

James Madison

the 'OG' of DOGE

By Donald J. Kochan,

ALF Advisory Council

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Step aside Elon Musk and make way for the “OG” of DOGE, James Madison.

This week in 1788, Madison’s Federalist No. 62 was published in The [New York] Independent Journal.

The essays we know collectively today as The Federalist Papers, each authored under the pseudonym Publius by Madison, Alexander Hamilton, and John Jay, have stood the test of time as not only fundamental to our interpretation of the Constitution, but also to identify the evils it was designed to guard against.

Federalist No. 62 was directed at a defense of the proposed Senate composition, election process, and term length.

Madison explained that the features of the Senate would guard against too voluminous and too frequently changing laws. While discussing the utility of six-year terms as a way to incentivize legislators to have a long, reflective view, Madison explained the extended term would inject stability in the production of law.

It would minimize the inevitable mutability of laws historically exhibited in systems that the Founders studied with too constant and frequent change in the personality of the legislature.

Most importantly for today is the complementary lesson from the essay on what that means for the rule of law.

Put simply, Madison in Federalist No. 62 recognized that the creation of voluminous laws and regulations, a primary effect of a too mutable set of legislators, “poisons the blessing of liberty itself.”

And here is where his warnings in 1788 mirror our concerns with the regulatory state today: Reflecting on history and prescient about the nature of humans and their institutions, Madison’s critical enduring paragraph in Federalist No. 62 explains the danger.

He wrote: “It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?”

The “laws” we have today and how they might apply are little known to Americans when they are buried in an avalanche of millions of pages of often incoherent regulatory jargon in the Federal Register that cannot be understood.

The modern regulatory state as it has evolved, especially in the past 90 years since the New Deal, has resulted in a set of legal rules for the citizenry, regularly generated by bureaucrats rather than legislators, that are impossible to comprehend because, as Madison warned, they have become, collectively “so voluminous that they cannot be read.”

Thus, even if a citizen could manage to find relevant rules, find the resources to study them, and then have the capacity to translate complex regulatory language into an understanding of the law, there’s just too much “law” to ever know what the law is.

Among others studying this phenomena, Supreme Court Justice Neil Gorsuch in his 2024 book co-authored with Janie Nitze, “Over Ruled: The Human Toll of Too Much Law,” summarized the state of affairs.

The book demonstrates that less than 100 years ago, the collected statutes of the federal government fit in a single volume. In contrast, they explain that there are now 54 volumes in the U.S. Code at around 60,000 pages.



An artist's rendering of Founding Father James Madison—who was the fourth president, serving from 1809 to 1817—was featured on a 34-cent first-class postage stamp in 2023.

New congressional production rates average 344 pieces of legislation passed annually totaling 2 million to 3 million words a year.

And that's just actual laws. We are also drowning in a sea of regulations.

While the Constitution contemplates three branches of the federal government and only one with the power to make laws, there are now more than 435 federal agencies and subagencies most of which have often significant—and at least some level of—power to create regulatory rules that effectively operate as laws.

The Code of Federal Regulations is approximately 200 volumes filled with administrative rules governing countless fields of individual behavior. And the Federal Register—where notices, new proposed regulations, and new final regulations get published—ran beyond 80,000 pages of new regulatory content in 2022 alone.

If the mission of the new Department of Government Efficiency is to highlight the problems

of the volume and complexity of law wrought by the modern administrative state and a Congress that has aggrandized federal power, it should take comfort in knowing that Madison and the other Founders sought to create a Constitution designed with a similar mission.

Federalist No. 62 is just one exposition on that goal. While we have drifted from the constitutional dock, the Founders constructed moorings to which we can return. 🇺🇸



Donald J. Kochan
 Professor Law and
 Executive Director of
 the Law & Economics
 Center, George Mason
 University Antonin
 Scalia Law School