

# The President and Federal Power

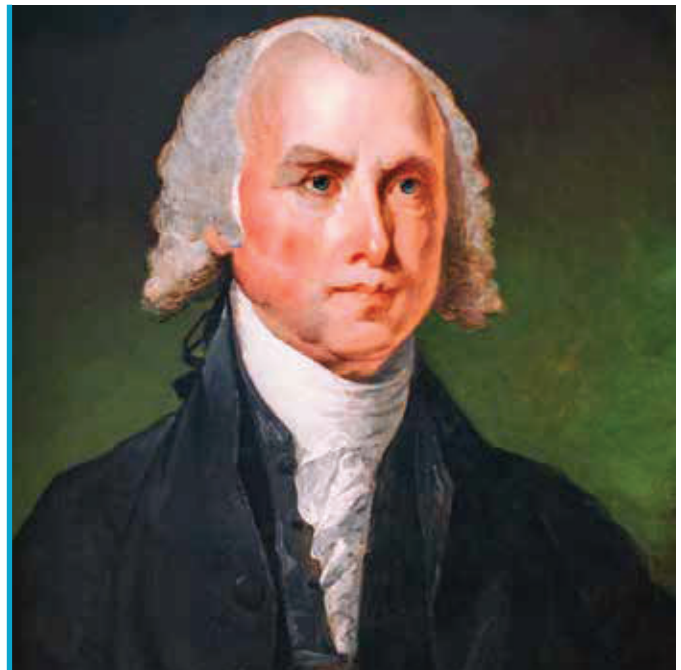
By David Marion, Ph.D.

---

**J**ames Madison and Alexander Hamilton, among other leading Founders, recognized by the early 1780s that the government created by the Articles of Confederation suffered from both organizational and empowerment deficiencies. The Confederation government had neither the power nor the institutions that it needed to carry out important national tasks. Hamilton was an early advocate for an independent executive and Madison recognized that the central government had to be equal to the job of creating and maintaining a national commercial republic. What emerged from the Constitutional Convention of 1787 was a plan for a “compound” republic that was “partly national, and partly federal,” to paraphrase Madison. The new national government was to have “national powers,” and thus national means, equal to “national ends.” One of the new institutions was an independent executive with control over national administrative affairs. For their part, the states retained important powers to address tasks that did not require national direction or management.

If the scope of the powers of the new national government had been enlarged, it was understood by Madison and other Framers that they were still limited. It did not take long, however, for the outer boundaries of those powers, including the powers of the independent executive, to become a source of considerable controversy. Hamilton’s call for the creation of a Bank of the United States, along with his defense of national assumption of war debts, provoked strong reactions from Americans who advocated a strict construction of national powers and responsibilities. Significantly, Madison joined Jefferson in complaining that Hamilton and the Federalists intended to “administer the country into a monarchy” by giving a broad or “loose” construction to the powers of the central government and the executive department.

While Madison never regretted his support for a national rather than confederal system of government, he labored over several decades to preserve what he considered to be the proper balance between the national government and the states on the one hand, and the legislative and executive powers of the central government on the other (“Madison’s Middle”). He believed that the consolidation of power in the central



government as a whole or in the executive branch would not be good for liberty or competent government. It is noteworthy that Madison’s last significant action as president was his veto of the so-called Bonus Bill that included a fairly comprehensive plan for internal improvements such as roads and canals. Although he understood the benefits that would be derived from these improvements, and had even discussed the importance of internal improvements in his second inaugural address, Madison believed that the powers contained in the bill were not among the enumerated powers of Congress as set out in

the Constitution. For Congress to assume these powers on its own would represent a dangerous challenge to the constitutional system. The people, in their capacity as the sovereign body, had been entrusted by the Framers with the power to revise the Constitution through the addition of amendments, argued Madison.

The debate over the scope of the powers entrusted to the national government by the people did not come to an end with the passing of the last of the Framers, or with the victory of the Union Army in the Civil War. Argument for and against a broad interpretation of enumerated powers, and over the existence of implied powers, have become permanent features of the American landscape. The role and powers of the federal government and the presidency in Madison's republic, however, have evolved. The legitimacy of some degree of national involvement in the everyday affairs of the people has been conceded, if sometimes grudgingly, since the mid-Twentieth Century. Along with a more activist national government, most Americans consider the executive department to be principally responsible for the proper management of the many programs and activities overseen by the national government. As the "Chief Executive," and thus the "manager-in-chief" of the country, and as the sole representative and instrument of all the people, modern presidents routinely take the lead in calling for national action to address all manner of problems.

Although regarded during his time in Congress as a Southern conservative who did not favor deficit spending, President Lyndon Johnson quickly undertook to champion civil rights and poverty legislation (the monumental Civil Rights Act and the Economic Opportunity

Act, better known as the War on Poverty Bill) following the assassination of President Kennedy. President Johnson used the phrase "Great Society" to describe the various programs that he believed would empower Americans to "shape the civilization" that they wanted for themselves. During his tenure as president, and in sharp contrast to Madison's presidency, the national government enacted the Civil Rights Acts of 1964 and 1965, established the Medicare and Medicaid programs as well as the National Endowment for the Arts and Humanities, and passed legislation to protect wilderness areas and strengthen elementary and secondary education. It is significant that all this action by the national government triggered no constitutional crisis. None of the programs was declared unconstitutional by the Supreme Court, which had made its peace by the 1940s with what came to be called the new "administrative state."

While the distribution of power within Madison's "compound" republic has undergone a significant change since the Founding, the argument that programs aimed at poverty, education, health or civil rights fall outside the sphere of proper national authority is not without its prominent advocates. Ronald Reagan, for example, vigorously criticized federal education and civil rights programs during his 1980 presidential campaign. His self-proclaimed goal was "to curb the size

and influence of the federal establishment and to demand recognition of the distinction between the powers granted to the federal government and those reserved to the states or to the people." He labored to reduce federal spending on social welfare programs and contain federal regulatory activity. While he never succeeded in dismantling the Department of Education, and social

***As the "Chief Executive," and thus the "manager-in-chief" of the country, modern presidents routinely take the lead in calling for national action to address all manner of problems.***

welfare spending did go up during his presidency, his rhetoric provoked a national debate over the case for “big government.” Reagan is credited with helping to shape a Supreme Court that would protect the place of the states in the American federal system. The one area that Reagan believed did warrant large-scale action by the federal government was defense. Defense spending increased by over 100 percent between 1980 and 1987.

The distribution of powers within the national government and between the national government and the states arose out of negotiations during the Founding period among the friends and critics of state sovereignty and legislative governance. The constitutional arrangement that emerged out of the Convention of 1787 reflects the Framers’ attempt to match powers with responsibilities. That powers should be divided as well as limited, and that checks should be retained both within and among governments in the United States, has not been controversial for the very reason that limited and divided government is accepted by all Americans as being good for both liberty and competent

government. Where the line should be drawn in the distribution of powers will be a subject of controversy as long as Americans are serious about the preservation of personal liberty on the one hand, and the requirements of competent and decent government on the other.

***Dr. David Marion is Director of the Wilson Center for Leadership in the Public Interest and Elliott Professor of Government and Foreign Affairs at Hampden-Sydney College. He is the author of an award winning book *The Jurisprudence of Justice William J. Brennan, Jr.: The Law and Politics of ‘Libertarian Dignity’* as well as the co-author of *The Deconstitutionalization of America and Founders and the Constitution*. His essays on constitutional and administrative law, public administration and American political thought have appeared in the *Alabama Law Review*, the *Bill of Rights Journal*, and the *Review of Politics*, among other journals and books.***



***...that checks should be retained both within and among governments in the United States has not been controversial.***

## Notes

[illegible]