Interpretation
A JOURNAL OF POLITICAL PHILOSOPHY

Spring 1996 *Volume 23 Number 3*

Interpretation

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Composition by Eastern Composition, Inc.,
Binghamton, N.Y. 13905 U.S.A.
Printed and bound by Wickersham Printing Co.,
Lancaster, PA 17603 U.S.A.

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The Republic of Letters, The Correspondence between Jefferson and Madison, 1776–1826, edited by James Morton Smith, 3 vols. (New York and London: W.W. Norton & Company, 1995), xxvii + 1351 pp., $150.00.

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In reviewing James Morton Smith's three-volume edition of the Jefferson-Madison correspondence, *The Republic of Letters*, I will direct my remarks to his introductions to the sections into which their letters are divided. Smith's work is extremely impressive, aside from its being a monumental enterprise undertaken with great care. What I am essentially concerned with, as a reviewer, is the point of view expressed in these introductions, a point of view which could easily be characterized as distinctively Madisonian.

In his introductory chapter to the three volumes, Smith expresses the view that Jefferson's and Madison's thinking represents "the two sides of early American thought, each setting forth, with a different emphasis, the eighteenth century version of the wisdom of the ages transformed . . . into a completely American synthesis." Smith appears to make every effort to emphasize the differences between Jefferson and Madison, which are surely there, but it would be very hard indeed to imagine that whatever differences they had represent the two sides of early American thought. We are given the distinct impression from reading the introductory chapter that the correspondence between Jefferson and Madison, or what Smith describes as "the republic of letters," is understood to embrace the broad spectrum of republican thought. Smith approvingly but uncritically accepts Adrienne Koch's characterization of Jefferson and Madison as "the two greatest philosopher statesmen of the American Enlightenment," which is an extremely problematic statement, displaying a clearly anti-Hamiltonian bias.

It is rather interesting that, while Hamiltonianism and Jeffersonianism have been used to characterize movements of thought in America, there has been no comparable term to elevate Madison's name to a movement, and there must be a good reason for that. Madison's contributions to the thought and statesmanship that made the American Constitution were singularly impressive, but there is no movement comparable to Hamiltonianism or Jeffersonianism associated with the father of the Constitution. There is no Madisonianism, as it were, influencing the stream of history. Madison distanced himself from Hamiltonianism by referring to the difference in "the general complexion of their political theories" at the time of their collaboration on *The Federalist* and from Jeffersonianism by moderating Jefferson's more radical stances in their collaborative

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effort on the Virginia and Kentucky Resolutions, as well as on other occasions. He simply could not accept Jefferson's almost complete depreciation of political power, a difference which explains his more moderate stances on practical political issues. He can most clearly be distinguished from Jefferson by the fact that he had more appreciation, certainly in theory, for the necessity of energetic government. It is enough to say that Madison's thought moves between the boundaries drawn by Hamilton and Jefferson, but if there are two sides to early American thought, as Smith believes, then Jefferson and Madison would appear to be on the same side. It is more than apparent that the great tension in early American thought was between the Hamiltonian Federalists and the Jeffersonian Republicans.

I am somewhat bewildered by the fact that Jefferson is treated, at least implicitly, as a founder of the American regime, especially in view of the fact that he was clearly on the sidelines at the time of the Constitutional Convention. There is no doubt that Jefferson is chiefly responsible for the Declaration of Independence and that the principles of the Declaration are implicit in the Constitution. It is vital to remember, however, that Jefferson had nothing whatsoever to do with establishing the Constitution as a frame of government. It is clear that the Declaration merely declares; but it is the Constitution that constitutes a government. The series of exchanges between Jefferson and Madison on the proposed Constitution would hardly make up for his absence from the constitutional proceedings. He was, in Madison's language, "an interested but distant spectator [of the train of events which brought about the important crisis of a general convention, as of those which followed it.]" Jefferson would have been well satisfied with something less energetic than the American Constitution, like a reconstituted Articles of Confederation. He certainly did not deny that the Constitution represented an improvement over the Articles, but nonetheless wrote to John Adams that "all the good of this new constitution might have been couched in three or four new articles to be added to the good, old, and venerable fabrick." But it should not surprise us that Jefferson, although inclined toward radical change, was defensive of the Articles, for he was more thoroughly a rebel in thought than in action. He defined himself with great precision when he described himself as author of the Declaration of Independence, of the Virginia Statute for Religious Freedom, and father of the University of Virginia. He knew that he was not a founder of the American regime and must therefore become resigned to deriving his prestige from other accomplishments.

Smith includes in these volumes a congratulatory letter from Jefferson to John Adams upon the latter's election to the Presidency in 1796, where he writes that, although he knows he will not be believed, he has "no ambition to govern men" preferring to "leave to others the sublime delights of riding in the storm, better pleased with sound sleep and a warm birth [sic] below, with the society of neighbors, friends and fellow laborers of the earth, than of spies and

sycophants." What is surely impossible to say is whether Jefferson had coveted the Presidency in 1796. Smith suggests that from Jefferson's point of view "there was . . . a substantial political reason for [his] not coveting the Presidency in 1797" with a view to 1800. But it would be a matter of speculation whether he had future designs on the Presidency even as early as 1791. It is more than conceivable that his willingness to trade off his opposition to the Bank bill for placing the seat of government in land carved out of Virginia was made with a view to his eventually sitting in the presidential office. It is not inconceivable that his unwillingness to have his presidency listed in his epitaph was merely a matter of feigned humility on his part.

Smith devotes twelve pages of his introductory chapter to an examination of the Jeffersonian-Madisonian position on the slavery question. He defines their essential problem in terms of the disjunction between practice and principle, saying that "their deeds [were] at odds with their democratic dreams," that is, between their practice as slaveholders and their democratic principles. What is more important, however, is that Jefferson and Madison not simply accommodated themselves to the practice of slavery as slaveholders, but denied the constitutionality of congressional power to restrict slavery, especially evident in the case of their position on the Missouri Compromise of 1820. In a later chapter, Smith refers in passing to Jefferson's labelling of proposed restrictions on the right of Missouri citizens to own slaves as a violation of the Constitution. As a matter of fact, Madison denied the power of Congress to attach an antislavery condition to a new state and questioned the constitutionality of laws excluding slavery from national territories, although these sentiments are not contained in any correspondence with Jefferson, but in a letter to Robert Walsh on November 27, 1819, and hence are not mentioned by Smith. But it is rather hard to believe that Smith does not see their opposition to congressional restrictions on slavery expansion as part of their ambivalence on the slavery issue.

It appears that Smith comes closer to the truth when he says that "both Jefferson and Madison accommodated themselves to the practice of slavery, knowing that their republican dream was tragically flawed by the existence of slavery in a system founded on liberty and equality." But Jefferson and Madison accommodated themselves to the practice of slavery, not simply by being slaveholders, but more essentially by opposing restrictions on the rights of citizens in the new territories to own slaves. It is relevant therefore to inquire into the question as to whether their *real problem* was that their deeds were at odds with their democratic dreams, as Smith suggests, or whether it was in a more fundamental sense on the level of one democratic principle versus another, namely, the procedural democratic principle of consent (i.e., the consent of majorities to vote slavery up or down) versus the substantive democratic principles of liberty and equality. In other words, the deeper problem was on the level of principle itself. Therefore, if the disjunction exists at all, it exists ultimately within the very structure of the democratic principle as they held it.

On the matter of states' rights, not unrelated to the slavery matter, Smith devotes a considerable portion of his last chapter to Madison's attempt to counter Calhoun's claim that his doctrine of nullification was based on the Madisonian doctrine of interposition enunciated in the Virginia Resolutions of 1798 (which is beyond the scope of the Jefferson-Madison correspondence). Smith allows Madison to state the case for himself. Madison does so to extricate himself from having any responsibility for the nullification doctrine. Smith presents the Madisonian argumentation in meticulous detail, but does not pass judgment on those arguments. He does not appear to intrude himself into the discussion, but his elaborate exposition of Madison's position (without any criticism) would seem to suggest that he is sympathetic to those arguments.

Madison presented interposition in the Virginia Resolutions as the right of states to make declarations of unconstitutionality against laws of the United States that exceeded their delegated authority, but he never mentioned the right of states to resist measures of the national government, only their right to interpose declarations of unconstitutionality. Nevertheless, the position he took in those resolutions had consequences which went far beyond the debate over the Alien and Sedition laws, that is, his statement that the states have the right to "interpose" declarations of unconstitutionality, whenever in their view the national government oversteps its bounds by construing its powers too broadly, supplied the crucial premise from which the doctrine of nullification could later be drawn.

Even though the Virginia legislature had declared the Alien and Sedition laws unconstitutional, Madison argued that these resolutions were never meant as a prescription for action, and he made a studied attempt during the nullification crisis to separate his own doctrine from the Calhounian doctrine. In his Report on the Resolutions of 1799, Madison represented the Virginia doctrine merely as a criticism of unconstitutional action. He referred to those resolutions as only "expressions of opinion unaccompanied with any other effect than what they may produce on opinion by exciting reflections." Madison argued that the right of a state to declare a law unconstitutional did not have a nullifying signification, only a declaratory one, inasmuch as a declaration of unconstitutionality does not have the effect of nullifying a law. His contention was that the purpose of the resolutions was only to call upon the states collectively to recognize and announce a principle. But Madison could not disguise the fact that the right of states to declare laws of the United States unconstitutional, whether called "interposition" or "nullification" (Jefferson used the latter term in his draft of the Kentucky Resolutions of 1799), is more than a protest. He was unwilling to admit that the terms "interpose" or "interposition" as well as "nullification" have precise meanings, inasmuch as their essence is suspensive or preventative and not merely declaratory of opinion. But Madison did not appear to recognize in those resolutions any risks for the regime. The kindest thing would be to say

that he never really allowed himself full consciousness of what he had written there.

We must return once more to the fact that Smith places very great emphasis on the differences between Jefferson and Madison, the former "fearing governmental power as a threat to liberty" and the latter "viewing the new and more powerful government under the Constitution as a protector of liberty." It cannot be denied that there were significant differences there, but Smith overlooks or obscures the fact that Madison could be said, in a more fundamental sense, to share Jefferson's understanding that the Constitution is an explicit delegation of sharply defined powers, a position which is especially evident in his opposition to Hamilton's Bank bill. Madison never denied that the necessary and proper clause gave power, but only such powers as were absolutely necessary for the execution of the enumerated powers, and that places him squarely in Jefferson's corner. Madison admitted that there must necessarily be discretion with respect to the means, inasmuch as a constitution cannot possibly enumerate all the means by which the powers of government are carried into execution, but he was nevertheless concerned that the government might abuse its discretion as to the choice of means under the necessary and proper clause.

Madison viewed the necessary and proper clause in such a way that its terms tended to confine rather than enlarge the enumerated powers, whereas Hamilton placed more emphasis on the importance of construction to extend governmental power. The necessary and proper clause on its face could be construed as an extension of power or a limitation on power, for if it means absolutely and indispensably necessary, it could be construed as a limitation on power. The essential difference between Hamilton and Madison concerned not the fact that the government had some discretion with respect to the means of carrying out its enumerated powers, for everyone agreed on that, including Jefferson, but whether the necessary and proper clause was an extension of power or a restriction on power. Madison was concerned that the abuses of power invited by Hamilton's construction of the necessary and proper clause would, by a process of accretion, convert a limited constitution into an unlimited one. He stated in opposition to the Bank bill that the terms "necessary" and "proper" gave no additional powers to those already enumerated. He was arguing that the power to establish a national bank could not be reasonably inferred from such enumerated powers as taxing, borrowing, coining money, paying debts, and regulating trade.

John Marshall reminded us in *McCulloch v. Maryland* in 1819 that the necessary and proper clause is found among the powers in Article I, Section 8, not among the restrictions of Article I, Section 9. Hamilton had argued that the necessary and proper clause should be recognized for what it is, as a means for establishing the enumerated powers, broadly construed, but he never contended that this clause added to the Constitution any new or independent powers

(through construction) not already in the Constitution. The views of Hamilton and Marshall on this are clearly consistent. It should be said, however, that from this perspective, a limited constitution allows considerable latitude in the selection of the means by which national exigencies are to be provided for. But Madison, from another perspective, was considerably prone to overestimate and overemphasize the danger to the regime of constructive powers. It was impossible for him ever to be certain in his own mind that the government might not exceed its limitations as to what could reasonably be inferred from the enumerated powers in Article I.

The argument over the constitutionality of the national bank provided an opportunity for articulating alternative constructions of the necessary and proper clause in relation to the enumerated powers of the national government. Smith concedes that Hamilton's arguments on the constitutionality of the bank (presumably in contrast to Madison's arguments) were "bold and persuasive," but he still leaves no room for Hamilton's thought in early American thought, at least as far as we can determine. It would appear that he considers Hamilton's thought to be outside the purview of republicanism altogether. It could of course be argued that there is no place for a discussion of Hamilton's thought in volumes devoted exclusively to the Jefferson-Madison correspondence, except for the fact that the Republican party of Madison and Jefferson found its origin in its reaction to Hamiltonian programs and policies. It would be hard indeed to study the political history of the 1790s without taking into account the tensions between Madison and Jefferson on the one hand and Hamilton on the other.