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James Madison and Strict Constructionism

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Introduction

James Madison is often revered as the “Father of the Constitution,” as he had a significant influence in the drafting of certain clauses and the ratification of the document itself. Apart from this fact, one particular debate has raged since the beginning of the Republic all the way into the present day: the debate on the way in which the Constitution of the United States should be interpreted. Many law experts have argued for a “broad” or “loose” understanding of the Constitution. Claiming it to be a “living, breathing, document,” which allows for the document to evolve as American society and culture evolves. Others, however, see this view as dangerous and not what the Founders intended for the Constitution. This side, known as strict constructionism, argues that the Constitution must be read and interpreted in the manner in which it was originally written, only being able to change or evolve if absolutely necessary through a lengthy amendment process. Given the radical difference between both interpretations and that both sides claim to represent the Founders’ intentions for how the supreme law of the land should be understood, it is crucial to determine which view is most correct. Therefore, given his involvement in and dedication to the Constitution, the purpose of this essay is to determine which school of interpretation James Madison practiced. To properly reach this conclusion, the contents of this essay include a summary of the methods of research utilized, an analysis of both loose and strict construction, as well as Madison’s views on each, and a Biblical analysis of the issue.

Research

The only research method conducted in the drafting of this essay was that of qualitative research. The reason for this being is that, given the theme of political thought and theory, no quantitative research was necessary or numerical data available to formulate a proper conclusion for the hypothesis. Additionally, this essay draws from and cites scholarly articles, relevant to the topic that utilizes quantitative research, as well as definitions of political terms, quotes from the Bill of Rights of the Constitution of the United States, and a passage from Scripture. The philosophical, political, and worldview-based content of these sources in addition to its lack of numerical data solidifies the utilization of them as qualitative research.

Analysis

Introduction

Fortunately, James Madison was an active and vocal politician, with many direct statements pertaining to the Constitution itself and his personal political philosophy. This makes the process of analyzing and determining his view on strict and loose constructionism an immensely uncomplicated process. The analysis portion of this essay initially focuses on further defining the conflicting camps of loose and strict constructionism, as well as a summary of the utilization of the Ninth and Tenth Amendments of the Constitution, which set the precedent for how the powers, enumerated in the Constitution, would be construed. After this, an analysis of Madison’s actions and statements is made in order to reach a conclusion on his view of how the Constitution should be interpreted.

Strict and Loose Constructionism

As stated previously, it is necessary to provide an understanding of both strict and loose constructionism to properly bind the issue faced in this essay and to better understand the arguments made. A loose constructionist is defined as “an advocate of loose construction (as of a statute or constitution),” or more specifically, “one favoring a liberal construction of the Constitution of the U.S. to give broader powers to the federal government.”¹ In an obverse manner, a strict constructionist is defined as “one who favors giving a narrow conservative construction of a given document or instrument,” or once again more specifically, “one who favors a strict construction of the Constitution of the United States.”² The fundamental difference between loose constructionism and strict constructionism is that the former proposes an increase in the powers of the federal government, while the latter believes otherwise. Strict constructionism proposes that the Constitution must be interpreted literally and as the words were written, whereas loose constructionism warrants that the Constitution must be interpreted in a manner that gives the “implied” powers to the national government. Strict construction was the more popular of the two philosophies after the founding of the United States with early Supreme Court cases ruling in favor of it, such as *United States v. Morrison*, *New York v. United States*, *Gregory v. Ashcroft*, *Alden v. Maine*, *United States v. Lopez*, and *Printz v. United States*.³

Ninth and Tenth Amendments

The two key amendments behind outlining the proper interpretation of the Constitution are the Ninth and Tenth Amendments. Interestingly enough, both amendments were drafted by James Madison himself.⁴ The Ninth Amendment states the following: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” (U.S. Constitution, Amendment IX, Section I) Likewise, the Tenth Amendment states that, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” (U.S. Constitution, Amendment X, Section I) Of the two interpretations of the Constitution, strict constructionism finds its basis in the Tenth Amendment.⁵ In fact, the Ninth Amendment also supports strict constructionism. After the establishment of the new American republic, it was commonly understood that the Ninth Amendment actively restricted the federal government from increasing its power, while the Tenth established the principle of restriction of power, giving both a joint roll in protection against a powerful federal government.⁶ However, the New Deal Era brought an end to the strict constructionist view of both amendments.⁷ Many of the court cases decided

¹ *Dictionary by Merriam-Webster: America's Most-trusted Online Dictionary* "Definition of LOOSE CONSTRUCTIONIST," accessed December 6, 2020, <https://www.merriam-webster.com/dictionary/loose%20constructionist>.

² *Dictionary by Merriam-Webster: America's Most-trusted Online Dictionary* "Definition of STRICT CONSTRUCTIONIST," accessed December 6, 2020, <https://www.merriam-webster.com/dictionary/strict%20constructionist>.

³ Kurt T. Lash, "James Madison's Celebrated Report of 1800: The Transformation of the Tenth Amendment," *The George Washington law review* 74, no. 2 (February 2006): 165, https://heinonline-org.ezproxy.liberty.edu/HOL/Page?collection=journals&handle=hein.journals/gwlr74&id=178&men_tab=srchresult#.

⁴ Lash, "James Madison's Report," 180.

⁵ *Ibid*, 165.

⁶ *Ibid*, 175.

⁷ *Ibid*, 189.

during Depression America were responsible for this dramatic change. The ruling of *United States v. Darby* greatly increased federal intrastate commerce powers by denying precedent that the Tenth Amendment required a strict constructionist interpretation of powers enumerated to the national government by the Constitution.⁸ Furthermore, the hearing of *Wickard v. Filburn* did not remotely acknowledge the Tenth Amendment.⁹ This change led to a major shift from the historical precedent of strict constructionist rulings based on the Ninth and Tenth Amendments to many more loose constructionist ruling in recent history.

Madison's View

Given a summary of strict and loose constructionism and the historical use of the Ninth and Tenth Amendments, it is imperative to analyze and determine James Madison's stance in this issue of interpretation. First and foremost, Madison believed that the federal government would fundamentally attempt to expand its powers through an improper interpretation of the Constitution.¹⁰ Additionally, Madison made the claim that the Constitution did not allow for the expansion of federal powers but rather solidified the powers given to it in the Articles of Confederation.¹¹ In addition to this, Madison also stated:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.... The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.¹²

This leads to the conclusion that a broad interpretation of the constitution leads to the misplacement of authority and power, as sovereignty belongs to the people and not the federal government.¹³ Madison also stressed the idea of veneration of the law. In fact, "Under Madisonian constitutionalism, institutions should mediate the will of the people, and constitutional change should be relatively infrequent because people need a constitution they can "venerate" and tinkering with it every generation would undermine this requirement of government."¹⁴ Madison disagreed with his colleague Thomas Jefferson's insistence on the will of the people regularly being reflected in the law as he believed that constantly appealing to the whims of the people would negate veneration of that same law.¹⁵ He believed that it would be a risk of major issues being determined by passion rather than reason.¹⁶ Madison was convinced of the idea of venerating the law in a similar way that one venerates Almighty God.¹⁷ However,

⁸ Lash, "James Madison's Report," 192.

⁹ Ibid, 193.

¹⁰ Adam Tate, "James Madison and State Sovereignty, 1780–1781," *American Political Thought* 2, no. 2 (2013): 191, doi:10.1086/673130.

¹¹ Tate, "State Sovereignty," 191.

¹² Lash, "James Madison's Report," 166.

¹³ Tate, "State Sovereignty," 191.

¹⁴ Jeremy D. Bailey, "Should We Venerate That Which We Cannot Love? James Madison on Constitutional Imperfection," *Political Research Quarterly* 65, no. 4 (2011): 732, doi:10.1177/1065912911427451.

¹⁵ Bailey, "Venerate: Constitutional Imperfection," 732.

¹⁶ Ibid.

¹⁷ Ibid, 733.

despite his dedication to veneration of the law, Madison did support a process of amendment.¹⁸ This was due to the fact that he recognized that it was possible for a constitution to be flawed and should thus be able to be changed when necessary.¹⁹ Finally, Madison stressed the importance of the meaning of the language used in the law in order to prevent misinterpretation.²⁰

Having drafted both the Ninth and Tenth amendments, Madison naturally formulated opinions surrounding them. Madison interpreted both amendments as power-restraining in regard to the federal government.²¹ He also spoke out against the establishment of the national bank as a broad view of federal power and against the Ninth and Tenth Amendments.²² In fact, Madison's interpretation of the Ninth Amendment was utilized to promote strict constructionism by Supreme Court Justice Joseph Story.²³ Finally, according to Madison, the purpose of the Ninth Amendment was to prevent the federal government from expanding upon the powers already enumerated to it by the Constitution.²⁴

Conclusion

With the analysis of Madison's given, it is possible to yield a conclusion on Madison's stance on the proper interpretation of the Constitution. Madison's political philosophy and beliefs reflected many elements of strict constructionism such as his respect and interpretation of the Constitution. Additionally, Madison's interpretation of the function of both the Ninth and Tenth Amendments was also reflective of a strict constructionist. In conclusion, it is completely logical and apparent to consider James Madison a strict constructionist.

Biblical Analysis

With the necessary research conducted, it is imperative to provide a Biblical analysis of Madison's strict constructionist views. The Apostle Paul wrote the words,

Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore, whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. Therefore, one

¹⁸ Bailey, "Venerate: Constitutional Imperfection," 735.

¹⁹ Ibid, 736.

²⁰ David T. Konig, "James Madison and Common-Law Constitutionalism," *Law and History Review* 28, no. 2 (2010): 514, doi:10.1017/s0738248010000076.

²¹ Lash, "James Madison's Report," 175.

²² Ibid.

²³ Ibid, 177.

²⁴ Kurt T. Lash, "The Lost Original Meaning of the Ninth Amendment," *Texas Law Review* 83, no. 2 (December 2004): 399, <http://ezproxy.liberty.edu/login?url=https%3A%2F%2Fwww.proquest.com%2Fscholarly-journals%2Flost-original-meaning-ninth-amendment%2Fdocview%2F203664054%2Fse-2%3Faccountid%3D12085>.

must be in subjection, not only to avoid God's wrath but also for the sake of conscience.²⁵

One of the points exhibited in this passage is respect for the law, even the laws of man. Therefore, it should be assumed that God considers obedience to the human authority and laws seriously. In addition to this, the Apostle John wrote that, "And this is love, that we walk according to his commandments; this is the commandment, just as you have heard from the beginning, so that you should walk in it."²⁶ This passage reflects that obedience to God's commands is an act of love towards him. While these passages do not explicitly state that a strict constructionist interpretation and veneration of the Constitution is morally righteous, it does show that laws and commands, especially when they are from God, are to be taken seriously. Additionally, it can be logically assumed that it is necessary to correctly understand a command or law to properly obey it.

Conclusion

Finally, given the extensive research exhibited, it is clear on which side of the interpretation James Madison falls. An analysis of his political beliefs points firmly towards that of Strict constructionism. Additionally, his opinions on the matter of Constitutional interpretation appear to line up Biblically. All these factors point to the principle that a proper understanding of the law and a respect of that same law are necessary for good laws to remain in existence, which is why the United States continues to be a bastion of liberty and rights to this day.

²⁵ Rom. 13:1-5

²⁶ 2 John 1:6

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