book began so late in Madison's natural life is the first sign of his human limitations. Despite having earned the moniker Father of the Constitution in our popular imagination, which might convey to some that this man was a born genius (indeed, Feldman himself uses that term to describe Madison), there is little sign of precociousness in young James—he was no John Stuart Mill or Wolfgang Amadeus Mozart. He was the son of Virginia's landed gentry, about as close to aristocracy as one could get in colonial America, and appears to have been rather rudderless through his childhood and into his formative years at Princeton. Even then, however, we see early seeds of the curiosity, work ethic, and strong friendships that would later prove to be Madison's defining traits—Feldman describes how Madison and a friend pushed themselves to exhaustion to finish their studies a year early (pp. 4–5). (For what purpose

---

\* Retired Associate Justice, United States Supreme Court.

1. Felix Frankfurter Professor of Law and Director of the Julis-Rabinowitz Program on Jewish and Israeli Law, Harvard Law School.

other than to say it could be done is unclear, as it seems Madison spent that extra year he had just earned recovering from the exhaustion (pp. 4–5).

As Madison matures into adulthood, we encounter a young man who lacks many of the features so often associated with other Founding Fathers. Absent is the bravery of Washington. Madison avoids the perils of war as a young man on account of fits of epilepsy—in truth, migraines (p. 21). Missing, too, are the good looks or social charm of the likes of Hamilton and Jefferson. Instead, Madison comes across as reserved and, at times, prudish.<sup>2</sup> But we also meet a man devoted to his friendships, to his love of learning, and to fixing what he saw was wrong with the world around him—from protecting religious minorities (pp. 12–14) to ensuring uniform trade policy in the fledgling confederacy (p. 40). Thanks to those traits, Madison pestered Jefferson to provide him with books through which he could study ancient and contemporary republics and federations with an eye to adopting their virtues and avoiding their vices in his home state of Virginia and what was to become the national government (pp. 56–57).

Madison's wide reading prepared him well for his contribution to the drafting of the Constitution. Feldman acknowledges that Madison was not the first to undertake a comparative study of governing systems, but Madison's deep dive prior to the Constitutional Convention was perhaps the most thorough to date (p. 316). And it produced some key insights. One, perhaps the greatest, contribution Madison made in this area was his view that a larger republic would be less susceptible to the suppression of a minority than a smaller one (pp. 98–99). The reason, Madison believed, "was that 'a common interest or passion is less apt to be felt and the requisite combinations less easy to be formed by a great than by a small number'".<sup>3</sup> "In the larger community," Madison wrote, "the society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert".<sup>4</sup> Here, too, we see Feldman's sober reflection on his subject, noting that Madison's claim "was not obviously correct—far from it" (p. 99). But Madison's reading nonetheless led him to "a highly original conclusion" that the sovereign government should be designed so as to ensure it would be neutral as between the competing interests—that is, free of faction (p. 99).

It is hard not to want to find larger messages in Madison's preoccupation with faction for our own times. "Today," Feldman observes, "Americans frequently complain about partisanship. Yet at the same time we find ourselves unable to escape its lure" (p. xv). "To avoid disrupting the story from

---

2. See p. 5.

3. P. 98 (quoting James Madison, *Vices of the Political System of the United States*, in 9 THE PAPERS OF JAMES MADISON 345, 357 (Robert A. Rutland & William M. E. Rachal eds., 1975)).

4. P. 98 (quoting James Madison, *Vices of the Political System of the United States*, in 9 THE PAPERS OF JAMES MADISON 345, 357 (Robert A. Rutland & William M. E. Rachal eds., 1975)).

its proper frame,” Feldman “mostly refrain[s] from suggesting parallels or comparisons to contemporary debates or events,” but, he notes, “they are there in plain sight” (p. xvi). I don’t blame Feldman for avoiding comparisons to contemporary debates—his is a work of history, not contemporary politics—but I must admit that I am curious to know what lessons on this subject he thinks we can learn from Madison’s three lives. Many readers of Feldman’s book, myself included, share Madison’s (early) hostility to faction and its pernicious effects. His later embrace of the partisanship he tried so hard to stamp out is sobering to say the least. If not a lesson, perhaps the silver lining in that aspect of his story is that the problem we confront today is nothing new. If the frail, nascent republic could withstand the partisan tumult Madison experienced, then there is every hope that we can, too.

As an aside, given my own firm conclusion about the specific question of the Second Amendment’s proper meaning, I found it significant that Feldman found it necessary to devote so few words to Madison’s original proposal for that provision, which states:

The right of the people to keep and bear arms shall not be infringed; a well armed, and well-regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.<sup>5</sup>

Feldman briefly explains that “[t]he language left little doubt that the right to bear arms meant neither more nor less than the right to serve in a well-regulated militia” (p. 269). It should come as no surprise to those reading this essay that I completely agree.<sup>6</sup> This view of the Second Amendment’s original meaning takes on added clarity when considered in the context of reactions to Madison’s own initial preference for a strong national government (p. 198). Those views were tempered by the system of dual sovereignty that eventually took shape, but Madison’s initial proposals, Feldman notes, prompted a hostile response from some attending the Convention, such as Elbridge Gerry who feared that Madison’s proposal “might stop states from organizing their own militias” (p. 124).

Gerry, of course, did not give the world partisan gerrymandering, but we have him to thank for the portmanteau that so succinctly captures the problematic practice that almost terminated Madison’s political career. On February 2, 1789, James Monroe, acting on behalf of Patrick Henry, nearly succeeded in an attempt to gerrymander Madison out of office (pp. 249–50, 255). Instead, Madison won his election to Congress (p. 255), which he later led both in adopting the Bill of Rights and supporting other legislation. Had the gerrymanderers of the Founding Era had the sophisticated tools of mapmakers today, perhaps the result would have been different.

---

5. P. 269 (quoting James Madison, *Amendments to the Constitution*, [8 June] 1789, in 12 THE PAPERS OF JAMES MADISON 196, 201 (Charles F. Hobson & Robert A. Rutland eds., 1979)).

6. *District of Columbia v. Heller*, 554 U.S. 570, 636–80 (2008) (Stevens, J., dissenting).

Madison was no natural politician, but his wide reading, which had prepared him so well for the Constitutional Convention, also prepared him for his leadership as a member of Congress. His study of works written by Adam Smith surely affected his thinking about commercial issues (p. 260). Madison disagreed with Hamilton's view that the federal government should assume responsibility for the war debts of the states (pp. 296–300), and they also disagreed about where the capital should be located (pp. 305–10). Apparently a dinner hosted by Thomas Jefferson in Philadelphia in June 1790 led to an agreement between Hamilton and Madison that supported Hamilton's position on the war debts and the Virginians' interest in the location of the capital (p. 307). (I am told this episode provides the basis for one of the more well-known numbers in the Broadway musical, *Hamilton*.)

Madison and Hamilton also disagreed about both the wisdom and the constitutionality of a national bank, and each tried to persuade George Washington to agree with his respective views (pp. 314–30). Hamilton not only prevailed in Congress but also persuaded Washington to sign the measure (pp. 322–23). Whereas Madison had been extremely influential early in Washington's presidency, their relationship totally deteriorated after Madison joined Jefferson in criticizing Washington for accepting Hamilton's advice to proclaim neutrality in the war between France and England, arguably violating the 1778 Treaty of Friendship with France (pp. 372–77).

In the last week of May 1791, Madison and Jefferson traveled together through New England where they visited a 250-acre farm owned and managed by a free African-American man named Prince Taylor, who employed six white laborers (pp. 328–30). The fact that Taylor was unmarried and apparently allowed no women on his farm particularly interested Madison, still a bachelor at age forty, perhaps more so than the fact of a free, independent African-American farmer at this point in history (p. 329). Madison was forty-three when he married the recently widowed Dolley Payne Todd, then twenty-six, in September, 1794 (pp. 388–89). Despite the difference in their ages, as well as the fact that she was about two inches taller than he (p. 388), they obviously enjoyed a very successful marriage. She was the popular hostess in the White House during both Jefferson's and her husband's presidencies (pp. 445, 506).

The few pages that Feldman devotes to Madison's views about slavery remind us of the glaring weakness of the Constitution's treatment of that subject (pp. 300–02). Feldman notes periodically throughout his book Madison's often conflicting—perhaps conflicted—views on slavery, which often reflect the young country's own struggle with that issue (p. 618). At times, Madison appears able to recognize the moral travesty slavery embodied and how inconsistent that system was with the country's founding principles of freedom and inalienable rights. But, like many of his contemporaries, he is unable or unwilling to muster the political will to cast it off. One notable episode in this regard came after his retirement when he responded to a letter from an abolitionist soliciting his views (pp. 618–19). His prompt response demonstrates that he had been thinking about the subject. He described slavery as an evil and favored emancipation that was (1) gradual, (2) equita-

ble to the individuals concerned, and (3) “[c]onsistent with the existing and durable prejudices of the nation.”<sup>7</sup> He endorsed a plan to have the federal government purchase land in Liberia and buy the estimated 1,500,000 slaves, using land sales to finance the project, and send them all to Africa (p. 619). The abolitionist hoped to make Madison’s views public but honored Madison’s request not to do so (p. 620). Feldman notes that Madison’s reticence about having his views publicized is not to his credit and that Madison’s continued belief that colonization was the only permanent solution to the problem of slavery was unrealistic and unworkable—and, I might add, far from admirable (pp. 620–21). But it is perhaps noteworthy that, at that stage of his life, this man who had been raised in slaveholding Virginia had come to acknowledge that enslaved persons should be recognized as humans rather than property (p. 621). Yet again, though, he failed to muster the will to end at least his own participation in that vile system, explaining that Dolley’s financial needs persuaded him not to free their slaves (p. 621).

Feldman ends his book with this sentence describing Madison’s legacy: “With its defects and remedies, its flaws and fixes, constitutional government remains the best option the world has known for enabling disparate people to live together in political harmony” (p. 628). What we see over the course of Feldman’s treatment of Madison are many apt parallels between the flaws and virtues of the system of constitutional government Madison helped usher in and the man himself. Through that balanced treatment, we gain a deeper understanding of Madison and his contributions to this country’s founding.

---

7. P. 618 (quoting James Madison, *From James Madison to Robert J. Evans*, 15 June 1819, in 1 THE PAPERS OF JAMES MADISON: RETIREMENT SERIES 468, 468 (David B. Mattern et al. eds., 2009)).

