

James Madison: Republican or Democrat?

Robert A. Dahl

Although James Madison is best known for the views he expressed in the *Federalist*, as he gained greater experience in the new American political system he rejected some of these early views and increasingly emphasized four propositions: (1) the greatest threat in the American republic comes from a minority, not the majority; (2) to protect their rights from minority factions, members of the majority faction must organize their own political party; (3) the danger that majorities might threaten property rights could be overcome by enabling a majority of citizens to own property, a feasible solution in America; and (4) in a republic, majorities must be allowed to prevail. Even Madison's post-1787 constitutional views, however, were flawed in at least three serious ways: (1) as an empirical proposition, his conjecture that increased size reduces the danger of factionalism is contradicted by subsequent experience; (2) in his conception of basic rights, Madison excluded more than half the adult population: women, African Americans, and American Indians; and (3) he actively supported the provision in the Constitution that gave to slave states an increase in representatives amounting to three-fifths of the slave population.

Nearly half a century ago I published a lecture that was highly critical of what I called "Madisonian Democracy."¹ Now I find myself both more sympathetic with Madison and more critical. I'm more sympathetic because I've come to understand how experience with the rapidly emerging American democracy led James Madison to views that I would regard as somewhat more democratic than those he expressed at the Constitutional Convention of 1787 and soon thereafter in the *Federalist*. I'm more critical because of his willingness to exclude a very large part of the adult population from enjoying the rights of citizens in the political system he helped to create.

Despite my criticisms of Madison, I bear a deep respect for the depth and range of his understanding of political

life and his constant search for propositions that rose above the level of description to reach a higher level of generality. In this sense he was a distinguished political scientist. Even more, his capacity for modifying his earlier conclusions through later observations gave him the perspective of a true scientist of politics.

Yet his view of politics went beyond empirical observations. For his interest in politics was profoundly anchored in concerns not only for what was, but also, in his view, what ought to be. His lifelong effort to understand politics was clearly motivated by a desire that Americans might achieve a good polity.

In Madison's view, a good polity for Americans would necessarily be a government that derived its just powers from the consent of the governed, or, as we might say today, a democracy. His role in the evolution of democratic ideas and institutions was extraordinary. By his creative leadership at the American Constitutional Convention in 1787 and his persuasive contributions to the *Federalist* immediately thereafter, he helped to inaugurate one of the most fundamental changes in democratic ideas and practices that has occurred over the entire history of this ancient form of government. Henceforth, "government by the people" would no longer be restricted to assemblies of citizens in small units like city-states. Nor would the right to choose representatives to legislatures in larger units be restricted to an exceedingly tiny number of men drawn from the privileged few, as it then was in the parliaments of Britain and Sweden. Judged from this perspective, Madison was, in his own cautious fashion, a revolutionary.

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Yet if we were to judge Madison by standards widely used today in determining whether a large political system possesses all the institutions minimally necessary for it to be considered a democracy, we would have to conclude that when he attended the American Constitutional Convention and wrote his essays for the *Federalist* in 1787, he was not much of a democrat. As readers of his well-known contributions to the *Federalist* are aware, he even insisted that the term democracy was not appropriate for the government he envisioned. Instead, it should be designated a republic.

In the years following the convention and the *Federalist*, as he engaged in the ongoing project of creating institutions necessary for a people to self-govern, Madison began to express views that were more “democratic” than those he had announced earlier. We might think of the views he presented at the convention and in the *Federalist* as composing his constitutional theory of 1787, while his later views expressed his post-1787 constitutional theory.² A stunning instance of the shift from the first constitutional theory to the second is his role in the formation of the Republican Party.

Yet even in his post-1787 constitutional theory, the more democratic Madison endorsed views and practices that were far less acceptably democratic than those that would come to prevail during the next two centuries.

The Man

When the Constitutional Convention assembled in 1787, Madison was only thirty-six. “At five feet six and less than 140 pounds,” one historian has written, “‘little Jemmy Madison’ had the frail and discernibly fragile appearance of a . . . schoolmaster, forever lingering on the edge of some fatal ailment.”³ With his modest stature and rather high-pitched voice, he was hardly an imposing orator. Yet

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Title

Debates in the Federal Convention of 1787
by James Madison, Member.

[This title must be printed to correspond with that of the former part of the work, consisting of the preceding Correspondence and Debates in the old Congress.]

Is the above to be a title like the proof attached - ed? and count two pages? (Yes -)
The "Introduction" ^{which follows this} ~~we know not how to set~~ it is some 30 pages - and we suppose it must be the same as the body - and shall set accordingly
Yes - but double lead it like the sample sent you from the former portion of the work

the knowledge he brought persuasively to bear on the issues, together with his gentleness and fair-mindedness, made him probably the single most influential member of the convention.

With a BA at twenty from the College of New Jersey (Princeton), at twenty-five he was a delegate to the Virginia Convention, at twenty-seven acting secretary and member of the Virginia Council of State, at twenty-nine a delegate to the Continental Congress, at thirty-three a member of the Virginia House of Delegates, and at thirty-five an appointee to the Annapolis Convention. In preparation for the Constitutional Convention at Philadelphia, he undertook a study of “ancient and modern republics [and] ancient and modern confederacies,”⁴ wrote a brief

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note entitled “The Vices of the Political System of the United States,” and drew up the essentials of what would shortly be introduced at the convention as the Virginia Plan for the new constitution.⁵ At the age of thirty six, James Madison was better prepared for a constitutional convention than most American political leaders of later generations would be at fifty-six or sixty-six.

Madison's Four Questions

Madison's most influential views were, and are today, those he expressed in the *Federalist*, notably in *Federalist* 10 and 51. Few persons, including most political scientists, I believe, have paid sufficient attention to the important ways in which he modified these views as he gained experience with the political system that he helped so much to create.⁶

At the Constitutional Convention, in the *Federalist*, and in letters and other writings of the time, Madison regularly sought to answer four questions:

1. What is the new system of government to be called?
2. Does a common good exist and, if so, can we know what it is?
3. What are the major threats to achieving the common good?
4. Can these threats be overcome and, if so, how?

A Republic or a Democracy?

By “pure democracy,” Madison said, he meant “a society consisting of a small number of citizens, who assemble and administer the government in person. . . .” Democracy thus defined—pure democracy—stands in contrast to “a republic, by which I [Madison] mean a government in which the scheme of representation takes place . . . [and] . . . the delegation of the government . . . [is granted] to a small number of citizens elected by the rest . . .”⁷

In advancing this definition, Madison confronted a genuine problem. In the eighteenth century no generally accepted name existed for the kind of government that he and his contemporaries were struggling to create: a government that acquired its legitimacy from the sovereignty of the people, but in which the people would govern indirectly by electing representatives with the power to enact the laws. Although classification schemes from Aristotle to Montesquieu were often presented with more nuance and subtlety than I need to explore here, a common practice was to divide constitutions or political regimes into the rule of the one, of the few, or of the many, each of which might be divided in turn into good and bad forms, depending on whether the rulers sought to achieve the common good or merely their own interests. The good and bad forms of rule by the one were monarchy or despotism. Rule by the few would be aristocracy or oligarchy. What about rule by the many? Should the good form be called a democracy or a republic? What about the bad form?

Around 400 BCE the Athenians, drawing, naturally, on their own language, chose to call their system a “democracy,” from *demos* (“the commons,” or “the people”) and *kratos* (“rule,” “sway,” or “authority”). At about the same time, the Romans called their system a republic, from the Latin *res*, thing, affair, and *publicus*, public. In the thirteenth century, when the Italian city-states of Venice, Florence, Siena, Lucca, Genoa, Bologna, and Perugia adopted constitutions providing for a measure of self-rule, they all, of course, drew on their own language and history and called their governments republics.

The difference in word usage boiled down to language, not political institutions. Yet whether called democracies or republics, the political systems of Athens, Rome, and the Italian city-states were totally inappropriate for eighteenth-century America. To be sure, along with their citizen assemblies, the Athenian democracy and the Roman republic had some elements of representation. But by no stretch could their political systems serve as models for a representative government in the United States of America. As for the Italian republics, they may have been aristocratic or oligarchic republics, but they were definitely not democratic republics.⁸

To add to the confusion, the two terms—democracy and republic—were, it appears, commonly used more or less interchangeably among Americans in the eighteenth century.⁹ My guess is that Americans who were more favorable toward rule by the people tended to use the term democracy, while those who were more dubious preferred the term republic.

In any case, Madison's famous distinction between the terms democracy and republic was somewhat arbitrary and ahistorical. Even some of his contemporaries, like James Wilson, referred to the new representative system as a democracy.¹⁰

The term democracy soon came into general usage.¹¹ The Republican Party, founded by Jefferson and Madison, was swiftly renamed the Democratic Republican Party and its successor, in 1828, the Democratic Party. Tocqueville's famous volumes published in 1835 and 1840 were, as we all know, named *Democracy in America*.¹²

The plain fact is that James Madison has decisively lost the battle of terminology.¹³ I would dismiss the whole question as trivial if it were not for the frequency with which I have encountered the assertion that the founders created a republic, not a democracy. One could interpret this to mean that by excluding more than half the adult population from the rights necessary for a system to meet today's democratic standards, the founders created an oligarchy—an oligarchic republic, if you will, not altogether unlike the medieval Italian republics. But it is my impression that those who make this claim want to use the authority of the founders to reject the legitimacy of “democracy” as an appropriate standard for contemporary America. To which I would like to reply, if the United

States is not, and should not be, a democratic republic, then what kind of republic is it or should it be? An aristocratic republic? An oligarchical republic?

Let me now turn to Madison's response to the second question; Does a common good exist and, if so, can we know what it is? Adopting a view that was common in his time, Madison assumed that a common good existed and could be definitely known, at least by some. Yet despite Madison's confidence, after two millennia philosophers continue to disagree over two central issues. Just how can we *know* what the public good truly is? And what *persons* would be most likely to know and actually seek to achieve the public good? As to the first issue, is knowledge of the public good self-evident? If not, can it be derived by pure reason, and perhaps only by pure reason, as Kant would assert? If pure reason is insufficient, does knowledge of the public good depend on intuitions? On feelings and emotion? Experience? All of these?

Madison's position was unequivocal: he came down firmly on the side of reason and, like Kant, refused to allow any place for emotions and passions.¹⁴ Here, Madison's understanding of human nature seems to have deserted him, which is particularly surprising because his view flatly contradicted that of David Hume, whose work he had reread before attending the convention and whose argument on the advantages of size for reducing the evil effects of faction anticipated Madison's.¹⁵ Because the physiological connections between reason and emotion were largely unknown until the late twentieth century, aseptic views like Madison's and Kant's were beyond effective refutation. In light of what is known today, however, the assumption that reason can be wholly separated from emotion appears to represent a fundamentally mistaken view of human nature.¹⁶

As to the second issue, Madison appears to have believed, not unlike Plato, Confucius, and many of his contemporaries, that certain persons of greater wisdom and public virtue might know better than others what the public good truly is, and would also be more inclined to act on it. A crucial advantage of a representative republic over direct or assembly democracy, Madison asserted, is that the requisite wisdom and virtue are more likely to exist among the elected representatives than among the people who elect them. In *Federalist* 10 he wrote that the effect of elections is

to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern *the true interests of their own country*, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves convened for the purpose. (My italics)

Madison was too experienced in the ways of politics and politicians to assume that this desirable outcome was inevitable, and he immediately adds a realistic qualifier:

On the other hand, the effect [of elections] may be inverted. Men of fractious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people.¹⁷

Before turning to Madison's solution to this dilemma, I want to underscore his implicit assumption that the "public good," the "interests of the people," could be definitely known and described. If Madison were alive today, I find it hard to believe that he would advance this assumption as if it needed no further justification. Today's Madison would surely ask a question like this: In concrete situations when people disagree about the public good, as they commonly do, how can we know what is best? In Madison's own time, didn't the interests of slave owners, including enlightened slave owners like Madison himself, conflict with the interests of others—not least, of course, those who were enslaved? Don't basic human rights trump property rights? Or are property rights inviolable even when they violate fundamental human values?

If some citizens believe that their interests conflict with the interests of others, how should the matter be decided? What is the proper place of public deliberation, and how is it to be achieved? When interests conflict, should we be guided by the utilitarian formula of "the greater good of the greater number," and if so just who constitutes the "we" entitled to make that decision? Or, given the pitfalls hidden in that formula, should the decision follow some other moral principle? If so, what? And just what is the legitimate role of majority rule?

Even if Madison's assumptions about the public good may have been persuasive in his own time, today his contention that the public good can be definitely known by elected representatives would scarcely be debated.

This leads me to my third question. In Madison's view, what are the major threats to achieving the common good? In his 1787 constitutional theory Madison was primarily concerned, I think, with two of these. One I have already mentioned: "Men of fractious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages [votes], and then betray the interests, of the people." His main solution to this problem of leadership—a solution widely supported by his colleagues at the convention—was the famous separation of powers into the different branches of government that would serve as checks and balances. Because I want to focus here on some changes in the views Madison came to express as he, the country, and indeed the world gained more experience with large-scale representative government, I'll say no more about this solution and instead turn briefly to the other major threat: factionalism. "By a faction," he wrote, "I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests*

of the community.” Where liberty exists, factions are inevitable. “As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. . . . The diversity in the faculties of men. . . . [is] an insuperable obstacle to a uniformity of interests. . . . The latent causes of faction are thus sown in the nature of man [T]he most common and durable source of factions has been the various and unequal distribution of property.”¹⁸

How might the dangers of faction be mitigated? “If a faction consists of less than a majority,” Madison wrote, “relief is supplied by the republican principle, which enables the majority to defeat [the minority’s] sinister views by regular vote.”¹⁹ But what if the faction were itself a majority? “In our Governments,” he wrote to Jefferson in 1788, “the real power lies in the majority in the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents.”²⁰ Like many of his colleagues at the convention, and the classic writers from Aristotle onward who had helped to shape their views,²¹ Madison believed that the greatest threat to fundamental rights would come from majorities of citizens who possessed little or no property. For if the many lacked property, they would, driven by the overpowering force of self-interest, surely attempt to infringe on the property rights of the few who did own property.

Turning to Madison’s fourth question, if factions that threaten the basic rights and liberties of others are inevitable, what is to be done? A Bill of Rights, Madison believed, might be helpful, but it was not sufficient. “My own opinion,” he wrote in his letter to Jefferson in 1788, “has always been in favor of a bill of rights At the same time I have never thought the omission a material defect, nor been anxious to supply it even by subsequent amendment, for any reason other than that it is anxiously desired by others. I have favored it because I supposed it might be of use, and if properly executed could not be of disservice.” He was lukewarm about its necessity and doubtful about its effectiveness because “experience proves the inefficiency of a bill of rights on those occasions when it is most needed. . . . Repeated violations of these parchment barriers . . . have been committed by overbearing majorities in every state.”²²

Was Madison’s early fear of majorities influenced by the possibility that they might threaten the one form of property—slavery—that was essential to his livelihood? Whatever the reasons, in his earlier years Madison clearly feared that government by majorities might seriously endanger the rights of minorities.

So what was to be done? Madison’s solution included several elements: federalism, a constitution of limited enumerated powers, and, as I have mentioned, the election of representatives.²³ But Madison’s most original contribu-

tion, the one for which he is probably best known and for which he has been cited endlessly, was to enlarge the size of a republic. “Extend the sphere,” he asserted, “and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.”²⁴ Increasing the size of the system, then, was “a republican remedy for the diseases most incident to republican government.”²⁵ Was Madison correct? I’ll return to this question in a moment.

Like everyone else in 1787, Madison confronted a challenge for which historical experience provided little guidance. Given that a large-scale representative democracy had never before existed in human history, his conjectures were probably as well founded as they could possibly have been.

Yet the constitutional system that Madison and his colleagues had helped to create would swiftly change in response to the powerful democratic impulses that soon emerged. Madison himself helped to strengthen these democratic impulses and their impact. For the three decades after the convention, he was deeply immersed in political life. Elected to the new House of Representatives in 1789, he quickly assumed a major leadership role. Whatever his reservations may have been, he introduced and quickly gained the passage of the Bill of Rights. In 1788, shortly after retiring from the House, he wrote the Virginia Resolutions, attacking the Alien and Sedition Acts, and the following year, after returning to the Virginia House of Delegates, he defended the Resolutions. In 1801 he was made secretary of state, where he remained throughout Jefferson’s tenure. On Jefferson’s retirement in 1808, he was elected president, as he was again in 1812. Ten years after retiring from the presidency he succeeded Jefferson as rector of the University of Virginia. In 1829 he was a delegate to the Virginia Constitutional Convention. During his final years he staunchly opposed nullification and defended the union. He died in 1836 at the age of eighty-five.

Madison’s experience from 1790 onward led him, I believe, to develop somewhat greater trust in majorities—majorities consisting, of course, exclusively of white males—and a greater distrust of minorities that, in his view, threatened the interests of the majority. Put simply, Madison, I believe, rapidly moved toward answers that were different from, or at least had a much different emphasis than, those he presented at the convention and in the *Federalist*. Madison increasingly emphasized four propositions:

1. The greatest threat in the new American republic came from a minority, not the majority. (By majority I’ll continue to mean a majority of white male citizens.)

2. To protect their rights, liberties, and entitlements from minority factions, a majority needed to organize a political party.
3. To ensure that majorities would not threaten property rights, it was necessary (and perhaps sufficient) that a majority of citizens owned property. As property owners, they would have an interest in protecting—not invading—the rights of property.
4. In the end, in a democratic republic, majorities must be allowed to prevail.

I want to illustrate Madison's change in views by noting very briefly some well-known historical developments bearing on each of these new propositions. Like his close ally Jefferson, Madison swiftly concluded that representatives of the Federalist Party were supporting and even achieving policies harmful to the interests of a majority of citizens. These included the pernicious Alien and Sedition Acts, the assumption of state debts, Hamilton's successful effort to establish a national bank, and his support for Britain in its conflicts with France.

It became obvious that to be effective the opposition needed its own political organization. Thus Jefferson, Madison, and other like-minded opponents of the Federalists created the Republican Party, which soon came to be called the Democratic-Republican Party, and finally, with Andrew Jackson, simply the Democratic Party. Like virtually all advocates of democracy, Madison had come to see, as he put it much later, that "no free Country has ever been without parties, which are a natural offspring of Freedom."²⁶ Creating a political party, however, represented a step away from *Federalist* 10. For a political party is a kind of faction, a faction that is organized by party leaders to win votes in elections. The word party itself, as Giovanni Sartori emphasized some years ago, derives from the Latin verb meaning to divide. Though party was sometimes seen as less derogatory than "faction," the two terms were often used interchangeably. A party is but a "part of a political society," not the whole.²⁷ In effect, then, organized political parties competing against one another in elections are important elements of the solution to the twin problems of faction and the defense of majority interests.²⁸

But competition between political parties would not necessarily diminish, and might even intensify, the danger to property rights if the suffrage were extended to those without substantial property, particularly those without landed property—in Madison's terms, "non freeholders." That danger would be reduced, of course, if most members of the electorate owned or expected to own property, and thus had an interest in protecting property rights. Though a solution along these lines was difficult, if not impossible in, say, Britain, in America the availability of land to the west provided a solution—to be sure, at the expense of the indigenous population. A westward movement that Madison had perhaps not clearly foreseen in

1787 was rapidly resulting in a large population of independent farmers who, as property owners themselves, would have little interest in threatening property rights.

Although Madison's later views were hardly those of a passionate supporter of universal suffrage and political equality, a note he wrote in 1821 begins with the comment that his "observations in 1787 do not convey the speaker's [that is, Madison's] more full & matured view" of the right to suffrage, which is "a fundamental Article in Republican Constitutions." After considering the alternatives, he concluded that extending the suffrage to those without (landed) property was preferable, on grounds of feasibility and justice, to any more restrictive alternative. "In a just & a free, Government," he wrote, ". . . the rights both of property & persons ought to be effectually guarded. Will the latter be so in case of a universal & equal suffrage? . . . Confining the right of suffrage to freeholders. . . violates the vital principle of free Govt. that those who are to be bound by the laws, ought to have a voice in making them." After examining four alternative arrangements that would deprive or limit the suffrage of those without property, Madison concluded:

Under every view of the subject, it seems indispensable that the Mass of Citizens should not be without a voice. . . . and if the only alternative be between an equal & universal right of suffrage for each branch of Govt. and a confinement of the entire right to part of the Citizens, it is better that those having the greater interest at stake namely that of property & persons both, should be deprived of half their share in the Govt.; than those having the lesser interest, that of personal rights only, should be deprived of the whole.²⁹

Political equality means that the majority must be allowed to prevail. Although Madison may never have fully overcome his worries about the potential threats to property rights arising from voters with little or no landed property, as he observed the expansion in property ownership among his fellow citizens, he seems to have become somewhat more committed to the fundamental principle of majority rule.

Toward the end of his life, particularly after John C. Calhoun had begun his attacks on the principle of majority rule, Madison's defense of the principle was forceful and unambiguous. In a letter written in 1833, Madison contended:

[W]hatever opinions may be formed on the general subject of confederal systems, or the interpretation of our own, every friend to Republican Government ought to raise his voice against the sweeping denunciation of majority Governments as the most tyrannical and intolerable of all Governments

[T]he general question must be between a republican government in which the majority rule the minority, and a Government in which a lesser number or the least number rule the majority. . . . Those who denounce majority Governments altogether because they may have an interest in abusing their power, denounce at the time all Republican Government and must

maintain that minority governments would feel less of the bias of interest or the seductions of power.³⁰

That same year in a “Memorandum on ‘Majority Government,’” he wrote:

If majority governments . . . be the worst of Governments those who think and say so cannot be within the pale of the republican faith. They must either join the avowed disciples of aristocracy, oligarchy or monarchy, or look for a Utopia exhibiting a perfect homogeneousness of interests, opinions and feelings nowhere yet found in civilized communities.³¹

I find it regrettable that Madison is almost entirely known for his 1787 constitutional theory, for there can be little doubt that as he and the American political system both evolved, he revised his views in ways that were far more democratic. Yet even Madison’s revised constitutional theory contained at least three serious flaws.

The first is his argument in the *Federalist* that increased size reduces the dangers of factionalism. At the convention itself he had—rightly, I believe—“contended that the States were divided into different interests not by their differences in size, but by other circumstances; the most material of which resulted partly from climate, but principally from (the effects of) their having or not having slaves. These two causes concurred in forming the great division of interests in the U. States.”³²

His much better known argument in the *Federalist* (especially in essays 10 and 51) may well have been useful as a rhetorical point that would help to reduce fears expressed at the convention, and outside the convention by Anti-Federalists, that the interests of the people in small states would suffer in the proposed federal system.³³ But if we consider the latter argument as an empirical proposition in political science, two comments seem to me justified. It could not possibly have been tested adequately in his own time. And two centuries of experience since then flatly contradict his proposition.

Among the representative democracies of our time, the smaller countries are no more vulnerable to faction than the larger ones: consider the three Scandinavian countries, together with Finland, the Netherlands, Switzerland, and New Zealand. Or consider that among the seventy or so countries of the world that meet today’s standards for democracy—rather higher standards, by the way, than Madison’s—countries with populations under a million are much more prevalent than larger countries.³⁴ Or if we move to a much smaller scale, an analysis of town meetings in Vermont reveals a remarkable combination of vigor, civility, participation, and respect for the direct democracy. Indeed, the smaller the town, the more these qualities tend to appear.³⁵

Madison was right in thinking that diversity tends to increase with size.³⁶ But he overlooked the costs of heterogeneity and the advantages of homogeneity.³⁷ For example, until immigration recently created new cultural

diversities in Sweden, its extraordinary homogeneity enabled Swedes to negotiate national policies with a very high degree of consensus in the cabinet, the parliament, and the entire country.³⁸ At the other extreme, consider the difficulties the European Union now faces in creating a constitution, given the diverse and conflicting interests, views, values, and political cultures that continue to exist among Europeans.

It is difficult, even impossible, to reconcile Madison’s seeming optimism about the beneficial affects of size with his clear recognition of the crucial difference in interests among property owners in different states stemming “from (the effects of) their having or not having slaves.” Didn’t the framers make the Civil War virtually inevitable by incorporating into the union the Southern states with economies, social systems, and cultures based on slavery? Whether separation rather than union would have been more desirable in the long run is a question too complex to examine here. My point simply is that enlarging the sphere might just set the stage for irresolvable conflict.

I have sometimes wondered whether Madison stressed the advantages of size in order to counter the objections of the Anti-Federalists, perhaps the most vigorous opponents of the new federal system. If so, it was a shrewd move. But that does not make his conjecture empirically valid.

The second major flaw that remained in Madison’s revised constitutional theory is the tacit exclusion from full citizenship of an enormous share of the adult population. Like other men of his time, Madison seems to have taken for granted that suffrage should be restricted to men, and that there was no question of the right to vote, as well as many other fundamental rights, being extended to women. And while women had few rights as citizens, slaves had no rights at all. Like Washington, Jefferson, and many other eminent Virginians, Madison owned slaves, which he had inherited from his father. Like Washington and Jefferson, he believed that slavery was an evil,³⁹ and he seems to have treated humanely those he possessed. Like his fellow Virginians, however, he chose not to free his slaves during his own lifetime or to contest the institution publicly.⁴⁰ Nor did he follow Washington’s example and emancipate them at his death. Instead, no doubt fearing his wife’s impoverishment, he willed them to her.⁴¹ Like Jefferson, he supported schemes of gradual emancipation “and the colonization of freedmen in Africa or some other remote region.” In 1819 he even proposed that money obtained from the sale of western lands be used to purchase enslaved persons from their masters—after which they would be shipped to Africa.⁴² Of course, the scheme went nowhere.

The third major flaw in his post-1787 constitutional theory had been mainly overlooked by biographers, historians, political scientists, and constitutional lawyers until Garry Wills called it forcefully to our attention.⁴³ This was the infamous two-fifths rule, according to which, in the words of Section 3, Article I: “Representatives and

direct Taxes shall be apportioned among the several states . . . according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . three fifths of all other Persons.” Who were these “other Persons”? Slaves, of course.⁴⁴ Wills argues, rightly, I believe, that the extra seats in the House—and therefore in the electoral college—had, in Wills’s words, “a great deal to do with the fact that for over half a century, right up to the Civil War, the management of the government was disproportionately controlled by the South.”⁴⁵ It even “undermined the very possibility of debating or changing the status of slaves—as the gag rules of the 1830s and 1840s would demonstrate.”⁴⁶ Although Madison seems not to have played a big part in the adoption of this constitutional provision, he supported it at the convention and throughout his life.

Madison was limited in important ways by his time and place, yet he helped to launch the world’s first experiment in what would later come to be called representative democracy. The political institutions, practices, and ideas about popular government to which he contributed contained dynamic—even revolutionary—elements that, once set in motion, would continue to evolve, sometimes quite rapidly.

Madison was a part of that evolution. In his 1787 constitutional theory, a fear of majorities required that barriers to their power be imposed by constitutional and other means. In his post-1787 theory, he came to defend majorities. Yet many of the crucial elements of the constitutional system that reflected his earlier, and not his later, views have remained in place to the present day.

I sometimes wonder what further revisions Madison would make in his constitutional theory if he were alive today. I’m inclined to think that after he had reflected at length on the changes since his time in democratic ideas and practices, both in his own country and elsewhere, he might well prove to be a vigorous contemporary critic of the Constitution he helped so much to create.

Notes

- 1 Dahl 1956.
- 2 The extent to which Madison expressed his real views in the *Federalist* is a matter of some disagreement. See note 7, below.
- 3 Ellis 2001, 53.
- 4 Miller 1992, 15.
- 5 Padover 1953, 22.
- 6 Samuel Kernell (2003) argues that “the Madisonian model was formulated after the fact, specifically in *Federalist* 51 and its companion essays, in order to promote the Constitution’s ratification” (p. 93). If his interpretation is correct, then Madison’s first constitutional theory was simply “campaign rhetoric” (p. 114), and his later views might be interpreted as an expansion of views he actually held earlier but had suppressed in his public rhetoric.
- 7 *Federalist* 10 (Hamilton, Jay, and Madison 2000, 58–59).
- 8 In the words of a leading historian, they were “constitutional oligarchies” (Martinez 1979, 148).
- 9 Adams 1980, 99–117.
- 10 Speaking at the Pennsylvania ratifying convention in November 1787, a mere two months after the convention ended, James Wilson, who was Madison’s ally at the Convention and, like Madison, one of its most influential members remarked: “. . . [T]he three species of simple governments. . . are the monarchical, aristocratical and democratical. In a monarchy, the supreme power is vested in a single person; in an aristocracy . . . by a body formed upon the principle of representation, but enjoying their station by descent, or election among themselves, or in right of some personal or territorial qualifications; and lastly, in a democracy, it is inherent in a people, and is exercised by themselves *or by their representatives*. . . [O]f what description is the Constitution before us? In its principles, Sir, it is purely democratical: varying indeed in its form in order to admit all the advantages, and to excluded all the disadvantages which are incidental to the known and established constitutions of government. But when we take an extensive and accurate view of the streams of power that appear through this great and comprehensive plan . . . we shall be able to trace them to one great noble source, THE PEOPLE. [sic]” (Bailyn 1993, 802–3, emphasis added). The following June, at the Virginia ratifying constitution, responding to the criticisms of Patrick Henry, John Marshall contended that “The Constitution provided for ‘a well regulated democracy,’ where no king, or president, could undermine representative government” (Simon 2002, 25).
- 11 An interesting deviation from this pattern persisted in presidential inaugural addresses. I find that throughout the nineteenth century, if a president referred to the American political system in an inaugural address, he used the terms republic or republican and, with only one exception, never democracy or democratic. The exception was the ill-fated William Henry Harrison who in 1841 said of the Framers that “there were in it [the Constitution] features which appeared not to be in harmony with their ideas of a simple representative democracy or republic.” From this we can infer that the terms “republic” and “representative democracy” were understood as equivalent. I need hardly add that during the twentieth century, in their inaugural addresses presidents frequently referred to the United States as democratic or a democracy. In his four inaugural

- addresses, FDR used these terms twenty times and “republic” not once. Reagan and the first Bush used both in equal numbers, while Clinton and the second Bush employed only the term “democracy” in their inaugural addresses.
- 12 In Europe, as the *Oxford English Dictionary* reminds us, “republic” came to mean “without a monarch,” as in France, Germany, and elsewhere. Thus the Scandinavian countries, along with Holland and Spain, are not republics; but, as in the rest of the world, their people rightly call them democracies.
 - 13 An authoritative example: The *Oxford English Dictionary* defines democracy as “government by the people; that form of government in which the sovereign power resides in the people as a whole, and is exercised either directly by them (as in the small republics of antiquity) or by officers elected by them.”
 - 14 Matthews 1995, 81.
 - 15 Miller 1992, 53 ff.
 - 16 Damasio 1995.
 - 17 *Federalist* 10 (Hamilton, Jay, and Madison 2000, 59).
 - 18 *Ibid.*, 54–56 (emphasis added).
 - 19 *Ibid.*, 57.
 - 20 Padover 1953, 254.
 - 21 Richard 1994.
 - 22 Padover 1953, 254. At the Virginia Ratifying Convention in June, 1788, Patrick Henry gave a lengthy and passionate criticism of the Constitution for, among other things, its omission of a Bill of Rights that would protect the freedom of religion, trial by jury, and “the other great rights of mankind” that were, he noted, preserved by “our own Constitution” (i.e., the Constitution of the Commonwealth of Virginia). In his reply, Madison argued, “If there were a majority of one sect, a Bill of Rights would be a poor protection for liberty. Happily for the States, they enjoy the utmost freedom of religion. This freedom arises from a multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society” (Bailyn 1993, 678, 690).
 - 23 I am grateful to Richard Matthews for calling my attention to the first two of these. In *If Men Were Angels*, he provides an excellent account of Madison’s views on these and other important constitutional issues.
 - 24 *Federalist* 10 (Hamilton, Jay, and Madison 2000, 61).
 - 25 *Ibid.* (Hamilton, Jay, and Madison 2000, 64).
 - 26 Farrand 1987, 3:452, appendix A.
 - 27 Sartori (1976, 5 ff.), provides an excellent account of the evolution of the term “party” and its distinction from “faction.”
 - 28 For a carefully presented view of the evolution of Madison’s views on parties, see Riemer 1968, 173–74.
 - 29 Farrand 1987, 3:450–55, appendix A, punctuation as in original. His continuing concerns for property are revealed by his unwillingness to reject one alternative: “Confining the right of electing one Branch of the Legislature to freeholders, and admitting all others to a common right with holders of property, in electing the other branch.” He points out that this had been tried and abandoned in New York but “is still on trial in N. Carolina . . . It is certain that the trial, to be satisfactory ought to be continued for no inconsiderable period; untill [sic] in fact the nonfreeholders should be a majority” (p. 454).
 - 30 Madison, *Writings*, 9:520–28, cited in Meyers 1973, 525.
 - 31 Madison, *Writings*, 9:526, cited in Riemer 1968, 157.
 - 32 Farrand 1987, 1:486.
 - 33 This is clearly the case in his response to the (ultimately successful) insistence by delegates of the small states on equal representation in the Senates. Three large states—Virginia, Massachusetts, and Pennsylvania—were, he argued, deeply divided by their different interests. For example, in “staple productions they were as dissimilar as any three other States in the Union” (*Ibid.*, 447).
 - 34 Diamond 2002, 26, table 1.
 - 35 Bryan 2004, 69–81, 136, 231, 296–97. See also Bryan and McClaughry 1989.
 - 36 For evidence and discussion, see Dahl and Tufte 1973, 91 ff.
 - 37 Alesina and Spolaore (2003) propose that “the sizes of national states (or countries) are due to the trade-offs between the benefits of size and the costs of heterogeneity of preferences over public goods and preferences provided by government. . . . Our main argument [is] that democratization, trade liberalization, and reduction of warfare are associated with the formation of small countries, whereas historically the collapse of free trade, dictatorships, and wars are associated with large countries” (pp. 6, 15).
 - 38 Lewin 1988, 195–206.
 - 39 Rakove 1996, 337. Ralph Ketcham (1990) writes: “Though brought up among slaves and dependent on their labor, he abhorred the institution of slavery and sought to have as little as possible to do with it” (p. 148).
 - 40 An exception was one Billey. “In 1783, as Madison prepared to return to Virginia from Philadelphia, he discovered that, after nearly four years in the company of free servants, Billey was ‘too thoroughly tainted to be fit companion for fellow slaves in Virginia.’ . . . Why, Madison asked his father, should Billey be punished ‘merely for coveting the liberty for which we have paid the price of so much blood, and have proclaimed so often to be right, and

worthy the pursuit, of every human being” (Ketcham 1990, 148). All of Madison’s pronouncements about the evils of slavery are in private letters or documents.

- 41 “[I]n his will Madison said of his slaves merely that none of them should be sold without the slave’s consent as well as Dolley Madison’s. A lifetime of opposition to slavery had thus been reduced in Madison’s will to a gesture, likely to be ineffectual, not of freedom, but only of decent treatment. As happened again and again in slave states, the demands of creditors and estate legatees subverted Madison’s intentions” (Ketcham 1990, 629).
- 42 Meyers 1973, 398; Ketcham 1990, 625–29.
- 43 Wills 2003.
- 44 When Madison discussed the conflict of interests between property owners in free and slave states early in the Convention, he had proposed that instead of the two-fifths rule, slaves “should be represented in one branch according to the number of free inhabitants only; and in the other according to the whole no. counting the slaves as (if) free. By this arrangement the Southern Scale (sic—States?) would have the advantage in the House, and the Northern in the other. He had been restrained from proposing this expedient by two considerations: one was his unwillingness to urge any diversity of interests on an occasion when it is but too apt to arise of itself—the other was the inequality of powers that must be vested in the two branches, and which wd. destroy the equilibrium of interests” (Farrand 1987, 1:486–87).
- 45 Wills 2003, 6.
- 46 *Ibid.*, 4.

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