

The Enduring Importance of James Madison's First Amendment Legacy
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It's a really great pleasure to be here ... so many good colleagues and friends and familiar faces, and a number of new faces – and hopefully, we'll get to know each other over time. So, let's talk about Madison.

“Madison” is embedded in our daily lives: The epicenter of advertising is Madison Avenue. When we want to see the Knicks or the Rangers or, more recently, Billy Joel play, where do we go? Madison Square Garden. And a few blocks from here is the first modern luxury hotel that was opened in Washington, D.C., in 1963. The name of that hotel – The Madison.

That brings us, of course, to Dolley and James Madison, who are the namesakes for many of these institutions. Just to give you a little bit of history.... Dolley Madison had been married previously – her name had been Dolley Todd – and she was 17 years younger than James Madison. James Madison did not yet have eHarmony so he needed to find someone. He ultimately went to an analog version of eHarmony at the time, and that analog version's name was Aaron Burr. It was Aaron Burr who introduced Dolley Todd to James Madison. And of course, Aaron Burr later turned out to be the person who murdered one of the Founding Fathers, Alexander Hamilton. There's a good deal of irony here.

Let me talk a little about Dolley Madison first. We know that she loved to serve ice cream and loved to eat ice cream. But part of that was because she was really the first great social hostess in Washington, D.C. And one of the great legacies that Dolley Madison has left us (hopefully to be revived) is the notion of bipartisanship. Once upon a time, we had an extremely partisan environment. In fact, Thomas Jefferson refused to meet with anyone who was not in his political party. There was also a lot of violence that went on. As you know, Aaron Burr shot Alexander Hamilton, but there were frequently duels and there were physical altercations over politics.

Dolley Madison had the idea, “Can we bring all of these people together so we can begin to have a civil and constructive dialogue?” She is the pioneer of what we know as bipartisanship. Unfortunately, she's not with us today. But hopefully that spirit can be revived at some point in time, because of the obvious great rancor we have now in our country between our political parties.

What's also interesting about Dolley Madison is that she was the first First Lady of the United States. Thomas Jefferson had been widowed and he didn't have a partner. So, Dolley Madison – who of course was not married to him – essentially said, “I will volunteer to be your hostess when you have official events.” She really trained for that role. Thomas Jefferson was the third president and was succeeded by James Madison.

At the point that Madison was elected, Dolley Madison officially became the first First Lady of the United States. And she is the only First Lady in the history of our country who was given an honorary seat on the floor of Congress, because she was such a powerful figure. Certainly, when we talk about The Madison Project, and Madison, I don't want anyone to forget Dolley Madison because she is a critical and important figure in American history.

That brings us to James Madison. As many know, James Madison was small in stature but very big in ideas. He was one of the seven Founding Fathers and had a critical role to play in the development of the Constitution and ultimately the Bill of Rights. What's interesting about Madison is that he really was a team player. In fact, he wrote: "The Constitution is not like the fabled Goddess of Wisdom, the offspring of a single brain. It ought to be regarded as the work of many hearts and hands." He clearly wanted to share credit.

Madison opposed the idea of the Bill of Rights. But ultimately, Jefferson persuaded him that we needed greater protection than was put in the original Constitution. So, basically Madison said, "I will pick up that mantle and I will develop these amendments to the Constitution." Those first 10 amendments are what we call the Bill of Rights.

More critically – or perhaps just as critically – he wrote 29 of the 85 essays that we know as *The Federalist Papers*. They are an incredible resource, giving the philosophy of how our Constitution was developed and also how our Bill of Rights was developed. In *Federalist Number 9*, which was one of those 29 essays that Madison wrote, he said, "The people are the only legitimate fountain of power. And it is from that, that the constitutional charter, under which the several branches of government hold their power, is limited."

Madison was very concerned about the potential overreach of government – and that's reflected in the Bill of Rights. He was the architect of the idea: How do we build a wall or at least a barrier between government and the people to prevent the government from going over that wall and encroaching on their personal liberty?

The 45 words Madison wrote were precise and they were elegant. They remain enduring and they're worth saying and hearing: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

Forty-five words hold an incredible number of ideas and obviously have an enduring legacy. Unfortunately, I think both James Madison and Dolley would be dismayed if they were with us today, because we now have sophisticated ways to measure how people perceive the First Amendment, how people perceive the notions of free press and free speech. I want to spend a few minutes reviewing the results of a few recent national surveys to convey a little flavor of how people are understanding the First Amendment now.

Let me start with a bit of positive news. According to a 2022 survey by the Knight Foundation, 89% of adults see freedom of speech as a democratic essential. That's obviously great news –

we'd like to have that higher, but 89% is a pretty good number. Particularly in comparison to some of the other numbers, the contrast will be evident because the surveys then begin to take a dramatic downward turn.

For example, the Freedom Forum found in a 2020 survey, called "Where America Stands," that only 33% of people were aware that entertainment is protected by the First Amendment, and only 4% – I'm going to repeat this – only 4% – indicated that freedom of the press is essential. Only 4%. The Knight Foundation in 2022 found that only 59% felt that news organizations should not face government censorship when putting out the news – 59%. And a survey in July 2023 by the APM Research Lab found that only 45% of adults believe that democracy, while somewhat problematic, is the best system to have in place.

This year, we've had some major surveys, principally by the Foundation for Individual Rights and Expression (FIRE), which is now involved in First Amendment advocacy and research. FIRE found in its most recent survey in 2024 that only 25% of Americans believe that freedom of speech is secure. Sixty-nine percent believe it is off track and headed in the wrong direction. The results from college campuses, as we've seen in recent weeks, are just as sobering.

Another FIRE survey, done in conjunction with the Cato Institute this year, found that only 37% of students think it is never acceptable to shout down a speaker. Only 55% think it is never acceptable to block other students from hearing the speaker, and a growing number – 27% in that survey – believe that violence can be an acceptable answer to stop a campus speech. These are all some very troubling numbers.

There is also another strain of sobriety that I want to talk about – and obviously, it hits closer to home with respect to media and communications. Last year, Gallup found that only 32% of Americans trust the news media, and 39% have no confidence at all in the news media. We saw that the comparison with 2016 is quite dramatic. At that point in time, 27% had no confidence and now we're up to 39%.

Getting back to this polarized environment, we see that although 58% of Democrats trust the news media, only 11% of Republicans and 29% of Independents do. Thus, we have quite a polarized environment with respect to trusting the news media. A survey done by the Pew Research Center in 2023 found that 71% of the respondents thought news and information was being made up and was a big problem for our country. The data tell us a great deal in terms of where things are and where things may be headed.

In light of all this, it's timely to ask: "WW JMD?" What would James Madison do? Madison was not just a great constitutional architect; he was also a media mogul in his own time. Madison founded a paper called the *National Gazette*. He also founded the first political party, called the Democratic Republican Party. He then had the *National Gazette* essentially act as the media resource for the party. He used the *Gazette* as a way to advance the ideology of the Democratic Republicans.

In some ways, the *National Gazette* was the Fox News or the MSNBC of that era. But Madison felt it was important for media to have sharp ideological distinctions. He was very proud of being

able to start a publication, not with the idea of being fair and balanced, but with the idea that other publications would start and have opposing thoughts. He believed (getting back to the idea of individual freedom) that people have the ability to hear information from all over and to make decisions. In 1791, when the Bill of Rights took effect, he wrote in an essay called *Popular Basis of Political Authority*, “Public opinion sets bounds to every government, and is the real sovereign in every free one.”

In light of this, here’s what I think James Madison would say if he were standing here today, talking to you. I think he would recognize that media and communication companies, whether individually or through trade associations, are critical in both restoring the confidence in our cherished First Amendment values, and also in improving and enhancing trust in media – especially this year, as Americans return to the ballot box to elect our 47th president. Public opinion is essential here. And media help drive public opinion.

What are some things that might be done? Let me offer some data first. According to FIRE again, in 2023 only 40% of Americans could name one right that’s protected by the First Amendment. As we know, there are five freedoms in those 45 words, but only 40% of Americans can name even one of those rights. Freedom of speech is the one that people most think about – but to be fair, only 63% of people say that freedom of speech is protected under our Constitution. And freedom of the press is only at 20%. That gives a sense of where we are and where I think we need to go, where I think media and communications companies have a critical role to play in helping shape and improve public opinion around free speech and free press.

What might be done? Let me suggest a few things. The first would be if every media company and trade association took those 45 words and put them on its website, or had a pop-up on its website, or put them on social media. I think many people have never actually seen what the First Amendment looks like. We all know how to do the Pledge of Allegiance – but most of us don’t know how to recite the First Amendment. And not that we eventually would have people recite it, but just visualize it and see how powerful those words can be when they’re put together.

It would also be very useful if media companies and trade associations went to the public libraries in their local communities and said, “We will make a banner with the words of the First Amendment that you can hang for people to see as they walk into the library.” I think libraries would be very happy to accept that gift. And in fact, I think they would be proud to display it, as they should be. In addition, perhaps media companies and trade associations could donate a collection of books around free speech and free press to individual local libraries. When kids and other people came in, there would be a little bookshelf of First Amendment books. And of course, we are now in the era of e-books. All of these books could be made available digitally to a very wide audience.

Some of you remember that in 1976, CBS pioneered something called the Bicentennial Minute. That was the 200th anniversary of our country. CBS said that every night it would have a person (often a celebrity or someone in news or sports) come on and talk a little about our Constitution and our history. Well, 2026 is approaching and it will be the 250th anniversary of our country. It would be a great idea if once again we had a new effort to produce the equivalent of Bicentennial Minutes. Beginning in 2026, every day, there would be a new one-minute video that’s posted,

produced, or perhaps sponsored by media organizations. Again, what we need to do is raise public opinion and try to reverse the course that I've suggested the data are showing.

Perhaps most importantly, in your own organizations, there are new generations of people coming to work, there are intergenerational people working together, and I don't think there is a high level of knowledge or appreciation about the First Amendment. Internally, media companies and trade associations need to do a little bit of education and discussion around the First Amendment. These workers are the shapers of public opinion – so it's exceedingly important. No field has benefited more from the First Amendment than our field of media and communications. It's in our business interest, as well as a real civic responsibility as stewards of free speech and free press, to support the First Amendment every day.

Let me close on a positive note. I've written a book and titled it *The First Amendment Lives On*. It's titled that way because I really do have a sense of optimism that if we have proper attention and focus in this area, we're all going to be part of keeping alive the profound lessons that James Madison left behind.