Memory of the Constitutional Convention and the Madison Papers

A Thesis Presented for the

Master of Arts

Degree

The University of Tennessee, Knoxville

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December 2021

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Acknowledgements

I might not have completed this thesis without the tremendous encouragement and support that I received from my advisor, Professor Michael Woods. I am incredibly grateful for the numerous conversations that we had about my research, for his extensive and helpful comments, and for the time that he dedicated to this project. I am equally grateful for the support of Professor Luke Harlow and Professor Monica Black and thank them for working with me in the early stages of this project, for taking time to read the final product, and for their inspiring and thought-provoking comments about the future of my scholarship. Thank you also to Professor Daniel Feller for having several conversations with me about my thesis and what it means to be a historian.

I owe many thanks to the University of Tennessee for the generous funding that I receive, to the Department of History for its support, and to all of the great History professors at UT who want to see their students succeed. It is truly a blessing to be able to read, write, research, and teach for a living, and I am grateful for the bountiful opportunities that I have here in Knoxville.

I feel indebted to my mentor, Professor Paul A. Rahe, for the continued interest that he has expressed in my work. His guidance and encouragement have helped me persevere through many challenges. He made a memorable impression on me and continues to do the same for countless other students at my beloved alma mater, Hillsdale College. Indeed, it was in his grueling, but rewarding class, "American Constitutional Convention," that I first became interested in this incredible event. For Dr. Rahe and all of my outstanding professors at Hillsdale I will be eternally grateful.

God has blessed me with amazing friends who push me to be a better person every day. Without Mariah, Lucas, Catherine, Lydia, Natalia, and Jacob, among several others, my life would not be the same. Words cannot express the gratitude that I feel in my heart for my grandparents, William and Carol, and for my mom, Justine. More than anyone else, they have been my source of strength and inspiration. They are the greatest of all the many gifts that God has given me. There will never be enough space to thank all of the beautiful people in my life. To my family and my chosen family, I love you all dearly.

In truth, there is little that I can do besides say a heartfelt thank you. Thank you to all who have helped me complete this thesis and reach this milestone in my career. I believe that the ultimate expression of appreciation is to "pay it forward." I will continue to dedicate my life to doing just that.

Though I worked wholeheartedly on this thesis, ultimately I know that it was, as the Apostle Paul wrote, "not I, but the grace of God that is with me." My blessed Savior, Jesus Christ, reminds me constantly that, with Him, I can achieve all things. *Soli Deo gloria.*

Abstract

The Convention that formed the United States Constitution met in the Philadelphia State House over the summer of 1787—behind closed doors. Americans thus learned the details of the proceedings only gradually, as members of the Convention disclosed their recollections of the event and as accounts of the proceedings fitfully entered public conversation in the decades after 1787. The 1840 publication of the "Madison Papers," a collection of James Madison's notes from the Confederation Congress and his journal from the Convention, marks one episode in the unveiling of the Constitutional Convention.

This thesis revisits the impact of the Madison Papers in American cultural memory by situating Madison's notes within the larger context of contested memories of the Convention in the 1830s and 1840s. Historians' isolated studies of the Madison Papers within the antislavery movement, while commendable, have obscured our understanding of the publication's full significance in the antebellum U.S. This thesis historicizes the appearance of Madison's record from the Convention by juxtaposing his account with the previously published sources from the Convention and by reconsidering antislavery activists' debates over the Constitution within a broader cultural framework. Newspapers, eulogies, antislavery tracts, contemporary books, and published letters are used to explore Americans' memory-narrative of the Constitutional Convention around 1840.

Furthermore, this thesis argues that scholars have not sufficiently studied how the Convention, as an *event*, repeatedly reemerged in cultural memory over the course of the nineteenth century as successive publications shed light on the secret proceedings of the Philadelphia meeting. Consequently, this thesis examines the tension between the transformative influence of the publication of Madison's record and the previously existing narrative of the Convention. Madison's notes entered neither at the beginning, nor at the end, but in the middle of an extant memory-driven narrative of the Philadelphia assembly. Reconsidering the impact of this publication illustrates the ways in which undisclosed, private, and secret information, when revealed to the public, has the power to alter political debate, personal opinions, and national memories.

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Introduction

'Twas at the hour of summer eve,
  The day its brightest death-smile gave,
When they, the mightiest to achieve,
  Their signets to our charter gave,
A noble band in yonder hall,
Obedient to their country's call.

Behind the chair where sage debate
  Was well controlled by Washington,
Appeared, as if hung out by fate,
  A pictured image of the Sun—
That emblem, would it set or shine?
What patriots's eye could then divine!

And he, the sage, at whose command
  The forked lightnings left their play,
Was there, and traced with steady hand
  A name that ne'er shall pass away:
And when the glorious task was done,
Said proudly—"'tis a *rising* sun!"[1]

This poem, published one month after the *United States Magazine and Democratic Review* announced the publication of the Madison Papers, refers to an image carved on the back of George Washington's chair at the Constitutional Convention. The poet quoted Benjamin Franklin's remarks on the final day of that gathering, when, pleased with the result of the Convention's deliberations, Franklin had said, "I have the happiness to know that it is a *rising*, and not a setting sun."[2]

[1] "The Sun of the Constitution," *The United States Magazine and Democratic Review* 5, no. 4 (April 1839), 361. It is somewhat unclear whom the writer means by "the sage," but from the context, we can be fairly certain that he was referring to Benjamin Franklin. Franklin gave a great speech (read by James Wilson) the final day of the Convention, September 17,urging all of the delegates to sign the Constitution and present it to the people. See Max Farrand, *The Records of the Federal Convention of 1787,* Vols. I-IV (New Haven: Yale University Press, 1937), Volume II, 641. The poem continuedin the same style and tone for another five stanzas, praising the work of the Convention—the Constitution.

[2] "Madison, and the Madison Papers," *The United States Magazine and Democratic Review* 5, no. 3 (March 1839), 250. *My emphasis on "rising."*

Franklin's expression of gratitude and praise was also the last line of the "Madison Papers," a collection of James Madison's notes from the Confederation Congress and the Constitutional Convention.[3] Since the "Convention which formed the Constitution" of the United States met behind closed doors over the summer of 1787, Americans only learned the details of the proceedings gradually, as members of the Convention disclosed their recollections of the event and as accounts of the proceedings fitfully entered public conversation in the decades after 1787.[4] James Madison's journal from the Convention was one such document. Published in 1840, four years after the former president's death, the Madison Papers included a wealth of information on the secret proceedings of the Convention and had a tremendous impact on Americans' understanding of that event. Madison's published notes became enmeshed in an existing memory-narrative of the Constitutional Convention.[5] With the availability of Madison's record, memories of the Convention—an event ever-present in American culture and politics—became more intricate, varied, and complex.

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[3] Contemporaries referred to the publication of Madison's writings, private correspondences, and public records with this title, "the Madison Papers." Throughout this thesis, "Madison Papers" refers to this newly published source and is used interchangeably with "Madison's notes," referring to his "Notes of Debates in the Federal Convention of 1787" specifically, which were contained within the first publication of his papers. The full title of this publication is: *The Papers of* James Madison, *purchased by Order of Congress, being his Correspondence and Reports of Debates during the Congress of the Confederation, and his reports of Debates in the Federal Convention; Now published from the original Manuscripts deposited in the Department of State, by Direction of the Joint Library Committee of Congress, under Supervision of* Henry D. Gilpin. 8vo. Vols. I. II. III. pp. 580, xxii.; 662; 382, ccxlvi. Washington: Langtree & O'Sullivan. 1840.

[4] Throughout the nineteenth century, the Convention was often discussed with this elaborate title. Throughout this essay, the prefixes "Constitutional," "Federal," and "Philadelphia," will be used before "Convention" in reference to the meeting in the Philadelphia statehouse during the summer of 1787. On secrecy at the Federal Convention, see John P. Kaminski, "Secrecy and the Constitutional Convention," The Center for the Study of the American Constitution (University of Wisconsin-Madison, 2005). A short list of significant works on the 1787 Convention includes Clinton Rossiter, *1787: The Grand Convention* (New York: The Macmillan Company, 1966); Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York: Random House Trade Paperbacks, 2009); Michael J. Klarman, *The Framers' Coup: The Making of the United States Constitution* (Oxford: Oxford University Press, 2016).

[5] I use "memory-narrative" to refer to the recollections, anecdotes, images, myths, and histories of the Constitutional Convention that relay stories about how that event might have transpired. The narrative of the Convention developed over time across generations and arose from several different, often competing memories. Memory-narrative is meant to reflect unsettled, inconclusive stories of the past which leave room for ambiguity, diversity, and debate. This was especially the case for the Convention because it was held in secret and because those present did not immediately disclose what transpired during their proceedings, nor was there ever a full, impartial recounting of the event. The memory-narrative of the Convention hinges upon the reflections of people who were present at the time (the Revolutionary generation), as well as the ways in which Americans of subsequent generations remembered the event as revealed through the spoken words of the Framers, rumors, and primarily print culture—the published written records of the Convention.

However, memory of the Convention did not *begin* with the publication of the Madison Papers. This thesis revisits the influence of the publication of Madison's notes on memories of the Convention by historicizing the publication in two respects: first, by placing Madison's notes in relation to other published records pertaining to the formation of the Constitution, and second, by reinterpreting the place of Madison's notes in the constitutional debates of the antebellum antislavery movement. The two are necessarily related. A thorough examination of the anticipation and then reception of the Madison Papers shows what Americans thought of the Constitutional Convention at the time. Meanwhile, a focused study of the impact of the Madison Papers on divisions within the antislavery movement during the 1830s and 1840s provides a felicitous context through which to understand the contentious nature of the Constitution, the Founding Fathers, history, and memory in the antebellum United States. Placing these stories side by side forces a reconsideration of the relationship between those debates and Americans' knowledge of the Constitutional Convention in the nineteenth century. Furthermore, the intersection of two general historiographic conversations—memory of the Revolutionary era with antebellum antislavery—allows for a more thorough understanding of how Americans have remembered and debated the Convention in its affiliation with the Constitution and the Revolutionary generation.[6]

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[6] Three principal sources influenced my use of memory in this thesis—*Remembering the Revolution, The Myth of Seneca Falls,* and *Making Slavery History.* The first was instrumental in my understanding of memory and the American Revolution. This collection of essays significantly informed my analysis of memory of the Constitutional Convention through the relationship between past and present, the transmission of memory, history, and knowledge between generations, political uses of the past, and the preservation and appropriation of memory. More specifically, these essays also provided insight into memory in the antebellum United States and the importance of the Revolutionary generation in American memory. Lisa Tetrault's work, *The Myth of Seneca Falls,* was enlightening for the way that Tetrault treats memory in the"operation of social movements." Likewise, her discussion of stories, origin myths, and memory, as well as her idea that the Seneca Falls Convention was "an event as well as a story" informed how I read Americans' knowledge of the Convention. Lastly, Margot Minardi's book, *Making Slavery History,* contributed to my understanding of the relationshipsbetween the past and the present, between memory and history, and between memory and abolitionism. Especially informative was Minardi's recognition of the "layers of historical memory" and the idea that "characters, tales, andtropes…emerged, receded, and resurfaced from memory as the exigencies of successive moments demanded." See Michael A. McDonnell, ed., *Remembering the Revolution: Memory, History, and Nation Making from Independence to Civil War* (Boston: University of Massachusetts Press, 2013); Lisa Tetrault, *The Myth of Seneca Falls: Memory and the Women's Suffrage Movement, 1848-1898* (Chapel Hill: The University of North Carolina Press, 2014); Margot Minardi, *Making Slavery History: Abolitionism and the Politics of Memory in Massachusetts* (Oxford: Oxford University Press, 2010). I also consulted Michael Kammen's scholarship on memory, while there are snippets of memory present in the work of Mary Sarah Bilder, David W. Houpt, and William M. Wiecek, all discussed below. For more on memory studies and the intersection of memory and history, see Maurice Halbwachs, *On Collective Memory,* ed. Lewis A. Coser (Chicago: The University of Chicago Press, 1992); Geoffrey Cubitt, *History and Memory* (Manchester University Press,

The Madison Papers have a small historiography of their own. The cultural impact of the publication of Madison's record of the Constitutional Convention is featured in Michael Kammen's scholarship on memory and the Constitution in American culture. Kammen explores the significance of Madison's death, the jubilee anniversaries of the Convention's meeting and the Constitution's ratification, and the role of the publication of Madison's notes in the antebellum antislavery movement. However, Kammen's narrative is limited and incomplete. Kammen spends considerably less time analyzing the nineteenth century than he does the twentieth. Additionally, because of the chronological breadth of his studies, Kammen provides only a superficial discussion of memory with respect to the Constitution, and peripherally, the Convention, prior to the Civil War. This essay builds off the firm foundation provided by Kammen's scholarship primarily by utilizing the rich newspaper sources, journal reviews, and antislavery publications which show how Americans awaited the information contained in Madison's record and what they thought after his account of the Convention was published.[7]

Other scholars of the Constitution have engaged the Madison Papers and commented on their importance with respect to the Convention and constitutional exegesis. Leonard Levy suggests that "not until the publication of Madison's Notes in 1840 did a source become available for original intent and analysis."[8] Clinton Rossiter briefly discusses Madison's records and claims that "Madison is the principal source of our knowledge of the debates in the Convention…the record he left us is remarkably full, impartial, and accurate."[9] John Kaminski concurs, suggesting that "with this gift from Madison," "much

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2007); Joan Tumblety, ed. *Memory and History: Understanding Memory as Source and Subject* (London: Routledge, 2013); Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995).

[7] Michael Kammen, *A Season of Youth: The American Revolution and the Historical Imagination* (New York: Alfred A. Knopf, 1978); *A Machine That Would Go Of Itself: The Constitution in American Culture* (New York: Alfred A. Knopf, 1986); *Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York: Vintage Books, 1991).

[8] Leonard W. Levy, *Original Intent and the Framers' Constitution* (Ivan R. Dee, 1988), ix.

[9] Clinton Rossiter, *1787: The Grand Convention* (W. W. Norton & Company, 1987), 163.

of the mysterious fog created by the secrecy of the Convention has been lifted."[10] On the other hand, Mary Sarah Bilder shows that historians must take into consideration the editing work that Madison did before publishing his notes, but nevertheless agrees that Madison's record, "is the single most important source for the Convention." Bilder also contends that, "to a remarkable degree, Madison's Notes created the narrative we inherit of the Convention."[11] Lastly, Max Farrand, one of the foremost scholars on the Convention who assembled the commendable *Records of the Federal Convention of 1787*, argues that when Madison's notes were finally published in 1840, "at once all other records paled into insignificance."[12]

While few scholars dispute the fact that Madison's record of the Convention is the most thorough of all those published, previous scholarship has obscured the ways in which Americans debated the value of the Madison Papers at the time of publication. Although historians have accepted Madison's record as authoritative, the narrative of the publication of Madison's notes, and their role in the antislavery debates, is rife with controversy; disagreement over the authoritative nature of Madison's account of the Convention defined the reception of the Madison Papers in American culture. Additionally, Madison's record, while the most elaborate, was not the *first* publication to reveal the secret deliberations of the Convention and so should not be viewed as the starting-point for our knowledge of that event. Nor did Americans ignore the other publications after Madison's record became available. Therefore, the way that we understand the importance of the Madison Papers today should not be transposed onto each preceding

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[10] John P. Kaminski, "Secrecy and the Constitutional Convention," The Center for the Study of the American Constitution (University of Wisconsin-Madison, 2005), 24.

[11] Mary Sarah Bilder, *Madison's Hand: Revising the Constitutional Convention* (Cambridge: Harvard University Press, 2015), 1. The subtitle of Bilder's work is an argument in itself, that Madison's record is authoritative. Yet, Bilder's excavation of Madison's many revisions to his notes from the Convention calls into question their authenticity as a contemporaneous record of the Convention. Her book is a valuable contribution to studies of Madison's account of the Convention, though much of what she discusses falls outside the scope of this thesis. Bilder's book has also received mixed reviews. See Edward J. Larson, *Madison's Hand: Revising the Constitutional Convention* by Mary SarahBilder (review), *Journal of Interdisciplinary History* 47, no. 1 (Summer 2016); Matthew G. Schoenbachler, *Madison's Hand* and *Humboldt and Jefferson*, Book Review, *Presidential Studies Quarterly* 47, no. 1 (March 2017); Paul A. Rahe, Book Reviews, "Missing the Point," *Claremont Review of Books* XVIII, no. 2 (Spring 2018).

[12] Max Farrand quoted in Bilder, *Madison's Hand*, 2.

generation. That is, we should not assume that all Americans at all times have shared our scholarly interpretation of the value of the Madison Papers. Many Americans did praise Madison's full and authentic account, but the Papers were received in the 1840s with tremendous debate, which provoked several varied opinions about their significance, relevance, and utility.

The contemporary reception of the Madison Papers and the historical circumstances at the time of their publication are deftly handled by David W. Houpt in his essay, "Securing a Legacy." Houpt argues that the publication of the Madison Papers was Madison's "legacy," but that "an inquiry into this process reveals that even the purchase of a document so important to our nation's history became enmeshed in the sectional conflicts of the 1830s."[13] He offers a thorough and convincing narrative of the process by which Madison's notes were purchased and published, why Madison opted for posthumous publication, Madison's own opinion of his notes, and what the public knew about the existence of Madison's record. Houpt also reflects on the significance of Madison's being the "last of the fathers" and suggests that there existed a "demand" for his notes—upon Madison's death, Americans "prepared themselves for the publication of the notes, anticipating new fuel for their debates."[14]

Houpt's essay makes an incredibly significant contribution to the historical conversation about the Madison Papers and the cultural and political impact of their publication. His work touches on several of the themes in this essay, including memory, generations, anticipation, and praise for Madison's record-keeping. However, Houpt's essay opens as many questions as it answers. Houpt's focus is on the debate in Congress over the purchase and then publication of Madison's notes, more so than the popular anticipation and reception of the Papers. When he does discuss Americans' opinions of the Papers, he provides nominal evidentiary support, citing only Max Farrand and an article in *The United States Magazine and Democratic Review*. Houpt's restricted use of sources suggests a one-sided narrative of

[13] David W. Houpt, "Securing a Legacy: The Publication of James Madison's Notes from the Constitutional Convention," *The Virginia Magazine of History and Biography* 118, no. 1 (2010), 7.

[14] Houpt, 6.

what Americans thought about the Madison Papers, in their anticipation and reception of Madison's record of the Convention.

Other scholarly analysis of the Madison Papers is limited to the Papers' influence in the antislavery movement. This isolation of the Papers' impact within the antislavery debates distorts our knowledge of their place in nineteenth-century American society and politics. Scholars miss an opportunity, by not comparing references to the Madison Papers within *and outside* of antislavery circles, to comprehend the full significance of Madison's record of the Convention. This was not a publication that Americans simply glanced over; rather, their sincere perusal of the Madison Papers underscores that this publication had a tremendous impact in the antebellum United States. Indeed, the publication's importance was heightened, not diminished, by the divisive conversations its appearance provoked. Studying the Papers in their full context illuminates their influence in American society and politics, while it also clarifies their impact within the antislavery movement.

When historians of abolitionism write about the impact of the Madison Papers within the antislavery movement, they tend to take the publication out of context in two respects. First, they often do not acknowledge that Madison's was not the only published record from the Convention; that is, much of what Madison recalled had been sketched out before in either the official *Journal* or in *Secret Proceedings*. Second, these historians often overemphasize the impact of the Madison Papers on the development of Garrisonian disunionism by not closely attending to chronology. As a corollary, scholars then elevate Garrison's interpretation of the Constitution without thoroughly examining the complex spectrum of constitutional thought that prevailed amongst antislavery intellectuals from the late 1830s through the 1840s. Previous work on the Madison Papers and antislavery constitutionalism is commendable, but it also indicates that we need a more nuanced and broadly contextualized study of the impact of the Madison Papers within the antislavery movement.

Aileen S. Kraditor dismisses antislavery intellectuals' constitutional arguments from the 1830s. She argues that "carefully worked-out theories began to take form in response to a number of later developments," meaning in the early 1840s. These developments, according to Kraditor, included "the

earlier signs of what was to become Garrison's disunionist position, the publication in 1840 of Madison's notes on the Convention of 1787, the government's steps toward annexation of Texas, the Supreme Court's decision in *Prigg v. Pennsylvania,* and the Liberty party's need to justify its existence within the nation's political framework, yet distinct from the two major parties."[15]

Kraditor is right to include the publication of Madison's notes in this list, as the availability of his record of the Convention did contribute to more well-developed theories about the Constitution's relationship with slavery. However, these theories first developed in the 1830s, *before* the appearance of Madison's notes, when antislavery intellectuals considered this relationship by using other records, such as *Secret Proceedings* and *Elliot's Debates*. In a footnote after this quotation, moreover, Kraditor explains that, "The proceedings of the convention that wrote the U.S. Constitution had been secret; when they were published they provided documentation for the contention of some abolitionists that the Founding Fathers deliberately wrote safeguards for slavery into the Constitution."[16] This is misleading—Madison's notes were not the first published records from the Convention and the materials that abolitionists would have needed to support this position, that "the Founding Fathers deliberately wrote safeguards for slavery into the Constitution," had been readily available prior to 1840 in the *Journal* and especially in *Secret Proceedings.*

William M. Wiecek offers a similar argument about the Madison Papers and the development of antislavery constitutional thought. His work on slavery with respect to the Madison Papers and constitutional theory is the most significant to date, but portions of his narrative merit clarification and elaboration. For instance, Wiecek argues that "disunion was premised on the theory that the United States Constitution was a proslavery compact." He then explains that "Garrison and others arrived at this view in three ways"—

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[15] Aileen S. Kraditor, *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834-1850* (Ivan R. Dee, 1989), 187.

[16] Kraditor, 227.

> First, textual exegesis proved that the documentary Constitution was a bulwark of slavery in at least four particulars. Second, they took advantage of the publication in 1840 of the so-called 'Madison Papers'…This was a traumatic revelation to abolitionists, for Madison's detailed coverage of the debates confirmed abolitionists' suspicions that the framers consciously wrote guarantees for slavery into the Constitution. Third, Garrison and his colleagues were pursuing their principal opponents, the supporters of the Liberty party, and were trying to controvert every Liberty position, theoretical as well as tactical.[17]

Wiecek overemphasizes the impact that the Madison Papers had within the antislavery movement by calling them a "traumatic revelation." Wendell Phillips' document, *The Constitution: A Pro-Slavery Compact,* which was the first to outline the Garrisonian interpretation of Madison's notes from the Convention, did not appear until four years after the publication of the Madison Papers. Even so, talk of disunion was in the air before then. Wiecek, like Kraditor, also fails to acknowledge that, although Madison's record *was* more detailed, clear, and expositive, abolitionists had access to most of the bare facts contained therein as early as 1819 and 1821.

Furthermore, the publication of the Madison Papers should not be given sole credit for convincing Garrisonians that the Constitution was a proslavery document nor for leading them to their disunion position. Paul Finkelman claims that,

> before the publication of James Madison's Convention notes, the Garrisonians were not disunionist, and though unhappy with the constitutional protections of slavery, they were not yet ready to condemn the whole document. Some even argued that the Constitution favored liberty. However, Madison's notes on the Convention, published in 1840, convinced Garrison and his followers that the Constitution was in fact proslavery.[18]

Scholars have generally accepted that the Garrisonians were not disunionist prior to 1840; however, the construction of Finkelman's sentences here might have us believe that the Madison Papers were the *source* of the disunion argument, or that disunionism immediately followed their publication. This is hard to accept when we consider that the American Anti-Slavery Society only announced its disunion position in May 1844 and that Phillips' document did not appear until later that year. It is also hard to believe that

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[17] William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (Cornell University Press, 1977), 239.

[18] Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson,* (Armonk, NY: M.E. Sharpe, 1996), 1, 2.

the Madison Papers had much of an influence on the move to disunionism when Garrison himself did not mention the Madison Papers in his private correspondence until July 1845. Meanwhile, Garrison was still writing that slavery was *antithetical* to the Constitution in September 1840, nearly nine months after the publication of the Madison Papers.[19]

Antislavery studies often jump from the publication of Madison's notes in 1840 to the publication of Phillips' document in 1844 with only a superficial analysis of what came in between. Doing so obscures the full impact of the Madison Papers within the antislavery movement. Actually, the antislavery movement's response to the Madison Papers in the early 1840s was not monolithic; it mimicked that of the broader public, which had fiercely debated the value of the publication. However, historians have not adequately reflected on how this impacted the development of Garrisonian disunionism.

Sean Wilentz more appropriately situates the Madison Papers in the context of the antislavery movement, but still offers some generalizations that are similarly misleading. Wilentz writes that, "Hailed as a definitive record of the nation's founding, Madison's transcriptions and observations would promise to raise constitutional interpretation to a new level, above and beyond the exegesis in the *Federalist* essays, not least on slavery."[20] Not everyone, however, believed that Madison's notes amounted to a "definitive record of the nation's founding," although they did contribute to more complex discussions of constitutional exegesis. Additionally, *The Federalist* was not the only other source that Americans in the nineteenth century used for constitutional exegesis. Wilentz also contends that, "the Garrisonians' hostility to the Constitution focused on the framers' compromise over the Atlantic slave trade, as exposed in Madison's notes."[21] The Garrisonians were particularly focused on the "evil" compromises of the Convention, but Wilentz is mistaken to say that these compromises were exposed, with the implication

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[19] William Lloyd Garrison to Mrs. Henry Walker, 8 September 1840, Letter 219 in Louis Ruchames, ed., *The Letters of William Lloyd Garrison, Vol. II: A House Dividing Against Itself, 1836-1840* (Cambridge: The Belknap Press of Harvard University Press, 1971), 700.

[20] Sean Wilentz, *No Property in Man: Slavery and Antislavery at the Nation's Founding* (Harvard University Press, 2018), 223.

[21] Wilentz, 229.

that they were exposed for the first time, in Madison's notes. Luther Martin—who was a member of the Committee on the Slave Trade at the Philadelphia Convention—spoke at length about this particular compromise in his *Genuine Information* speech before the Maryland legislature in 1787, which was printed in *Secret Proceedings* in 1821 and again in 1839. The compromise over the slave trade can also be gleaned from the *Journal*; a close study of the votes reveals that the New England states agreed to extend the time allowed for the importation of slaves when the Deep South made concessions with respect to navigation acts.

Wilentz was correct, nevertheless, in pointing out that other events influenced the development of the Garrisonian position that the Constitution was a proslavery document, which was closely related to disunionism. Wilentz explains that the Garrisonians "[redoubled] their radicalism" after deciding that, "it was not simply foolish but wicked to attack slavery in line with a Constitution that they now proclaimed, especially in light of the *Prigg* decision, was proslavery to its very core."[22] The decision in the Supreme Court case *Prigg v. Pennsylvania* was an important milestone in the development of Garrisonian constitutionalism, more so than the publication of the Madison Papers.

Two other developments were also more influential for Garrisonian abolitionism than the availability of Madison's record from the Convention. These were the growing proslavery agitation to annex Texas and the rising influence of the Liberty Party. Both of these historical developments illustrate that in order to fully understand the impact of the Madison Papers in the antislavery movement, we need to look beyond Garrisonian abolitionism. Rather than take the Garrisonian interpretation of Madison's notes for granted, this thesis emphasizes the agitation caused by antislavery interpretations of the constitution proffered by non-Garrisonians, especially the political antislavery men. Thus, this thesis reaffirms Corey Brooks' argument that, "scholarship emphasizing William Lloyd Garrison and his vocal inner circle has long diverted attention from the influence and accomplishments of the much larger group

[22] Wilentz, 228.

of political abolitionists."[23] The Madison Papers appeared at the zenith of the "Slave Power" argument, while 1840 was also the year that the Liberty Party first put forth a candidate for president with the belief that "they could achieve their ultimate goal of destroying American slavery only by first upending the proslavery party system."[24] These developments should be considered on equal footing with the publication of the Madison Papers when analyzing the spectrum of antislavery constitutional theories in the antebellum United States.

While the Madison Papers may have solidified the Garrisonian proslavery and even disunion positions, they did not *create* an interest in the Constitutional Convention. Madison's notes entered neither at the beginning, nor at the end, but in the *middle* of an existing memory-narrative of the Philadelphia assembly. The publication did not represent a dramatic break; rather, there was more of a fluid transition between the pre- and post-publication periods. For instance, evidence from the 1830s suggests that antislavery thinkers had been trying to understand the Framers' intentions for some time prior to the publication of Madison's notes. Nevertheless, those researching the Constitution's relationship with the "peculiar institution" had few resources at their disposal from the Philadelphia Convention itself, and so they relied on records from the state ratifying conventions, the constitutional exegesis in *The Federalist*, and the first debates in Congress after the adoption of the Constitution.

After the publication of the Madison Papers in 1840, both the Garrisonians and political abolitionists integrated Madison's notes into an existing framework of antislavery constitutional thought. Situating the antislavery debates within the larger cultural and political context of the 1830s and 1840s, therefore, is one way of reconsidering the role of the Madison Papers in these debates and, relatedly, is an avenue through which to observe the place of the Convention in popular memory. This thesis thus explores the relationship between the publication of the Madison Papers and memory of the

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[23] Corey M. Brooks, *Liberty Power: Antislavery Third Parties and the Transformation of American Politics* (The University of Chicago Press, 2016), 3.

[24] Brooks, 9.

Constitutional Convention between Madison's death in 1836 and the introduction of the Wilmot Proviso in 1846 by considering the antislavery debates within a broader cultural framework that recognizes the convergence of the publication with commemorative events, the growing divisions within the antislavery movement, the rise of the Liberty Party, and the intensification of the sectional crisis. This broader framework is essential for restoring the Madison Papers to their full significance in antebellum American and through this, for discerning their impact on the developing memory-narrative of the Constitutional Convention.

Furthermore, historians have examined memory and the Revolutionary War, the Declaration of Independence, the Constitution, George Washington, and even Independence Hall, but they have not sufficiently studied how the Constitutional Convention, as an *event*, repeatedly reemerged in cultural memory over the course of the nineteenth century as successive publications shed light on the secret proceedings of the Philadelphia meeting.[25] With the publication of the Madison Papers, the Convention resurfaced, directly and indirectly, in newspapers, journals, congressional debates, and antislavery pamphlets; through their reflections on the Framers' deliberations in Independence Hall, Americans remade the Convention into an event of even greater importance. Additionally, the impact of the Madison Papers in the antislavery debates offers an opportunity to see how Americans wrote their *present* into narratives of their *past*. This essay thus employs familiar sources, but studies them from the perspective of memory, exploring questions such as: how was the Constitutional Convention remembered

[25] See for instance, Wesley Frank Craven, *The Legend of the Founding Fathers* (Ithaca: Cornell University Press, 1956); Lester H. Cohen, *The Revolutionary Histories: Contemporary Narratives of the American Revolution* (Ithaca: Cornell University Press, 1980); Michael F. Conlin, *One Nation Divided by Slavery: Remembering the American Revolution While Marching toward the Civil War* (Kent: Kent State University Press, 2015); Robert G. Ferris, *Signers of the Constitution: Historic Places Commemorating the Signing of the Constitution* (Washington, D.C.: United States Department of the Interior, 1976); Francois Furstenberg, *In the Name of the Father: Washington's Legacy, Slavery, and the Making of a Nation* (New York: Penguin Press, 2006); Michael D. Hattem, *Past and Prologue: Politics and Memory in the American Revolution* (New Haven: Yale University Press, 2020); Edward G. Lengel, *Inventing George Washington: America's Founder, in Myth and Memory* (New York: HarperCollins Publishers, 2011); Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Vintage Books, 1998); Michael A. McDonnell, ed., *Remembering the Revolution: Memory, History, and Nation Making from Independence to Civil War* (Boston: University of Massachusetts Press, 2013); Charlene Mires, *Independence Hall in American Memory* (Philadelphia: University of Pennsylvania Press, 2002); Gary B. Nash, *First City: Philadelphia and the Forging of Historical Memory* (Philadelphia: University of Pennsylvania Press, 2002); David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill: University of North Carolina Press, 1997).

when Americans were anticipating the publication of Madison's notes? How did Americans compare Madison's record to previously published sources from the Convention? How were the Madison Papers utilized by antislavery men to craft a particular narrative of the Convention and reconstruct, in a way that was politically expedient, the Framers' intentions? To what extent did Americans receive Madison's journal as the definitive account of what happened at the Philadelphia Convention?

The publication of Madison's record of the Convention intensified arguments over the constitutionality of a number of antebellum political disputes, but none more so than slavery. During their debates, antislavery theorists shaped their memory-narrative of the Convention to fit the present political moment and perceived the Convention with renewed relevance as they saw in the Madison Papers vindication of their respective interpretations of the Constitution. By reconsidering the antislavery reception of the Madison Papers in the context of the American public's anticipation and reception of Madison's notes from the Convention, we can more adequately judge the real impact of the publication—on the antislavery movement, in American political culture, and with respect to memories of the Convention and the founding of the United States. By historicizing the publication of the Madison Papers in relation to other available records from the Constitutional Convention, we can examine what knowledge Americans possessed of the "Convention which framed the Constitution" and consequently, examine howthey remembered that foundational event.

Chapter One

Memory Begins with Death

Madison's death marked a turning point in the developing memory-narrative of the Constitutional Convention. Madison had been the last living member of the Convention when he died on June 28, 1836. No longer did Americans possess a living connection to the men who framed their Constitution. No more could a living source substantiate claims about the Convention, nor could anyone who attended contest false characterizations of the event or the Framers.

The death of a former president, especially one of Madison's stature, was an event of national significance. Americans reflected on the Founding generation, which they saw quickly coming to an end, and they articulated that something greater was lost when Madison passed on. Madison was one outstanding symbol, like George Washington, of a bygone era. With Madison's death, the Constitutional Convention, and to a great extent the Revolutionary generation, became part of America's history, more so than its present. Many veterans of the Revolutionary War still lived—one presently occupied the White House as the seventh president—but popular imagination and historical memory were taking the place of personal affiliation with the creation of the United States.

Eulogies given in the wake of Madison's death, along with subsequent conversations about the posthumous publication of his private papers, reveal what Americans thought of the late president, as well as the Convention. The events set in motion by Madison's death illustrate that a vivid popular memory of the Convention existed even before the appearance of Madison's notes. The years 1836 to 1840 show that Americans were cognizant of historical time and that they desired to preserve memories of their fleeting Revolutionary past.

Madison's death, furthermore, closely coincided with the jubilee anniversaries of the Convention's meeting and of the signing of the Constitution. While these events were not often celebrated in the same ways that Americans celebrated Independence Day, they were remembered. Moreover, despite Madison's recent passing, Americans voiced multiple, complex, and varied memories of this

Founding Father and of the Convention. Some, but not all, grieved his loss. Some highlighted Madison's work in the Convention, and in the process, reflected on the history and contemporary significance of that event, but others chose to chastise Madison's slaveholding, rather than praise his life's work.

Madison thus occupied an ambiguous place in the national conscience. This was true also of what many saw as his final great contribution to the nation—the publication of his notes from the Constitutional Convention. Whether they remembered Madison as "the Father of the Constitution," or as one of many framers of their Founding document, Americans looked forward to the publication of his notes, even as they wondered aloud about their worth.

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Orations given in honor of Madison illustrate that Americans grappled with the meaning of his loss in terms of the past, present, and future. They emphasized that Madison's death signified the rapidly decreasing presence of the Revolutionary generation amongst the living. During the antebellum era, Americans recognized that the memory of that extraordinary era must be preserved by their generation, so that it could be transmitted to future generations. Eulogists reflected on the sacrifices made by the Revolutionary generation and on Madison's beneficent contributions in particular. The announcements of his death and celebrations of his life show that remembrance of Madison's work in the Convention—which bestowed upon the nation a great gift with the Constitution—was of no trifling significance to Americans in the late 1830s.

Only days after Madison's death, an article in the *New England Spectator*, a religious, antislavery periodical in Boston, drew connections between Madison and his predecessors. The article began, "The death of Ex-President Madison…has produced a sensation in the public mind corresponding with the distinguished talents and exalted character of the deceased." After providing a brief sketch of Madison's political career, the *Spectator* observed that, "six days added to [Madison's] life would have carried him to the 4th of July, on which memorable day all his predecessors in the office of President died, with the exception of Washington." The "proud but melancholy list" of former presidents included George Washington, who died December 10, 1799, John Adams and Thomas Jefferson, who both died on the

fiftieth anniversary of the Declaration of Independence, July 4, 1826, and James Monroe, who died the same day five years later.[26]

Americans' awareness of the passage of time was further awakened in 1836 by the approaching end of Andrew Jackson's presidency. Jackson, in his final year in office when Madison died, was, like Madison, a member of that Revolutionary generation so quickly fading away. Back in 1824, in the midst of his presidential campaign, Jackson was referred to as "one of those that bled and suffered in the cause of freedom" and "the last of those valiant establishers of the liberty of our Republic" who could become president.[27] A decade later, Martin Van Buren recognized that Jackson was the last president of the Revolutionary generation by acknowledging in his Inaugural Address that he himself was not. Van Buren told his audience, "Unlike all who have preceded me, the Revolution that gave us existence as one people was achieved at the period of my birth; and whilst I contemplate with grateful reverence that memorable event, I feel that I belong to a later age."[28] As the last President to have served in the Revolutionary War, however, Jackson, who was only fourteen during that conflict, occupied a kind of middle position between the Founding generation and Van Buren's "later age." Jackson himself felt indebted, even subordinate to the "Fathers," and did not count himself as one of them. In his Farewell Address on March 4, 1837, the aging veteran thanked God, "that He has given me a heart to love my country with the affection of a son."[29]

In the same message, Jackson remarked that, "We have now lived almost fifty years under the Constitution framed by the sages and patriots of the Revolution." The close of Jackson's presidency occurred just prior to the fiftieth jubilee of the signing of the Constitution and less than one year after Madison's death. In the White House at the time of Madison's passing, Jackson was the one to inform

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[26] "General Intelligence—Ex-President Madison," *New England Spectator,* 6 July 1836, 107.

[27] John Eaton, *The Letters of Wyoming, to the people of the United States, on the presidential election, and in favor of Andrew Jackson: originally published in the Columbian Observer* (Philadelphia: S. Simpson & J. Conrad, 1824), 6.

[28] Martin Van Buren, "Inaugural Address," 4 March 1837.

[29] Andrew Jackson, "Farewell Address," 4 March 1837.

Congress of Madison's death. He did so on June 30, and asked that Congress acknowledge Madison's memory and his contributions to their national happiness. Following Jackson's announcement, Senator William Cabell Rives, Madison's neighbor and friend, offered a cogent eulogy. While many of Madison's accomplishments were praiseworthy, Rives professed, "there is one great work of his which must ever recur prominently to the grateful memory of his country." According to Rives, Madison

> was, in an especial manner, the founder and author of that glorious Constitution which is the bond of our Union and the charter of our liberties; and it was graciously vouchsafed to him, in the order of Providence, to witness, for a longer period than any of his illustrious colleagues, the rich blessings which have resulted from its establishment. He was the last surviving signer of that sacred instrument!

After highlighting Madison's central role in the framing of the Constitution and his fortune to have lived longest to witness the new government in operation, the Senator made the same connections as the *New England Spectator*, but added a personal touch. Rives shared with his audience that Madison had written him just days before his death to inform him of his feeble health. "Still," Rives confessed, "I trusted that his light might hold out to the 4th of July, that he might be restored on that glorious anniversary to an immortal companionship with those great men and patriots with whom he had been intimately connected in life." Nevertheless, he continued, Madison's "career has been closed at an epoch, which, forty-nine years ago, witnessed his most efficient labors in the illustrious assembly which laid the foundations of our present system of Government."[30]

Later that day, in the evening session, Jackson's message announcing Madison's death was read again. John Mercer Patton, speaking for the Virginia delegation, rose to give a few remarks. He concluded that they could not do justice to Madison's memory in such a setting, and declared instead that, "His appropriate and enduring eulogium is to be found inscribed in those pages of his country's history which are identified with her honor and glory. It is engraved upon every pillar of that splendid fabric of constitutional liberty under which we live." John Quincy Adams, also a former president, then spoke of the emotions evinced by the knowledge that Madison had died. His meditation reiterated that of Rives and

[30] "Death of Mr. Madison," *Congressional Globe,* 30 June 1836, 599.

Patton's, and he connected past, present, and future, while ruminating on the link between the Revolutionary generation and his own. "Of that band of benefactors of the human race, the founders of the [U.S.] Constitution," Adams said,

> James Madison is the last who has gone to his reward. Their glorious work has survived them all. They have transmitted the precious bond of union to us, now entirely a succeeding generation to them. May it never cease to be a voice of admonition to us of our duty to transmit the inheritance unimpaired to our children of the rising age![31]

Echoing Rives' initial eulogy in the Senate, as well as these early remarks from Adams, orations delivered in honor of Madison included reflections on his life, the ephemeral nature of the Founding generation, the Constitution, and the Philadelphia Convention. First, those speaking at funeral observances emphasized that the passing of the Revolutionary generation was now a *fait accompli* with Madison's death. In a speech at Madison's Richmond funeral, Virginia politician William H. MacFarland, like Senator Rives, considered the longevity of Madison's life a gift; he recognized that Madison had lived long enough to "[stand] among the generations which he blessed."[32] Though he outlived each of his colleagues from the Federal Convention, Madison was still part of a generation that was all too quickly passing from the scene. Madison's celebrants acknowledged that his generation had less of a physical presence in the world, but, in spite of their melancholy, they affirmed that the Founders' work lived on and that the memory of their example remained vibrant. John Quincy Adams, speaking in Boston, poignantly remarked that, "of the signers" of the address to George III in 1774, the Declaration of Independence in 1776, the Articles of Confederation in 1781, and the Constitution in 1787,

> Not one remains in the land of the living. The last survivor of them all was he to honor whose memory [sic] we are here assembled…We look *back* on the century gone by—we look around with anxious and eager eye for *one* of that illustrious host of Patriots and heroes under whose guidance the revolution of American Independence was begun and continued and completed. We look around in vain.[33]

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[31] *The Congressional Globe,* 24th Cong., 1st Sess., 601 (1836).

[32] "The Father of the Constitution. Mr. MacFarland's Oration," *Niles' Weekly Register* 14, no. 25, 20 August 1836, 415.

[33] John Quincy Adams, *An Eulogy on the Life and Character of James Madison, Fourth President of the United States, Delivered at the Request of the Mayor, Alderman, and Common Council of the City of Boston, September 27, 1836* (Boston: American Stationers' Company. John H. Eastburn, City Printer, 1836), 84-85. Extracts from Adams' eulogy were

This extensive litany of past Revolutionary moments underscored Adams' point that the Founding generation, which had triumphed over tremendous difficulty, was "no more." He called attention to the anxious desire of many Americans to look around and find their beloved examples of patriotism and leadership, only to be confronted with the fact that *they* were the ones who must now be patriots and leaders, while their revolutionary forefathers rested. Such occasions as the death of a loved one offer poignant opportunities to meditate on the past and one's connection to the deceased. Adams' rhetoric assumed an overtone of loved ones grieving the loss of a family member or friend—this is just the kind of emotional sentiment that he and many other Americans attached to Madison's death. Yet, despite their grief, Adams proclaimed, "From the saddening thought that they are no more, we call for comfort upon the memory of what they *were,* and our hearts leap for joy, that they were our *fathers*."[34]

Adams had a special (and actual) claim on Revolutionary parentage because his own father was John Adams—one of the signers of the Declaration of Independence and the nation's second President. Yet, the rhetoric here indicates that *all* Americans could share a kind of familial attachment to the Revolutionary generation, to the "Founding Fathers." Though it was not the first use of the epithet, Adams referred to Madison as "the father of the constitution" in his Boston eulogy. Reflections on Madison's paternal connection to the United States Constitution was a second common theme in tributes proffered after his death. Each speaker meditated on the struggles of the newly independent nation under the Articles of Confederation and attributed to Madison the first proposals for a stronger government, thus emphasizing his leading role in calling a convention, and subsequently, in writing the Constitution. Former Virginia governor James Barbour, one of the men who helped carry Madison to his grave, contended that Madison's efforts to convene such an assembly marked the "culminating point in [his]

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often reprinted in newspapers across the country. For two examples see, "Adams' Eulogy on Madison," *Connecticut Courant,* 12 November 1836 and "Extract from Adam's Eulogy on Madison," *Nashville Republican,* 22 November 1836.

[34] Adams, *An Eulogy*, 85. *My emphasis on "fathers."*

public character, which his country will forever contemplate with affection and with admiration."[35] With diction that evokes biblical imagery, Barbour declared,

> It was from the heights [Madison] occupied that, calmly looking down on the troubled and threatening scene, he called order out of chaos. It is to him more than to any mortal, unless Washington be an exception, that we are indebted for our constitution, and, in consequence, for our union.

Barbour's language here painted Madison as a kind of creator-figure. Then, later in his speech, when discussing the Convention, Barbour claimed that the men gathered there had "Madison as their Palinurus," in other words, as the navigator of their metaphorical ship. Relatedly, Barbour said that Madison, in these first years of the new nation, was "like another Moses conducting his countrymen through the wilderness to the land of promise—laying the foundations of a constitution, which, if his examples and his counsels prevail, will, with the blessing of God, be immortal." Lastly, in keeping with the image of Madison as "father," Barbour described the Constitution as the "peculiar offspring of [Madison's] zeal."[36]

Despite Barbour's overwhelming laudations, and in contrast to Adams' claim that Madison was "*the* father of the Constitution," other orators placed Madison amongst the several *fathers*, plural, who were members of the Philadelphia Convention. In another eulogy for Madison, delivered at the Annual Commencement of Norwich University, Thomas J. Whipple gave a brief synopsis of Madison's life in which he emphasized that, "first, he was one of the framers of the Constitution." The key phrasing here is "one of," in reference to Madison, rather than simply "the." Similarly invoking the plural, Whipple felt that "the names of [the] Fathers of the Republic will be fresh on the records of time."[37] This leads to a third common theme of Madison's eulogies—ruminations on the work of the Framers in the Federal

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[35] For more details about Madison's burial, see Ralph Ketcham, *James Madison: A Biography* (New York: Macmillan, 1971), 670.

[36] James Barbour, "Eulogium Upon the Life and Character of James Madison," *Niles' Weekly Register* 51, no. 11, 12 November 1836, 172, 174.

[37] Thomas J. Whipple, *Eulogy on James Madison, Ex-President of the United States. Delivered at the Annual Commencement of the Norwich University, August 18, 1836. By Thomas J. Whipple, Member of the University*, (Montpelier: W. M. Clark, 1836), 6, 7.

Convention and the legacy of that meeting, the Constitution. In their selective overviews of Madison's political career, orators were sure to discuss some details of the Convention itself and acknowledge the labors of others besides Madison, even if they accorded him singular attention.

Remarks about the Philadelphia meeting were strikingly similar; each focused on the selection and character of the men of the Convention, and the precarious state of the nation at the time of its convening. Adams stated that, "nearly four months of anxious deliberation were employed by an assembly composed of the men who had been the most distinguished for their services civil and military, in conducting the country through the arduous struggles of the revolution."[38] Meanwhile, Barbour offered his vision of the gathering of "illustrious men:"

> Every state, save Rhode Island, sent deputies to this convention of their most distinguished citizens. For intelligence, patriotism and virtue, they may well challenge comparison with any deliberative body that the whole course of time had furnished: to them was confided the future fate of their country. They deliberated, amid great difficulties, on a state of affairs without a parallel; there was no precedent on the files of time for their guidance….committing themselves to the polarity of their own superior intelligence, [they] triumphed over every difficulty, and, by forming and recommending our happy constitution, wrought out our deliverance.[39]

This unprecedented gathering also called forth remarkable leaders in the figures of Washington, chosen as President of the Convention, and, of course, Madison, deemed an intellectual guide.

Between Madison's eulogies, therefore, and within the same eulogy even, existed a tension between Madison as *the* father of the Constitution and Madison as one of several *fathers,* plural. Adams, Barbour, and MacFarland all afforded Madison distinct commendation for his role in calling a convention and his position therein. Given the occasion—Madison's death—it is not surprising that the speakers focused especially on Madison's role in their discussions of the Convention. MacFarland elaborated at length:

> I would claim nothing for Madison, to the prejudice of his compatriots…the selection of himself as a fellow laborer with the venerable men with whom he was associated. Impartial history has assigned him a principal and leading agency, in procuring the convention to be called. And as a

[38] Adams, 24.

[39] Barbour, 172.

> member, none carried with them a more thorough comprehension of the difficulty of the whole subject; none applied themselves with greater devotion until the end was accomplished.[40]

"Impartial history" may seem an oxymoron, but according to the orators, MacFarland's description of Madison was true of the Federal Convention, and also the Virginia state ratifying convention. Madison's commendable role in the Virginia convention, deemed worthy of exposition and admiration by his orators, is the fourth theme of his eulogies. "It seems to have escaped the memory of American citizens," Whipple despaired, "that James Madison was the unwearied vindicator of the Constitution, supporting it against the eloquence of Henry, the logick of Hamilton, with an oratory far more, and a pen scarcely less powerful, than that of Jefferson himself."[41]

Whipple emphasized that the "constant, ceaseless, unsleeping energy with which [Madison] defended and enforced [the Constitution], had no precedent in the [Virginia] convention."[42] John Quincy Adams also punctuated Madison's work in the Virginia Convention, along with Madison's contribution to *The Federalist*. Mention of the Virginia Convention and *The Federalist* illustrates that Madison's relationship with the Constitution—his role in the process of writing the document, then in securing its ratification—and subsequently, Americans' memory of him and of the Convention, was complex and multifarious, stemming from several distinct but connected written records. Speaking of the quarrel between Madison and Patrick Henry, who opposed ratification, Adams suggested to his audience that, "the debates in the Virginia Convention furnish an exposition of the principles of the Constitution, and a Commentary upon its provisions not inferior to the papers of the Federalist," which, he had previously argued, are "of scarcely less authority than the Constitution itself."[43]

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[40] MacFarland, 416.

[41] Whipple, 10.

[42] Whipple, 7.

[43] Adams, 36, 31.

These reflections on Madison's part in Virginia's deliberations over the Constitution are important because memories of the Philadelphia Convention and methods of constitutional interpretation are interwoven with the political and cultural significance of the state ratifying conventions. Adams' additional comment about Madison's involvement in *The Federalist* is intriguing not only for what it adds to the debate about appropriate sources for constitutional exegesis, but because Alexander Hamilton, more so than Madison, was principally responsible for writing those essays. Hamilton might not be remembered as "The Father of the Constitution," but he certainly exerted tremendous energy during the ratification debates trying to convince Americans, particularly New Yorkers, to support the new plan of government.

Not all of Adams' contemporaries shared his adoration for Madison, "the Philosopher, the Statesman, and the Patriot."[44] Abolitionist William Lloyd Garrison wrote to George Benson in September 1836 that he did not attend Madison's funeral observances in Boston. Not only that, but Garrison expressed an entirely different opinion of the former President:

> Yesterday there was a great procession in this city in honor of the late President Madison, and a eulogy was pronounced by John Quincy Adams, but I did not hear it. Alas, for the memory of Madison, that he left more than one hundred slaves in bondage, not having principle or generosity enough to emancipate one at his death! The world may call him a patriot—but at the bar of God he will be recognized as a man-stealer.[45]

Adams and Garrison were both men of antislavery principles, but Garrison here invoked a different memory of Madison—Madison not as "Father of the Constitution," nor as member of the Convention, nor as former President in war and peace, but as *slaveholder*. While a eulogy is not often an occasion where the living criticize the deceased for their failures and their sins, Garrison's critical, though private remarks did acknowledge the reality that Madison held human beings in bondage. This is one of the great incongruities in the story of the American Founding and memory of the Constitution and Convention—

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[44] Adams, 84.

[45] William Lloyd Garrison to George Benson, 28 September 1836, Letter 58 in Louis Ruchames, ed., *The Letters of William Lloyd Garrison Volume II: A House Dividing Against Itself, 1836-1840* (Cambridge: The Belknap Press of Harvard University Press, 1971), 180.

for while Madison asserted in Philadelphia that the Constitution should not admit, "the idea that there could be property in men," he himself failed to live out the principle.[46]

Another striking omission in Madison's eulogies are mentions of the voluminous written records that Madison left behind. Only one of the many gentlemen who offered public remarks after Madison's death mentioned his papers. Barbour expressed appreciation that Madison spent his retirement "preparing a work which, if I mistake not, will be eagerly read, both in Europe and America." He then continued, expressing keen interest in the knowledge that Madison might be able to disclose regarding the Convention. Madison had edited

> the journal of the convention of 1787, that prepared and recommended our constitution. It presents not only all that received the sanction of the convention, but every proposition submitted, with the argument of the mover, whether successful or otherwise. With what profound interest will the statesman trace our organic law to its spring head; with what curiosity will he investigate the first crude suggestion which, elaborated by great minds, resulted in that beautiful symmetry which they finally obtained! Especially it will be most gratifying to him to see in what shape was first proposed that peculiar feature of our government, which so happily blended the conservative principles of a confederacy with the application of the powers of the government to individuals. This forthcoming work will furnish him the means of his gratification.[47]

Barbour would have known that Madison's personal written collection contained an account of the Convention, as this had been more or less understood since 1819 when another of Madison's eulogists, John Quincy Adams, asked Madison for help while preparing the official journal for publication that year. Yet, it is unclear how Barbour could have stated affirmatively what Madison's records had to say about the Convention. Nevertheless, the idea presented here, that the availability of these records would be "most gratifying" to present and future "statesmen," was habitually repeated in the years to come. Madison would also use this term, "gratifying," which at the time meant to "make grateful," to indulge, and to please. It was used in the sense of "[gratifying] one's curiosity," in matters of the mind. Madison's notes aptly fit such a description. Additionally, antonyms of gratify included "deprive" and "debar,"

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[46] Max Farrand, ed., *The Records of the Federal Convention of 1787: Volume II* (New Haven: Yale University Press, 1966), 417.

[47] Barbour, 174.

which both expressed the "idea of withholding." In this case, we might understand the diction to suggest that if Madison were *not* to disclose his notes from the Convention, Americans would be displeased, while they would not have the opportunity to express gratitude for such a contribution to their national literature.[48]

The occasion of Madison's death also produced numerous commentaries on the Convention which may be found in newspaper announcements of his passing and in editorials reflecting on his contributions to the nation. One such pronouncement, which appeared in *Niles' Register* in August 1836, did call attention, like Barbour's eulogy, to the forthcoming publication of Madison's private papers. The article touched upon the significance of Madison's death, as well as the significance of the Convention, and the effect that the lack of available records from Philadelphia had on public knowledge of the Constitution's formation. The writer began,

> The decease of Mr. Madison, the survivor of the members of the convention of Philadelphia, necessarily draws the attention of the public mind to that assembly of statesmen, and to the great work there accomplished. It has already been remarked that the profound secrecy with which their debates were conducted, and the scrupulous adherency of the members to the injunction not to disclose any part of the proceedings, leave us [sic] without the ordinary means of information as to the progress of their labors. Facts have since transpired calculated rather to awaken than to satisfy curiosity.

With the word "facts," the writer presumably alluded to two draft copies of the Constitution, both rather different, which were printed for members of the Convention to use in committee, and were kept in 1836 by Boston's historical society. He discussed how the drafts differed and suggested that Americans could only "conjecture" what happened in the Convention.

Echoing John Quincy Adams' comment that the Revolutionary generation was "no more," the writer also highlighted that the death of Madison severed Americans' living connection to the Convention. Not only that, but the secrecy of the Convention further precluded those remaining from becoming familiar with the details of the debates. "There is a private history in this matter," the writer

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[48] George Crabb, *English Synonymes Explained, Sixth Edition* (London, 1837), 289, 448; *Johnson's Dictionary, Improved by Todd, Abridged For the Use of Schools* (Boston: Charles J. Hendee, 1836), 154.

reiterated, "which, if Mr. Madison has not revealed, will be forever lost to posterity." The transmission of knowledge from one generation to the next often occurs through the written word. However, if Madison were to withhold his account of the Convention—which this writer thought would be especially revelatory—Americans would lose even more than their living connection to that secret meeting. The writer's despair gave way to hope, however, as he concluded expectantly, "we hope to be enlightened by the forthcoming work of Mr. Madison."[49]

The anticipation here expressed, for the publication of Madison's record of the Convention, implied that the availability of Madison's notes would augment Americans' knowledge of what transpired in the Philadelphia statehouse. From rumors, correspondences, and previous attempts to glean retrospective insight from Madison, most Americans would have known, prior to the 1840 publication, that Madison possessed extensive notes pertaining to the formation of the Constitution. However, while eulogies for Madison reveal that Americans considered his memory thoroughly intertwined with that of the Convention and the Constitution, it is just as important to note that the Constitution was formed in an assembly of *fifty-five men*, not through Madison's genius alone. When studying how Americans have remembered that assembly, therefore, we need to recognize, as some contemporaries did, that Madison was neither the only person who took notes while attending the proceedings nor the only person who could speak with authority about what happened there. We must acknowledge that, while without doubt Madison's notes from the Convention are the most detailed and thorough, memory of the Convention did not *originate* with Madison, nor with the publication of the Madison Papers. Rather, Madison's notes appeared in the middle of an unfolding memory-narrative of the Federal Convention.

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When Congress published Madison's private journal of the Convention in 1840 it was not the first publication to shed light on the debates in Philadelphia. Congress formally lifted the "veil of secrecy" when it published the official *Journal* of the Convention, the record kept by Secretary William

[49] "Mr. Madison and The Constitution," *Niles' Weekly Register* 14, no. 26, 27 August 1836, 433.

Jackson, in 1819. Robert Yates, a delegate from New York, also took extensive notes, which became available in 1821. Even prior to that, two other delegates, Luther Martin from Maryland and Edmund Randolph from Virginia, had disclosed information about the Philadelphia Convention before their respective state legislatures. Over the course of the 1830s, historian Jonathan Elliot also compiled and published the records of the state ratifying conventions.[50] Lastly, originally published in 1821, a reprint of Robert Yates, John Lansing, and Luther Martin's accounts of the Convention entitled *Secret Proceedings*, was published in 1839, just before the January 1840 publication of the Madison Papers.[51] This collection of sources informed the public's knowledge of the Convention, prior to 1840, and indicates that some familiarity with the course of debates during the summer of 1787 was already a part of the national culture when Madison's notes appeared on the scene.

A series of notable anniversaries, similarly part of the antebellum national culture, and coinciding with Madison's death and the publication of both *Secret Proceedings* and the Madison Papers, form another part of the context in which Madison's notes appeared. Between June 1836 and January 1840, Americans celebrated the fiftieth anniversaries of the meeting of the Philadelphia Convention, as well as the signing and ratification of the Constitution. "Celebrated" however, may be too strong a term to describe those festivities, or more curiously, the lack thereof. Although those tasked with memorializing Madison considered the significance of the Convention at length in their speeches, Americans in the nineteenth century did not remember the work of the Framers in the way that they reminisced about the final product of their deliberations, the Constitution. Moreover, celebrations of both the Convention and the Constitution paled in comparison to those praising the Declaration of Independence and celebrating Independence Day. For instance, John Quincy Adams gave an oration on July 4, 1837 to celebrate the

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[50] For a study of the ratification debates, see Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York: Simon & Schuster Paperbacks, 2010).

[51] For a study of the ratification debates, see Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York: Simon & Schuster Paperbacks, 2010). Consult the "Introduction" in Farrand, *The Records of the Federal Convention of 1787*, Vol.1, xi-xxv, for information onthe published and unpublished records of the Convention. David Houpt's essay, "Securing a Legacy," also contains a concise overview of the records of the Convention available before 1840.

sixty-first anniversary of Independence, but the Golden Jubilee of the Convention's meeting was not widely recognized that same summer, nor was the fiftieth anniversary of the signing of the Constitution on September 17, 1837 accorded much attention that fall.[52]

Why did these grand anniversaries pertaining to the Constitution and the Convention pass largely unnoticed? Michael Kammen suggests that "when the Golden Jubilee of 1837-39 took place, it directly followed a dozen years of constitutional acrimony and misrepresentation—based in part upon self-interest, in part upon deeply felt ideological commitments, and in part upon sheer ignorance of the Constitution." More succinctly, he claims that, "constitutional consensus was lacking" during the first half of the nineteenth century.[53] Furthermore, Kammen argues that Americans "at that time," were not "very consistent about the observance of historic anniversaries," and even the Fourth of July often "passed rather quietly." One explanation he offers is that, "for a while memory frequently fell victim to fierce factional disputes."[54]

Another explanation might simply be that the word "independence" elicits stronger emotions than "constitution" and "convention." That is, "independence" produces exciting images of battles and brave war heroes. On the contrary, because the Convention was held in secret, Americans could not vividly imagine, in the same way as the Revolutionary War itself, the less dramatic scenes of the Philadelphia Convention. Put another way, the Revolutionary generation "fought" for their freedom, but "deliberated" upon their form of government—and the former action seemed more memorable.

War and independence might have been the more exhilarating phenomena, but that did not preclude Americans from remembering the great achievements of the Founders within the Philadelphia

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[52] Kammen, *A Machine That Would Go of Itself,* 89-90. Caroline Cox, "Public Memories, Private Lives: The First Greatest Generation Remembers the Revolutionary War," in Michael A. McDonnell ed., *Remembering the Revolution: Memory, History, and Nation Making from Independence to Civil War* (Amherst: University of Massachusetts Press, 2013), 110. According to historian Caroline Cox, the recognition of such anniversaries and festivities including parades and speeches, "created a national memory of the Revolutionary era. They celebrated the collective sacrifice, emphasized shared political ideals, and were a central component of an emerging American national identity."

[53] Kammen, *A Machine That Would Go of Itself,* 89, 90.

[54] Kammen, *Mystic Chords of Memory*, 49.

statehouse. The American public did produce varied memories of what they *thought* occurred within the Constitutional Convention—memories often based on what they knew, but which they just as often embellished—even if they did not have grand public celebrations of the event.

On the other hand, other noteworthy milestones, at least tangentially connected to the Constitution, received more attention. One occasion was a Washington banquet celebration on March 4, 1839, to honor the anniversary of the Constitution's "adoption," but it occurred without significant recognition in the press, and seemingly without the grandeur that one might assume the occasion merited.[55] More pointedly, the New York Historical Society acknowledged the fiftieth anniversary of George Washington's Inauguration on April 30, 1839. At this event, John Quincy Adams—a favorite speaker for such occasions throughout the nineteenth century—gave an oration titled, "The Jubilee of the Constitution." In this speech, Adams reviewed the history of the nation, the colonists' fight for Independence, the Declaration, the failures of the Articles of Confederation, and the drafting of the Constitution. He also briefly discussed the work of the Convention, praising how the delegates "religiously confined" their exercises "to a simple power to propose" a constitution for the people to either reject or adopt.[56]

Whether speaking in 1836 or 1839, Adams clearly had extensive knowledge of the history and importance of the Constitution that, despite his political disagreements with Madison, resonated with the latter's own interpretation of the nation's history. His perceptive comment in "The Jubilee of the Constitution" echoed Madison's own understanding of the relationship between the Convention and the Constitution. During the antislavery debates some intellectuals also reiterated that it was the people's opinion of the Constitution, expressed through the state ratifying conventions, which mattered, and not

[55] Kammen, *A Machine Would Go of Itself*, 89.

[56] John Quincy Adams, "The Jubilee of the Constitution: A discourse delivered at the request of the New York historical society, in the city of New York, on Tuesday, the 30 of April, 1839."

that of the delegates to the Federal Convention, while others claimed that Madison's record of the Convention was a legitimate source for constitutional exegesis.

Madison, though, "rejected the doctrine that the original intent of those who framed the Constitution should be accepted as an authoritative guide of its meaning."[57] In 1821, Madison wrote that, "'as a guide in expounding and applying the provisions of the Constitution, the debates and incidental decisions of the Convention can have no authoritative character.'"[58] Not only did Madison declare that the Philadelphia Convention was not the appropriate place to turn to understand the meaning of the Constitution, but he distinctly pointed his contemporaries to the right location—the state ratifying conventions. Madison thus elaborated, "however desirable it be" that his notes

> should be preserved as a gratification to the laudable curiosity felt by every people to trace the origin and process of their political Institutions, & as a source perhaps of some lights on the Science of Govt. the legitimate meaning of the Instrument must be derived from the text itself; or if a key is to be sought elsewhere, it must be not in the opinions or intentions of the Body which planned & proposed the Constitution, but in the sense attached to it by the people in their respective State Conventions where it recd. All the authority which it possesses.[59]

Madison was not alone in this opinion, as many Americans involved in politics or in the antislavery movement felt the same way. Still, while this may seem like an authoritative statement on "original intent," and an explanation of the appropriate modes of constitutional exegesis from the one whom Americans have since given the most authority to speak on the Constitution, the reception of his papers in the 1840s particularly illustrates that Madison's advice often went unheeded. Americans continued to debate the appropriate means for determining the meaning of the text and the intentions of the Framers long after Madison provided an answer to their question. In rejecting Madison's personal opinion of his record's import, Americans demonstrated that his was not the only opinion they considered relevant.

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[57] Leonard W. Levy, *Original Intent and the Framers' Constitution* (Chicago: Macmillan Publishing Co., 1988), 1; For additional studies on methods for interpreting the Constitution and the Framers' intentions, see Jack N. Rakove, *Interpreting the Constitution: The Debate over Original Intent* (Boston: Northeastern University Press, 1990); Harry V. Jaffa, *Original Intent and the Framers of the Constitution: A Disputed Question* (Washington, D.C.: Regnery Publishing, 1994).

[58] Levy, *Original Intent and the Framers' Constitution,* 1.

[59] Kammen, *A Machine That Would Go Of Itself,* 88.

There is some irony in the fact that both contemporaries and historians have ascribed such tremendous importance to Madison's notes from the Convention when Madison himself belittled the same records. Yet it is likewise ironic, given Madison's advice to examine the state ratifying conventions for the clearest vision of the Constitution's meaning, that the records most readily available were those which directly supported his argument. These records were *Elliot's Debates*. Beginning in the late 1820s, historian Jonathan Elliot collected and assembled records of the state ratifying conventions and related documents into four volumes. Not long before Congress published the Madison Papers, indeed in 1836, a second and lengthened edition of Elliot's volumes appeared. Additionally, Congress had been distributing his extensive collection to its members so that they might readily access the information they contained, while the press widely acknowledged the importance of the publication.[60] This was also the case with Madison's notes, to which commentators often compared *Elliot's Debates*, along with the official *Journal* and *Secret Proceedings*. The circulation of *Elliot's Debates*, and thus the availability of the state convention records, indicates that scholars could learn more about Americans' memories of the Convention prior to the publication of the Madison Papers if they properly historicized the appearance of Madison's record in 1840.

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Madison believed that the appearance of his notes, "'should be delayed till the Constitution should be well settled by practice and till a knowledge of the controversial part of the proceedings of its framers could be turned to no improper account.'"[61] While writing this in 1821, Madison was well aware of the sectional animosities that plagued national politics and threatened the stability of the Union—indeed, the nation had just reached a critical compromise of self-preservation (or delayed self-destruction) during the Missouri crisis. Wanting to publish his papers, but knowing that they would potentially have

[60] The question of distributing *Elliot's Debates*, along with other documents of historical and political importance, to members of Congress was taken up with considerable debate. See *National Intelligencer* 24, Issue 7225 (8 April 1836) and *National Intelligencer* 24, Issue 7295 (29 June 1836).

[61] James Madison quoted in Kammen, *A Machine That Would Go of Itself*, 26.

an impact on contemporary debate, Madison opted for a posthumous publication. The former President thus spent his retirement editing and preparing his papers for publication.[62]

The process of reviewing his notes presumably gave Madison time to reflect on the contribution that his published papers would make to American politics. In April 1835, Madison expressed a change of mind. While in 1821 he wrote with caution and foreboding, in his will fourteen years later, Madison exuded confidence and hope, concluding that, "'It is not an unreasonable inference that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was constant in his attendance, will be particularly gratifying to the people of the United States…'"[63]

Madison's seemingly rational conclusion to publish his notes also revealed his admission that they contained information hitherto unknown to the American public because of the Convention's closed-door policy. Why did he think that revealing such information after his death would be "gratifying?" Why did he reach this conclusion only months from his death and not earlier, for would the people of the United States not have been just as grateful for the "inside scoop" on the Convention decades before? Though Madison had supplied bits and pieces of his notes to a few individuals prior to 1840, he still insisted on a posthumous publication. His biographers have suggested that Madison viewed his papers as a "gift for posterity" and that he thought their sale might be of "financial benefit to family members and institutions that he valued." Simultaneously, a posthumous publication allowed Madison to "save face before Virginia friends and critics," while it would mitigate conflict surrounding his account and "solidify" his position "as the central figure during the debates." Madison also hoped that releasing his notes only after his death would lessen the chance that they would become a "source of political

[62] On Madison's editing, see Mary Sarah Bilder, *Madison's Hand* and David Houpt, "Securing a Legacy."

[63] James Madison quoted in Kammen, *A Machine That Would Go Of Itself,* 88.

contention," while he honestly believed in the oath of secrecy and thought publication would be a "violation of conscience."[64]

Madison left the decision-making power regarding to the publication of his papers to his wife, Dolley Madison. Congress eventually purchased the papers and directed the Joint Committee on the Library to prepare them for publication. They selected Solicitor of the Treasury Henry D. Gilpin—who had prior experience with the Bank of the United States and who, as Attorney General, would later present the government's case in *United States v. Amistad*—to prepare them for publication, and chose publishers Langtree and O'Sullivan to bring the project to fruition. Only after considerable debate, however, which newspapers were prompt to report, did Congress make the decision to purchase and then to publish the papers. As early as 1837, when Congress passed a resolution appropriating $30,000 for the purchase of Madison's manuscripts, some congressmen—most notably, John C. Calhoun—questioned the constitutionality of such a measure.[65]

Two years later, Congress engaged in another debate over whether to distribute the published papers solely among its members or generally to the American public. During that debate on March 3, 1839, some congressmen expressed their opinion of the publication. The *Congressional Globe* reports that one Senator, William H. Roane of Virginia, "looked on [the Madison Papers] in a very different light from the trash that was so often published by Congress." Roane tried to convince his reluctant fellow congressmen that circulating the papers was worth the hassle and expense. "Mr. R. then descanted at

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[64] Madison's decision to publish his notes posthumously is most elaborately discussed by David Houpt in his essay, "Securing a Legacy." Madison's biographers also describe Madison's retirement and death, the provisions of his will, his decision to publish the notes, and Dolley Madison's attempts to bring that to fruition. See Ralph Ketcham, *James Madison: A Biography* (New York: The Macmillan Company, 1971), 661-671; Lynne Cheney, *James Madison: A Life Reconsidered* (New York: Viking, 2014), 449; Irving Brant, *James Madison: Father of the Constitution, 1787-1800* (The Bobs-Merrill Company, Inc., 1950), 19, 22; Irving Brant, *James Madison: Commander in Chief, 1812-136* (The Bobs-Merrill Company, Inc., 1961), 434. On Dolley Madison, see Holly C. Shulman, "'A Constant Attention': Dolley Madison and the Publication of the Papers of James Madison, 1836-1837," *The Virginia Magazine of History and Biography* 118, no. 1 (2010) and Catherine Allgor, *A Perfect Union: Dolley Madison and the Creation of the American Nation* (New York: Henry Holt and Company, 2006). See also Mary Sarah Bilder, *Madison's Hand.*

[65] "Papers of Mr. Madison," *Nashville Republican*, 9 March 1837, 2; For the Congressional debates, see *Congressional Globe*, 24th Congress, 2d. Sess., 193 (6 March 1837).

length on the great value of the Madison papers; the importance that the information contained in them should be disseminated as widely as possible, and the absurdity of locking them up from the public view, after having paid for printing them."[66] The senator's position as an advocate of the Madison Papers was a moment of intriguing coincidence. Roane just so happened to have been born on September 17, 1787—the day that thirty-nine of the Framers signed the Constitution—and he was the grandson of Patrick Henry, the outspoken Anti-Federalist. This historical curiosity aside, the 25th Congress passed a joint resolution for the distribution of the Madison Papers on the final day of their third session.

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Madison's eulogists shaped a particular memory of the Convention, one that focused on Madison's prominent role. However, this was not the only memory image that Americans painted at the time. Some called attention to Madison's flaws. Meanwhile, Madison tried to offer guidance before his death on sources of constitutional exegesis, which, ironically, often went unheeded. In Madison himself, therefore played out tensions between sources of authority on the Constitution and memories of the Convention. This would all continue to develop over the next few years as Americans anticipated the publication of Madison's notes and used their knowledge of Madison, U.S. history, and the existing published records from the Convention to judge the value, relevance, and usefulness of Madison's account. In doing so, they continued to form memories of the Convention and reflect on its role in the past and in the present.

Despite a devastating fire at the publisher's office, the Madison Papers were finished in January 1840. Shortly thereafter, the Papers received rave reviews in newspapers, appeared for sale in bookstores, and became a reference in congressional debate. Antislavery reformers also incorporated the Papers into their disparate theories about the Constitution's relationship with slavery. While the Madison Papers consisted of Madison's reports and correspondences from the Congress of the Confederation, as well as his notes from the Federal Convention, it was the latter that Americans awaited most.

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[66] *Congressional Globe*, 25th Congress, 3rd. Sess., 232-236 (3 March 1839).

Chapter Two

Memory in Motion

The publication of Madison's notes is one chapter in the unfolding memory-narrative of the Convention. As select publications sporadically disclosed bits of information from the secret meeting, Americans added increasingly more nuanced reflections on the Convention to their plethora of memories of the American Founding. The existing popular interest in the Convention, stemming from previously published sources, as well as press coverage of the Congressional debates over purchasing the Madison Papers, prepared Americans to think of the publication as valuable and important. The cultural significance of the epithet "Father of the Constitution," which some attributed to Madison especially after his recent death, heightened the sense of importance that Americans attached to the public release of his papers. Some Americans, moreover, were dissatisfied with the available records of the Convention and were thus eager for Congress to publish *Madison's own* record of the event. Others believed that Madison's description of the Philadelphia assembly would be an invaluable addition to an array of treasured documents pertaining to the Constitution's formation.

Not only did Americans look forward to the publication, but even prior to its appearance, they engaged in heated debates over how Madison's account was advertised, edited, and circulated. They judged Madison's account, furthermore, based on their prior knowledge of the Convention and thus often compared it with the official *Journal, Secret Proceedings,* and *Elliot's Debates*. Madison's record was often upheld as unbiased, accurate, complete, and revelatory, but these assessments were just as often qualified and contested.

The period in which Americans awaited the appearance of Madison's notes witnessed its own memories of the Convention and Madison's relationship therewith. Celebratory and critical newspapers commentators expressed their opinions of the historical, contemporary, and patriotic significance—or lack thereof—of the forthcoming publication. Their remarks both echoed those made by Madison's

eulogists and foreshadowed the structure of debates about the Madison Papers after the publication's appearance in 1840.

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In March 1839, the *United States Magazine and Democratic Review,* produced by the same company that published the Madison Papers, Langtree and O'Sullivan, offered a prospectus of the forthcoming publication. Editors John L. O'Sullivan and Samuel D. Langtree wrote that, "It had long been rumoured that there existed among the papers of Mr. Madison, a complete and accurate report of the Debates in the Convention which framed the Constitution, and the verification of the fact since his death, may be justly regarded as one of the most interesting events in the history of our national literature." The editors, in this first full-length article to discuss the Madison Papers, compared Madison's report with the official *Journal* of the Convention, Yates', Martin's, and Randolph's notes, and the records of the state ratifying conventions, but suggested that "the paucity and meagre character" of the previously published materials confirmed the "richness of these newly discovered treasures," that is, Madison's notes.[67]

The *Democratic Review* article continued at some length, discussing Madison's public biography, the process by which Congress purchased the Papers, the contents of the impending publication, Madison's purpose for taking such detailed notes, and his audience, which the editors claimed was "posterity." The editors also exclaimed, "How wise and judicious was the provision" for holding the Convention in secret, since the delegates' "labor was not for their contemporaries. They worked for the far-off future." The editors' concern with Madison's audience and their suggestion that he wrote not for his contemporaries, but for future generations, shows that they believed Madison's notes would be useful as materials for civic education. This may well have been true, but the editors also appropriated Madison in support of their campaign to sell his papers. The editors' comments suggest, moreover, that they wanted to think that *Madison* thought his notes would be important in the future, and is thus evidence of a moment where contemporaries may have affixed their present understanding onto the past. Yet, the

[67] "Madison, and the Madison Papers," *The United States Magazine and Democratic Review* 5, no. 3 (March 1839), 243.

Review also thought of the Convention more generally, and concluded that, since "the injunction of secrecy has been removed…the people of the United States may now and henceforward learn and judge for themselves."[68]

The *Review's* remarks connecting past and future, as expressions of veneration and gratitude, also reflect the contemporary practice of praising the work of the Framers. The editors even adopted religious diction to discuss the significance of the Madison Papers—"the great mass of our people…have united to give a value almost *sacred* to every authentic document calculated to throw light upon the history of the Constitution, and on the opinions and motives which actuated its framers."[69] Adding greater significance to *Madison's* record, the *Review* concluded by declaring that the publication of this "*precious relique,"* Madison's private journal, shows that the American people "with one accord pronounced the spontaneous and cordial obituary eulogium of the honored and venerated Madison."[70]

The enthusiasm with which Langtree and O'Sullivan announced the availability of Madison's private records was perhaps justified. The editors were, after all, hired by Congress to publish the Papers; the fact that they zealously defended the Papers' significance is not surprising. But not everyone shared their ardor. In a letter to the *London Times,* dated August 1839, Jonathan Elliot, editor of *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, called out the *Democratic Review* for its "gross misrepresentation" of his collected records and rebuked the editors' "attempt to denounce or prejudice the public against my volumes." Langtree and O'Sullivan, according to Elliot, left out much of the content that he had disclosed in his work, and so "it is evident that their statement does not, as they boast, include 'all that [has] reached us.'" Elliot defended his volumes, proclaiming that "they are full and ample on the subject of the Confederation, and the Constitution, showing its rise, progress, and practice till 1836." Plus, Elliot explained,

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[68] "Madison, and the Madison Papers," *Democratic Review,* 249.

[69] "Madison, and the Madison Papers," *Democratic Review,* 243; *My emphasis on "sacred."*

[70] "Madison, and the Madison Papers," *Democratic Review,* 259.

> Thousands who possess the work are well satisfied with its appearance. Of its value and character I rest my claims on the letters of Mr. Madison, addressed to me; those of the Hon. Judge Story, Vice-President Calhoun, and other distinguished individuals, as well as the favourable notices of the public press, and above all, of the approbation of the resolution of Congress, authorizing for years past its distribution among the members of that honourable body.[71]

Elliot not only defended his *Debates,* but qualified the *Democratic Review's* biased announcement of the Madison Papers by contending that Madison attested to the importance of his work, as did Congress, which had been distributing his collection for the past several years.[72]

A second article in the *London Times,* coupled with Elliot's letter, also moderated the claims of the *Democratic Review.* In a series of terse and persuasive points, the writer argued,

> I quite agree with you concerning the importance of the *Madison Papers* in a political point of view, if they should turn out to be what the frothy announcement of the publishers would have us believe. I have no wish to detract from the merit of what must soon be known to us, but the affair at present appears to be one of the grossest specimens of puffing humbug that was ever palmed upon a credulous public.

The writer's use of "if" directly contradicted the definitive rhetoric in the *Democratic Review,* while he candidly accused the editors of being bombastic. The writer then reviewed what was known about the Papers from the *Review,* gave a summary of the resolutions in Congress, and outlined details of the publication's copyright. He questioned Congress' motives in hiring "Messrs. Langtree and O'Sullivan" to print the work and wondered about the price at which Congress purchased Madison's papers. He admitted the importance of the work, but contended that Congress hired men not qualified to handle its publication.

The writer's criticism then directly addressed the value of the publication itself, questioning whether the information supposedly contained in the Madison Papers was entirely novel and doubting that Madison was even capable of providing a "complete and accurate report," as the *Democratic Review* had advertised. The remarks are striking for these reasons, but also for how the writer framed Madison's role in the Convention. He explained,

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[71] Jonathan Elliot, "The Madison Papers," *London Times,* 30 August 1839, 2. For the selected extracts which the *Times* reprinted, see also "Madison, And The Madison Papers," *London Times,* 26 August 1839, 6.

[72] For more about what Madison thought of Elliot's records, as well as his opinion of other previously published sources from the Convention see Irving Brant, *James Madison: Commander in Chief, 1812-1836* (The Bobs-Merrill Company, Inc., 1961),434-435.

> When, on the publication by Congress of the *Journal of the Federal Convention* in 1819, Mr. Madison was applied to to [sic] fill up the *lacunae* in that work from his manuscript notes, something surely of his very valuable collection must have leaked out. But Madison, who attended the Federal Convention from its commencement…to its close…could not have kept that accurate and uninterrupted record of its proceedings which the publishers would have us believe. It must be recollected that Madison took a very active part in that assembly; that he often spoke on the resolutions introduced by others, besides introducing resolutions of his own and speaking on them. Thus, day by day, he was occupied in such a manner that it was physically out of his power to report the proceedings.

The writer thus humanized Madison's participation in the Convention with remarks that echoed the ongoing debate over Madison as *the* "Father of the Constitution" or as one of many. Americans' ambiguousmemory of Madison was delicately intertwined with memory of the Convention via the Madison Papers. Likewise, the writer also placed the publication of Madison's notes in relation to the other works which had previously revealed the inner workings of the Philadelphia assembly. In addition to the official *Journal*, the writer severely circumscribed the declared revelatory nature of the Madison Papers by comparing them with the 1821 publication *Secret Proceedings*. This document, the writer acknowledged,

> gives us much valuable and authentic information relative to the proceedings of that body, and its contents will be doubly important in correcting and illustrating the *Madison Papers*. The work consists of notes made by the Hon. Robert Yates, Chief Justice of the state of New York, whilst attending the convention as a delegate from that State; preceded by the "information" or report communicated by Luther Martin to the Legislature of Maryland on his return from the Convention. In this report Mr. Martin gives us the secret history of the formation of the American Constitution.

Not only does this quotation illustrate the writer's impressive familiarity with the Convention's historical record, but it suggests that he, and presumably others, measured the Madison Papers' worth by considering them in light of what knowledge they already had of the Convention. The significance of the Madison Papers was also conditional, for the writer continued, "*if* the *Madison Papers* can add anything more to illustrate the motives which guided the heroes of the North American Confederacy, we shall hail their publication as a valuable gift."[73]

[73] *My emphasis on "if."*

Finally, the writer concluded his critique of the *Democratic Review's* prospectus with still more hesitancy. He provided a lengthy description of the Convention's resolution to hold its proceedings in secret, explaining that the delegates could not even make copies of the resolutions presented during their sessions to review during recess. "With these facts before us, and they are unquestionable," the writer resolved, "how can we reasonably hope to find in the *Madison Papers* that perfect journal or report of the proceedings which we have almost been deluded into the belief to expect[?]"[74]

Despite the criticisms and reservations voiced in the *London Times,* the expressions of praise heaped upon Madison and his papers were not limited to the *Democratic Review.* Editorials in local and national newspapers in 1839 excitedly anticipated the publication of Madison's record of the Convention. In April 1839, the *Alexandria Gazette* relayed that Langtree and O'Sullivan had issued a prospectus for the Madison Papers. The *Gazette* described Madison as "one of the most distinguished members of the Convention" and his notes, they said, were "the only full report, or one even approaching that character, of the proceedings of that body." Thus, they argued, "the publication of this report alone is therefore a matter of high importance."[75] This characterization of Madison as one of several "distinguished members" echoes Thomas J. Whipple's eulogy of Madison, where he invoked the plural instead of referring to Madison as "*the* Father of the Constitution." Though the *Gazette* did not adopt John Quincy Adams' appellation for Madison, the article did give especial praise to his record of the Convention—without contradicting their claim that he was one of many framers. A few months later, the *Gazette* elaborated, "as a whole, this work may be safely pronounced the most valuable and important on the history and theory of the American Government, which has ever been published."[76]

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[74] "The Madison Papers," *London Times,* 30 August 1839, 2.

[75] "Madison Papers," *Alexandria Gazette,* 12 April 1839. This article was reprinted in *Niles' National Register* 6, no. 9, 27 April 1839, 131.

[76] "The Madison Papers," *Alexandria Gazette and Virginia Advertiser,* 31 July 1839.

In the same vein, the *Macon Intelligencer* quoted from the unpublished Papers Madison's parting remarks in his letter "Advice to My Country." The editors prefaced the extract by affirming that, "as the advice nearest the heart of so venerable a sage, and so true a patriot, it is eminently worthy the attention of the American people." Another Mississippi newspaper, the *Piney Woods Planter,* described the Madison Papers as a "great national work" in their notice of the forthcoming publication. The *Richmond Enquirer,* furthermore, reprinted an extract from the *Democratic Review* regarding the Madison Papers—"whose appearance the public are so anxiously awaiting." The anecdote was Benjamin Franklin's declaration that the image painted on Washington's chair was a "rising sun," which the *Enquirer* informed their readers "concludes the invaluable work which Mr. Madison has bequeathed to his countrymen." Meanwhile, the *Pennsylvania Inquirer* gave distinct notice to the Federal Convention when it suggested that, "Connected as they are, so deeply, with the debates in the Convention which formed our Constitution, [the Madison Papers] will be looked for with anxiety, perused with interest, and treasured with care."[77]

While these articles illustrate the keen emotional temper of those looking forward to Madison's account of the nation's infancy, some Americans expressed particular concern over *how* Madison's work was prepared for publication. A debate in the *National Intelligencer* showed a desire to preserve the record that Madison "bequeathed" to future generations in its original form. On September 7, 1839, the *Intelligencer* clarified that, "much unexpected delay has been occasioned in the publication by the state of the manuscript, and the necessity of explaining many allusions familiarly made at the time of writing by Mr. Madison, but which a lapse of sixty years had rendered obscure." The article explained that Henry D. Gilpin, whom Congress entrusted with the editing, had "taken much pains to elucidate these passages, having added some hundreds of notes in explanation of the text."[78]

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[77] "Cherish the Union," *Macon Intelligencer,* 30 May 1839; "Madison Papers," *Piney Woods Planter,* 12 October 1839; "Interesting Anecdote," *Richmond Enquirer,* 24 September 1839; "The Madison Papers," *Pennsylvania Inquirer,* 27 September 1839.

[78] "The Madison Papers," *National Intelligencer,* 7 September 1839.

This notice in the *Intelligencer* praised Gilpin's "superintendence" of the Madison Papers. However, in a letter to the editors two weeks later, "A Friend of Madison" wrote that such a notice was met with "surprise and concern" by "the personal and intimate friends of Mr. Madison, who knew with what labor and care he had prepared for the press the manuscript purchased by Congress since his death." The writer argued that the *Intelligencer's* pronouncement on the Madison Papers, "not only mistakes facts, but is calculated to do great injustice to Mr. Madison." What would Madison think, the writer asked, of such a statement that his notes, which he so dutifully prepared, needed additional editorial commentary to render them intelligible? Madison's "friend" elaborated:

> It is due alike to the character of Mr. Madison, as to the history of the interesting and valuable work in question, that the Public should be informed that the original manuscript, which the paragraph represents to have become obscure from the lapse of sixty years, is now in the custody of Mrs. Madison; and that the manuscript purchased by Congress was a fair and full copy, taken under the supervision of Mr. Madison, who carefully compared it with the original, taking care to have the names of the members written out at length, and all such 'notes' and other explanations added, as to render it entirely intelligible, as he conceived, to all when it should be published.

After defending Madison's record and affirming that the former president had already made all of the necessary edits, the writer remarked indignantly, "A manuscript thus prepared for the press by Mr. Madison himself, and which he requested should be published immediately after his death, has been withheld for years, because, as is alleged, of its being obscure and unintelligible." The writer bemoaned the publication's inappropriately delayed appearance. Additionally, the writer not only suggested that Gilpin's revisions were entirely unnecessary, but also that they might somehow tarnish the authentic record, which Madison himself had prepared. "It is to be hoped," he continued,

> [that] their numerous 'notes' may not have a political tinge, and be made to subserve parties or persons, as we find many 'notes' in certain editions of the Bible made to promote sectarian doctrines. Whatever may have been the motive, I wish, and I think the American People wish, that this first edition of their political bible had been without note or commentary; given to the world as its learned and virtuous author left it, and as he intended it to have been given.[79]

This understanding that the Madison Papers were a "political bible" for the nation would be echoed in future reviews of the document. Yet, the particular concerns expressed by "A Friend of

[79] A Friend of Madison, "The Madison Papers," *National Intelligencer,* 20 September 1839.

Madison" illustrate that Americans were highly attentive to notices of the forthcoming publication and show that they had an interest in *how* these papers, hitherto kept private, were first presented to the public. This was not an isolated sentiment. This letter to the *National Intelligencer* editors was reprinted in other newspapers. For example, a notice in the *Alexandria Gazette* concurred with the "Friend," professing that he "very properly objects to the proposed assistance of Mr. Gilpin and Mr. Sparks in editing Mr. Madison's Papers, by the addition of their notes and explanations." This sympathizer added, "We do not know that the public will be at all indebted to these gentlemen for their labors. It is stated that Mr. Madison left his papers prepared for the press, and ready for printing. Let us have the text, without the comment."[80]

These charges against the propriety and necessity of Gilpin's editorial comments did not go unanswered. On September 28, the *National Intelligencer* printed a letter from Gilpin in which he defended his work on the manuscript. The correspondents, he wrote, "have mistaken the extent of my agency…I have considered it a paramount obligation to preserve the work as left by its illustrious author." Gilpin admitted that, since sixty years had elapsed since Madison wrote the notes, the editors believed it "indispensable, to annex a few pages at the end of the volumes, containing brief references to some of the principal of these passages [sic]." Nevertheless, Gilpin believed that these references did not detract from Madison's manuscript, but rather the "task was undertaken solely in the belief that it was a proper service to the reader and the public."[81] This debate demonstrates, just as numerous subsequent debates would, that there existed in the antebellum United States a variety of opinions regarding the substance, import, authenticity, and value of the Madison Papers. No one disputed Madison's authorship, but the squabble over Gilpin's editorship, along with the reservations previously expressed in the *London Times,* illustrates

[80] *Alexandria Gazette,* 21 September 1839.

[81] This article was reprinted in *Niles' National Register* 7, no. 6, 5 October 1839, illustrating the wide press-coverage this exchange received.

that there were considerable disagreements over the manner in which Madison's papers were purchased, edited, and published.

The original article in the *National Intelligencer* which announced the news of the publication and kicked off the whole debate over Gilpin's editing also included remarks of high praise for Madison's account of the Convention. The article began: "This great national work, which has been so intensely expected—lifting, as it does, the curtain upon the very souls and inmost thoughts of the great men who 'laid the ribs of an eternal state'—will, we learn, be published in early November."[82] The writer ascribed to Madison unrealistic notetaking abilities by suggesting that his record could reveal the "inmost thoughts" of his colleagues, but this quotation aptly illustrates why some Americans believed that Madison's record was exceptional. The fact that this article was also reprinted widely in newspapers across the country confirms the popularity of the opinion expressed.

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Americans expressed a variety of opinions about the Madison Papers—even before they had the records in hand—which informed their understanding of the Convention's significance and shaped how they remembered the event. Historians who see the Madison Papers as a useful and informative account of the Convention have assumed that Americans at the time felt the same way. However, the scholarly understanding of the Papers today does not express the variety of purposes which *contemporary* Americans felt the Madison Papers served. Meanwhile, the historians' perspective obscures the full significance of this publication across American society. The Madison Papers meant something to Americans not necessarily involved in politics or the antislavery movement.

In addition to their conversations about the Madison Papers' contribution to American society, politics, and culture, Americans pondered what value the Papers held for generations past, present, and future. Americans contemplated whether the notes were at all useful and whether they were important, while they argued about how the Papers were prepared and when they should be published. A corollary

[82] "The Madison Papers," *National Intelligencer,* 7 September 1839.

debate formed around the *purpose* of the Madison Papers, and, relatedly, their intended audience. Americans believed that citizens young and old stood to gain from the publication of Madison's record of the Constitutional Convention.

The *Intelligencer* article quoted above had also shared a fascinating quotation from Asher Robbins, a senator from Rhode Island and member of the Whig Party, who suggested that the Madison Papers be printed in large type. Robbins proclaimed: "This is a book for the old men of the country. Let it be made so that they can read it with comfort. It will become the political bible of the land." Once again the Madison Papers were labeled the nation's "political bible," while Robbins' rhetoric assumed then accustomed religious overtones. The senator continued rather nostalgically:

> We, who recollect those times, who *felt* the inexpressible transition to the secure and permanent national happiness all of you have been born to enjoy, achieved by the men whose voices, swayed by the awful fears or mighty hopes of the moment, now come to us from the tomb through that book—we want to ponder over it, to study it, and to catch the inspiration of their solemn sense of public duty, ere we leave the life that has been blessed by their labors.[83]

Within this quotation, Robbins made a distinction between two generations—young and old. "We, who recollect those times," referred to the latter, and "national happiness all of you have been born to enjoy," to the former. While the *Democratic Review* had emphasized that Madison's audience was "posterity," Robbins believed that the Madison Papers were a valuable source for remembering the days of old and could be read for enjoyment, not merely for utility. Others shared both the *Democratic Review* and Robbins' opinions and claimed that the Madison Papers were at once relevant to present and future. One such article, found in the *Buffalo Daily Republican,* stated that, "We look upon these papers, as among the most important documents to the future historian, and the present admirer of the founders of our civil polity."[84] Several Americans expressed these sentiments after 1840 as well.

Robbins' quotation also harkens back to the sentiments expressed in Madison's eulogies. The Senator alluded to the fact that Madison's death severed the nation's last living link to the connection

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[83] "The Madison Papers," *National Intelligencer,* 7 September 1839.

[84] "The Madison Papers," from the *Buffalo Daily Republican,* reprinted in *Democratic Free Press,* 14 August 1839.

when he said that, the Framers' voices "now come to us from the tomb through" the Madison Papers. Additionally, Robbins' testimony suggests a desire to become familiar with the secret deliberations of the Convention and the intentions of the Framers, knowledge that goes beyond an understanding of the product of their actions, the Constitution.

In the last article to convey the public's readiness for the forthcoming publication, the *Alexandria Gazette* reported in January 1840—"We understand that the long expected *Madison Papers* will be published in a few days. They will form a most important addition to our materials for a history of the American Constitution and are looked for in all quarters with the greatest interest." [85] The reflections and compliments expressed by Robbins and by the *Gazette,* and others who were impatiently looking forward to Madison's account of the Convention, would be repeated in newspapers after his Papers were published, as would the reservations voiced in the *London Times* and related editorials. The Madison Papers did not cease to be the subject of debate after Congress had them published, nor did *all* Americans welcome the information therein with open arms.

[85] *Alexandria Gazette,* 8 January 1840.

Chapter Three

Memory and Memories

In their anticipation of the Madison Papers, Americans expressed a variety of opinions about the publication's value, relevance, and utility. This was just as true after January 1840, when Madison's private notes and correspondences became public. However, historians have not thoroughly analyzed the rich evidence database pertaining to the Madison Papers from the early 1840s. Consequently, they have missed the plethora of sentiments that Americans expressed about Madison, the Constitution, the founding of the United States, and the Philadelphia Convention after the issue of Madison's personal papers. Those scholars who have studied the impact of the Madison Papers in American culture and politics have done so primarily with respect to slavery. These studies are commendable, but they are also limited. Slavery, while arguably the *most*, was not the *only* divisive issue of the 1840s. We have yet to answer questions such as, how did Americans receive and use the Madison Papers in light of the independent treasury debates? What about the tariff, elections, and internal improvements? An examination of the press's reporting on the publication of the Madison Papers reveals that the Papers impacted political debates not explicitly related to slavery.

Ignoring the primary sources has also skewed our perception of the Madison Papers. Scholars have assigned much importance to the Papers retrospectively—but what did Americans think at the time of their publication? Bookstore advertisements, literary reviews, and congressional debates are just a few of the sources that attest to the numerous disputes agitated by the publication of the Madison Papers. Some Americans hailed the publication as one of the most significant contributions to the national library. Others seized the moment and used the publication to justify their arguments about everything from the national bank to the status of fugitive slaves. Some practically claimed that Madison's was the only record of the Convention. Others compared the Madison Papers with previously published accounts of the Philadelphia proceedings. A few dismissed the affair's cultural and political significance all together. Each person who encountered the Madison Papers characterized Madison, the Constitution, and the

Convention in a slightly different way, all of which contributed to Americans' memory-narrative of the Convention. This diversity of sentiment, coupled with the continued prevalence of other published records from the Constitution's formation—the official *Journal, Secret Proceedings, Elliot's Debates*—demonstrates that the Madison Papers were not unanimously received by the American people as a "definitive" account of the nation's Founding, nor were they always deemed the most valuable or the most revelatory of all the records which disclosed information about the concealed proceedings of the 1787 assembly.

Rather, Americans actively engaged in vivid conversations about the Constitution and the Convention where it was written. They remembered the Convention *through* the Madison Papers and in doing so shaped the event to fit their present political circumstances and to fit their particular memory of the American Revolution and the Founding Fathers. Americans' reception of the Madison Papers in the early 1840s reveals that the nation's relationship with its revolutionary past was complicated. As for the present, restoring the reception of the Madison Papers to their full context—their reception outside and within antislavery circles—allows for a clearer understanding of how both the American public and the antislavery movement shaped the memory-narrative of the Convention to fit their respective political agendas during the 1840s.

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The Madison Papers were featured in the press within months of their publication. Almost immediately, bookstores across the country started advertising that they had received the Madison Papers. As early as May 1840, *The North Carolinian* published a notice that the Madison Papers were available for purchase at the office of the *Democratic Review*. Though not surprising, given that the *Democratic Review* and the Madison Papers had the same publisher, the location of this ad is impressive. Likewise, in July 1840, a Nashville bookstore advertised in the *Republican Banner*, "The Madison Papers. Just Received." This trend continued for the next few years—similar advertisements appeared in the

Connecticut *Hartford Daily Courant* in December 1841 and in the Detroit, Michigan *Democratic Free Press* in June 1842.[86]

Newspapers quickly grasped that the Madison Papers revealed, in greater detail than ever before, several details of the Philadelphia Convention. One particularly interesting article in the *Illinois Free Trader* from August 1840 reported that, "In the Convention which formed the Constitution of the United States, seventeen hundred and eighty-two speeches, long and short, were delivered, according to the Madison papers." [87] The *Free Trader* must have spent significant time with the Madison Papers if they counted the speeches. The paper then listed several names of Convention members with the number of speeches they each made. Meanwhile, the *Mississippi Creole* said of the Madison Papers, "Of course this is a valuable Book, and should be in possession of every voter in the country." In a way, the *Columbia Democrat* concurred, offering the Madison Papers alongside the current *Democratic Review* and Alexis de Tocqueville's *Democracy in America,* as "liberal inducements" to augment their list of subscribers. In another unique article from the *Wheeling Times,* a bookseller included the Madison Papers among other "Superb Books" in an advertisement for "Christmas and New Year's Presents." On the other hand, the *Alexandria Gazette* limited their advertisement by suggesting that the Madison Papers would be of value "To Statesmen and Politicians." Nevertheless, more often than not, notices about the Madison Papers were meant for a broader audience. Most telling, for instance, is a notice from the *Daily Madisonian* describing the publication as, "The Madison Papers, cheap—complete in three volumes octavo, best edition, beautifully printed, and neatly bound—price $7.50, published at $11." [88]

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[86] "A card," *The North Carolinian*, 30 May 1840; "The Madison Papers. Just Received.," *Republican Banner*, 18 July 1840; "New Books," *Hartford Daily Courant,* 15 December 1841; "Madison Papers," *Democratic Free Press,* 21 June 1842.

[87] "Speeches in the U.S. Convention," *The Illinois Free Trader,* 21 August 1840. This article was originally printed in *The North American.* Showing a wide geographical interest in the Madison Papers, this article was also reprinted in Baltimore in *The Pilot and Transcript* 1, no. 70, 4 July 1840.

[88] "The Madison Papers," *Mississippi Creole,* 29 January 1842; "Premiums," *Columbia Democrat,* 27 August 1842; "Christmas and New Year's Presents," *Wheeling Times,* 16 December 1843; "To Statesmen and Politicians," *Alexandria Gazette,* 16 October 1840; "The Madison Papers, Cheap," *Daily Madisonian,* 7 December 1843.

At least this was the price in 1843. It does not seem to have been the case, however, immediately after publication in 1840. Instead, the literary journal *The Iris* expressed dismay over the price of the Madison Papers in November of that year. "Our only remaining regret," the editors wrote, "is that such a work, which should have been published in a form accessible to every freeman in the land, is held at a price which must limit its possession to comparatively a very small number." They argued this not for the sake of popularizing Madison, but rather, the editors believed that the Papers served an instructive purpose. "The government would have better consulted the public good, and the ascendency of the truly republican doctrines of Madison, by causing this great national work to be published in cheap form, and distributed to at least every township and village in the Union."

Not only did this incredible article comment on the price of the publication, but the editors also reported on several questions related to the Madison Papers—the public's anticipation of the document, Henry D. Gilpin's editing, Madison's role in the Convention, the Convention itself, and of course, Madison's actual account of the event. The article began by reiterating the anticipation previously expressed: "Here is a work long looked for, from the hand of one of the master minds of the revolution, and embodying the spirit of the illustrious author." *The Iris* also shared the position of the *National Intelligencer* in its praise for Gilpin's editing when it stated, "If a longer time has been occupied in the publication of these volumes than our impatience can excuse, we have at least the satisfaction of seeing that they are well printed, and, under the supervision of the accomplished editor, Mr. Gilpin, no doubt most accurately and faithfully executed." Here again, Gilpin's contributions were cast in a positive light, in contrast to the concerns expressed by the "Friend of Madison."

Furthermore, *The Iris* both reiterated and foreshadowed popular claims at the time that Madison was present for nearly every minute of the Convention and was a dominating figure of that body, that his account of the event was complete, and that his notes were superior to other records. *The Iris* concluded with the proclamation that Madison's

> record of the debates in this convention is full, extending from the first hour of the assembling of that body to the hour of its final adjournment. It is almost the only *record* existing of the discussions on that memorable occasion, and derives more than ordinary interest from the fact, that the true

> opinions of some of the prominent men of that day, which have often been perverted or misrepresented, are here faithfully portrayed by the hand of one of the most prominent actors. Great questions of constitutional power are here seen in their true form and aspect, by the help of the light which beamed upon the founders of the constitution.

In this article, the Convention was framed as a "memorable occasion" where the nation's leading men were particularly enlightened as they drafted the Constitution. Madison was described as a principal figure, a point with which his celebrants had concurred. *The Iris* also suggested that the Madison Papers might serve to clarify the conclusions reached by and exonerate the characters of the men in Philadelphia, which, because of the Convention's oath of secrecy, could only be known through rumor and conjecture until now. Lastly, the italicization of "record" may imply that the writers believed that the other written material pertaining to the Convention was somehow *not* a "record" of the events. Whatever the case, *The Iris* certainly assigned superiority to Madison's account by contending that it was the "fountain-head of information" and encouraging their political leaders to go to Madison's record, "and forgetting PARTY, learn to love, and live, and labor for their country, as did MADISON and his illustrious compeers."[89]

In addition to the *Iris*, two other journals published extensive commentaries a few years after the Madison Papers appeared. *The North American Review* and the *American Jurist and Law Magazine* both published impressive full-length reviews of the Madison Papers in 1841 and 1842 respectively.[90] These two reviews are outstanding examples of the various ways in which Americans thought about the Convention in the 1840s and reflected on its prominence, both in 1787 and in their day. Both journals saw value in the Madison Papers and acknowledged their importance, but they interpreted that value differently. Juxtaposing these reviews illustrates that Americans engaged with the Madison Papers, and through the Madison Papers the Constitution and the Convention, but highlights that they did so in diverse ways.

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[89] "The Madison Papers," *The Iris, or Literary Messenger* 1, no. 1, 1 November 1840, 43.

[90] *The Democratic Review* also rehearsed its past expressions of praise for the Madison Papers in 1839 with two additional review articles published in 1842. See, "The Constitution—The Framers and the Framing," *The United States Magazine and Democratic Review* 11, no. 2 (August 1842) and no. 4 (October 1842).

"Not contented with the life of eminent usefulness to his country," *The North American Review* began, Mr. Madison "determined to signalize the moment of his death by the communication of these papers to his countrymen." *The North American Review* was a literary magazine, based out of New England and established in 1815, that sought to promote American culture and improve public education. After praising Dolley Madison and Congress for publishing the Madison Papers, the *Review* explained that their value "is of a peculiar and somewhat unique character," for "it is the record of an extraordinary coincidence, in the same assembly, of men of practical skill, legislative talent, and disinterested purposes, such as the world had not often seen before, and such as it may never see again." The result of this assembly was the Constitution, but the Review seemed particularly interested in the Convention *itself*, as an event worthy of study and remembrance, adding that, "the process by which this remarkable instrument was produced in a country where so many elements have always existed, and still exist, to defeat it, will always be deserving of profound study by all who interest themselves in political science."[91] The comments here are not out of touch with other depictions of the Convention, but they are more elaborately developed. The *Review* also reflected on the relationship between past, present, and future, and here suggested that the Convention, in addition to its product, was, is, and will continue to be relevant.

Beyond that, the *Review* argued that the Madison Papers, revealing as they do the inner workings of the Convention, are valuable for what they expose about "man's capacity for self-government." The *Review* continued:

> It is then natural, that we should turn to the documents which relate to the commencement of the experiment with eager curiosity. The men who made the constitution are no longer here to explain the mode in which they arrived at their first result. We must now rely for instruction upon the expositions they may have left behind them. Among these, the work now under discussion must always claim a high rank, as coming from one of the leading minds in the formation of it, and as embracing the opinions of all others which were engaged in cooperation.[92]

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[91] "Art. II: The Papers of James Madison," *The North American Review* 53 (July 1841). The July volume of the *North American Review* received interesting commentary in other newspapers which reprinted its table of contents. See for example, *The Baton Rouge Gazette,* Saturday, 10 July 1841. *My emphasis on "process."*

[92] "Art. II: The Papers of James Madison," *The North American Review* 53 (July 1841).

Published written records were all that remained of the conception of this singular experiment in self-government, the United States, and thus, were the only physical sources left to preserve Americans' memories of the Convention. The Madison Papers, furthermore, were seen as a source for "instruction" for present and future generations to understand the work of the Framers. The *Review,* once again, linked the appearance of the Madison Papers with the reality that Madison's death severed Americans' last living connection to the Convention. In 1839, Senator Asher Robbins had requested that the Madison Papers be printed in "large type" for the old men of the country to read and reflect upon nostalgically. Conversely, the *Review* made a suggestion from the opposite perspective by insisting that the Madison Papers could be used as a didactic tool, that they were part of the American civic education library. This tension between seeing the Madison Papers as facilitating nostalgia, as interesting and entertaining, and as instructive, pedantic, and useful was a persistent them in the contemporary literature. The dichotomy should not be overstated, however, so as to be misleading—often reviews of the Madison Papers expressed a combination of these sentiments, just like the *North American Review.*

Moreover, the *Review* acknowledged that Madison's record was not the only one, and even compared his account with Robert Yates' notes, Luther Martin's speech, and the official *Journal.* However, Madison's account was the only one to receive such laudatory distinction. Lastly, although the delegates to Philadelphia came from a variety of backgrounds and embraced often conflicting ideologies, according to the *Review*, they were "guided by the right spirit"—the diversity of opinion "so far from producing its ordinary effect to paralyze action, had, in this instance, a tendency to improve and mature the object which all had equally a desire to secure."[93] In their praise for those assembled at the Convention, the *Review* even supported the delegates' decision to hold their deliberations in secret, just as the *United States Magazine and Democratic Review* had done in 1839.

The *American Jurist and Law Magazine* similarly praised the gathering in Philadelphia, claiming that, "If the journal of Mr. Madison is, as we believe it to be, correct, the world has rarely, if ever, seen so

[93] "Art. II: The Papers of James Madison," *The North American Review* 53 (July 1841).

business-like a body of men as this convention." However, this magazine offered a different interpretation of the meaning of the Convention than *The North American Review* in that it chose to ground the Convention in its historical context—a choice also made by some antislavery intellectuals. The *American Jurist* also acknowledged that the public had eagerly anticipated the Madison Papers, but it argued that some of the anticipation may have been misplaced. The editors contended that,

> There is certainly no event connected with American history of more importance than the formation of the present Constitution of the United States, and these contributions of Mr. Madison towards its history have been waited for with intense curiosity. It is probable, that…expectation will not be fully realized, for it has been to some extent not founded in reason. The constitution…did not grow up during the session of the convention, nor yet during the period which elapsed between the declaration of independence and the convention. It was not an artificial structure invented by the genius of the patriot statesmen of the convention…it was and is the representation of the political and moral condition of the people of the United States, at the time of its adoption.

As such, according to the *American Jurist*, "the history of our constitution is then the history of the social and moral growth of the American people. It is in vain to expect to trace its whole growth in the journals of a convention." Here is a peculiar instance where an editor affirmed the value of the Madison Papers, but denied their relevance for understanding the Constitution. The *Jurist* included some extracts for its readers to study; however, the editors suggested that those who seek in this publication "a complete illustration of the origin and growth of the constitution, will be disappointed."[94] Thus, they provided a different interpretation of how to understand the Constitution, one less connected with Madison and the Convention which most others put forth; to understand the Constitution, according to the *Jurist,* Americans must understand the character of their fellow citizens during the 1780s. This rather sober account stands in contrast to the tone and rhetoric of most newspaper editorials of the day, but is illustrative of the period's vast assortment of opinions about the relationship between the Constitution and the Convention. The variations amongst reviews of the Madison Papers would play out in the antislavery movement as well, as those reformers incorporated the document into their own intra-movement debates.

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[94] "Art. VI. The Madison Papers," *American Jurist and Law Magazine* 26 (January 1842).

The relationship between the publication of the Madison Papers and the antislavery movement has been well documented by historians. However, slavery was not the only divisive political issue of the 1840s. The Madison Papers were published in 1840, in the midst of a quarrelsome presidential election that witnessed the election of a Whig, William Henry Harrison, and upset the Democratic Party's hold on the presidency. As with the election of 1836, Americans knew that the Revolutionary generation was fast receding from view—Harrison's father was one of the signers of the Declaration of Independence and Harrison was the last president born during British colonial rule, but he was not one of the Revolutionary generation himself. Meanwhile, a national economic depression caused many Americans to reflect, argumentatively, about the role of the government in the economy, the scope of the national government's power, and the practical nature of federalism.

Memory of the Convention was intertwined with these debates through discussions of original intent and through the published records used as references, citations, and evidentiary support. Politicians and intellectuals immediately absorbed the Madison Papers into their debates, using Madison's record to bolster their argument's credibility, or, on the other hand, dismissing the Papers as irrelevant or biased. They compared the Madison Papers to other records from the Convention and reflected on the publication's status in the contemporary political climate. The Madison Papers occupied a contentions place in Americans' developing memory-narrative of the Constitutional Convention.

As early as March 1840—less than three months after Langtree and O'Sullivan printed the Madison Papers—Representative Joseph Trumbull (Connecticut) of the Whig Party called attention to the volumes in a speech on the Treasury note bill, which was part of a larger debate at the time over establishing an independent treasury or a national bank. He reiterated opinions often expressed in newspaper reviews and stated that Madison's record of the Convention was comprehensive. Whereas the previously published sources were inadequate and kept many details of the Convention in the dark, Madison's record provided a "flood of light" on the Philadelphia assembly's deliberations. Trumbull claimed that,

> We have, Mr. Chairman, some evidence upon this subject now, as to what was the intention of the Convention of 1787 which framed the Constitution, that we have never had before. Heretofore we have had some memoranda from members of that Convention, and a report to the Legislature of Maryland, by the honorable Luther Martin, a delegate to the Convention from that State; but, in addition to this, we have now a flood of light spread upon this subject by what are termed the Madison Papers. I wish to refer for a few moments to these papers, that gentlemen may understand what passed in that Convention, as we have it from Mr. Madison, who was a member….[95]

Trumbull believed that the availability of Madison's transcript opened the door for more exhaustive constitutional exegesis. This was true, but it is also interesting how much he expressed dissatisfaction with the previously published sources and the extent to which he emphasized the novelty of Madison's account. Likewise, Trumbull curiously omitted the official *Journal*, the twice published document *Secret Proceedings*, and *Elliot's Debates*, which others at the time argued could also shed "light" on the Framers' intentions.

Nevertheless, Trumbull and other political figures deemed the Madison Papers distinguished enough to be used as supporting documentation for their stance in a given debate. This was especially the case in the prolonged fights over an independent treasury, treasury note bills, and national bank in 1840. One commentator in the *Richmond Enquirer* stated that, "the publication of the Madison papers completely establishes" the unconstitutionality of a national bank. The writer included extracts "from the debates in the Federal Convention," cited the Madison Papers, and concluded that nothing could "justify so bold an infraction of the Constitution."[96] On the other hand, in a related debate, North Carolina Representative Charles Fisher, affiliated with the Democratic Party, questioned his colleagues' use of the Madison Papers in their arguments for the unconstitutionality of the bill for issuing Treasury notes. He suggested instead, that the actions of Madison as president were more authoritative. Fisher argued that,

> Some contend that it is unconstitutional….Those who urge this objection adduce, as authority, a quotation from the papers of Mr. Madison just published, in which the writer would seem to entertain this opinion. But this argument loses its force when we call to mind that Mr. Madison himself while President, approved acts of this kind, under which millions of Treasury notes were issued. If he really believed this measure unconstitutional, would he have approved it, and carried

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[95] "Speech of Mr. Trumbull, of Connecticut, On the Treasury Note Bill," *Hartford Daily Courant*, 21 April 1840.

[96] "The Long Shot from Castle Hill," *Richmond Enquirer*, 7 April 1840.

> it into execution? All who know the character of that great man will not feel at a loss how to answer.[97]

Fisher may have misinterpreted his colleagues' use of the Madison Papers as an authority; Madison's record, certainly, contained opinions other than his own. However, Fisher's argument raises incredibly intriguing questions about the relationship between Madison's opinions and his record of the Convention, and the relationship between Madison's actions after the Convention and the Framers intentions.

References to the Madison Papers and continued discussions about the Constitutional Convention during protracted debates about the nation's finances show that Americans wrestled with these questions. For instance, Representative William Lucas of Virginia, though he too was a Democrat, advocated a position contrary to Fisher's. In remarks on the Independent Treasury Bill, Lucas proclaimed that, "whatever doubt there may exist about the constructive power under the Constitution to incorporate a bank, there can be none about the intentions of its framers." He then pointed to the Convention, via the Madison Papers, to apprehend the Framers' intentions:

> There cannot possibly be the shadow of a doubt, that it was not intended by them we should create a National Bank [sic]; for the proposition came up in the Convention in several shapes, and was rejected each time. The 'power to emit bills of credit,' being inserted in the original draft of the Constitution, these words were expressly stricken out and rejected by a vote of 9 States to 2. (See page 1343, Madison papers, vol 3; and pages 1354, 1576, 1577). [And] the proposition to confer the power to grant charters of incorporation and an amendment to the same to create a bank was positively rejected by 8 States to 3.

Though he confidently cited these details, even specific votes, from the Convention, as relayed in the Madison Papers, Lucas felt that he needed to elaborate. He anticipated objections to his argument and doubled-down on his position by contending that, "the fact that we have created two National Banks, claiming the power by implication, in the teeth of these repeated rejections of the proposition to confer the power, does not conflict with my position, that the framers of the Constitution did not in fact, intend to give the right, and did not grant it."[98] Lucas' argument that Americans should look to the intentions of the

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[97] "Remarks of Mr. Fisher, of North Carolina," *North-Carolina Standard,* 29 April 1840.

[98] "A National Bank," *North-Carolina Standard,* August 1840.

Framers and their actions in the Convention rather than to their actions in office afterwards seems to have been the more popular position at the time.

Lucas and Trumbull were not the only ones who turned to the Madison Papers for authoritative confirmation of their political positions. In still another debate on the bank and revenue bill, two senators—Clement Clay (Alabama) and John Henderson (Mississippi)—exchanged words over the constitutionality of the bank, drawing into their conversation records from the Convention *Journal*, the Madison Papers, and the opinions of Thomas Jefferson.[99] Their argument presents one example of two politicians using the Madison Papers in a partisan nature, for Clay was a member of the Democratic Party and Henderson was a Whig. Here, the Madison Papers are called upon in a partisan debate over economic policy, while they were simultaneously used, as Chapter Five will demonstrate, in sectional debates over slavery. The entire debate between Clay and Henderson is worth quoting, but one part in particular is most fascinating. Clay argued that "Mr. Jefferson was some authority" and quoted the late president on the unconstitutionality of the Bank. However, Henderson, who believed that the Bank was "a measure clearly intended by the Constitution," responded that, "Mr. Jefferson's opinion…was a record of memory after years intervening…He might be mistaken, and if he was not mistaken, his statement conformed neither to the journal of the convention nor the Madison papers."[100]

Senator Henderson implied that the Madison Papers, along with the official *Journal* of the Convention—the written records—might serve as a litmus test for determining the validity of claims about the Framers' intentions after the Convention. Likewise, repeated attentions to the Madison Papers illustrate that many Americans acknowledged their particular authority to separate fact from fiction. A representative sampling of the diction used illustrates this point. For instance, an editorial in the *Richmond Enquirer* critically reviewed Harrison's Inaugural Address and stated that, if he "had looked

[99] "Revenue Bill," *Staunton Spectator,* 12 August 1841.

[100] "Revenue Bill," *Staunton Spectator,* 12 August 1841.

into the Madison Papers," he would not have made some of the misleading statements that he did.[101] Similarly, the *North Carolinian* printed an article where the writer said,

> to show the reader how carefully this clause of the Constitution was worded, so as to provide against the multiplication of officers, at the pleasure of the President, we lay before him the following extract from *The Madison papers*, page 1, 422, third volume…Thus it appears that the mischief of the multiplication of officers was foreseen by the Convention and guarded against, so as in the words of Mr. Madison.[102]

More importantly, this article shows that the writer thought that the Framers provided for future "mischief" in the very construction of the Constitution. The Framers not only *did* "provide against" political maladies, based on the text of the Constitution itself, but they also *intended* to do so, based on Madison's record of the Convention. Here is another example, as we saw with *The North American Review*, showing that Americans were interested in the *process* through which the Framers molded the Constitution into its final form.[103]

The *North Carolinian* writer was able to find evidentiary support for his argument in the Madison Papers, but others were not as fortunate. In a multi-part series on the "Tariff Question," the *Richmond Whig* presented some "Facts for the People" using the *Register of Debates*. The writers clarified that they had hoped to "trace the history" of the tariff power "through the Convention, and to explain the various modifications which it received in that body." But, they admitted, "upon running our eye through the 'Madison Papers,' which we presume may be regarded as the most full and authentic account of its proceedings, we have found so little having a direct bearing on the subject, in the light which we propose to consider it, that we have concluded to abandon our original purpose."[104] The writers acknowledged the *value* and *authority* of the Madison Papers, but also recognized that they could not practically contribute to their stated purpose—to provide a history of the Tariff Question—and so,

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[101] "The Inaugural Address," *Richmond Enquirer,* 18 March 1841.

[102] "The Executive Authority," *The North-Carolinian,* 29 May 1841.

[103] "Art. II: The Papers of James Madison," *The North American Review* 53 (July 1841).

[104] "*From the Richmond Whig.* Facts for the People. The Tariff. No. 2," *Republican Banner,* 18 September 1844.

simultaneously, they attested to the Papers' *inutility*. Nevertheless, the article alleged that the Framers' intentions were recorded in the first Congress. To their antagonist, the writers retorted,

> Can he find no warrant in these proceedings and debates of the very men who formed the Constitution, and who were assembled for the first time, to put it into practical operation, for affording protection to American industry? We entreat him as a fair and upright man to pause before he again indulges in denunciations of the protective system. Let him reflect that when he condemns *that,* as unconstitutional, he necessarily affirms that the sages of the first Congress were either too stupid to comprehend the meaning of their own handiwork, or too corrupt to be restrained by their oaths to support its provisions.[105]

The writers of this article remembered the Convention via the first Congress, by reminding their audience that some of the men in the latter had been present in the former. Moreover, they argued that members of the first Congress were particularly enlightened in matters of constitutional exegesis because many of them had participated in the writing of the Constitution itself. Hence, they also concluded that anyone who dismissed the rulings of that Congress must necessarily place himself in a position opposed to the men who wrote the document from which all else flows. In the antislavery debates, drawing connections between the Convention and the historical context in which the meeting occurred was likewise a common trope of reflections on the significance of that event.

These debates provide a small sampling of Americans' extensive interactions with the Madison Papers shortly after their publication. There are dozens of other examples. If this has been repeated *ad nauseum*, it is because scholars have overlooked the profound interest that Americans expressed towards the Madison Papers, the multiple and various debates in which they referred to extracts of that publication, and the memories of the Convention that they created and relayed in the course of their political arguments. A few other examples must suffice.

In an "Address" of the Democratic members of the New York Legislature to the state electors, the authors defined the democratic principle, then quoted from several sources to support their position. Most frequently, they cited the Madison Papers, giving exact quotations from speakers within the Convention. In doing so, they painted their own picture of the assembly in Philadelphia. "These extracts," they

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[105] "*From the Richmond Whig.* Facts for the People. The Tariff. No. 2," *Republican Banner,* 18 September 1844.

claimed, "distinctly show that broad differences of opinion existed among the fathers of the republic. These differences exhibited themselves in the conventions to form the state constitutions, and more strikingly in the convention that formed the federal constitution."[106]

Other political agitators included extracts from the Madison Papers in their editorials and in their reviews of congressional debates. In 1841 alone numerous articles appeared with extensive quotations from the Madison Papers. The *Richmond Enquirer* relayed a debate in the Senate over the national bank where the speakers quoted from the Madison Papers and then asked,

> Could any thing more conclusive be shown? Could any one doubt the authority or verity of the Madison Papers? Could any one suppose for a moment, that their venerated author either misunderstood or misrepresented any important proposition, which was ever made in that body, of which he was himself a distinguished member? This book was not made up for selfish or temporary purposes—it was never published till after his death—he had no possible motive for misrepresentation.

On the same subject, William M. Gouge quoted the Madison Papers in a discussion of paper money in *The Journal of Banking.*[107] Meanwhile, the Madison Papers were also used as an authoritative source in a debate over the cession of public lands.[108]

Additionally, some commentators used extracts from the Madison Papers to focus on the details of the specific language debated in the Convention. In the midst of a debate in 1842 over treasury notes and the constitutionality of the "Exchequer scheme," an observer in the *Madisonian* declared that the Madison Papers had an acute impact. The article read, "since the publication of the Madison papers, whatever might have been the course of disquisition pursued before, no acuteness in the interpretation of the context of the instrument seems necessary. The question is said to be decided by a fact stated in that newly published work."[109] An article in the *Richmond Enquirer* two years later concurred in similar

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[106] "Address of the Democratic Members of the Legislature of New York to the Electors of the States," *Niles' National Register* 8, no. 14, 13 June 1840, 231.

[107] "Rhode Island and Paper Money," *The Journal of Banking* 1, no. 11, 24 November 1841, 161.

[108] "Art. III—1. Report of the Committee on Public Lands," *The Boston Quarterly Review* 4, no. 2, 1 April 1841, 230.

[109] "The Exchequer Bill," *The Madisonian,* 5 January 1842.

fashion, that "Since the publication of the Madison Papers in 1840, the question is changed in its aspect: they record the fact of the convention having rejected a proposition to confer the power on the National Government." The government, that is, did not have the power to create a national bank, despite James Madison or John Marshall's previous conclusions.

The content of the 1840s political debates themselves is less relevant than how politicians and the press *utilized* and *characterized* the Madison Papers, since what Americans thought about the Convention is by this revealed. Furthermore, the Madison papers were deployed in an attempt to make one's argument more credible, as a way of saying that the argument would have had the Framers' support because it aligned with their intentions as recorded in Madison's notes. These references illustrate but a few of the places where Americans included citations from the newly published Papers in their political debates, especially when those debates involved questions of constitutionality or the Framers' intentions.

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In a section titled, "Political Reflections" in the *Holly Springs Gazette,* one such individual remarked that the Convention, "was composed of men of almost every variety of political sentiment," and reflected on the diversity of opinion within that body, which almost threatened to dissolve the meeting, "without accomplishing their purpose." However, the writer contended, like *The North American Review*, that the Framers "were actuated by a sincere and enlightened patriotism, and felt the necessity of discharging their important trust." Such statements could be made because of the newly published resources that provided more details about the Convention: "the publication of Elliott's Debates and the Madison Papers has placed it in our power, to read the debates and views of these great men upon every important question of government and legislation."[110] By coupling Jonathan Elliott's records of the state ratifying conventions with Madison's notes, the writer implied that Madison's record was not the only source, and perhaps not even the most authoritative source, which Americans could turn to for information on the Convention and the Constitution.

[110] "Political Reflections," *Holly Springs Gazette,* 8 December 1843.

Americans had at their disposal a handful of resources which they could explore to uncover the hidden record of the Philadelphia Convention. The paucity of these resources, however, heightened the importance of each successive publication which "shed light" on the Convention. Moreover, given the limited number of resources available, Americans easily could (and readily did) compare the published records pertaining to 1787. Since these comparisons span two decades outside the purview of this thesis, this is not the appropriate place to review them in detail. Still, a few comments about these other sources, in reference to the Madison Papers, situates that publication in its appropriate historical context and contradicts presentations of the Madison Papers as a document which appeared out of nowhere with completely new information about the Convention. These comparisons further demonstrate that Americans did not receive the Madison Papers unanimously, nor did they consider the Papers as something entirely set apart from the other records for its supposed outstanding and revelatory nature. Additionally, comparisons between written records of the Convention often entailed comparisons of the Framers themselves. As the poem "The Sun of the Constitution" praised Benjamin Franklin and George Washington in the Convention, so others felt that men such as Alexander Hamilton were worthy of adoration as well. Competing claims about the Framers' roles in the Convention contributed to the disparate memories Americans constructed of the Convention itself.

The *Richmond Enquirer* relayed a debate over the constitutionality of a national bank where the writer suggested that the "Madison papers and Jefferson's works" were both more authoritative and informative than "the *mere* 'Journals of the Convention.'"[111] Another article in the same paper corroborated this position. After reviewing discussions in the Convention pertaining to the admission of new states, the writer, "Randolph of Roanoke," commented on the relationship between the *Journal* and the Madison Papers:

> That these statements are facts of undoubted and positive truth, the secret journals of the Convention give us the unquestionable evidence—but, 'to make assurance doubly sure,' the illustrious Madison, (who was within eye shot and ear-shot of all that occurred in Convention—and freshly recorded everything worth the pains, in the very moment it transpired)—in the last great

[111] "To the People of Virginia—[No. IV], National Bank," *Richmond Enquirer,* 12 April 1844. *My emphasis on "mere."*

> legacy of 'THE MADISON PAPERS,' which he bequeathed his country, has affixed the seal of his imperishable attestation.[112]

The *Richmond Enquirer's* depiction of Madison here echoed other newspaper articles both before and after the publication of his record of the Convention, while it harkens back to some of Madison's eulogies. Madison appears nearly super-human, to have recorded, without imperfection, the whole of the proceedings in Philadelphia. Moreover, the article suggested that Madison's account verified and substantiated the official *Journal*. We now know that Madison helped to prepare the *Journal* for publication in 1819 with information from his own materials, *and* that when Madison's edited his own notes for publication, he incorporated information from both the *Journal* and from Robert Yates' notes, published in 1821. Realistically then, the transcripts overlap in several respects. Nevertheless, it is remarkable to see that Americans compared these different accounts of the Convention.

Sometimes Americans chose to cite the previously published records of the Convention even after Madison's notes were published. For instance, an article from May 1840 in *The North Carolinian* outlined Alexander Hamilton's plan of government, not from the Madison Papers, but from *Secret Proceedings,* as published in 1821. In a way consistent with how the press wrote about Madison, the writer also included a short biography of Yates and praised the former Chief Justice as an "able and honest witness."[113] The continued use of other records after 1840 was especially true of the antislavery movement—in contrast to what historians have assumed.

Not only did Americans compare Madison's record of the Convention with the records at their disposal prior to 1840, but they also compared the Madison Papers with other valuable historical documents and grouped Madison with other Founders such as George Washington, Thomas Jefferson, and Alexander Hamilton. Conspicuously, the Madison Papers received an outstanding review in *The Iris,* quoted above, but in the article which directly followed that essay, the journal reviewed the "Letters of

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[112] "To the Editors of the Enquirer," *Richmond Enquirer,* 2 April 1844.

[113] "For the North Carolinian," *The North-Carolinian,* 6 June 1840.

Mrs. Adams." The editors wrote, "A volume with this title has appeared, which is peculiarly interesting at this time, when every relic of 'the heroic age of American history' is eagerly grasped and anxiously secured."[114] This quotation mirrored both the religious diction and eager tone of articles that had hailed the forthcoming publication of the Madison Papers prior to 1840, but also proposed that such sentiments were felt towards publications *besides* the Madison Papers. In the same vein, the *Democratic Free Press* advertised the 1839 reprint of *Secret Proceedings* as a "Rare Publication."[115] Meanwhile, an article in the *Southern Literary Messenger* wrote of the nation's history and noted sources which a "patriot" might peruse to learn that history, including, wrote the editor, "our immortal constitution, the life and writings of Washington, the Madison papers, and the like."[116]

One comparison of particular interest was that made between Madison and Alexander Hamilton. In the early days of the republic, Madison and Hamilton worked together and against each other. They had a complicated relationship, but both participated actively in the Convention and in the first two presidential administrations. Madison may have outlived Hamilton, but both left behind written records. Americans juxtaposed these records in the early 1840s—though not without controversy. In 1842, the London *Publisher's Circular* advertised: "Companion to the Madison Papers.—The OFFICIAL and other PAPERS of the late Major-General ALEXANDER HAMILTON; compiled chiefly from the originals in possession of Mrs. Hamilton."[117] The *Publisher's Circular* suggested here, in a neutral, declaratory tone, that Hamilton's writings could be read alongside Madison's and seemed to place the twoon equal footing.

On the other hand, Hamilton's son, John C. Hamilton, and the editors of the *New York Review* held a different opinion of the Madison Papers. Also in 1840, John Hamilton published the second

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[114] "Letters of Mrs. Adams," *The Iris, or Literary Messenger* 1, no. 1 (November 1840), 43.

[115] "Rare Publication," *Democratic Free Press,* 30 January 1839, 2.

[116] "South, Americus. French and English Propagandism," *Southern Literary Messenger* 10, no. 10 (October 1844).

[117] "Companion to the Madison Papers," *The Publishers' Circular* V, no. 117, London (August 1842).

volume of his father's biography, entitled *The Life of Alexander Hamilton.* Hamilton had died in a duel with Aaron Burr on July 12, 1804. His legacy was powerful, while his highly influential role in the nation's history was often clouded by criticisms, rumors, and myths—much like the Constitutional Convention. One assumed purpose of the junior Hamilton's biography was to vindicate his father in a way that would clarify and correct Hamilton's role in the nation's Founding. In January 1840, the *New York Review* printed an evaluation of *The Life of Alexander Hamilton* (hereafter, *The Life*) very much like the reviews of the Madison Papers in the *United States Magazine,* the *North American Review,* and the *American Jurist.* The *New York Review's* diction even appeared to mimic, near completely, that used by the Madison Papers' reviewers. "Next to Washington's," the writers began, "stands the name of Hamilton on the roll of American fame and in its demands on the gratitude of his country." Where others had venerated Madison, the *New York Review* venerated Hamilton.

Meanwhile, just as other journals had done for the Madison Papers, the *Review* proclaimed the importance of *The Life* for present and future generations, contended that it was both a work to be treasured and a work to be studied, and affirmed that Americans had been anticipating its publication. According to this essay, *The Life*

> is a work of national interest and national magnitude, and, rightly executed, a national blessing; for it forms, we may say, and will continue in all coming time to form, part of the natural heritage and birthright of all who live under the shadow of the American constitution—that constitution which Hamilton labored to found and lived but to interpret. It is their birthright, we say, and it will be their duty to become duly instructed in the life-labors and living principles of him whom we may not fear to name—if to any, such name may be appropriated—as its earliest and most zealous advocate, its most eminent framer, most eloquent defender, soundest expositor, and ablest practical statesman. It is in this light that we look at the life of Hamilton—as a national work and a people's study; and shall do our endeavor so to impress it on the minds of our readers. It is a boon that has been long promised to the American public and long delayed—we doubt not for sufficient reasons.

This was high-praise for Hamilton, appearing *at the same time* that Madison was hailed as "the Father of the Constitution!" While Americans debated the value of the Madison Papers, they simultaneously engaged in a contest over applying honorifics to these two Founders. John Hamilton's *The Life* played a part in this contest. The *Review* claimed that his work contained a three-fold argument: "First, as biography, portraying the character of the man. Secondly, as constitutional history, assigning to Hamilton his due merit in the formation of the federal constitution; and, Thirdly, as a defensive plea against the old

slanders recently renewed in the Madison Papers." The second and third arguments are most intriguing for how the *Review's* depiction of Hamilton stands in contrast to the oft-repeated characterizations of Madison.

This conflict, moreover, between Hamilton and Madison's legacies was also a conflict about how Americans remembered the Convention. Elevating Hamilton's role suggests that the Constitution may contain more elements of monarchical government, whereas emphasizing Madison's influence in the Convention assures the predominance of republican principles in the Constitution.

The writers of the *Review* argued that John Hamilton's *The Life* enabled Americans "to assign to Hamilton his due share in the formation of the federal constitution." Several pages in the article are thus dedicated to expounding Hamilton's sentiments towards monarchy, the British Constitution, the state of affairs under the Articles of Confederation, and his support for a stronger national government. The writers outline Hamilton's role in the Convention and used Hamilton's written plans, speech notes, and the official *Journal* to explain the opinions he expressed therein. They stressed, above all else, Hamilton's devotion to securing the ratification of the Constitution after the Convention closed—"he never ceased from that hour to labor and contend for it by tongue and pen, in heart, thought, and deed, equal—nay, beyond, may we not say?—any other member of that convention, or rather any man living." More so than this even, the *Review* declared, in striking contrast to John Quincy Adams and countless others who upheld *Madison* that, "To *Hamilton* belongs either the high merit of having been a chief framer of the Federal Constitution, or else the rarer and brighter merit of working for its advancement as if he had been, and as a patriot should do, disinterestedly for love of country."[118] If we judge claims to the title "chief framer of the Federal Constitution" based on the number of speeches given during the Convention, it would be a leap to grant Hamilton that designation. According to the *Illinois Free Trader,* which, in 1840, had printed alist of all the speeches given at the Convention, the leaderboard consisted of Governor Morris with 173, James Wilson with 168, and James Madison with 16. Hamilton was in the middle of the

[118] *My emphasis on "Hamilton."*

pack, having made, in comparison, a mere 23 speeches.[119] However, the *Review* here suggested that promoting the adoption of the Constitution was an act more praiseworthy than that of writing the document.

Just after these remarks, the writers turned to their third purpose, to explain why they saw John Hamilton's volumes "*as a defence of his father against the misrepresentations contained in the Madison Papers*." The *Review* offered highly critical comments about the Madison Papers and hoped that their explanation of the falsities Madison's account contained would put to bed dishonest claims about Hamilton's public service. The writers charged that,

> There is, in truth, but little in these much talked of 'papers.' In this, at least, they have disappointed both friend and foe. They throw but little light on the period to which they relate, and will be found, in the end, to add as little to the fame of the writer. So far as they have a bearing on the course or character of Hamilton, they have been fully analyzed by his son, and their not un-frequent errors and inconsistences conclusively exhibited…Viewed in this light as a conclusive, and we hope final, refutation of old slanders newly revived, the present volume of Mr. Hamilton has come forth peculiarly opportunely, just in time to put a stop to a second growth of falsehood, and to settle once and for ever the matter of Hamilton's opinions in the convention that framed the federal constitution.

Moreover, the sentiments of party, coupled with the controversies of Washington's administration, according to John Hamilton and the *Review,* must have influenced how Madison prepared his papers. Thus, the *Review* declared that, "Madison's notes of the convention of 1787 are not, in a strict sense, an original document, but bear the color of subsequent thought."

This remark explicitly contradicted the popular and repeated assertions in the press that Madison provided an honest record of the Convention, from notes written during the event. After all, the press extracted from the Madison Papers countless times Madison's famed explanation of his note-taking process:

> In pursuance of the task I had assumed, I chose a seat in front…in this favorable position for hearing all that passed, I noted in terms legible, and in abbreviations and marks intelligible to myself, what was read from the chair or spoken by the members; and losing not a moment unnecessarily between the adjournment and reassembling of the Convention, I was enabled to write out my daily notes

[119] "Speeches in the U.S. Convention," *The Illinois Free Trader,* 21 August 1840.

> during the session or within a few finishing days after its close, in the extent and form, preserved in my own hand, on my files.[120]

Notwithstanding Madison's testimony and the popular opinion of the day, which trusted that testimony, the *New York Review* remained unconvinced. Rather, they continued to explain the prejudice that Madison must have felt while preparing his notes for publication. If, as the *Review* deduced, Madison's notes of the Convention were not "an original document," then "it is easy to divine what tinge would be given them, whether intentionally or unintentionally, touching a party he had abandoned, principles he had forsaken, and, above all, the man whom, beyond all other men, he hated and feared. We are content, however, with expressing this but as a suspicion." Adjoining this "suspicion," however, was the writers' admonition that they could not entirely dismiss Madison. They continued, "As one of the framers of our constitution, as one of its ablest defenders in the Federalist, as the president who was willing to sacrifice consistency to the good of his country and recharter a national bank…for these acts we honor the name of Madison, and would not lightly believe evil of him. As against Hamilton, however, we cannot but hold him a false accuser." Although it should be no surprise, given how the article has read thus far, it is important to note that the *Review* referred to Madison as "*one* of the framers," as if to underscore their argument that there were many framers and support their position that the title to *the* "Father of the Constitution" was contested.

The *New York Review*'s analysis of the significance of this publication, *The Life of Alexander Hamilton,* not only contrasted sharply with reviews of the Madison Papers, but it also painted a different memory of the Convention. As the *Review* understood that event, *Hamilton* was the dominating figure and *Hamilton* deserved more of the credit for the success of the Constitution and the Union. In many ways, the *Review* swapped Madison's name for Hamilton's. The canonizing rhetoric of the final two paragraphs attested to the similar memories that Americans held of Madison and Hamilton, while it echoed the popular sentiment that their written records were worthy of study and preservation. The

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[120] "Madison, and the Madison Papers," *The United States Magazine and Democratic Review* 5, no. 3 (March 1839).

writers concluded that, "Hamilton is now a name, not of party, but of history. He belongs to that mighty past whose memories are ever the fairest heritage of the present—its wealth, its strength, its choicest storehouse of wisdom. Into that temple of historic truth Hamilton has now entered, and there stands among the effigies of our national ancestry." This eulogy delivered 37 years after Hamilton's death remarkably resembled eulogies given in honor of Madison just five years earlier. This time, it was Hamilton's eulogists who acknowledged the end of an exceptional generation which had bequeathed great blessings to the generations that followed. "Moreover," the *Review* ended, "we feel that no one of our American readers will deem his historical library complete without a copy of the 'Life of Hamilton.'"[121] Here we have that final theme of Madison's eulogies used in this tribute to Hamilton's life—the great importance of written records pertaining to the Founding Fathers.

This fascinating controversy over the legacies of Hamilton and Madison, their role in the Constitutional Convention, and their claims to the Constitution illustrates with incredible eloquence that Americans articulated competing visions of their nation's founding. The Convention here became a scene upon which greatness played out, but some Americans believed that Madison was the principal actor and others cast Hamilton in that leading role. Though several contemporary newspapers editorials praised the anti-party spirit of the Convention, it is clear that, after the fact, party sentiments clearly influenced how Americans remembered the Convention. This debate illustrates the influence of both the past and the present in Americans' memory-narrative of the Convention.

What is perhaps most impressive about this phenomenon is that, after the publication of the Madison Papers, Americans *themselves* called attention to these competing memories. We see this by juxtaposing the *New York Review's* essay on *The Life of Alexander Hamilton* with the three journals that reviewed the Madison Papers. Furthermore, Americans believed that these competing memories of the Convention and of these two Framers, in particular, as expressed in the above publications, *both* deserved a place in the nation's library. John C. Hamilton's biography and Hamilton's "Official Papers" often

[121] "The Life of Alexander Hamilton," *The New York Review* 8, Issue 15 (January 1841).

appeared alongside the Madison Papers in advertisements for "valuable books," advertisements which also listed other accounts of the Convention. In 1841, for instance, the *Richmond Palladium* ran an ad for "NEW BOOKS!" which included books on the Holy Bible, the French Revolution, and the United States Navy, as well as *The Life of Alexander Hamilton,* George Bancroft's *History of the United States,* the Madison Papers, and *Secret Proceedings.*[122]

That same year, the *Republican Banner* listed the Madison Papers and *Secret Proceedings* with Thomas Jefferson's works, a history of the Federal Government, and a collection of the "Presidents' Messages" under the heading "The [Works] of Thomas Jefferson, &c."[123] Later on, the *Banner* also included an advertisement from Berry & Tannehill, where the publishers said, "[we] invite the attention of purchasers to the following valuable books." The list included, to name a few, The Madison Papers, *Secret Proceedings,* Marshall's *Life of Washington, The Letters of John Adams, The Letters of Alexander Hamilton*, Bancroft's *History of the United States*, Webster's *Speeches*, Horace Walpole's *Letters,* and Gibbon's *Rome*.[124] These catalogues demonstrate that the Madison Papers, though often lauded as uniquely beneficial, were placed alongside other significant books, including other accounts of the Convention, in advertisements that read as syllabi for civic education.

Other advertisements focused specifically on how the Madison Papers and other records from the Convention might augment their readers' knowledge of the Constitution. Bookseller F. Taylor advertised in the *Daily Madisonian* under the heading, "On the Constitution," that he had, among other publications, "Story's Commentaries on the Constitution; the Madison Papers; the Federalist; Chief Justice Marshall's Writings on the Constitution…Elliott's Debates; and a variety of other works treating directly or incidentally on the same subject."[125] Relatedly, the penman of a letter to the editor of the *Alexandria*

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[122] "New Books!," *Richmond Palladium,* 1841.

[123] "The Works of Thomas Jefferson, &c.," *Republican Banner,* 30 September 1841.

[124] "Valuable Books," *Republican Banner,* 4 February 1842. The same publishers had advertised a similar list under the heading "Standard Works" in *Republican Banner,* 8 August 1842.

[125] "On the Constitution," *Daily Madisonian,* 1844.

Gazette wrote that, to "support [the Constitution] we must study it, and understand it." The writer suggested that if voters had more knowledge of the Constitution, they could question "political aspirants" and "compel [those] would be legislators to reflect a little more accurately on the source whence their power to act was derived." Therefore, he concluded, "the intelligent voters of all parties" should form clubs, "purchase some standard works on the Constitution," and keep them at the Court House. Such a collection should start with the Constitution itself, *The Federalist, Elliot's Debates*, the official Convention *Journal,* and "The Madison Papers, a most interesting work, showing how the Constitution was formed."[126]

While the writer of this letter to the *Alexandria Gazette* emphasized that the collection of sources on the Constitution should "not be for party purposes," an article in the *Ohio Democrat* took a more partisan stance. The *Democrat* advertised a new publication, "The People's Democratic Guide," which contained the Madison Papers and other related documents of interest. The ad argued that the "Guide," was "a work that every Democrat should possess, and we hope the Democracy of this county will subscribe liberally. The Madison papers alone are worth the whole price."[127]

These two articles in the *Gazette* and the *Democrat* once again demonstrate the diversity of opinions directed towards the Madison Papers in the early 1840s. We have an example of some who saw the Papers as valuable and useful for Americans of *all* political parties and an example of some who viewed the Papers with more partisan purposes in mind.

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While many of the above commentators affirmed the value of such publications as *Elliot's Debates* and Madison's notes, others were less enthused with the idea that the Madison Papers significantly contributed to constitutional exegesis. A column titled "Constitution Doctrines" from the *Richmond Daily Whig* represented a more critical view of the value of such publications. The writer

[126] "To the Editor of the Alexandria Gazette," *Alexandria Gazette and Virginia Advertiser,* 7 April 1843.

[127] "The People's Democratic Guide," *The Democrat,* New Philadelphia, Ohio, 21 March 1842.

asked, "Why need the public men of the day, trouble themselves with a perusal of the Memoirs of Jefferson, the Madison Papers, the Federalist, or any other *old-fashioned* exposition of constitutional law?"[128] Instead, the reporter believed that the constitutional interpretations of contemporary congressmen were sufficient. The idea presented here, moreover, that the Madison Papers and other such documents were "old-fashioned," stood in stark relief with the proposition frequently expressed that those resources were treasured historical documents, and even more so, that the Madison Papers was a *new* source that shed "unerring light" on the Constitution and the operation of the government.[129]

Americans did not monolithically receive the Madison Papers as valuable, relevant, or useful. Rather, in bookstore advertisements, literary reviews, and congressional debates, they debated Madison's record of the Convention. They compared his account with other published records of the Philadelphia assembly, while at the same time they juxtaposed their Founding Fathers. The Madison Papers were seen as everything from a Christmas present to nostalgic memorabilia, from fodder for partisan debate to an atlas for constitutional exegesis. Americans remembered the Convention *through* Madison's account of the Convention, but not *solely* through his recollection and not *just* because of the publication of the Madison Papers. No one memory of the Convention was most prominent; rather, Americans passionately debated the meaning of this event for their past, present, and future.

Disagreements over the Madison Papers reached new heights during the antislavery schism of the 1840s. Throughout the antebellum period, few questions aroused debate about the Constitution, the power of the government, and the intentions of the Framers like the slavery question. Opponents of slavery weighed in on the debate about the value of the Madison Papers. Before the United States fractured in civil war over slavery, men and women involved in the antislavery crusade incorporated questions about the value, utility, and import of the Madison Papers into their preexisting intra-movement debates about the nation's Founding and about the cultural and political role of their movement in American society.

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[128] "Constitutional Doctrines," *Richmond Daily Whig,* 8 February 1845. *My emphasis on "old-fashioned."*

[129] *Richmond Enquirer*, 29 June 1841. The subject of discussion was the national bank.

Chapter Four

Memory in History

Thus far, this thesis has historicized the publication of the Madison Papers by recognizing the cultural and political context in which they appeared and by placing Madison's account of the Convention in relation to other records of the Constitution's formation. The antebellum antislavery movement occurred simultaneously, and though the reformers were very much part of American society, their conversations about the Constitution, the Convention, and the Madison Papers revolved more exclusively around slavery and the government's power to abolish the institution.[130] There are, nevertheless, striking continuities between the reception of the Madison Papers within the antislavery movement, the American public, and Congress.

Within the antislavery movement, as among the general public, the Madison Papers appeared in the midst of ongoing debates about the Constitution, the Framers' intentions, and the nature of the government's relationship with slavery. When the Madison Papers appeared in 1840, antislavery reformers were overwhelmed by a plethora of interwoven controversies both outside and within their own movement. As the antislavery movement picked up steam in the late 1830s and early 1840s, slavery's sympathizers escalated their defense of the "peculiar institution" and their violence against abolitionists. Antislavery reformers also faced the proslavery politicians' agenda to silence antislavery petitions through congressional "gag" rules, as well as Southern efforts to block abolitionist mail to the slave states. The "slaveocracy" sought to tighten its grip on the federal government while seeking to expand its influence territorially. Antislavery reformers struggled to combat mounting pressure from Southern proslavery forces, while they fought to strengthen their own coalitions across the North. At the same time,

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[130] I use the phrase "antislavery movement" broadly. It refers not only to some Americans' efforts between 1831 and 1860 to promote the abolition of slavery, as in Garrisonian immediatism and gradual emancipation, but also other efforts to not necessarily *abolish* slavery, but to keep the institution limited to where it already was by restricting territorial expansion and to lessen the power of slaveholders within the government. This phrase also encompasses reform efforts aimed at assisting "fugitive" slaves, providing support for enslaved persons, developing biblical and political theories to show the negative impact of slavery on society, enslaver, and enslaved, and the extensive propaganda campaign that those opposed to slavery initiated.

antislavery reformers vied with each other about the appropriate role of their reform movement in society, about women's roles in the antislavery movement, especially with respect to officeholding and voting in antislavery societies, and about religion and the Bible. Most significantly, the antislavery movement broke into a number of factions based on the related questions of political involvement, voting, and support for the Constitution.[131]

By 1840, intense divisions within the antislavery movement existed between followers of William Lloyd Garrison, proponents of "moral suasion," and antislavery individuals who thought that the reformers should be more politically active. [132] The debate between the two factions was based on their reading of the Constitution as a proslavery or antislavery document. Garrisonians believed that emancipation could only be achieved through moral revolution, by convincing Americans that slavery was sinful. When they decided that the Constitution was merely a pact of evil, proslavery compromises, they maintained that the document could not be used in the fight to abolish slavery because it was itself part of the problem. On the other hand, political antislavery reformers believed that moral suasion was not enough—elected allies, votes, and legislation should be used to weaken the influence of slaveholders and realize the abolition of slavery. They held that the Constitution was an antislavery document, but that it had been perverted and used inconsistently with its true character by proslavery politicians. If there were more antislavery politicians, therefore, they could right the wrongs and restore the Constitution to its proper place as a bulwark of liberty, not slavery.

Eighteen-forty was also the year of the antislavery schism—some members of the American Anti-Slavery Society broke away to form the American and Foreign Anti-Slavery Society—as well as the year in which the newly formed Liberty Party nominated its first candidate for president. Debates about

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[131] See Aileen Kraditor and Manisha Sinha's exemplary reviews of these debates. Aileen S. Kraditor, *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834-1850* (Ivan R. Dee, 1989); Manisha Sinha, *The Slave's Cause: A History of Abolitionism* (Yale University Press, 2017).

[132] For relevant biographical information on Garrison, consult Henry Mayer, *All on Fire: William Lloyd Garrison and the Abolition of Slavery* (New York: St. Martin's Press, 1998).

the constitution's relationship with slavery were sometimes in the center of other debates within the antislavery movement and sometimes at the periphery. [133] Though these conversations grew more intense after the antislavery schism, the foundation of the factional disputes over whether the Constitution was a proslavery or antislavery document, and how abolitionists should respond, was laid in the late 1830s.

But in the late 1830s, Garrisonians and political antislavery men were still in the process of forming themselves into distinct groups based on their different opinions about theory (proslavery or antislavery Constitution) and tactics (moral suasion or political action). The lines between these factions were murkier in the late 1830s than they were in the early 1840s, after the antislavery schism. Moreover, the *Garrisonian* position with respect to the Constitution prior to the American Anti-Slavery Society's declaration in May 1844—"No Union with Slaveholders"—was particularly obscure.

A review of the debates relevant to the Constitution in the 1830s sets the stage for the publication of the Madison Papers in 1840. [134] To some degree, 1840 represented a turning point in this particular debate, but it is important to acknowledge that antislavery reformers, politicians, and intellectuals were already engaging questions about the Constitution's formation and the Framers' intentions *before* they had access to the Madison Papers. Likewise, the reformers had already formed particular memories of the Convention before Madison's notes appeared. Acknowledging these points properly historicizes the impact of the publication of the Madison Papers, while a review of the 1830s also underscores that the

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[133] Detailed studies of the relationship between the Constitution and slavery include Michael F. Conlin, *The Constitutional Origins of the American Civil War* (Cambridge: Cambridge University Press, 2019); Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (Oxford: Oxford University Press, 2001); William W. Freehling, "The Founding Fathers and Slavery," *The American Historical Review* 77, no. 1 (1972); Simon J. Gilhooley, *The Antebellum Origins of the Modern Constitution: Slavery and the Spirit of the American Founding* (Cambridge: Cambridge University Press, 2020); Lawrence Goldstone, *Dark Bargain: Slavery, Profits, and the Struggle for the Constitution* (New York: Walker & Company, 2005); John P. Kaminski, *A Necessary Evil? Slavery and the Debate Over the Constitution* (Madison House Publishers, Inc., 1995); Earl M. Maltz, "The Idea of the Proslavery Constitution," *Journal of the Early Republic* 17, no. 1 (1997); Paul A. Rahe, *Republics Ancient & Modern: Inventions of Prudence: Constituting the American Regime* (Chapel Hill: The University of North Carolina Press, 1994); George William Van Cleve, *A Slaveholders' Union: Slavery, Politics, and the Constitution in the Early American Republic* (Chicago: The University of Chicago Press, 2010); David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2009).

[134] Insightful commentary on the relationship between constitutional antislavery in the 1830s, transitioning into the 1840s, and the impact of the publication of Madison's notes may be found in Helen J. Knowles, "The Constitution and Slavery: A Special Relationship," *Slavery and Abolition* 28, no. 3 (December 2007), 309-328.

Madison Papers did not appear out of the blue or ignite discussions about the Convention. Rather, antislavery intellectuals much like non-abolitionist politicians, editors, and pundits, incorporated this publication into their existing debates.

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Prior to the American Anti-Slavery Society's disunion announcement in May 1844, there appears to have been no rhyme or reason as to where antislavery newspapers stood on the question of the Constitution's proslavery or antislavery character. This was true before and after the publication of the Madison Papers. Within the same periodical, there might have been some articles that praised the Constitution, others that merely focused on the history of the Constitution with respect to slavery, and still others that denounced the Framers' for safeguarding the abhorrent practice of holding human beings in bondage. This diversity of sentiment with respect to the Constitution's relationship to slavery accentuates the fact that there existed a broad spectrum of opinion *within* the antislavery movement, and thus, even this insulated community produced multiple and often competing memories of the "Convention which framed the Constitution."

Before Madison's record of the Convention was published, antislavery intellectuals gathered information circuitously related to the Convention, but which they believed still offered insights into the Framers' intentions. These theorists focused on the diction used in the Constitution itself, the deliberations in the state ratifying conventions, the historical context in which the event—the Convention—occurred, and the Framers' political roles outside of the Philadelphia assembly.

Several antislavery newspaper editorials dealt with the Framers' intentions in one way or another. The most common method was to call upon the names of Convention members as authorities in a given argument. In 1836 an article in the *Philanthropist* bemoaned infringements upon freedom of speech, presumably in light of the new "gag rule" in Congress which prohibited discussion of antislavery petitions. The writer provided quotations from Benjamin Franklin, Robert Morris, and John Jay as "the testimony of men, particularly able to judge in this matter…the two former were members of the federal convention and the last is well known as one of the three most eminent writers in defence of the

constitution." These men had special credentials, in this writer's opinion, which made them authoritative sources. "All these men," the author continued, "living at the period of the formation of our union, actors in this great event, [were] fully apprised of all the mutual concessions made for the establishment of our government," and thus, as "the real architects of the government," their understanding of the Constitution should be heeded.[135] Relatedly, the *Emancipator* published an essay on the admission of new states into the Union in which the author wrote extensively about the Framers' intentions. He concluded that, "Whatever may have been the administration to the present time as to this clause, the intention of its framers can not be without influence upon those who hold them in affectionate and revered remembrance." This commentator even acknowledged the importance of the intentions "of the minority who refused to adopt the Constitution."[136]

The Framers' intentions mattered to these antislavery intellectuals. More minutely even, several such individuals demonstrated in their editorials that the deliberations within the Convention were also significant. Though they did not have Madison's account of the Convention, analysts in antislavery newspapers turned to other sources from the Convention, as well as the state ratifying conventions, to understand the Constitution as the Framers meant for it to be understood by future generations. In 1833, for instance, one contributor to the *Liberator* quoted at length from Luther Martin's reflections on the Philadelphia Convention, while in the same paper the following year, another article cited the "Debates of the Virginia Convention" in reference to the slave trade. In 1837, a writer in the *Philanthropist* quoted from both Luther Martin's *Genuine Information* and from one of Madison's speeches in the Virginia convention. This writer also explained what was learned "from Yates' minutes of the Federal Convention of 1787, published in Elliot's Debates" about the construction of the importations clause. Additionally, beyond these explicit records from the Convention, antislavery intellectuals relied on any sources that

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[135] "Harmony of the Measures of Abolition with Inter-national Law & the Federal Constitution," *The Philanthropist*, 13 May 1836.

[136] "For the Emancipator. The Admission of New States into the Union. No. 1," *The Emancipator*, 6 December 1838.

they thought pertinent and authoritative. Garrison, in an 1838 edition of the *Liberator,* shared some remarks made by Wendell Phillips regarding the unconstitutionality of the annexation of Texas where Phillips had cited the records of the first Congress, the Northwest Ordinance, and the *Federalist* as authorities in support of his position.[137] This article illustrates that abolitionists, even Garrisonians, did not need access to the Madison Papers to inform their memory-narrative of the Convention.

Also in 1838, Garrison reprinted an article from the *Herald of Freedom* that addressed the "claim of property in man," but denied that there could be any such claim. The article discussed at length the intentions of the Framers, providing instruction as to how the people can learn their intentions. The writer argued that, "The intent of the framers is now to be gathered from what they said in the instrument itself—not their colloquies at the time or before or after, but what they put down in imperishable black and white. It is what they inscribed on the parchment for all time, that they legally intended, and there we are able to go to get at their intent."[138] The theory that Americans should turn to the Constitution to comprehend the Framers' intentions would be repeated in years to come, by both political antislavery men and Garrisonians. That same year, 1838, the idea was repeated at the Annual Meeting of the Massachusetts Anti-Slavery Society. In related commentary, the *Liberator* shared minutes from this meeting and quoted one individual, Mr. Cole, who was introduced as "a colored citizen of Boston." Mr. Cole spoke of the language used in the Constitution and of the compromises over slavery at the Convention. Despite these compromises, he said, "so cautious were the framers of that instrument, to avoid recognizing slavery as part of our systems; and so conscious were they of its repugnance to the very spirit of our institutions, that their provisions were made without introducing into that sacred instrument the word slave or slavery."[139] This was a popular focal point in the antislavery movement, especially

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[137] "For the Liberator," *The Liberator,* 5 October 1833; "Report on the Slave Trade," *The Liberator,* 7 June 1834; "Remarks of Henry B. Stanton," *The Liberator,* 11 March 1837; "Remarks of Wendell Phillips, Esq.," *The Liberator,* 9 February 1838.

[138] "The Claim of Property in Man," *The Liberator,* 21 September 1838.

[139] "Annual Meeting of the Mass. A.S. Society," *The Liberator,* 23 February 1838.

among political antislavery men, to emphasize that the Constitution did not explicitly use the word "slave."

Furthermore, while antislavery intellectuals closely scrutinized the particular language used in the Constitution, they were just as careful to meticulously characterize the different factions present at the Federal Convention. They made distinctions between the Framers—writers acknowledged that some of thedelegates in Philadelphia were opposed to slavery, while others wanted recognition of and protections forthe institution. For instance, one contributor to the *Emancipator*, who believed that Congress had extensive powers over slavery, stated that,

> Researches into the opinions of the citizens who framed our Federal Constitution, have convinced me, that the members of that convention, always excepting the Slave traders of South Carolina and Georgia alone, unanimously designed that Congress should have power to abolish slavery in this republic…

The writer's exemption of South Carolina and Georgia here is important, as it shows that his image of the Framers was neither monolithic, nor was his image of the Convention a meeting without division. To support his conclusion, that *most* of the Framers believed that Congress should be given such powers over slavery, the writer quoted the "testimony" of "Judge Wilson [who] was a member of the Federal Convention, and also of the Pennsylvania Convention." After sharing a few of Wilson's lines, the writer said, "From that language, it is evident, that there was a general understanding among the founders of our republic, that slavery was to be altogether restricted to the then existing States: and that they considered the Federal Constitution as instrumental to the overthrow of slavery." Thus, since the majority of the Framers were hostile to slavery, and since their expectation was that Congress would soon interdict the institution, antislavery reformers should finish what the Framers had started. The article concluded with a call to action: "Abolitionists must emerge from *fogs* of existing dough faces, into the *sunshine* of the revolutionary patriots and philanthropists!"[140]

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[140] "For the Emancipator. Power of Congress over Slavery," *The Emancipator*, 26 July 1838.

Antislavery intellectuals also articulated their views about the Constitution, the Convention, and the Framers' intentions in published tracts and book-length pamphlets. These were mainly proffered by individuals who felt that political action would sustain and strengthen the abolitionist cause. Though their theories took on a number of varied forms in the late 1830s and early 1840s, generally political antislavery men argued, quite clearly, that the Constitution was an *antislavery* document. While the Garrisonian position may have been obscure during this time, one thing that distinguished those who did *not* ascribe to Garrisonianism was their definitive conception of the Constitution as an antislavery document and their willingness to use the current constitutional framework to loosen the grip of proslavery politicians on the operations of the federal government.

Alvan Stewart was one of the first writers to articulate the political antislavery position with respect to the Constitution. While the popular trend had been to not talk about slavery, coupled with an understanding that the Constitution acknowledged the institution, Stewart's claims that slavery could be legally ended were groundbreaking. [141] Stewart studied law, formed the New York Anti-Slavery Society, and once ran for Governor of New York as the Liberty Party nominee. He believed that both the Declaration of Independence and the Constitution were antislavery documents, and held that Congress, by the Constitution, possessed the power to abolish slavery everywhere in the Union. [142] Stewart made this argument based on the due process clause of the Fifth Amendment, which, he added, was inspired by the Magna Charta. Writing in 1837, Stewart focused more on the text of the Constitution, and, interestingly, the text of the Constitution after the Convention, for the Bill of Rights was not drafted in Philadelphia in 1787, and grounded his discussion of the Framers' intentions in the particular words that they chose in writing that instrument. In the case of the due process clause, for instance, Stewart emphasized the

[141] William M. Wiecek argues that Stewart's "open repudiation of the federal consensus" in 1837 was a "sensational event" and that his pronouncements "marked the dramatic debut of radical antislavery constitutionalism," *The Sources of Antislavery Constitutionalism,* 254.

[142] Alvan Stewart, "A Constitutional Argument on the Subject of Slavery" in Jacobus TenBroek, *Equal Under Law* and reprinted from *The Friend of Man* Vol. II (Utica: October 18, 1837), 282.

importance of the word "person." Additionally, his interest in the word "person" foreshadowed debates in the 1840s over whether the Founders thought of slaves as "persons" or as "property." After 1840, that debate developed around Madison's statement in the Convention that he "thought it wrong to admit in the Constitution the idea that there could be property in men."[143]

On the Convention itself, Stewart had little to say, although he did comment that, "We must bring to mind, in carrying out the true theory of the Federal Constitution, at its formation, that the whole sovereign people of the thirteen states, in legal contemplation, were present, acting in one vast assemblage or body, where every thing was understood and discussed, bearing on the great subject under consideration."[144] Whether he was referring to the Philadelphia Convention or to the state ratifying conventions is somewhat unclear; however, if he meant the former, Stewart was incorrect to say that "the whole sovereign people of the thirteen states" were present as Rhode Island did not attend.[145] Despite his flawed image of what transpired in Philadelphia, it was clear that Stewart expressed interest in the *formation* of the Constitution, in connection with the text of the Constitution itself.

Stewart was not alone in grounding his arguments about the Framers' intentions in their choice of diction. Other antislavery thinkers in the late 1830s elaborated both on the intentions of those who wrote and those who ratified the Constitution. Theodore Dwight Weld's pamphlet *The Power of Congress over the District of Columbia* was the most impressive pronunciation of the political antislavery position before 1840. Weld was one of the first members of the nineteenth-century abolitionist movement and dedicated his life to the cause. His pamphlet stands out for its examination of the framing of the Constitution, for the connections Weld made between the Federal Convention and the state ratifying conventions, and for the way he emphasized the historical context of these meetings. Weld articulated his

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[143] Max Farrand, ed., *The Records of the Federal Convention of 1787: Volume II* (New Haven: Yale University Press, 1966), 417.

[144] Stewart in TenBroek, 285.

[145] Stewart also incorrectly claims that the due process clause was constructed at the Convention. See Wiecek, *The Sources of Antislavery Constitutionalism*, 266.

argument that the Constitution was an antislavery document by discussing the abolition of slavery in the District of Columbia. Congress, he affirmed, had legislative power over the capital, according to Article 1, Section 8, Clause 18, in "all cases whatsoever." Weld responded to the claim that this merely referred to police regulations, by asking, "But if the Convention that framed the Constitution aimed to provide for a *single* case only, why did they provide for '*all* cases whatsoever?' besides, this clause was opposed in many of the state conventions, because the grant of power was extended to '*all* cases whatsoever,' instead of being restricted to police regulations *alone*."[146]

Weld's comment indicated that he was thinking not only about the framing of the Constitution, but also about the relationship between the Federal Convention and the state ratifying conventions. He made this connection routinely throughout his pamphlet, as if to bolster the credibility of his sources.[147] In turning to the ratification debates, interestingly, Weld was also relying on the sources that Madison had argued should be used to understand the Constitution. Weld further mentioned that Luther Martin advocated for the abolition of slavery "both in the Federal Convention, and in his report to the Legislature of Maryland."[148] He cited Martin repeatedly, presumably because he would have had access to Martin's *Genuine Information* speech—his account of the Convention before the Maryland state legislature—which was published as part of *Secret Proceedings* in 1821 and would be published again in 1839. His use of Martin's speech demonstrates that antislavery intellectuals expressed interest in the accounts of the Convention which they had access to before Madison's notes—also evinced by several of the antislavery newspaper articles. The antislavery reformers themselves highlighted that Madison's work was not the only nor the first published account of the Convention.

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[146] Theodore Dwight Weld, *The Power of Congress over the District of Columbia.* Reprinted from the New-York Evening Post, with additions by the author (New York: John F. Trow, Printer, 36 Ann-Street, 1838), 3-4.

[147] Weld also included citations for individual state ratifying conventions, but without mentioning Jonathan Elliot's name.

[148] Weld, *The Power of Congress*, 11.

Again, Weld called attention to those present at the Convention as a reiteration of their authoritative understanding of the Constitution when he introduced James Wilson as "one of the framers of the constitution," before quoting Wilson speaking in the Pennsylvania state convention.[149] Meanwhile, for Roger Sherman, Weld emphasized Sherman's intimate knowledge of both the Declaration and the Constitution: "the celebrated Roger Sherman, one of the committee of five appointed to draft the Declaration of Independence, and also a member of the convention that formed the United States' constitution, said, in the first congress after its adoption: 'The Constitution *does not consider these persons,* (slaves), *as a species of property.*'"[150] Weld brought together the formation of the Declaration, the Federal Convention, and the first Congress, illustrating that the connections between these events provided indispensable context for understanding the Framers' intentions with regard to slavery, and showing that the Convention was not remembered out of context; rather, Americans' memory-narrative of that event was grounded in history.

Americans outside of the antislavery movement had done the same thing during other political debates, even after the publication of the Madison Papers. The *American Jurist and Law Magazine,* for instance, had affirmed the value of the Madison Papers, but chose to ground the Convention in its historical context in order to understand the Constitution. An article in the *Richmond Whig* called attention to the first Congress, and the particular ability of those men—many of whom were at the Convention—to understand and interpret the Constitution. Lastly, even John Quincy Adams, in his eulogy of Madison, had stressed the connections between the events of the Revolutionary era to illustrate the impressive nature of the Founding generation and lament that those who were so instrumental to those first moments of the United States, in war and peace, had passed into the realm of memory.[151]

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[149] Weld, *The Power of Congress,* 32.

[150] Weld, *The Power of Congress,* 43.

[151] "Art. VI. The Madison Papers," *American Jurist and Law Magazine* 26 (January 1842); "*From the Richmond Whig.* Facts for the People. The Tariff. No. 2," *Republican Banner,* 18 September 1844; John Quincy Adams, *An Eulogy on the Life and Character of James Madison, Fourth President of the United States, Delivered at the Request of the Mayor,*

Weld not only placed the Convention in historical context, but he also highlighted the overlap of political, cultural and social events. Weld wrote, "In 1787, the Pennsylvania Abolition Society was formed. Benjamin Franklin, warm from the discussions of the convention that formed the United States constitution, was chosen President, and Benjamin Rush, Secretary—both signers of the Declaration of Independence. In 1789, the Maryland Abolition Society was formed. Among its officers [was]…Luther Martin, a member of the convention that formed the United States Convention."[152] Weld showed that the Convention was not an isolated event; members of the Convention had other commitments and obligations outside of that meeting, which, notably, demonstrated their antislavery opinions. Additionally, Weld enlisted the entire U.S. Congress to support his conclusion that the Framers were hostile to slavery. Weld said of the 1787 Northwest Ordinance—which provided for the organization of the Northwest Territory and outlawed slavery in that region—

> This ordinance was passed while the convention that formed the United States Constitution was in session. At the first session of Congress under the constitution, this ordinance was ratified by a special act. Washington, fresh from the discussions of the convention, in which *more than forty days had been spent in adjusting the question of slavery, gave it his approval.*[153]

Why did Weld take great pains to emphasize the overlapping positions of members of the Convention and members of Congress? Or to suggest that there was some connection between the passing of the Northwest Ordinance and the meeting of the Federal Convention? He would have known how long the Convention discussed slavery from the official *Journal,* but his insistence on reiterating this, in light of the Northwest Ordinance, reflects his belief that the overlapping events reaffirmed the antislavery intentions of the Framers. He was not the only one, moreover. A year later, in 1839, Gerrit Smith wrote a letter to Henry Clay, published in the *Anti-Slavery Examiner,* in which he adopted Weld's arguments. Smith, one of the Liberty Party organizers, wrote in support of the abolition of slavery, in the context of

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Alderman, and Common Council of the City of Boston, September 27, 1836 (Boston: American Stationers' Company. John H. Eastburn, City Printer, 1836).

[152] Weld, *The Power of Congress,* 30.

[153] Weld, *The Power of Congress,* 31.

an onslaught of antislavery petitions to Congress during the ongoing debate over the right of petition and the gag rule.[154] Smith contended that Congress had the power to abolish the interstate slave trade, citing "the history of the times in which the Federal Convention was framed and adopted."[155]

Like Weld, Smith emphasized historical context and made a connection to the Northwest Ordinance. He explained that, "the Ordinance concerning the North-west Territory, passed by the Congress of 1787, and ratified by the Congress of 1790, shows, so far as those bodies can be regarded as correct interpreters of the Constitution which was framed in 1787, and adopted in 1789, that slavery was not to have a constitutional existence in the new States."[156] Smith, furthermore, remembered the Convention indirectly by suggesting that the proximity of the first congresses to the Convention implied that they possessed singular authority in the realm of constitutional exegesis. But then he added that, "the avowed object of the Ordinance harmonizes with that of the Constitution: and that the Ordinance was passed the same year that the Constitution was drafted, is a fact, on which we can strongly rely to justify a reference to the spirit of the one instrument for illustrating the spirit of the other."[157] Thus, Smith made the connection explicit. The fact that these events happened simultaneously was of great significance for Weld and Smith, as they believed that the overlapping events underscored the *antislavery* intentions of the Framers and the *antislavery* "spirit" of the Constitution.

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In affirming the antislavery intentions of the Framers and the antislavery character of the Constitution, based on the "history of the times," Weld and Smith advanced an argument that political antislavery men and women would use for years to come—the Constitution itself was good, but was

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[154] For more information on the gag rule debates see William Lee Miller, *Arguing About Slavery: The Great Battle in the United States Congress* (New York: Alfred A. Knopf, 1996).

[155] Gerrit Smith, *The Anti-Slavery Examiner* No. 9, Letter of Gerrit Smith to Hon. Henry Clay (New York: The American Anti-Slavery Society, 1839), 4.

[156] Smith, *Anti-Slavery Examiner,* 9.

[157] Smith, *Anti-Slavery Examiner,* 17.

perverted in practice over time. Both Garrisonians and political antislavery men believed that the Southern slave states, the "slaveocracy," maintained tremendous influence in national politics. They argued that through power, privilege, and conspiracy, slaveholders were able to manipulate presidents, force concessions from Congress, and convince Northerners to support their proslavery agenda. They called this the "Slave Power." The two sides of the antislavery movement differed, however, on the questions of where the Slave Power originated and when it became especially overbearing. Garrisonians believed that the Slave Power had been corrupting the nation from the start, thanks in part tothe proslavery constitution which it had written, whereas political antislavery groups believed that the Slave Power grew stronger after the essentially antislavery Founding and corrupted the nation in the decades which followed.[158]

Illustrating the political antislavery "Slave Power" argument, Smith wrote to Clay, "I think it wise to repose more confidence in the views, which the framers of the Constitution took of the spirit and principles of that instrument, than in the definitions and interpretations of the pro-slavery generation, which has succeeded them."[159] Smith did two things in this sentence—first, he suggested that Americans could somehow know the "views" of the Framers with respect to the "spirit and principles" of the Constitution; second, he implied that the Founders were *not* part of a proslavery generation by insisting that they were *displaced* by one.

The writings of Gerrit Smith and Theodore Dwight Weld serve as a bridge between the 1830s and the 1840s because of their discussion of the Framers' intentions prior to the publication of Madison's notes. As in the collection of antislavery newspapers articles above, they wrote about the Convention, but more indirectly than what would appear after the publication of the Madison Papers. Instead, Weld,

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[158] For more on the concept, argument, or conspiracy known as the "Slave Power," see Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana State University Press, 2000). On the relationship between the Slave Power theory and political antislavery, see Corey Brooks, *Liberty Power: Antislavery Third Parties and the Transformation of American Politics* (Chicago: The University of Chicago Press, 2016).

[159] Smith, *Anti-Slavery Examiner,* 18.

Smith, and other pundits relied on sources such as *Secret Proceedings,* congressional journals, and the records of the state ratifying conventions, while they focused on historical context, the "spirit" of the Constitution, and the meaning of particular words and phrases. These themes and sources persisted even with the availability of the Madison Papers, which would reaffirm the antislavery movement's interest in the Framers' intentions, while also providing another source for them to work with.

Chapter Five

Memory Under Fire

In 1842, *The Democratic Review* acknowledged the historical context in which the Madison Papers appeared and reflected on what the publication contributed to that moment:

> It comes to us in the midst of our distracting controversies on topics of transient and often very trifling interest, like a voice from the sepulcher of our departed fathers, fraught—if we could but listen to it—with lessons of the deepest import; or rather it evokes and brings before us, from the night of the past, the vision of our ancestors, as they thought and spoke and acted in the fullness of their strength, and the rich maturity of their mental powers.

While many certainly believed that slavery was not a matter of "very trifling interest," debates over the Constitution were, for abolitionists, among the most distracting controversies of the day. The *Review's* diction here also echoed the sacred and memorial tone of its previous appraisal of the Madison Papers from 1839. The writers connected past and present in their presentation of the Constitutional Convention as worthy of praise, while the Founding Fathers were upheld for their exemplary character. The *Review* continued, "We hear their words of truth and wisdom. We witness the calmness, the grave decorum, the mutual condescension and gentle courtesy, with which they conducted their momentous discussion."[160]

Still, amongst those involved in the campaign to eradicate slavery, the supposed "wisdom" contained in the Madison Papers was not self-evident, but rather a topic of contentious debate. Indeed, the availability of Madison's record of the Constitutional Convention intensified the debate over the Framers' intentions and the constitutionality of slavery and contributed to the growing divide between the Garrisonians and the political abolitionists. Both those in the political antislavery camp and those in the Garrison camp used the Madison Papers to bolster the credibility of their arguments in hopes of winning support for their cause amongst Northerners. Yet, their contest was also a struggle over the meaning of the Constitution, and through that, the meaning of the Convention in American memory. Which memory would prevail? The vision of the Framers in Philadelphia as compromising, as sacrificing their principles

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[160] "The Constitution—The Framers and the Framing," *The United States Magazine and Democratic Review* 11, no. 2 (August 1842), 141.

to preserve slavery, or the vision of the Framers as upright men whose good work had been perverted by an ever-growing "slaveocracy?" In their debates over the proslavery or antislavery nature of the Constitution, the friends of freedom considered the Convention itself, which, in turn, provoked questions about what the Framers said, how they debated the construction of certain phrases, what sectional and partisan factions were present in Philadelphia, and the effect of holding the meeting in secret. Meanwhile, antislavery reformers shaped their responses to these questions—and formed their respective memories of the Convention—to suit the present political moment.

Simultaneously, while antislavery reformers used the Madison Papers in their debates about the Constitution's proslavery or antislavery character, the format and structure of their debates was also part of the dispute. That is, not everyone agreed that the Madison Papers could or should be used as a source of information about the Convention and the Framers' intentions. Some argued that Jonathan Elliot's records of the state ratifying conventions were the proper source for constitutional exegesis, while others claimed that the Constitution itself was the only "authentic" evidence of the Framers' intentions. In this respect, the antislavery movement's reception of the Madison Papers echoed the Papers' reception amongst the American public and within Congress. *Where* one should go to understand the Constitution, *what* information those sources contained, and *how* such documents as the Madison Papers should be utilized were all questions with disputed and inconclusive answers.

Antislavery activists gradually integrated the Madison Papers into their ongoing discussion of the constitutionality of slavery. Some took up the Madison Papers right away, while others examined the publication only later. Curiously, the Garrisonians did not release a formal statement about the Madison Papers until 1844. At this point, however, Madison's record of the Convention re-energized the movement, while his notes also prompted new responses to the question of the constitutionality of slavery. Moreover, the back and forth nature of antislavery intellectuals' publications illustrates the acuteness of historian Manisha Sinha's comment that the, "Garrisonians' and political abolitionists'

stances on the nature of the Constitution hardened in response to each other."[161] The contentious nature of these debates reveals that the Madison Papers were not always "hailed as a definitive record of the nation's founding," at least amongst slavery's adversaries.[162]

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Wendell Phillips' *The Constitution: A Pro-Slavery Compact* was one of the most well-known tracts to review the Madison Papers. Often historians place his work at the center of their narratives of the antislavery activists' reception of the Madison Papers. But emphasizing Phillips' arguments and neglecting to review conversations about the Madison Papers between 1840 and 1844 has obscured the full story of the Papers' impact in the antislavery movement. Relatedly, historians often jump from the 1840 publication of the Madison Papers to the appearance of Phillips' pamphlet in 1844 with only superficial coverage of what transpired between these two important dates. Between the publication of the Papers and the appearance of Phillips' *The Constitution,* antislavery intellectuals commented on the Madison Papers, while the Papers were referenced in several newspaper editorials. The antislavery tracts and editorials printed in the first few years after the publication of the Madison Papers also have much in common with the pre-publication writings and therefore show continuities across the 1840 divide.

Although antislavery authors did not review the Madison Papers with the same kind of immediacy and enthusiasm as the American public and Congress—Representative Joseph Trumbull, for instance, was already citing the Papers in March 1840—the early antislavery tracts and newspaper editorials which appeared between 1840 and 1844 are just as important for our understanding of the antislavery movement's reception of the Madison Papers as the popularly known and oft-cited tract

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[161] Manisha Sinha, *The Slave's Cause: A History of Abolitionism* (Yale University Press, 2017), 475. Sinha's work is an exhaustive synthesis of studies on abolitionism in the United States. On abolitionism and the antislavery movement, see also Alan M. Kraut, ed., *Crusaders and Compromisers: Essays on the Relationship of the Antislavery Struggle to the Antebellum Party System* (Westport: Greenwood Press, 1983); Jacobus TenBroek, *Equal Under Law: Originally Published as The Antislavery Origins of the Fourteenth Amendment: New, Enlarged Edition* (New York: Collier Books, 1951); Martin Duberman, ed., *The Antislavery Vanguard: New Essays on the Abolitionists* (Princeton: Princeton University Press, 1965). For a recent essay on the state of the field, consult W. Caleb McDaniel, "The Bonds and Boundaries of Antislavery," *Journal of the Civil War Era* 4, Issue 1 (March 2014).

[162] Wilentz, *No Property in Man*, 223.

published by Phillips in 1844.[163] The sources between 1840 and 1844 tell their own story that historians often leave out of their narratives of antebellum abolitionism. Though the debate over the Constitution and slavery, especially slavery's expansion, intensified during the *late* 1840s, evidence from the first few years of that decade proves that slavery's antagonists were engaged in heated debates about the Framers' intentions and the significance of the Philadelphia Convention. Looking closely at the early 1840s reveals that the Madison Papers added fuel to the fire raging between political antislavery men and Garrison men. Meanwhile, it demonstrates that competing memories of the Convention and of the Framers intentions contributed to the intense and divisive atmosphere of the antebellum US, at a point when the nation was either going to reach a compromise or its breaking point

Political antislavery writers were the first to cite the Madison Papers after 1840. Their initial writings show obvious continuities with the pre-publication period. The earliest example was George W. F. Mellen's work, *An Argument on the Unconstitutionality of Slavery,* published in 1841. Mellen argued that "there is and can be no legal slavery in this country under our present Constitution."[164] To support this stance, Mellen reviewed the text of the Declaration and the Constitution, the proceedings of the Federal Convention, the annals of several state ratifying conventions, congressional records, and Supreme Court decisions. The subtitle of his book—"Embracing an Abstract of the Proceedings of the National and State Conventions"—however, was a bit deceiving. Mellen spent considerably little time on the "proceedings of the National Convention" (only twenty pages of over 400) compared to the state ratifying conventions. Additionally, he cited the Madison Papers just once, and not even in the chapter on the

[163] "Speech of Mr. Trumbull, of Connecticut, On the Treasury Note Bill," *Hartford Daily Courant,* 21 April 1840.

[164] George W. F. Mellen, *An Argument on the Unconstitutionality of Slavery, Embracing an Abstract of the Proceedings of the National and State Conventions on the Subject* (Boston: Saxton & Peirce, 1841), 9.

Federal Convention.[165] Rather, for his review of the Federal Convention, Mellen cited *Secret Proceedings* exclusively, while in his review of the state ratifying conventions, he footnoted "Elliot's Reports."[166]

Why did Mellen rely on *Secret Proceedings* instead of the more recently published Madison Papers? Did he not yet have time to study Madison's notes, or was he more comfortable using the older sources, which he presumably would have been more familiar with? It is unclear why Mellen did not provide more information from the Madison Papers, but what his book does show is the continued belief that the state ratifying conventions offered valuable information for understanding the relationship between slavery and the Constitution. His attention to the state conventions, moreover, in relation to the Federal Convention both resonated with earlier remarks made by Theodore Dwight Weld and echoed Madison's opinions about constitutional exegesis. Additionally, though he only cited the Madison Papers once, that citation shows that Mellen had encountered the publication, while it underscores that the Madison Papers were not instantly transformative within the antislavery movement, but rather were considered alongside other sources seen as valuable for understanding the Constitution.[167] Once again, consequently, Americans' developing memory-narrative of the Convention was not dependent upon the availability of Madison's notes.

Perhaps Mellen thought that the state ratifying conventions were *more important* than the Federal Convention. This was a position that several political antislavery intellectuals and politicians returned to throughout the 1840s. Furthermore, Mellen was not alone in his causal, disinterested use of the Madison Papers. Joshua Giddings, a member of the House of Representatives from Ohio, offered his opinion in

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[165] Mellen, *An Argument on the Unconstitutionality of Slavery,* 86. Mellen wrote, "according to the Madison papers," before discussing a motion made by South Carolina representatives Pierce Butler and Charles Pinckney.

[166] Chapter 5, "The Proceedings of the National Convention," is where Mellen reviewed the Philadelphia convention and cites *Secret Proceedings.* "Elliot's Reports" appears in a footnote on page 152, where Mellen discussed the Massachusetts state ratifying convention.

[167] William Wiecek claims that Mellen's book "was an unsuccessful attempt to neutralize the impact of the Madison Papers" (Wiecek, 256). However, it is unclear what he means by the word "neutralize." Moreover, the evidence does not support this claim—how could Mellen's book be an attempt to "neutralize" the impact of the Madison Papers when the Garrisonians had not yet commented on the publication? Wiecek did not adequately consider the context in which Mellen's publication appeared.

1842 on the relationship between slavery and the Constitution. He too only referenced the Madison Papers once, writing that, "The convention that framed our Federal Constitution, met with no trifling difficulty in fixing the rights of the people of the different States in regard to *fugitive slaves*."[168] Commentators in other political debates often included extracts from the Madison Papers to support their arguments, but Giddings merely paraphrased the debates in the Convention and then directed his audience to page 1447 in the third volume of the publication.

The same year as Giddings wrote, 1842, the Supreme Court delivered its verdict in *Prigg v. Pennsylvania.*[169] Justice Joseph Story declared that Pennsylvania's "Personal Liberty Law" was unconstitutional, as it violated the federal government's exclusive power to capture fugitive slaves under the fugitive slave clause. Despite this decision, Story refused to concede that the Constitution recognized "property in man"—a common theme that antislavery theorists would return to time and again.[170] While arguing their cases, lawyers often referred to the state ratifying conventions for evidence. When a lawyer for the state of Pennsylvania cited the Madison Papers, however, Story did not pause to consider them, and instead turned to the text of the Constitution: "Mr. Hambly cited the Madison Papers and Debates in Convention, that this matter was expected to be left to state legislation…As if, however, to remove all doubt upon this subject, we have, in the Constitution itself, an open admission that the whole subject of slaves and slavery was left in the hands of the states."[171]

Story's opinion contradicted the opinion expressed in the *Madisonian* in the midst of a debate over treasury notes that questions of interpretation could now be decided by facts stated in the Madison

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[168] Joshua Giddings, "Pacificus: The Rights and Privileges of the Several States in Regard to Slavery; being a series of essays, published in the Western Reserve Chronicle, (Ohio), after the election of 1842. By a Whig of Ohio," 2.

[169] It is worth noting that just a year before, the Supreme Court granted freedom to kidnapped Africans in the case *United States v. Amistad.* For more on the *Prigg* Supreme Court case, consult H. Robert Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution* (University Press of Kansas, 2012).

[170] The Constitution and the phrase "property in man" is the subject of Wilentz, *No Property in Man*.

[171] *Prigg v. Pennsylvania,* 1842. Story cites the importations clause, United States Constitution Article 1, Section 9.

Papers.[172] Story would not be the only one to dismiss the Madison Papers or argue that they should not take the place of the Constitution itself. In fact, this was one of the central debates both within and outside of the antislavery movement—Americans asked, to what extent should constitutional exegesis be grounded in the text of the Constitution? And to what extent could expository documents should as *The Federalist,* records from the Constitutional Convention and state ratifying conventions, or records from the first Congress be used to inform our understanding of this foundational document? Antislavery reformers also used these questions to guide their interpretations of the Constitution as a proslavery or antislavery document.

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These were questions often woven into antislavery newspaper editorials about the relationship between slavery and the Constitution. Contributors to this niche press also considered the Framers' deliberations in the Philadelphia Convention, the historical context in which that meeting occurred, and the relationship between the Convention and the state ratifying conventions. Through their deliberations upon these questions, the friends of freedom explored what the Madison Papers revealed about the nature of the Constitution—was it explicitly a proslavery or antislavery document?—as well as what the Papers revealed about the Framers' original intentions. Similarly, they pondered such considerations as whether the Constitution admitted "that there could be property in men" and whether subsequent generations had interpreted the Constitution in keeping with what the Framers' had in mind at the Constitutional Convention.

As evinced by the newspaper articles from the 1830s, where the antislavery press stood on the question of the Constitution as a proslavery or antislavery document was often inconclusive. That this trend continued after the publication of the Madison Papers in 1840 affirms that historians should reconsider the impact this publication had on the development of antislavery and proslavery constitutionalism. In the early 1840s, to the diversity of sentiment expressed in the press with respect to

[172] "The Exchequer Bill," *The Madisonian,* 5 January 1842.

the Constitution and the Convention were added a variety of contradictory opinions and utilizations of the Madison Papers. Meanwhile, memories of the Convention and the Founding became more complex and the proslavery or antislavery character of the Constitution, both past and present, became more contested.

One of the earliest newspaper articles which used the Madison Papers in a discussion of slavery and the Constitution appeared in the *Philanthropist* in February 1841. The article was exceptionally impressive, including numerous extracts from the Madison Papers and offering elaborate analysis in between the selected quotations. Remarkably, though it appeared in an organ edited by James G. Birney and Gamaliel Bailey, the former a future Liberty Party presidential candidate, the article expressed, in nearly verbatim language, similar sentiments as would Wendell Phillips in his pamphlet, *The Constitution: A Pro-Slavery Document.* The article began,

> It is generally known, that the foregoing clause of the Constitution, which authorized the continuance of the slave-trade twenty years, was the product of a shameful bargain between the Northern and Southern states. In the Madison Papers, the details of this dark transaction are given at length; and their character is such as should make the descendants of the pilgrims hang their heads at the record of their fathers' shame.

Lengthy extracts from Madison's record of the debates in the Convention were then provided, day by day, with the author commenting on what transpired. The writer believed that the Madison Papers were indispensable for understanding the nature of this compromise. Moreover, he used these extracts to draw distinctions, as other contemporaries did, between the delegates at the Convention. The writer said, "We have been taught to venerate the character of the framers of the federal constitution. It would be well to discriminate in bestowing our respect," then expressed sadness and frustration with specific delegates from New England, South Carolina, and Georgia. While the writer bemoaned the compromises of principle for the sake of slavery, he included Madison's quotation that the Virginian "thought it wrong to admit in the Constitution the idea that there could be property in men," in all capital letters and exclaimed, "Let this last proceeding be imprinted deeply on every mind," that the language of the Constitution was amended to accord with Madison's counsel.[173]

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[173] "Importation of Slaves—Original Compromise Between North and South," *The Philanthropist,* 17 February 1841.

Other articles discussed the Convention, but without referencing the Madison Papers. In February 1840, the *Anti-Slavery Examiner* printed an article which was signed by the Executive Committee of the American Anti-Slavery Society. The article gave a historical overview of the steps which led to the renewal of the congressional "gag rule" in the House of Representatives on January 28. The Madison Papers, also just published in January 1840, were not mentioned in this article, but the writers did express interest in the Framers' intentions at the Convention. The gag rule was a "violation of both the spirit and the letter of the Constitution," the authors claimed. They then explained that, "The framers of the Federal Constitution supposed the right of petition too firmly established in the habits and affections of the people, to need a constitutional guarantee. Their omission to notice it, roused the jealousy of some of the State conventions, called to pass upon the constitution." The writers interestingly called attention to the relationship between the Federal Convention and the state ratifying conventions—the latter appear to have acted as a corrective check upon the former. The Committee then summarized the process by which the Bill of Rights was added to the Constitution. They concluded with the proposal, "Let us petition [our state legislatures] immediately to rebuke the treason by which the Constitution has been surrendered into the hands of the slaveholders."[174]

Without using the Madison Papers, this article established three common themes that other contemporary commentators would rely on. First, the Executive Committee expressed an interest in the *history* of how a constitutional provision, or in this case, an act of legislation, came to be. Second, they drew connections between the Constitutional Convention in Philadelphia and related events from the time, such as the state ratifying conventions and the first Congress. Third, the authors suggested that the Constitution had been used in a way perhaps inconsistent with its true nature, or, more specifically, that slaveholders had manipulated the Constitution for their own political advantage. This last theme would be prevalent amongst political antislavery writers who expounded the "Slave Power" theory. It is ironic to read that the American Anti-Slavery Society expressed such an opinion, but it underscores the need to

[174] "Address," *The Anti-Slavery Examiner*, 1 January 1840.

clarify the chronology of Garrison's interpretation of the Constitution. Moreover, each of these themes, among others, would play out in the antislavery movement's internal debates about the Constitution's proslavery or antislavery nature.

An article from the *National Anti-Slavery Standard* in July 1841 likewise expounded on the importance of history for understanding constitutional provisions related to slavery. The article's tone was explanatory, but also verged on offering the view that the Constitution was an antislavery document because the Framers' anticipated the institution's demise. The article first drew connections between several significant events of the Revolutionary era—with the understanding that these events informed the mindset of the Framers' as they formed the new government:

> The great majority of these eminent statesmen, who put forth the Declaration of Independence, enacted the Ordinance of 1787, and framed the Constitution of the United States, contemplated the gradual extinction of slavery, and verily thought they had made such arrangements as would rather facilitate than hinder this desirable event.

The mention of the Northwest Ordinance in this list of significant events mirrored the writings of Theodore Dwight Weld and Gerrit Smith from the late 1830s, while the writer shared their desire to situate the framing of the Constitution in historical context. The writer continued in the same vein,

> Slavery at that time was considered dependent on the slave trade. To prohibit the last, it was thought to strike a fatal blow at the first. Hence the dangerous strife between the anti-slavery and proslavery principles, in the Convention which framed the Constitution, growing out of the introduction of the clause in the original draught of the Constitution, that proposed to confer on Congress the power to abolish the slave trade.

The writer occasionally cited specific pages of the Madison Papers, but he maintained his focus of explaining the historical setting which informed the writing of the Constitution. He also acknowledged that slavery was a divisive force within the Convention, especially when the first draft of the Constitution proposed to outlaw the international slave trade outright.

Antislavery theorists made two contradictory arguments regarding the slave trade clause as written in the final draft of the Constitution. Some believed that the provision—which gave Congress the power to abolish the slave trade after 1808—was proslavery at heart because it allowed for the importation of slaves for another twenty years after the Convention. Simultaneously, others maintained

that the fact that Congress was able to abolish this abhorrent practice *at all* made this provision of the Constitution sympathetic to the cause of abolition. Their disagreement over this clause reflected the larger trend in the debates over the proslavery or antislavery (or even neutral) intentions of the Framers. The writer of this article in the *Standard* was speaking to this disagreement.[175]

Also in July 1841, the *National Anti-Slavery Standard* shared a similar article from the *Cincinnati Gazette*. The article summarized the deliberations over slavery at the Convention and remarked that, "The Constitution, it is well known, was framed as a matter of compromise." However, the writer added that the Convention, heeding Madison's guidance, did not go so far as to admit "that there could be such a thing as property in man;" rather, "the Constitution Simply [sic] guaranteed the *statu [sic] quo*. Further it did not go." The writer then included extracts from the Madison Papers for August 25, when the delegates debated duties on slave trade "importations." In introducing his selected quotations, the writer asked, "What say the framers themselves, in reference to this matter?" His rhetorical question implied that, with the Madison Papers, his audience could read the Framers' opinions as if the Framers' spoke to them directly. Also implied was the importance of preserving this written record of the Framers' voices.

Furthermore, the writer believed that the particular language that the Convention chose was significant—in the case of the importations clause (Article I, Section 9), the use of "person" instead of "property" held great meaning. "If names are anything—and we will let the framers of the Constitution tell their own story—they certainly meant something by the substitution, and that something [favored] the personality of the slave."[176] The writer believed that the Madison Papers presented an accurate, if not verbatim, record of the Framers' discussions at the Convention and he trusted the authority of that record.

Antislavery theorists repeatedly addressed the significance of the use of "person" as opposed to "property" in the Constitution, and likewise, the absence of the words "slave" and "slavery" in that instrument. With the Madison Papers, they extended their linguistical analysis to an examination of *how*

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[175] "The Ordinance of '87," *The National Anti-Slavery Standard*, 29 July 1841.

[176] "From the Cincinnati Gazette, Law of Slavery in Ohio," *The National Anti-Slavery Standard*, 1 July 1841.

the delegates decided on the final construction of the Constitution. Madison's reflection, or his word of warning, in the Convention, about the language used to discuss human bondage was a popular reference point for antislavery intellectuals.

A few months later, the *National Anti-Slavery Standard* reprinted an article from the *Philanthropist* which had also quoted Madison's well-known line from the slave trade debates and used the Madison Papers to illustrate the antislavery intentions of the Framers. The article, entitled "Old Times," also read like several of the newspaper advertisements and reviews of the Madison Papers which reflected on the passing of the Founding generation. The writers began nostalgically,

> We are fond of reverting to the past. Our republic, we fear, has seen its purest days. It is a pleasure to know, that there was a period in its history, when its statesmen rose above those low, mercenary considerations which enslave, with few exceptions, the public men of this day. We have already quoted the words of Mr. Madison, as recorded by himself, when the Federal Convention was settling the phraseology of that clause of the constitution which conferred power on Congress to abolish slavery in 1808. "Mr. Madison thought it wrong to admit in the Constitution, the idea that there could be property in men." Such was his tender regard for the constitution of a free republic. "The *Madison Papers*" contain abundant evidence of the same solicitude on the part of most of the members of that celebrated convention.

According to these commentators, the Madison Papers provided proof of the antislavery intentions of the Framers, Madison expressed the general will of those present at the Philadelphia assembly, and the Convention was worthy of the modifier "celebrated." Furthermore, the writers added that, "one fact has never before been published in the newspapers." Referencing page 1589 of Madison's record, they explained that the Convention changed the words in the fugitive slave clause to be more specific and more cautious—the term "legally" having been replaced with "under the laws" of each state. Again, the writers in the *Philanthropist* saw this as evidence of the Framers' antislavery intentions—"How anxious were they not to do any thing which, by the most remote implication, could be construed to sanction slavery."[177] Here also, the writers believed that the Framers were forward thinking, that they constructed the Constitution so as to provide against future "mischief."[178]

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[177] "Old Times," *The Philanthropist* in the *National Anti-Slavery Standard,* 24 February 1842.

[178] "The Executive Authority," *The North-Carolinian,* 29 May 1841.

If the articles from the *National Anti-Slavery Standard* and *Philanthropist* are two striking examples of the antislavery reformers' interest in this quotation of Madison's from the Convention, another may be found in the *Liberator*. In April 1842, William Lloyd Garrison printed a "Review, by Dr. Channing"—presumably the Unitarian minister William Ellery Channing—of "Daniel Webster's Letter of Instructions to Edward Everett." The context was the court case pertaining to the *Creole*—an American ship seized by the enslaved persons on board then sailed to the Bahamas, a free British colony.[179] Dr. Channing wrote about the Constitution's relationship with slavery as it pertained to the idea that there could be property in men. He argued that, "The Constitution was intended not to interfere with the laws of property in the States where slaves had been held. But the recognition of a moral right in the slaveholder is most carefully avoided in that instrument. Slaves are three times referred to, but always as *persons,* not as *property*." He then reviewed the history of the fugitive slave clause before and during the Convention. Referencing the Madison Papers, Dr. Channing continued:

> It ought also to be added, that in the debate in the Convention on that clause of the Constitution which conferred powers on Congress to abolish the importation of slaves in 1808, 'Mr. Madison thought it wrong to admit in the Constitution the idea that there could be property in men.' Most memorable testimony to the truth from this greatest Constitutional authority![180]

Dr. Channing's commentary was more judicious than most others at the time, though simultaneously he exalted Madison's superiority in matters of constitutional exegesis. He recognized that the Constitution let slavery remain where it was, but held that the document also evaded any affirmation that slavery was a legal or moral institution. Dr. Channing also showed that the Madison Papers could be used to inform Americans about what the Framers thought in the Convention while implying that they were both authoritative and valuable.

Antislavery theorists' attention to the language debated at the Convention, as well as the diction ultimately used in the Constitution, was a persistent theme within the movement's reception of the

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[179] For more information on the *Creole* case consult Gerald Horne, *Negro Comrades of the Crown: African Americans and the British Empire Fight the U.S. Before Emancipation* (New York University Press, 2012).

[180] "Selections. Daniel Webster's Letter of Instructions to Edward Everett," *The Liberator,* 22 April 1842.

Madison Papers. It was true, also, that commentators in other political debates expressed interest in the particular language that the Framers used and what they must have intended through that language. Language thus informed Americans' understanding of the Constitution, and, in turn, their memories of the Convention.

Additionally, antislavery intellectuals also acknowledged that the Constitutional Convention brought together several opposing factions in one assembly—small states and large states, the rural periphery and the urban centers, and slave states and free states. Some articles, such as one entitled "The Compromises of the Constitution" in *The Philanthropist,* focused less on the intentions of the Framers and more on the dynamic between these competing interests within the Convention. Like previous articles, moreover, the writers here recognized the unfortunate, in their opinion, spirit of compromise operating within the Convention. Appearing in December 1841, the article included several lengthy extracts from the Madison Papers. The writers lamented that, "Strenuous as were these gentlemen, in opposing a vicious principle so far as the suffrage of the States was concerned, they consented to that clause of the Constitution which at once creates a gross inequality in the rights of the people of the Union." They had in mind the so-called three-fifths clause, which provided a formula for representation of "all other Persons" in the House of Representatives (Article I, Section 2). In keeping with the themes of these antislavery editorials, the writers also expressed an interest in the history of this constitutional provision. "As this clause of the Constitution," they continued, "from the effects which have followed its operation, has become a subject of vast importance, we have thought that its history might be of interest to our readers. For our information on this point, as on the infamous compromise with regard to slave importation, we are indebted to the MADISON PAPERS." The writers concluded by referring to the three-fifths clause as a "triumph of the slave power" and that the "slave-holding delegation" had "urged" this compromise upon the Convention.[181]

[181] "From the Philanthropist. The Compromises of the Constitution," *The National Anti-Slavery Standard,* 9 December 1842.

Some antislavery intellectuals believed that the "Slave Power" had triumphed in more ways than one at the Convention. Indeed, they believed that the deliberations within as well as the product of the Convention amounted to a victory for the South, and particularly for enslavers. A few newspaper articles referenced the Convention and the Madison Papers in relation to the argument that the Constitution was a *proslavery* document. For example, in 1843, the *Liberator* shared a communication from the Middlesex County Anti-Slavery Society where the Madison Papers had been used to prove that the fugitive slave clause "was adopted by the Convention with the express understanding that it applied to the slaves."[182] Although this communication appeared in the *Liberator,* Garrison did not offer any additional comment about the Madison Papers.

The most impressive of these Constitution-as-proslavery articles, furthermore, in a most perplexing way, did not mention the Madison Papers once. An article in the *Philanthropist* (which had previously printed an article with extracts from the Madison Papers) written by Samuel Brooke, Jr., appeared in December 1842. Brooke wrote at length about the relationship between the Constitution and the Convention, but focused in on the *secrecy* of the Philadelphia assembly. Brooke said, "Our Revolutionary Fathers promulgated their principles in the first sentence of the Declaration of Independence, and declared them in the face of the world, to be self-evident truths...The Constitution of the United States was established with a strict regard to these principles." Slavery, which violated these principles, "was not adopted as a national institution," but was left to state regulation "with a distinct understanding that it should never be extended, but should be gradually, and at no distant day, wholly abolished by State authority." Brooke argued that, without this understanding, the American people would not have ratified the Constitution. He turned to the Convention and contended that, "the confidence of the people, in those they had selected to form a Constitution, was unbounded."

Nevertheless, Brooke continued, "The constitution fails in many of its parts to do what it promised," that is, to fulfill the promises of the Preamble. He believed that there were inexcusable

[182] "Middlesex County A.S. Society," *The Liberator,* 27 October 1843.

"inconsistencies" between the Declaration of Independence and the Preamble "on one hand, and the constitution itself on the other." He abhorred and condemned the compromises made with the slaveholding interest within the Convention. While other commentators drew connections between the Revolutionary events to underscore the Framers' authority as well as their antislavery intentions, Brooke drew the same connections to call out the Revolutionary generation's hypocrisy. "Nine hundred and ninety-nine of a thousand, will tell us that those who signed the Declaration of Independence; that those who formed the Constitution of the United States, were the purest and best patriots the world ever produced;" but, in actuality, Brooke proclaimed, they "sacrificed their principles." Moreover, in Brooke's opinion, the Framers appear to have done so knowingly and perhaps ashamedly, which he offered as one explanation for the Convention's secrecy. The Convention, Brooke argued,

> tried to keep the people in ignorance of the demands of the South, and the concessions that were made to her they did not dare to debate the subject with open doors. And ever since the formation of our government, Congress has tried, as far as in its power, to keep the people from understanding the continual demands of the South, and the frequent concessions made to her.[183]

In his own way, Brooke proffered the "Slave Power" argument, but shared the Garrisonian perspective that the slaveholding interest had been corrupting the nation from the start. Moreover, Brooke's note to the *Philanthropist* suggested that the Convention set a poor precedent by holding their deliberations in secret. As we saw earlier, his opinion was not shared by the *North American Review* and the *Democratic Review* which both *praised* the Convention's decision to hold its meetings "behind closed doors."

Thus, we are presented with two different, competing memory-narratives of the Convention—one in which the Framers' decision to hold the Convention in secret was deceitful and another which proclaimed that it was judicious. One commentator employed the Madison Papers in their formation of their image of the Convention, the other did not. These examples demonstrate that memory of the Convention was not solely linked to the availability of Madison's record, which itself was contested, praised, and set aside.

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[183] Sam'l Brooke, Jr., "The Constitution and Slavery," *The Philanthropist,* 14 December 1842.

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The antislavery movement's variegated reception of the Madison Papers mimicked that of the American public and Congress. That antislavery reformers were less immediately enthusiastic might be explained by the overwhelming circumstances of the early 1840s, but the sources do show significant engagement with narratives of the Convention between 1840 and 1843. What is less comprehensible, however, is why William Lloyd Garrison, arguably the most famous spokesman for the antislavery movement, did not publicly address the publication of the Madison Papers until 1844 and privately until 1845. Indeed, in September 1840, nine months after the publication of the Madison Papers, Garrison was still writing that slavery "is contrary to our Declaration of Independence, our Constitution, and our theory of government."[184] Garrison and his allies' delayed interest in the Madison Papers begs a reconsideration of the role which that publication played in the development of their Constitution-as-proslavery-document and disunionist arguments.

As late as June 1844, *The Liberator* reported, "we have not yet had an opportunity to peruse the 'Madison papers.'"[185] This is a striking delay for so popular an abolition periodical and for one of the official organs of the American Anti-Slavery Society. Why would the Society—and William Lloyd Garrison, for that matter—*not* have wanted to publish their official commentary about the Madison Papers sooner? Why did they disclose that, in 1844, they still had not studied the publication? Did they miss an opportunity to capitalize on the popularity of the Madison Papers with their delayed response to this conspicuous publication, or did they enter the conversation at the perfect moment? While we might not have answers to these questions, it is clear that the antislavery movement's reception of the Madison Papers merits closer scrutiny than it has thus far received in the scholarship.

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[184] William Lloyd Garrison to Mrs. Henry Walker, 8 September 1840, Letter 219 in Louis Ruchames, ed., *The Letters of William Lloyd Garrison, Vol. II: A House Dividing Against Itself, 1836-1840* (Cambridge: The Belknap Press of Harvard University Press, 1971), 700.

[185] "The Constitution," *The Liberator,* 28 June 1844.

Four-and-a-half years is a long time to neglect commenting on so popularly received a publication as the Madison Papers. By 1844, several national newspapers and literary magazines had published reviews of the Papers, and bookstores advertised the Papers for sale in local presses across the United States. Indeed, in just two years, Congress would debate a second printing of the remaining papers in Madison's collection. However, and at last, 1844 saw the Garrisonians express more of an acute, sustained interest in the Madison Papers, while political antislavery intellectuals continued to expound on the value of that publication as they had before. From that point on, the remainder of the decade witnessed more thorough and detailed interactions with the Madison Papers in antislavery circles.

We can only hypothesize why 1844 became a turning point in the Garrisonians' interest in the Madison Papers. Three historical developments help to frame the chronological progression of the reformers' attention to Madison's record of the Convention: the Supreme Court's decision in *Prigg v. Pennsylvania*, the growing seriousness with which Southern slaveholders pursued annexing Texas, and, for the Garrisonians particularly, the augmenting influence of the Liberty Party in national politics. The first underscored that antislavery crusaders—and more importantly, the enslaved—did not have the federal courts on their side. The second heightened anxieties about an expanded slaveholding territory which would augment slaveholders' power in the national government. Lastly, the third, for Garrisonians, resurrected fears of past compromises over slavery which they wanted to avoid in the future.

Though by September 1844 their readers could have purchased the whole publication at a manageable price, the *Liberator* that month first printed several extracts from the Madison Papers.[186] Most notably, 1844 also saw the publication of two significant tracts by men on different sides of the debate—William Goodell, for the political antislavery men, and Wendell Phillips, for the Garrisonians. Both men were fervently involved in the antislavery movement: Goodell was a founding member of the New York Anti-Slavery Society, and the American Anti-Slavery Society, and he later wrote the

[186] "The Madison Papers," *The Liberator*, 13 September 1844.

convention address and party platform for the Liberty Party. Meanwhile, Phillips, a Garrison-convert, gave up his law career to focus his time on being an advocate for the abolition of slavery.

William Goodell did not himself explicitly engage the Madison Papers—in a puzzling remark, he even admitted that he did not have access to the Papers while writing.[187] However, not citing the Madison Papers was also consistent with his argument, for he essentially dismissed the idea that they could be used in constitutional exegesis. His work stands out for its extensive reflections on strict construction of the Constitution, the secrecy of the Federal Convention, published accounts of that meeting, and what others had said about Madison's record. Goodell's *Views of American Constitutional Law* was a "synopsis of the radical argument" that the Constitution was an antislavery document.[188] His work echoed some of the arguments presented by political antislavery intellectuals back in the late 1830s. For instance, he made a connection between the Federal Convention and the state ratifying conventions when he wrote that, "the Federal Convention was held in 1787, and in the same year, Judge Wilson, one of the members of that Convention, declared in the Pennsylvania Convention for its ratification, that the Constitution *laid a foundation for* 'banishing slavery out of the country.'"[189] Goodell also argued that Americans should base their interpretations of the Constitution on the text of the document itself, in harmony with Story's opinion in *Prigg v. Pennsylvania*. On this point, he took issue with the idea that a "compromise" between the Northern and Southern states took place, to secure the southern states' position in the Union, contending that, "in the *written compact* the pretended 'compromise' is no where to be found."[190] Goodell here used the product of the Convention to argue against the widely-held interpretation of the Convention as a meeting motivated by a "spirit of compromise."

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[187] William Goodell, *Views of American Constitutional Law, in its bearing upon American slavery* (Utica, NY: Published by Jackson & Chaplin, 1844), 156. Goodell offers no explanation for why he did not have access to the Madison Papers.

[188] Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848*, 257.

[189] Goodell, *Views of American Constitutional Law*, 123.

[190] Goodell, *Views of American Constitutional Law*, 121.

The central tenet of Goodell's reading of the Constitution as antislavery was that Americans *adopted* the Constitution. He believed, like Madison, that the source of authority was what the people decided after the Convention, whilst holding the state ratifying conventions. He acknowledged the publication of the *Journal* and *Secret Proceedings,* but he suggested that the existence of a "compromise" could not be proved, even with those notes.[191] Still, Goodell argued,

> What if it *were* so, that in the secret Convention…there were men who wished to shape the instrument in such an ambiguous manner as to favor slavery, without saying so, in direct and honest terms? And what if it could be *proved* that this were so…would the 'People of the United States,' who knew nothing of the fraudulent procedure, be bound by the *wicked intentions* of the framers, or of a portion of them, instead of the natural import of the *language* they employed?[192]

The language of the Constitution itself was for Goodell the highest authority. The publication of various Convention records, furthermore, did not inform Americans of the Convention's understanding of slavery. Goodell said that,

> Not until *thirty-two years afterwards*—not until the year 1821, do Messrs. Yates and Lansing lift the veil of secrecy from the 'proceedings and debates of the Convention,' revealing, by the bye, in addition to the strong and apparently unanswered anti-slavery speech of Luther Martin of Maryland, very little that throws light on the views held in the Convention on *that subject.*[193]

Even the Madison Papers met with Goodell's scrutiny, for he continued, "Many years afterwards come the celebrated posthumous papers of Mr. Madison, said by those who have waded through them, to contain very little if any satisfactory information on that subject." Despite these publications, even the "celebrated" Madison Papers, which countless others had lauded as novel, revelatory, and enlightening, Goodell only upheld the Constitution itself. Since the recent publication of Madison's record did not appear to change his mind, he again asked rhetorically,

> Are we now to be told…that the Constitution must be construed to mean what Messrs. So-and-So are rumored to have said in that secret Convention—that the 'compromises' and 'guaranties' of the 'compact' are to be looked after, in the secret and unknown doings of that Convention—NOT in

[191] Goodell, *Views of American Constitutional Law,* 224.

[192] Goodell, *Views of American Constitutional Law,* 123.

[193] Goodell, *Views of American Constitutional Law,* 125.

> the document they elaborated, nor yet in the ACTS and INTENTIONS of the People who took the instrument at its word, and adopted it, for what its words made it?[194]

Goodell, like his intellectual predecessors Alvan Stewart and Theodore Dwight Weld, and like Madison himself, maintained that the text of the Constitution, and the actions of the American people through their state ratifying conventions in adopting the instrument, should be the guide to interpreting the Constitution's meaning, *not* the Madison Papers. Goodell suggested that even with these documents, what happened at the Convention was still shrouded in secrecy and rumor. But the text of the Constitution itself, he argued, was a source of certainty and clarity, as opposed to the indistinct and imperfect records of the Convention.

On the other hand, Cassius M. Clay, a Kentucky politician, called on the text of the Constitution to affirm the antislavery character of the Constitution, but he also cited the Madison Papers to prove his point. In a statement that would have appalled Garrisonians, Clay proffered that, "When, out of the original Thirteen States a new Government was formed to 'establish liberty,' the compromise was to reduce Slavery gradually to extinction—read the Madison Papers and deny it! Search the Constitution for the word 'Slavery' in vain, and deny it!'"[195] This abolitionist enthusiastically believed that the Madison Papers proved that the Constitution was an antislavery document.

Other abolitionists were not so sure. Samuel Joseph May, an abolitionist who at one point argued that the Constitution merely ignored slavery, but did not establish it, changed his mind upon studying the Madison Papers.[196] Several years later, May reflected on the antislavery debates:

> It seemed to me, that we owed it to the memory of those venerated men whose names are conspicuous in the early history of our Republic…to exonerate them, if we fairly could, from the awful responsibility that was laid upon them by those who insisted that they *guaranteed* to the Southern States the unquestioned exercise of their assumed right to enforce the *enslavement* of one sixth part of the population of the land…But the publication of the 'Madison Papers'…I confess,

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[194] Goodell, *Views of American Constitutional Law*, 125.

[195] "Letter from Cassius M. Clay," *New-York Daily Tribune*, 16 May 1844.

[196] Wiecek, *The Sources of Antislavery Constitutionalism*, 253-254.

> disconcerted me somewhat. I could not so easily maintain my ground in the discussions which afterwards agitated so seriously the Abolitionists themselves.[197]

Madison's notes from the Convention apparently convinced May that it may not be so easy, or even accurate, to argue that the Constitution did not protect slavery. Moreover, he drew some distinctions amongst the Framers; that is, May implied that the Framers were well-intentioned, but the "Southern States" at the Convention forced their hand. The image presented is complicated—the Framers were perhaps complacent in compromise, but not guilty. His statement also suggests that, in the midst of the sectional crisis over slavery, some Americans felt that a proslavery reading of the Constitution betrayed the memory of the Founding Fathers, and so they sought to harmonize the Constitution with their exalted commemorations of the Framers. Memory-narratives could thus be warped to fit the contemporary political circumstances.

May's personal conversion as a result of the publication of Madison's notes, however, was a relatively isolated incident. Other antislavery intellectuals, such as David Lee Child, converted to the Garrisonian position a few years later, amidst the drama of the impending annexation of Texas and the approaching Mexican-American war.[198] Such developments suggest that historians have overstated the transformative nature of the Madison Papers within the antislavery movement. The Garrisonian abolitionists' delayed response to the Madison Papers begs a reconsideration of the publication's place on the timeline of Garrisonian disunionism. Historical developments such as the Supreme Court's decision in *Prigg v. Pennsylvania,* the push to annex Texas, and the growth of the Liberty Party appear to have had more of an impact on the disunion decision than the Madison Papers.

Moreover, Garrison and his followers reached the conclusion that the Constitution was a proslavery document without having relied on the Madison Papers exclusively. Regarding Garrison's letter, "Address to the Friends of Freedom and Emancipation in the United States," published in the

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[197] Samuel J. May, *Some Recollections of Our Antislavery Conflict* (Boston: Fields, Osgood, & Co., 1869), 143.

[198] Kraditor, 203.

Liberator in May 1844, Henry Mayer explains that, "To his familiar charges Garrison added a host of damning material culled from James Madison's recently published notes on the Philadelphia convention that revealed the Framers' deliberate attempts to placate the slaveholding interest."[199] Mayer accurately suggests that the Garrisonians made these arguments repeatedly before they explored the Madison Papers, and thus they simply *added* the Papers to their tirades. Yet, to speak of the Madison Papers as being "recently" published as late as 1844 obscures the extent to which they were, by that year, decidedly integrated into the national consciousness. His analysis of the Madison Papers' impact thus falls short, because he does not consider the wider cultural narrative to see Garrison's delayed interest in the Papers.

May 1844 was also when the American Anti-Slavery Society announced their position, "No Union With Slaveholders." The key, therefore, to understanding the impact of the Madison Papers within the antislavery movement, as applied to Garrisonian abolitionism and disunionism, is to acknowledge that Garrison and his allies only first dealt with the Madison Papers at length in 1844, much later than others in the antislavery movement, while they certainly showed a delayed interest in the publication compared to the general public's anticipation and reception of the Papers. This begs the question, what made 1844, in the eyes of Garrisonians, an opportune time to publish a detailed collection of sources which supported their argument that the Constitution was a proslavery document and that, as a result, the union should be dissolved?

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The Madison Papers were the "cherry on top" of the Garrisonian's Constitution-as proslavery document argument. Wendell Phillips, furthermore, corroborated Samuel J. May's new doubts about the Constitution. His diction echoed popular estimations of the Madison Papers' value when he proclaimed that, "The Madison Papers…settle beyond all doubt what meaning the framers intended to convey."[200] Phillips' tract, *The Constitution: A Pro-Slavery Compact,* made the most thorough use of the Madison

[199] Mayer, 327.

[200] "Can Abolitionists Vote or Take Office Under the United States Constitution," *The Anti-Slavery Examiner* No. 13 (February 1845).

Papers within antislavery circles at the time. The abolitionist joined extracts from the Papers, the state ratifying conventions, Martin's speech, *The Federalist,* and the first Congress.[201] In this sense, his work mirrored previous publications, which saw each of these sources as enlightening the American public with respect to the intentions of the Framers. However, Phillips, writing for the Garrisonians, clearly articulated that the Madison Papers verified, once and for all, the proslavery nature of the Constitution. "Now *these pages* prove," Phillips asserted, "the melancholy fact that willingly, with deliberate purpose, our fathers bartered honesty for gain and became partners with tyrants that they might share in the profits of their tyranny."[202] It is curious that Phillips's willingly used the phrase "our fathers," yet his way of doing so was not boasting and laudatory, as we saw in reviews which praised the work of the Framers or in Madison's eulogies which expressed gratitude for the Founding generation

Phillips chided individuals who, "to serve the purposes of a party, have tried to prove that the Constitution makes no compromise with slavery."[203] He had in mind the Liberty Party and some antislavery Whigs and Democrats. The Garrisonians focused, almost exclusively, on the "compromise" at the Convention between the free and the slave states over several provisions of the Constitution—clauses which Phillips' listed at the beginning of his document—but most notably the "bargain" over the international slave trade. With the growing political antislavery movement, the Garrisonians abhorred the idea that a partisan group might once again introduce compromise into the conflict over slavery. The Madison Papers, according to Phillips, proved that the evils of compromise had been corrupting the

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[201] Of all the published records of the Convention available before the Madison Papers, antislavery intellectuals were always sure to include Luther Martin's *Genuine Information* amongst their list of sources. During the Convention, Martin opposed the injunction of secrecy and the strong centralized government that some delegates (like Madison) had proposed, while he was also one of the most outspoken opponents of slavery. Perhaps this, coupled with the fact that he left early and refused to sign the Constitution, suggests a kind of kinship between Martin and these antislavery intellectuals. For the Garrisonians, Martin's story certainly fits their narrative of the Convention, and their repeated references to him makes him appear almost as a champion of the Garrisonian position.

[202] Wendell Phillips, *The Anti-Slavery Examiner* No. 11, *The Constitution: A Pro-Slavery Compact: Or, Extracts from The Madison Papers, Etc.* (New York: American Anti-Slavery Society, 1844, first edition), 6. *My emphasis on "these pages."* The American Anti-Slavery Society published subsequent editions in 1845 and 1856.

[203] Phillips, *The Constitution,* 5.

nation from the very beginning—in contrast to the political antislavery position that the Slave Power emerged in the generation after the Founding—and he took advantage of the moment to build support for the Garrisonian position.

However, the careful historian should critique Phillips' reading of the Madison Papers and his claims about their revelatory nature. Although Phillips argued that the Madison Papers *affirmed* what had always been believed, that the Founders sacrificed their principles in the Convention to write safeguards for slavery into the Constitution, the timing of his publication also suggests that he believed the Madison Papers were *the* document which proved this once and for all. Yet, the Garrisonians, and all Americans, would have known about the Framers' compromises in the Convention from previously published sources—especially Luther Martin's "Genuine Information" speeches published in *Secret Proceedings* in 1821.

Contemporary critics of the Madison Papers themselves called attention to this fact. The unconvinced pundit in the *London Times,* back in 1839, had said that *Secret Proceedings* "gives us much valuable and authentic information relative to the proceedings of that body, and its contents will be doubly important in correcting and illustrating the *Madison Papers*." The writer added that Luther Martin's report contained in that publication, "gives us the secret history of the formation of the American Constitution. Never did a body of men with such pretentions appear to less advantage." Then, the writer acknowledged that Martin revealed the style of the infamous compromise in the Convention, as part of this "secret history:"

> We learn also the true nature of the compact entered into between the northern and southern states on the subject of slavery, the history and iniquity of which will one day or other see the light. And if the *Madison Papers* can add anything more to illustrate the motives which guided the heroes of the North American Confederacy, we shall hail their publication as a valuable gift.[204]

This commentator in the *London Times* doubted that the Madison Papers would amount to all that the *Democratic Review* had promised. Since Luther Martin so aptly revealed the nature of the compromise

[204] Jonathan Elliot, "The Madison Papers," *London Times,* 30 August 1839, 2.

over slavery in the Convention, this writer was unconvinced that the Madison Papers could contribute anythingmore indicative of the Convention's proceedings. Wendell Phillips, on the other hand, wrote about theMadison Papers as if they, not *Secret Proceedings* or any other previously published records, were the first document to expose the secrets of the Philadelphia assembly.

Phillips' document began, "*Every one* knows that the 'Madison Papers' contain a Report, from the pen of James Madison, of the Debates in the Old Congress of the Confederation and in the Convention which formed the Constitution of the United States."[205] It is ironic that Phillips acknowledged the popularity of the Madison Papers, and also rather unnecessary by 1844. Here again, we should question why Phillips first published his book four years after the Madison Papers appeared and not sooner. Nevertheless, Phillips' document, with its extracts from this manuscript, served an invaluable purpose, according to its author, because those individuals advocating the "new theory of the Anti-slavery character of the Constitution," have deceived the public. These theorists—political antislavery men—according to Phillips, only "quote some portions of the Madison Papers in support of their views,--and this makes it proper that the community should hear *all* that these Debates have to say on the subject."[206] Phillips assigned more importance to the Madison Papers than did some of his contemporaries—not everyone, as we have seen, who espoused the view that the Constitution was an antislavery document used the Madison Papers to support their opinions.

Besides this, Phillips' charges did not go unanswered; rather, they were turned against Phillips himself. In November 1845, the *Anti-Slavery Bugle* paraphrased Liberty Party advocate Isaac Pierce criticizing Phillips' reprint of the Madison Papers. The *Bugle* reported that, according to Pierce, *The Constitution: A Pro-Slavery Compact,* "were *garbled extracts,* said that he had compared them with a copy in his possession, and discovered that 'all the Debates on those clauses of the Constitution which

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[205] Phillips, *The Constitution,* 3. *My emphasis on "every one."*

[206] Phillips, *The Constitution,* 7.

'relate to slavery' are not given, as the compiler declares.'"[207] The *Bugle,* however, supported Wendell Phillips and mocked Pierce for his considerably delayed rebuttal.

Phillips' distinction between "some" and "all" provokes questions about representations of the Convention. It implied, moreover, that people could paint different pictures of the Convention, depending on what they chose to cite from Madison's record—we might call this "selective memory," as it shows how people can warp memory for the sake of political expediency. It is also another example of the contested nature of Americans' memory-narrative of the Convention. Phillips understood the consequences of this implication, for he insisted that Americans deserved to have access to *all* of the extracts related to slavery available in Madison's writings so that they may admit the proslavery intentions of the Framers. Subsequently, therefore, Phillips presented a cause-and-effect scenario:

> The further we explore [the Madison Papers]…the clearer becomes the fact that the Constitution was meant to be, what it has always been esteemed; a compromise between slavery and freedom. If then the Constitution be, what these Debates show that our fathers intended to make it…then we affirm that it is 'a covenant with death and an agreement with hell,' and ought to be immediately annulled…we repeat our demand upon every honest man to join in the outcry of the American Anti-Slavery Society, NO UNION WITH SLAVEHOLDERS.[208]

For Phillips, the Madison Papers did not necessarily "shed new light" on the debates in Philadelphia; rather, they proved what was already assumed, but in a way that was presumably more satisfactory than the previously published records from the Convention, which arguably said the same things. How Americans who shared Phillips' interpretation of the Constitution *originally* reached their conclusions is not stated here, but Phillips used the *Madison Papers* to claim that his interpretation was the right one and to disseminate the disunion argument.

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In explicit contrast to Wendell Phillips, Gerrit Smith argued that the Madison Papers illustrated the *antislavery* character of the Constitution. In a letter to John G. Whittier, published in the *Liberator,* Smith exclaimed, "I am glad to see so many pens employed to vindicate the Constitution from the charge

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[207] "Limaville," *Anti-Slavery Bugle,* 23 November 1845.

[208] Phillips, *The Constitution,* 7.

of being pro-slavery. It is an anti-slavery instrument; and needs but be administered in consistency with its principles, to effectuate the speedy overthrow of the whole system of American slavery."[209] This was part of the classic Slave Power argument—the Constitution itself was antislavery, but it had not been administered consistently with its principles because of corrupt southern politicians and complacent northerners who let proslavery forces obtain control of the government. Smith contributed his own pen to the cause by analyzing the construction of several allegedly proslavery clauses of the Constitution. Focusing on the fugitive slave clause, he asked rhetorically,

> Who can read the 'Madison Papers,' and in other ways also acquaint himself with the mind of the Convention which framed the Constitution, and yet believe that the Constitution would have suffered [a pro-slavery meaning of this provision]? Who can believe that this Convention, which would not suffer the word 'slave'…to have a place in the Constitution…would have consented to let the Constitution declare in plain, unequivocal terms, the right of the slaveholder to chase down…the poor innocent fugitive from slavery?

Aside from using the text of the Constitution to support his argument, Smith also maintained that, given the "strong anti-slavery sentiment" of the times, had Americans understood the diction of the Constitution as explicitly proslavery, it is doubtful they would have consented to its adoption. Other writers had made similar comments before, while Smith also suggested that there were additional sources, beyond the Madison Papers that Americans could use to understand the Framers' intentions.[210]

Smith argued that proslavery doctrines had perverted the Constitution; they did not originate therein, which he clarified by praising those who sought to "vindicate" that document. This resonates with his earlier comments, expressed in his letter to Henry Clay in 1839, that the Framers' intentions were good, but that the "pro-slavery generation" had subsequently corrupted the text of the Constitution.[211]

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[209] "Gerrit Smith's Constitutional Argument," *The Liberator,* 31 August 1844. The letter is dated July 18, 1844. Smith's argument was reviewed and criticized in subsequent publications of the journal. Smith's comment here also echoes a similar expression from Salmon P. Chase—Chase offered his own antislavery interpretation of the Constitution based largely on Theodore Dwight Weld's argument—who wrote to Joshua Giddings in 1842, "The Constitution must be vindicated from the reproach of sanctioning the doctrine of property in men," quoted in Wilentz, *No Property in Man,* 226.

[210] Smith in *The Liberator,* 31 August 1844.

[211] Gerrit Smith, *The Anti-Slavery Examiner* No. 9, Letter of Gerrit Smith to Hon. Henry Clay (New York: The American Anti-Slavery Society, 1839).

Likewise, Alvan Stewart had also argued in 1837 that slaveholders perverted the Constitution—"but the slaveholder has assumed a jurisdiction over the slave, in the very face of the Constitution, and contrary to its solemn interdict, and high behest."[212] These sentiments reverberated in the declarations and actions of the Liberty Party, which believed that antislavery campaigners needed to be involved in formal party politics in order to fight the corrupt and greedy Slave Power that had been controlling the government, perverting the Constitution, and threatening American democracy for several decades. The Liberty Party, consequently, believed that, because the Constitution was an antislavery document, their party could dismantle the Slave Power *within* the existing constitutional framework.

On the contrary, Garrisonians believed that the Constitution was corrupt and proslavery from the start—and this justified their push for disunion. Remarkably, their proslavery interpretation of the Constitution attracted an unusual audience—Southern sympathizers of the "peculiar institution"—making Garrisonians and proslavery theorists unlikely bedfellows. For example, "proslavery Alabama politician John A. Campbell suggested to John C. Calhoun that Wendell Phillips' *The Constitution: A Pro-Slavery Compact* was an 'able pamphlet… [which] we might circulate to great advantage, excluding a few paragraphs.'"[213] This too informed the political antislavery men's arguments—why give slaveholders the added power of thinking that the Constitution favored slavery?

Not everyone involved in the antislavery crusade, however, agreed with Phillips (and ironically, Campbell) that the Madison Papers were a helpful resource. Outside of antislavery circles, as well, commentators debated the value and authority of the Madison Papers. For example, in Congressional debates on the national bank, the *Republican Banner* reported that one gentlemen dismissed a reference to

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[212] Alvan Stewart, "A Constitutional Argument on the Subject of Slavery," 290.

[213] Wiecek, *The Sources of Antislavery Constitutionalism*, 240. An analysis of proslavery interpretations of the Constitution is outside the scope of this thesis; however, Southern proponents of slavery were developing their own theories of the Constitution, and the government's relationship to their "peculiar institution," at the same time as antislavery men and women were expounding their constitutional exegesis. As this quotation illustrates, the two sides were also following the developments of the other. For an introduction to proslavery thought, see Drew Gilpin Faust, *The Ideology of Slavery: Proslavery Thought in the Antebellum South, 1830-1860* (Baton Rouge: Louisiana State University Press, 1981) and Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701-1840* (Athens: University of Georgia Press, 1987).

the Madison Papers as unnecessary: "the fact about which the Madison Papers are cited had been just as well known long before, having been made public by the printing, in 1820, of the Secret Journal of the Federal Convention itself—the most authentic record of the matter."[214] Contrarily, in an editorial on the tariff in the *Richmond Whig,* the author said of the Madison Papers, "we presume [they] may be regarded as the most full and authentic account of [the Convention's] proceedings."[215]

Both writers used the word *authentic,* but assigned it to different published records from the Convention. The word connoted something genuine, original, and provable, with authority. It meant the opposite of deceive, delude and falsehood, as well as contrive, devise, invent, and, in another way, rumor and hearsay.[216] Lysander Spooner also used this qualifier in his work, *The Unconstitutionality of Slavery,* where he argued that the *Constitution* was "the *only* authentic evidence of [the Framers'] intentions."[217] Here we might read "authentic" as real, trustworthy, and true. Spooner's book, alongside Goodell's, was the most thorough explanation of the political antislavery position and became a standard source for the Liberty Party.[218] In elaborating the legal and historical foundations for his argument that slavery was unconstitutional, Spooner reviewed the nature of law, the colonial charters, the Declaration of Independence, state constitutions in 1789, the Articles of Confederation, the Constitution, the intentions of the Federal Convention, the practice of the government, and the state constitutions of that year, 1845. The ninth chapter of the thirteen total, entitled, "The Intentions of the Convention," was a fascinating

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[214] "The Apology of Mr. Dallas for His Course in Regard to a National Bank," *Republican Banner,* 24 July 1844.

[215] "*From the Richmond Whig.* Facts for the People. The Tariff. No. 2," *Republican Banner,* 18 September 1844.

[216] George Crabb, *English Synonymes Explained, Sixth Edition* (London, 1837), 244, 272, 387; *Johnson's Dictionary, Improved by Todd, Abridged For the Use of Schools* (Boston: Charles J. Hendee, 1836), 29.

[217] Lysander Spooner, *The Unconstitutionality of Slavery* (Dow & Jackson's Anti-Slavery Press, 1845), 137. On Spooner's work in relation to the broader antislavery debates, see Knowles, "The Constitution and Slavery."

[218] Several years later, Frederick Douglass would cite Goodell and Spooner's publications when he described the Constitution as "a glorious liberty document" in his famous speech, "What to the Slave is the Fourth of July?," Wilentz, *No Property in Man,* 227.

exposition on the Convention, original intent, and the Madison Papers. It is also fascinating that Spooner grouped all of these sources together and did not distinguish Madison's record.

Spooner's argument about the relationship between the Convention and the Constitution mirrored Madison's own contentions, which John Quincy Adams had so aptly outlined in his 1839 "Jubilee of the Constitution" address.[219] Spooner professed that the Convention did not have the authority to "adopt or establish a constitution; but only to consult, devise, and recommend." The Constitution only "derived all its validity and obligation, as a frame of government, from its adoption by the people at large;" thus, only *their* intentions "are of any importance to be regarded in determining the legal meaning of the instrument."[220] If there are any appropriate sources, therefore, besides the Constitution itself, which may shed light on its meaning, Spooner implied that it would be the records from the ratifying conventions.

The Madison Papers did not count for much, in Spooner's opinion. Outside of the antislavery movement, his opinion was shared by a writer in the *Richmond Daily Whig* who had described the publication as "old-fashioned."[221] Spooner was the most vehement of the political antislavery writers to assert flatly that the Madison Papers could not add anything of value to debates about the "legal" meaning of the Constitution. Like Phillips, he too took a turn chiding his adversaries—the Garrisonians—in their use of the Madison Papers. After proclaiming that the Constitution was the only "authentic" source of the Framers' intentions, Spooner inquired rhetorically, "But why do the partizans of slavery resort to the debates of the convention for evidence that the constitution sanctions slavery? Plainly for no other reason than because the words of the instrument do not sanction it. But can the intentions of that convention, attested only by a mere skeleton of its debates…add any thing…to the legal meaning of the words of the constitution? Plainly not."[222]

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[219] John Quincy Adams, "The Jubilee of the Constitution: A discourse delivered at the request of the New York historical society, in the city of New York, on Tuesday, the 30 of April, 1839."

[220] Spooner, *The Unconstitutionality of Slavery,* 135.

[221] "Constitutional Doctrines," *Richmond Daily Whig,* 8 February 1845.

[222] Spooner, *The Unconstitutionality of Slavery,* 136.

Even after Madison's notes offered more than a "mere skeleton" of the Convention's debates, Spooner still insisted that it was nonsense to accept the language—as the Garrisonians did—of peripheral records over the text of the Constitution itself. Offering an astonishing snub of the Madison Papers, Spooner wondered whether the Constitution itself was

> to be impeached and destroyed, and free government overturned, on the authority of a few meagre snatches of argument, intent or opinion, uttered by a few only of the members; jotted down by one of them, (Mr. Madison,) merely for his own convenience, or from the suggestions of his own mind; and only reported to us fifty years afterwards by a posthumous publication of his papers? If any thing could excite the utter contempt of the people of this nation for the miserable subterfuges, to which the advocates of slavery resort, it would seem that their offering such evidence as this in support of their cause, must do it. And yet these…mere fragments of evidence, all utterly inadmissible and worthless in their kind, for any legal purpose, constitute the warp and the woof, the very *sine qua non* of the whole argument for slavery.[223]

Spooner here expressed an understanding of Madison's purpose for taking notes completely contrary to that posed by the *Democratic Review* and others who believed that Madison kept his record for "posterity" and that he viewed the Convention as a remarkable and historic event.

Additionally, Spooner's qualification that the Madison Papers had no "legal" value was hardly a balm for his sharp condemnation of the Garrisonians' belief in their importance or his use of the adjective "worthless." His opinion may have been useful in antislavery circles, serving the purposes of the Liberty Party to counteract the Garrisonians' proslavery reading of the Madison Papers, but it is hard to believe that his ideas would have resonated with the American public, who, leaving aside the antislavery debates, attached tremendous value and meaning to the publication of Madison's record of the Convention.

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The Democratic Review had also used the term "authentic," but once again, in contrast to both Spooner and the Garrisonians, in praise of Madison's notes: "An authentic record of the proceedings of the assembly that formed the constitution…by one of the leading members of that illustrious body, must of course be a document second in interest to none in the whole circle of political literature."[224] The views

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[223] Spooner, *The Unconstitutionality of Slavery,* 137.

[224] "The Constitution—The Framers and the Framing," *The United States Magazine and Democratic Review* 11, no. 2 (August 1842), 140.

expressed in this article in 1842 contrast those expressed by antislavery intellectuals in 1844. The Madison Papers had come under fire. The Garrison camp had voiced a spirited condemnation of the nation's memory of the Convention, while the political antislavery camp held steadfast to their belief that the Framers did not intend for the Constitution to be used as a bulwark for slavery.

Antislavery reformers' examinations of the Madison Papers contributed to the growing divide between the Garrisonians and political abolitionists. Madison's account of the Constitutional Convention was incorporated into an existing framework of debate; thus, the Madison Papers were often considered alongside other documents pertaining to the nation's Founding. Antislavery intellectuals used these documents to ask: what was the meaning of the Convention in American memory? Did the Framers willingly protect slavery or were they forced to make concessions to a "Slave Power?" Was the Constitution the mainstay of bondage or of freedom?

Garrisonians, though late to the conversation, eventually claimed the Madison Papers in support for their argument that the Constitution was a proslavery document. Meanwhile, the Liberty Party and other political abolitionists used the Madison Papers time and again to demonstrate the antislavery spirit of the Constitution and the antislavery intentions of the Framers. On both sides of the antislavery debate, as in American society and politics outside of the antislavery movement, some theorists thought that the Madison Papers were valuable, revelatory, and authoritative, others thought that they added little information beyond what was already known, and still others dismissed the publication altogether.

This diversified reception of the Madison Papers is why historians need to closely attend to chronology in their analysis of Garrisonian disunionism. Historical developments such as the Supreme Court's decision in *Prigg v. Pennsylvania,* the drive to annex Texas, and the growth of the Liberty Party were more influential than the publication of the Madison Papers in showing some abolitionists that the case for freedom was hopeless within the Union. The great diversity of sentiments expressed about the Madison Papers also indicates that the memory-narrative of the Convention was contested both within and outside of antislavery circles. Americans simultaneously painted multiple, competing images of how

the event transpired. They constructed countless narratives of the past shaped by their present. When this occurred with respect to slavery and abolitionism, it threatened to tear the nation apart.

Conclusion

Lysander Spooner's work, with its strong skepticism of the Madison Papers, was not the last published on the relationship between the Constitution and the Convention with respect to slavery. Political abolitionists and Garrisonians continued their sparring over this debate and over the Madison Papers in the second half of the 1840s and beyond, even up to the outbreak of the Civil War. However, the nature of this debate shifted after the introduction of the Wilmot Proviso in 1846 and in the context of the Mexican-American War. While there were some continuities, antislavery intellectuals' debates about the Constitution's slavery-related clauses and the Framers' intentions focused more on the constitutionality of territorial acquisition and on the threat of slavery's expansion.

Americans, whether involved in the antislavery movement or living on its periphery, created multiple narratives of what happened at the Federal Convention, as they looked forward to the publication of Madison's record and as they reviewed the published manuscripts. They thought about the Convention with and without using the Madison Papers. Bridging the reception of the Madison Papers in the American public and Congress with their reception in the antislavery movement underscores the significant degree to which Americans were talking about the Constitution and the Convention. Within and outside of the antislavery debates, the nature of the Constitution, the meaning of its diction, the character of the Founding Fathers, and the nation's history was up for debate.

The closed-door policy of the 1787 Philadelphia assembly heightened the sense of importance that Americans attributed to written records of "the Convention which formed the Constitution." Most Americans believed that such records were a gift to posterity and should be carefully preserved and extensively distributed. Some Americans excitedly anticipated the appearance of the Madison Papers and were appreciative for this moment of communication between generations. Some Americans received the Madison Papers as a valuable and informative account of how the Constitution was created, which they saw both as satisfying for the nostalgia of older generations and as an instrument of civic education for the nation's youth.

Historians have assumed that Americans in the 1830s and 1840s thought like they do now—that the Madison Papers were a useful resource about the Convention. For some Americans, this was true. However, this was not the case for *all* Americans. Rather than diminish their importance, the fact that Americans conversed and argued about the Madison Papers *increased* their significance. Yet, Americans' reception of the Madison Papers—from generous praise to cynical dismissal—has largely gone unexplored in the historical literature. This thesis historicizes the publication of the Madison Papers and illuminates the full impact of their publication in the antebellum United States. This could only be done through an exploration of how Americans have remembered the Constitutional Convention.

The Madison Papers appeared in the middle of an existing memory-narrative of the Convention that continues today, as Americans still debate the origins of the Constitution and the intentions of the Framers. The impact of the publication of the Madison Papers proves that historians should not simply consider the Convention as "prologue," but rather, they should understand how it was an event that kept resurfacing in political debate and in cultural memory throughout the nineteenth century. Not just the Constitution, but the event, meeting, and place where it was written—the *Convention*—repeatedly remerges in American history. The memory-narrative of the Convention was ever-changing and ever-contested. The publication of the Madison Papers was one instance of this. In the 1840s, Americans, and especially those involved in the antebellum antislavery movement, remade the Convention into an event of even greater significance as they continually shaped their memories of the Philadelphia assembly to align with their understanding of the past, their politics in the present, and their vision for the future.

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