James Madison

by
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George Washington has his monument and Thomas Jefferson has his memorial, but James Madison, the reputed "father of the Constitution," has no such edifice in the nation's capital. Instead, the Washington, D.C. based American Political Science Association gives an award in his name to the outstanding political scientist of the day. The political scientists recognize Madison as a fellow political scientist, as their patron saint, one might say; indeed, although he accomplished great things as a political actor, his greatest distinction was as a political scientist. To single out his accomplishments as a political scientist is to contrast political science not only with political practice but with political philosophy as well. John Locke, an important philosophic source for founding generation Americans, had said of the study of politics, that it "contains parts very different the one from the other, the one containing the original of societies and the rise and extent of political power, the other, the art of governing men in society." He placed his own Two Treatises of Government in the first, but not the second category.[1] A century later, Thomas Jefferson restated and somewhat modified the distinction Locke drew. He identified two classes of political writing, "theory" and "practice." The first promulgates "the general principles of liberty and the rights of man, in nature and in society." He neglected to provide a general description of the second kind, but he supplied examples of each--again Locke's Treatises in the first class, and a text in which Madison had a great hand, The Federalist, in the second.[2] It is not that Madison had no thoughts at the level of "theory" or

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[1]John Locke, "Some Thoughts Concerning Reading and Study for a Gentleman," in Political Essays, ed. Mark Goldie (Cambridge, Engl., Cambridge University Press, 1997), 351-352.

[2]Thomas Jefferson to Thomas Mann Randolph, May 30, 1790, in Life and Selected Writings, eds., Adrienne Koch and William Peden (New York: Modern Library, 1944), 496-97.

political philosophy, but that his originality and unique contributions lay in the sphere of practice, or political science.

Like most of the founders and unlike most other writers in whom we are interested as political thinkers, Madison left his thoughts scattered in various places, often texts written for one or another immediate political occasion. Even The Federalist, the closest thing to a book that Madison produced, is no exception. The text was prepared with an immediate political purpose in mind, to help secure ratification of the Constitution. The project was led by Alexander Hamilton, who wrote a much larger share of the essays than did Madison.[3] Moreover, The Federalist was a series of essays in defense of the Constitution, but in a letter written at the close of the Constitutional convention, Madison expressed very grave reservations about the document he allegedly fathered; as it came from the hands of the convention it did not embody the principles of Madisonian political science to a sufficient degree to please him or to make him confident of the government's prospects under it.[4] Nonetheless, Madison believed the proposed Constitution superior to the old Articles of Confederation, and so, biting his tongue but acting in perfectly good conscience, he fought hard to secure adoption of the convention's product, suppressing, as a good advocate must, his substantial reservations. One important implication of these various facts is that The Federalist is at best an imperfect source for gleaning Madison's political thought. I propose, therefore, to look elsewhere for the most part. The political analysis in terms of which he both proposed or "fathered" the Constitution and came to hold such important reservations about his own child emerged in the years immediately preceding the constitutional convention and found expression in memoranda, letters, and speeches prepared before and during the convention.

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[3]For information on the circumstances of the composition of The Federalist, see James Stoner, "The Federalist," this volume.

[4]James Madison to Thomas Jefferson, Sept. 6, 1787 in The Papers of James Madison (Charlottesville, Va., University Press of Virginia, _____) 9: 162-164.

Madison is, by the attestation of America's political scientists, among the greatest political scientist to have arisen in America. But wherein lies his claim to greatness? The answer is two-fold: Madison developed a revolutionary theory of federalism, which made possible an altogether new kind of union; Madison developed a revolutionary theory of republicanism, which made possible an altogether new kind of republican government. These were inventions or discoveries that made possible the transformations of political life that we have come to think of as modern politics. Considerations of space demand a focus only on the second, more fundamental of Madison's two great political innovations.

I. Political Philosophy

Madison's great contributions were as a political scientist, but we cannot understand these contributions without considering his thinking about the issues of political philosophy. Madison understood that a science of practice must be guided by knowledge of the ends and grounds of practice. Madison did not lack political philosophy, but on these matters he understood things much as other leading founders did. He thought of the grounds, foundations and ends of politics in the terms captured in the Declaration of Independence, a document (its author Thomas Jefferson tells us) meant "to place before mankind the common sense of the subject. . . . Neither aiming at originality of principle or sentiment, . . . it was intended to be an expression of the American mind."[5]

Probably the most concentrated and visible opportunity Madison had to commit himself on the themes of political philosophy came in his role as "father of the Bill of Rights." The original constitution's lack of a Bill of Rights, common in state constitutions, was held to be a major defect by those who feared the power and centralization they saw in the new Constitution. Bills of Rights normally came at the beginning of state constitutions and resembled the

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[5]Jefferson to Henry Lee, May 8, 1825 in Writings ed., Merrill Peterson (New York: Library of America, 1984), 1501.

theoretical sections of the Declaration of Independence more than the Bill of Rights that eventually was adopted. When he introduced a draft Bill of Rights in Congress in 1789 Madison had in mind a Bill of Rights of this character. Thus he proposed as a first amendment to the Constitution "that there be prefixed to the document a declaration, that all power is originally vested in, and consequently derived from, the people. That government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety. That the people have an indubitable, unalienable, and indefeasible right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution."[6] Much of the actual language Madison uses here comes from the Virginia Constitution and Bill of Rights, a document from which Jefferson also borrowed heavily when he wrote the Declaration of Independence.[7]

Madison invokes the social contract theory of politics most often associated with the seventeenth century English political philosopher John Locke.[8] Political power, according to this theory, traces back to the people and nowhere else. Thus the people are sovereign. Rulers possess what are, in effect, delegated powers. The people empower government for the sake of their own good, not the good of the rulers. Thus the exercise of political power is to be judged according to whether it serves that good. Like Locke, Madison understands the good for the sake

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[6]Madison, Speech in the House of Representatives, June 8, 1789, reprinted in The Mind of the Founder: Sources of the Political Thought of James Madison, Marvin Meyers, ed., (Indianapolis, IN., Bobbs-Merrill Co., 1973), 215.

[7]Pauline Maier, American Scripture: Making the Declaration of Independence (New York: Alfred A. Knopf, 1997), 125-128.

[8]John Locke, Two Treatises of Government, ed. Peter Laslett (Cambridge, Engl.: Cambridge University Press, 1988).

of which government is created as the security of preexisting (i.e., natural) rights, or the objects of preexisting rights--"the enjoyment of life and liberty, with the right of acquiring and using property; and generally of pursuing and obtaining happiness and safety." Madison gives a version of natural rights closer to the original Lockean formulation than to Jefferson's triad of "life, liberty, and pursuit of happiness;" it has been argued that this is a distinction without a difference, however, because the two formulations mean the same thing substantively.[9] Finally, Madison caps his list of first principles with the "indubitable, unalienable, and indefeasible right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution." Again, Madison closely echoes Jefferson's parallel "right to alter or abolish" governments that fail to secure the end (rights securing) for which they exist.

Madison's sketch of "the original of societies and the rise and extent of political power" as prepared for inclusion in his proposed Bill of Rights needs to be supplemented by two other important Madisonian statements of political philosophy. In the one Madison draws some of the implications of the social contract philosophy for the proper or legitimate form of government. By 1792 Madison was forced to recognize and to defend the existence of political parties (or at least of the party of which he was one of the chief organizers). His party "consists of those who, [believe] in the doctrine that mankind are capable of governing themselves and [hate] hereditary power as an insult to the reason and an outrage to the rights of man."[10] The "rights of man" imply that only "republican government" is legitimate. If, as the social contract theory says, political authority derives exclusively from the people, then no set of rulers can claim any share or piece of it that does not derive from the people. That principle disqualifies all hereditary and other forms of self-appointed political authority. It is from this understanding of the sole

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[9]Michael P. Zuckert, Launching Liberalism (Lawrence, KS.: University Press of Kansas, 2002), .

[10]Madison, "A Candid State of Parties," (1792) in Mind, 247.

legitimacy of republicanism that Madison derives his famous definition of that form of government in Federalist 39: "a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it. . . . It is sufficient for such a government, that the persons administering it be appointed, either directly or indirectly, by the people; and that they held their appointments by either of the tenures just specified." Earlier followers of the social contract philosophy did not draw this same conclusion: thinkers like Locke, Montesquieu, and Blackstone accepted as legitimate that part of government be in the hands of hereditary ruling groups.[11] When Madison and the other Americans rejected that part of earlier political philosophy, they set the terms for the task to which Madison's political science was most emphatically directed: to build a wholly republican system (what we would today call a democracy) that successfully achieves the task for which all governments rightly exist: to secure all in their rights. With that the Americans introduced into the world a thought that became one of the master ideas of modern politics--that only democratic government is supportable, and that such government must govern with respect for the human rights of its citizens. That is, the Americans are the first to commit themselves to liberal (rights respecting and securing) democracy as solely legitimate.

Legitimate government must be republican, and it must be rights-securing. Madison has a good deal more to say about rights in a remarkable essay he wrote at about the same time as his defense of his political party. This essay, titled "Property," follows the curious usage of Locke, who had spoken of all rights, or the objects of all rights, as property. Madison helps explain

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[11]See Locke, Two Treatises, II 132; Montesquieu, The Spirit of the Laws ed. and trans., Anne Cohler, Basia Miller, and Harold Stone (Cambridge, Engl.: Cambridge University Press, 1989), Bk. XI, ch. 6; William Blackstone, Commentary on the Laws of England (Chicago: University of Chicago Press, 1979) Bk. I, ch. 3.

Locke's usage when he identifies property as a "dominion which one man claims . . . in exclusion of every other individual."[12] There are two elements to rights: dominion and exclusivity. The first means that the right-holder has a kind of control over that to which he has a right. The second means that he has a kind of immunity from the intrusions of others on that to which he has a right. Like Locke, Madison recognizes that the more usual meaning or "particular application" of the term property involves "the external things of the world."[13] But also like Locke, Madison identifies a broader meaning: "In its larger and juster meaning, [property] embraces everything to which a man may attach a value and have a right, and which leaves to everyone else the like advantage."[14] Madison includes in property in this broad and more proper sense "safety and liberty of person," "the free use of . . . faculties, and free choice of the objects on which to employ them," the rights Locke (and then Jefferson) included in the catalog of rights as "life" and "liberty." Madison emphasizes more strongly even than Locke had done, "a property in opinions and the free communication of them," especially religious opinions and practices.[15] "Conscience is the most sacred of all property."[16] In sum, Madison says, "as a man is said to have a right to his property, he may be equally said to have a property in his rights."[17]

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[12] Madison, "Property" in Mind, 243.

[13] Ibid.

[14] Ibid. Emphasis in the original.

[15] Ibid.

[16] Ibid, 244.

[17] Ibid.

Madison (again following Locke) asserts that "government is instituted to protect" this very broad kind of property. Some scholars see Madison as obsessed with property in the narrow sense, others with republicanism and personal rights. Neither side captures the real Madison: "that alone is a just government which impartially secures to every man whatever is his own."[18] Just government, in order to secure property in external goods, must not invade property in personal rights, must not seize the property which a man has in "his personal safety and personal liberty," nor must men be denied "the free use of their faculties and free choice of their occupations" because of "arbitrary restrictions, exemptions, and monopolies."[19] Just governments neither "invade the domestic sanctuaries of the rich" nor "grind the faces of the poor."[20] All equally have rights, and all have an equal right to have their property secured, but the task of just governance is rendered difficult by the fact that some have more (sometimes much more) of the external things of the world than others.

Madison understands the fundamentals of political philosophy in such a way as to point to a series of tensions in the tasks set for political science. Three such tensions are especially central: (1) the principles of political right require that government be "wholly republican" but that it, at the same time, impartially respect the property or rights of all; (2) although all have equal rights (and therefore equal property in one sense), all do not have equal property in the other sense; in one form or another property tends to translate into political power and the holders of political power are seldom neutral or fair-minded in the way they wield political power--they use it to favor their own interests. How can government act impartially and justly then? (3) Government exists to secure property in the extended sense; therefore, it must be strong enough to do that, but not too strong to do more than that. "Where an excess of power

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[18]Ibid.

[19]Ibid., 245.

[20]Ibid.

prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions." However, the answer cannot be merely to control or check power: "where there is an excess of liberty, the effect is the same, though from an opposite cause."[21]

Madison's political philosophy thus poses three especially difficult problems for his political science to solve: (1) How can one combine rights--securing with republican government? (2) How can one impartially secure property in both the narrow and the extended senses of the term? (3) How can one navigate the narrow passage between too strong government and too much liberty? Madison's greatness as a political scientist lies first in his clear recognition that these are the problems political design must solve, and secondly in his recognition that all previous models, including those most widely accepted in the America of his day, were inadequate to the challenge posed by these three problems. Finally, he invented or discovered almost entirely new solutions to these three problems.

III. Political Science

The requirements of legitimate politics had the unanticipated effect of disqualifying the two main models of political regime prevalent in eighteenth century America. As much as anything, this fact forced Madison onto his paths of innovation. The leading political authority in America, remarkably widely cited on almost every side of the political debates of the day, was the French philosopher Baron de Montesquieu.[22] His Spirit of the Laws was probably the greatest achievement of modern political philosophy to that day, and it deservedly stood high in the eyes of the world. Part of the basis for his very wide appeal was the great range of topics he covered, together with sufficient ambiguity in his presentation so as to allow different readers to

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[21] Ibid., 244.

[22] Donald Lutz, The Origins of American Constitutionalism (Baton Rouge, LA.: Louisiana State University Press, 1988), 136-149.

find in him authority for quite different positions. Strange to say, the two dominant models Madison had to break from both traced in large part to Montesquieu. The first model is what Montesquieu put forward as a rationalized version of the English constitution of the eighteenth century, a complex affair which uniquely aimed, Montesquieu said, at liberty as its object: following that characterization let us call this the Montesquieuean free constitution.[23] The other model to which many Americans looked was Montesquieu's rendition of the classical republic.[24] The first was most attractive to Madison himself and others who went on to become Federalists in the battle over ratification of the Constitution. The other proved most attractive to those who went on to become Anti-Federalists.

Montesquieu's free constitution was an obvious influence on Madison and the other American founders, for it is the model that introduced the modern theory of separation of powers to the world. That apparent familiarity conceals from us the great complexity and marvelous richness of the Montesquieuean theory, however, for that theory combines at least the four following elements: the discrimination of separate functions of governance; the articulation of the need for separateness of personnel to carry on the different functions; the mixed regime as the only means by which to achieve the needed separation; and checks and balances as the necessary means by which to maintain the separation.[25]

The classification of governmental powers into the categories, legislative, executive, and judicial is largely the accomplishment of Montesquieu. He takes his bearings in doing so from thinking through the nature of the rule of law. The three functions are stages in the process of governance by law. The regime that explicitly aims at liberty is the regime that best articulates the requisites of the rule of law. Legislation involves the making of laws, that is, of general rules

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[23]Montesquieu, Spirit, Bk. XI, ch. 5.

[24]Ibid. Bks. III-VII.

[25]The following account is based on ibid, Bk. XI, ch. 6.

that apply impartially across the society; when law rules, the rulers are subject to the law also, and so proper laws apply to legislators as well as to everyone else. The executive is that part of government explicitly possessing that property that distinguishes government from all other social organizations--coercive authority. The executive uses coercion to apply the rules made by the legislature. The judiciary shares with the executive the task of applying the law, but it does not possess the tools of coercion itself. Nonetheless, its authorization is necessary before the executive may apply coercion to individuals. The judiciary, in a way the weakest part of government, stands between the coercive authority of government and individuals. It guarantees that coercion is applied in accord with law and not arbitrarily. Montesquieu thus assigns a particularly high ranking to the judicial function.

These three governmental functions are not only conceptually distinguishable, but, Montesquieu says, they must be institutionally separate as well in order for the rule of law to prevail. In The Federalist Madison expresses the Montesquieuean idea very clearly: "The accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[26] (In this context Madison cites Montesquieu as his authority on this subject). Montesquieu has in mind with his theory of separation of powers something like a relay-race: each of the powers must be located in a separate and independent body, each of which acts in turn and passes on to the next body the baton of the law. The laws must be made by one body (composed according to certain specifications that Montesquieu lays down), they must be coercively applied by another body, and adjudicated (i.e., tested to see whether they rightly apply to specific individuals) by yet a third. The combination of all three, or even of any two powers in the same set of hands endangers the rule of law and thus liberty. The central idea here is to have, as the ruling element of society, general rules, formulated in a body constructed so as to increase the likelihood of the justice and wisdom of the rules. Those

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[26]Federalist 47.

who control the means of coercion, always so terrible and always such a temptation to misuse, must be prevented from using their coercive authority as pleases themselves, i.e, to further their own interests or passions. Thus they must apply the rule taken from elsewhere and have authorization from the judiciary before they can apply it. The Montesquieuean separation is thus particularly aimed at taming the executive.[27]

Montesquieu's constitutional theory takes its bearings from the principles of modern political philosophy in that he sets as the chief and proper aim of political life the security of rights, best achieved through guaranteeing the rule of law. Nonetheless he frequently confuses readers because he combined the theory of separation of powers with the much older idea of the mixed regime, a theory with its roots in the classical political philosophy of Plato, Aristotle, and its peak expression in the writings of Polybius. This theory did not begin where Montesquieu did--with the goal of rights-securing, the means of rule of law, and conceptual tools taken from the stages of law. Rather it began with the classical theory of regimes--rule by one, by the few, or the many--with each type of rule subject to good and bad forms. In its mature Polybian form, this theory contained the notion of a cycle of regimes--each good form tends to degenerate into its opposite bad form, which then tends to set in motion a corrective so that the bad form is in turn replaced by the next good form. The cycle had certain disadvantages, including great instability and bad rule half the time. Polybius claimed that the cycle could be arrested and good rule secured through a mixed regime, that is, a sharing of power among the three ruling elements of the pure regimes. This theory was extremely influential all through antiquity and the middle ages, and indeed into modern times.

Montesquieu argued that the free constitution required something like a superimposition of the mixed regime onto the separation of powers scheme. It was particularly important that the legislature contained the three elements; Montesquieu thought the British constitution, with its democratic lower house, its aristocratic upper house, and its monarchical executive who was also

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[27]See Harvey C. Mansfield, Taming the Prince (New York: The Free Press, 1989), 213-246.

part of the legislature was the model regime. The legislature contained all elements of society and gave each in effect a veto power. It would necessarily therefore take account of the rights of all. The democratic lower house guaranteed that the personal rights of the many would not be sacrificed to the property rights of the few. The aristocratic upper house guaranteed the reverse. The monarchic executive, partly above the fray of the two houses of the legislature, independent of both, the scion of a long established hereditary line with deep common interests with the good of the whole community, could hold the balance between the two houses and provide leadership when stalemate threatened. Likewise, the hereditary monarch was the ideal possessor of the executive authority (so long as he was surrounded by the legislature and judiciary), for as a unitary force he could supply the energy and decisiveness needed to act in both the domestic and foreign arenas. Finally, Montesquieu understood the judiciary essentially as the "jury of one's peers." Like the legislature, then, it would embody the elements of the community and contribute to the sense of security in rights that citizens would feel, for they would know that the state could not apply the law to them except with the acquiescence of their peers, i.e., members of society like themselves.

Finally, Montesquieu added to the cauldron the notion of checks and balances. This was not, as is usually said in textbooks, the primary feature of the theory of separated powers. Checks and balances were needed in order to maintain the separation of powers, not to produce a government of stalemate or gridlock. The chief point of checks and balances is to check the legislature:

> If the executive does not have the right to check enterprises of the legislative body, the latter will be despotic, for it will wipe out all the other powers, since it will be able to give itself all the power it can imagine.

The judiciary is no part of the system of checks (neither checker nor checkee) and the legislature is a part only as the body to be checked. "The legislative power must not have the reciprocal faculty of checking the executive power." Checks and balances are thus a much smaller and different part of the free constitution than we are accustomed to conceive them.

Although there were many political leaders in America in 1787 ready to pronounce the British constitution the best in the world and the model all free nations should follow, it can easily be imagined that immediately after the revolution this viewpoint would also have its detractors. Like Madison himself, most Americans came out of the agitation leading up to the revolution firmly committed to republicanism, understood (at least) as the absence of all hereditary authority. The Montesquieuean free constitution did not qualify as republican under this standard because hereditary institutions played so large a role in it. Moreover, the conflict leading up to the revolution led most Americans to focus on the dangers of overbearing governments, and especially the dangers posed by non-elected political authorities like kings. These concerns found echo in another part of Montesquieu, in his presentation of the classical republic. The second model constitution that had great favor in America in the mid 1780's was a blend of theories from Montesquieu's republics and inferences the Americans drew from their own experience and their prior commitments to Lockean politics.

Two themes from Montesquieu's republicanism particularly resonated for the Americans. One was his theory of size: republics had to be (relatively) small; large political societies could not sustain the republican form but had to be either monarchies or despotisms.[28] The Americans, of course, wished to be neither of the two last. Montesquieu had also identified as the "spring" of republics a quality he called "virtue," by which he meant a willingness to subordinate one's private good to the public good, or rather a dominant identification of one's own good with the public good.[29] The good republican citizen had no good other than the public good. That at least was the heroic ideal of republicanism, an ideal that the ordeal of the revolutionary struggle gave life and meaning to.

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[28]Montesquieu, Spirit, Bk. VIII, chs. 15-20.

[29]Ibid., Bk. III, ch. 2; Bk. IV, chs. 5-8; Bk. V, chs. 1-7.

Fused with these themes from Montesquieu were some others the French thinker had not emphasized. The Americans came to see the chief political problem as the potential oppressiveness of government. They came to see the chief solution to that problem in a robust kind of political responsibility.[30] Rulers needed to be controlled; that meant they were to be subjected to electoral control through frequent elections and short terms of office. They were not to be trusted with large powers and independent range of action. They were to be kept as much like the citizenry as a whole as possible. They were not to make political service into careers--they were to "rotate" in office through term-limits and they were to return to the population at large before they developed an attachment to their authority and a sense of themselves as somehow different. Men love power and are too easily corrupted by it. The Americans recognized that direct democracy was impossible in the states that they had, but they accepted representation as a necessary evil at best. The representatives were to be as much like the population as could be engineered. This meant, among other things, large governing bodies, so that the differences in the community could be readily contained in the government, but even more it meant commitment to social homogeneity so that all the people had roughly the same interests and the convergence between private and public interest could be easy to effectuate. This desire for homogeneity reinforced the commitment to small size.

This second model can fruitfully be conceived of as "short-least republicanism": the main theme in constitution-making was devising multiple and redundant ways of keeping governors on a short-leash. It can also be thought of as a "no-gap polity." The central idea was not to have gaps, either within the society (i.e., all were to have the same interests so far as possible), or

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[30]These themes are best developed in the writings of the Anti-Federalists. For a representative sampling of Anti-Federalist texts, see The Anti-Federalist: Writings by the Opponents of the Constitution, eds. Herbert J. Storing and Murray Dry (Chicago: University of Chicago Press, 1985).

between government and society. Gaps, that is, the development of an identity and interests separate from the people, appeared to be the source of all political evil.

Madison's understanding of the requirements posed by the truths of political philosophy led him to see that both models, the Montesquieuean free constitution and the short-leash republic, were unacceptable. He found the Montesquieuean free constitution impossible for America, not only because America lacked the raw materials for it, having no hereditary aristocracy and no royal line, but even more decisively because hereditary power of any sort was inherently illegitimate. The free-constitution did not satisfy the requirement that government be wholly republican through drawing all its power directly or indirectly from the people. The short leash model failed as well. It could not satisfy two other of the principled requirements Madison accepted. For one, Madison understood that government had to be strong enough and effective enough to protect rights, although not so strong and uncontrolled as to endanger rights itself. The short-leash model took one-half of this task seriously, attempting to protect the populace from government, but failed to take seriously the other and primary task, the construction of government able to do what governments existed to do. The short-leashers did all they could to provide for safety from government, but not to supply strength and competence. On this score the Montesquieuean model was far superior. Madison also recognized the complexity of the task of rights-securing deriving from the dual character of rights and the unequal distribution of one kind of property coupled with the equal distribution of the other kind. The no-gap theory failed to recognize the complexity of rights or the two sorts of property, and it therefore failed to build in proper devices for safeguarding the rights of all. As Madison famously argued, the small republics the short-leashers had established in the states tended to degenerate into tyrannies by the majorities that controlled them.[31] Montesquieu's free constitution did a far better job of protecting the full range of rights, for it built in a separate part of the legislature for the holders of each type of property. In general, the Montesquieuean free constitution was superior to the

[31] See Federalist 10.

short-leash model on all grounds except the fundamental criterion that legitimacy required republicanism.

It would not be inaccurate to see Madison's own political science as the attempt to synthesize the other two models, or to adapt the free constitution to the exigencies imposed by the necessity of republicanism. He attempted, in a word, to replicate the free constitution on a "wholly republican" basis. This effort led him to reject nearly everything in the short-leash model except the very commitment to republicanism itself. It led him to reject nearly everything about the workings, although not the aims, of the free constitution, as well.

Madison's political science, then, attempts to find a way to achieve all that Montesquieu's free constitution achieves on the sole basis of republican or popular government. This last is crucial to understanding Madison, for at least since Charles Beard the claim has been raised that Madison sought to evade or overcome democracy.[32] It is true that Madison sought to evade or overcome some of the potential ill effects of democracy, not because he was an anti-democrat, but because he was so thoroughly committed to democracy, or, in the terminology of the day, republicanism.

We have already noticed Madison's definition of republicanism. His is a much more popular or democratic definition than was current in his day. Montesquieu, for example, considered hereditary aristocratic regimes to be republics, and it was common usage to call all non-monarchical regimes republics. Madison denies the label "republic" to regimes with any element of hereditary authority, and moves even further in the popular direction by insisting that all governing powers must be derived directly or indirectly from the great body of the people, and all must serve either for a set term, after which they are subject to returning back to the body of the people, or be removable for misbehavior in office, through ordinary powers of dismissal or

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[32]Charles Beard, An Economic Interpretations of the Constitution (New York: Macmillan and Co., 1935); Richard K. Matthews, If Men Were Angels (Lawrence, Ks.: University Press of Kansas, 1995).

extraordinary means such as impeachment. According to Madison's definition of republic, political authority is thoroughly public in character--no one has any private or personal claim of any sort to it, and the people must ultimately appoint and be able to remove all their governors.

Madison's definition of republic is much less democratic, however, than the definition later proffered by his friend and colleague, Jefferson. "Were I to assign to this term republicanism a precise and definite idea, I would say, purely and simply, it means a government by its citizens, acting directly and personally; . . . the further the departure from direct and constant control by the citizens, the less has the government of the ingredient of republicanism."[33] Jefferson insists on direct and immediate involvement of the people, while Madison accepts indirect and ultimate derivation from the people. The two friends and political allies split over whether the substantive end of politics ("to secure these rights") or the processual means ("consent of the governed") had primacy. Madison was also more alive to the array of purposes a properly constructed political system must fulfill, and he saw that republican government could be constructed in such a way as to successfully fulfill that broad array of ends only on the basis of his somewhat laxer definition of republic. Jefferson's more strenuous definition would make impossible many of the devices Madison thought essential to constructing a free constitution on a republican basis. Jefferson was more like the Anti-Federalists. He feared the oppressive potentiality of power and he sought to keep it tightly checked by the people, whose original rights were both the source and the purpose of government. (cite Read).

Even with his relatively laxer definition of republic Madison well understood that his project of a free constitution on wholly republican grounds would be extremely difficult to achieve. As he thought about his problem he was led to formulate with greater comprehensiveness than the short-leash republicans ever did and with greater explicitness than Montesquieu what the operational qualities of an effective and legitimate political system must be. His best formulation of these qualities occurred in the extraordinary Federalist 37. In that

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[33]Jefferson to John Taylor, May 28, 1816 in Writings, 1392-1393.

essay Madison speaks of the difficulties the Constitutional Convention faced in trying to draft a constitution. The most fundamental of those difficulties stemmed from the facts that the qualities good governments must have are multiple and complex, and, he showed clearly, the arrangements which produce one quality tend to undermine the others. The requirements are not only complex, but somehow incompatible, or at least in tension with one another, and with republicanism. In Federalist 37 Madison identifies three different requirements of good government--energy, stability, and republican liberty. These are among the requisites of any government that can fulfill the tasks posed by political philosophy.

Madison is quite insistent that energy is "essential" to government. It is the capacity to act with decision and effectiveness. Having laws is not enough--the laws must be executed, and energy is the quality that facilitates "prompt and salutary execution of the laws." Without government, political philosophy says, rights are insecure. Government supplies not only the standing rules around which individuals structure their behavior, but the "teeth" that get people to follow those rules. If voluntary compliance were sufficient, as short-least republicans sometimes seemed to believe, then government itself would not be necessary. In emphasizing energy as a requisite of government, Madison was recognizing and carrying to a higher degree of explicitness an insight present in Montesquieu's treatment of the executive as a separate "power," deriving its legitimacy and strength from its royal character.

Madison also identifies stability as a requisite of good government. By stability, Madison means a high degree of continuity of the laws governing behavior. People do not respect laws that constantly change, and they cannot lead successful lives for themselves in an environment in which the legal structure is unstable.[34] Instability of law prevents people from planning for the future, and in the middle-run stultifies liberty and initiative, for people will not undertake long--term projects if there is no reasonable prospect that the environment will remain stable enough for them to see those projects through to reap their fruits.

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[34]Federalist 49; Madison to Jefferson, Feb. 4, 1790, Papers of James Madison, 13: 18-21.

The final criterion Madison identifies in Federalist 37 is republican liberty. Madison here refers to the ability of the people to keep government under control and checked--to prevent it from being a danger to them. Madison also referred to this requirement as "safety." This criterion is clearly a direct implicate of the three tasks political philosophy sets for political science, and the one that short-leash republicans most clearly appreciated.

These requirements of good governments are not only multiple and therefore complex, but they appear to be conflicting. Safety, Madison says, seems to require weak government, with weak powers, with many governors, with short terms of office, term limits, and other such devices to facilitate popular control and to hinder the opening of gaps between rulers and ruled. Energy, on the other hand, requires strong powers with few officers wielding power, while stability requires consistency of policy and therefore long terms of office, and perhaps an intermediate number of office-holders, because it seems that both large and very small bodies tend to be quite changeable.

The short-leash republicans focused more or less exclusively on only one of these requirements (safety), and in their proposals for political institutions built exclusively with that requirement in mind. They were too simplistic and Madison thought it no wonder that the political systems they had designed--the Articles of Confederation and the state governments--were not working well. Madison thus revised the accepted political science of the day by calling attention to the much greater range of qualities that governments must possess, and perhaps even more importantly, showing the conflicting character of those requirements. The incompatibilities among the various requirements were so severe as to raise questions about whether any government could possibly satisfy all the criteria posed by political philosophy; the Montesquieuean free constitution came the closest, but it did so only on the basis of mixing in non-republican elements. The hereditary monarch and the hereditary upper legislative house were essential to the achievement of two of the goals Madison emphasizes in Federalist 37, energy and stability. Without those non-republican elements Madison had to wonder how a

political structure could manage to combine the various qualities needed to achieve adequately strong and competent government.

The commitment to wholly republican systems also rendered questionable the ability of government to achieve the other tasks set by the principles of political philosophy. The difficulty can be stated in a number of different ways. On the one hand, there were the two sides of property, property as personal rights and property as external goods. To place political power in the hands of the "great body of the people" might seem a fairly reliable way to produce at least the political will to support and protect the personal rights that were universally shared by all. But it was not as likely to produce a will seeking to protect property in external goods, rights equally requiring respect and protection. Madison believed that the history of America in the short time since independence illustrated what the entire history of popular republics showed, that the rights of property were ill-served, with the result not only of the direct commission of injustices, but the production of intense struggle and factional disorder. The ultimate result in the course of history was frequently the loss of republican liberty and the discouragement of the exercise of the unequal faculties of individuals on which the flourishing of human communities ultimately depends.[35] In Montesquieu's model of a free constitution, the complex task of securing property (in the extended sense) was, once again, achieved via the admixture of non-popular, hereditary or self-selecting elements. The aristocratic upper house could be counted on to protect rights to property (in the narrow sense), as a complement to the democratic lower house, which would be solicitous of personal rights.

Madison's problem could be stated more generally as well. He was not concerned solely about the propertied, but about any minority in a majority rule system. As he insisted at the Constitutional Convention, divisions can occur on many grounds other than wealth and property interests. Regionalism and religion, for instance, are two such bases of division. "In all cases where a majority are united by a common interest or passion, the rights of the minority are in

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[35]Federalist 10.

danger."[36] Montesquieu's free constitution does not have entirely reliable means of securing the rights of minorities of these sorts, but the role of the monarch offers some promise of doing so. The monarch stands above the factional elements in society and therefore has a certain independence from them. The monarch has, moreover, an incentive to look with an impartial eye over the various interests and factions in the community and has some incentive to consider himself the neutral protector of the rights of all. The monarch, possessing a veto power in the legislature, has the capacity, both in terms of power and position, and some incentive to act the part of protector of the rights of minorities generally. The wholly republican system lacks any such "will independent of society."[37]

The short-leash republicans had no solution to this problem--indeed they were not really aware of it as a problem. The division they were most concerned about was between government and society, or between rulers and ruled. The danger they focused on was oppression of the latter by the former. The solution they favored was to keep rulers like the ruled, and controlled by the ruled. Two of Madison's most characteristic insights challenged the main elements of this short-leash approach. Madison insisted that their analysis of society and social dynamics was naively inadequate and ultimately dangerous. As he said at the convention in an analysis he would expand into his famous argument in Federalist 10: "All civilized societies would be divided into different sects, factions, and interests, as they happened to consist of rich and poor, debtors and creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district, or that district, the followers of this political leader or that political leader, the disciples of this religious sect or that religious sect."[38] In all his formulations of this

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[36]Madison, Speech in the Constitutional Convention, June 6, 1787. Reprinted in Mind, 101.

[37]See Federalist 51.

[38]Madison, Speech in Constitutional Convention, June 6, 1787. Reprinted in Mind, 101. Also see Madison, "Vices of the Political System of the U.S." in Mind, 89.

point, Madison emphasized its applicability to "civilized societies"; these are societies marked by (relatively) secure property holdings, the progressive development of arts and sciences, increase of population, and a general increase in the degree of division of labor and specialization present in the society. Civilized societies are anything but homogeneous in composition and interest. The short-leash theory ignored this aspect of civilization and dividedness within society to concentrate on the dividedness between society and governing authorities, proceeding as though society could be taken as one undifferentiated and homogenous mass over and against government. So far as they were aware of the possibilities of differentiation within society they sought to keep society small and relatively simple in order to minimize those divisions.

Madison considered the typical short-leash institutional responses to be wholly inadequate. The effort to prevent the emergence of social differentiation though engineered homogeneity would not work, and in any case it would require a suppression of the forces that produced differentiation--the free use of human faculties. Moreover, the typical short-leash republican prescription for the tight control of government by society exacerbates the problem; the ideal short-leash outcome has government reflecting and embodying exactly the array of forces in society with the result that if there is a majority with an interest in oppressing some minority that majority will face no barriers whatever to its enterprises. In his memorandum on "Vices of the Political System of the U.S." Madison pointed out, "In republican government the majority, however composed, ultimately give the law. "Whenever . . . an apparent interest or common passion unites a majority," he asks, "what is to restrain therefore unjust violations of the rights and interests of the minority, of individuals?"[39] He has little confidence in moral and religious self-restraint to inhibit the self-interested action of ruling majorities.[40] The short-leash

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[39]"Vices," 89.

[40]Ibid., 89-91.

approach can at best solve one part of the problem of oppression: majorities can protect themselves against minorities. But the short-leash approach could not alleviate the dangers of majority tyranny, which, it should be clear, is the chief danger in Madison's eyes precisely because this is a republican, that is, majority rule, system. As Madison once wrote to Jefferson: "wherever the real power in a government lies, there is the danger of oppression. In our governments the real power lies in the majority of 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." Madison understood how much he was overturning reigning opinion in America with this view: "This is a truth of great importance, but not yet sufficiently attended to. . . . Whenever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful and interested party than by a powerful and interested prince."[41]

So, the tasks imposed by the principles of political philosophy would be very difficult to accomplish on a wholly republican basis, and the approaches prevalent in eighteenth century America could not possibly succeed. Madison's greatness as a political scientist lay in his success at figuring out a solution to this set of apparently insoluble conundra. The general line of his solution was the exact opposite of the short-leash republicans: he sought to construct what we might call a "gappy republic," that is, a structure embodying, encouraging, and exploiting the very distancing of governors from governed that the short-leash model strove to avoid.

The role of gaps and of Madison's less stringent definition of republicanism are visible in his proposals for satisfying the first requisite of building a free constitution: a free constitution requires separate powers. Montesquieu had argued that it is not sufficient merely to have separate governing institutions: these must also derive from different constituencies or else they will not be truly independent. He gave the example of the republic of Venice, which had separate institutions, but all were selected by the same body and responsible to it. The selecting

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[41]Madison to Jefferson, Oct. 17, 1788, in Mind, 206-207.

body was able to exercise great control over the allegedly separate and independent institutions, thus overcoming informally but effectively the official or formal separation. Montesquieu had, of course, solved this problem via his recourse to the "mixed regime" model overlaid on the separation of powers.

The Montesquieuean solution was foreclosed to Madison, but he began his constitutional thinking in a very orthodoxly Montesquieuean manner: a free constitution requires separation of powers and thus one of the unshakeable pillars of Madison's political science was the need, even in a republic, to have separate legislative, executive, and judicial branches. This was a major break with the structure prevalent theretofore in the government of the union under the Articles of Confederation, which had but one branch, a legislature. To decree separate powers was easy enough but to make them genuinely separate was much more difficult under the constraint imposed by the all-republican rule. Madison's first answer was to attempt to derive the different powers so far as possible from different constituencies, or to make them responsible in different ways to the same constituency. Thus in his original planning for a new constitution, he would have the lower house of the legislature elected directly by the people, as the House of Commons was. As he said at the Constitutional Convention, he "considered the popular election of one branch of the national legislature as essential to every plan of free government."[42]

The way in which Madison's political science modified both the chief models of his day is visible in such a small detail as the composition of the lower house. In Britain, the model of the free constitution, the members of the Commons sat for no set term; Parliamentary elections were called instead by the king. This royal power, of course, was a tool the king used to extend his influence into the legislature, and thus was a weapon in overcoming the separation of powers. Madison instead projected a set term of office for representatives, far more in line with the

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[42]Madison, Speech in the Constitutional Convention, May 31, 1787; reprinted in Max Farrand, ed., The Records of the Federal Convention of 1787 (New Haven, Conn.: Yale University Press, 1937) I, 49.

prevalent arrangement in the short-leash model. Madison further republicanized the lower house by seeking a much shorter term of office than the maximum possible under the British system.

Relative to the Montesquieuean model Madison's plan was more republican. Relative to the short-leash model, however, it was much "gappier." Where he favored three year terms, the short-leash preference was for much shorter terms, in part to facilitate popular control over the legislature, and even more importantly to prevent legislators from coming to think of themselves as different and separate from their constituents. Thus the short-leash model favored one-year or in some cases even six months terms of office. A favorite motto of the day: "where annual elections end, there tyranny begins." To this short term was frequently added rotation. The purpose of this was much the same as the short terms--to prevent the emergence of gaps.

Where the short-leash model sought to foreclose gaps, Madison attempted to build them in. The three-year term he sought would indeed make the representatives different from the ordinary citizen in many ways, but these differences would be all to the good. "Instability, is one of the great vices of our republics, to be remedied. Three years will be necessary, in a government so extensive, for members to form any knowledge of the various interests of the states to which they do not belong. . . . One year will be almost consumed in preparing for and traveling to and from the seat of national business."[43] Madison hoped, furthermore, that the longer term and the possibility of indefinite reelectability would work a change in the psychological identifications and aims of representatives. One need, relating to the federal more than the republican character of the new constitution, was for representatives to identify with the government of the union rather than with that of the states from which they hailed. The fact that they could make careers in the union government could attach them to it and to the enterprise of making that government strong, effective, and able to resist the centrifugal forces applied constantly by the states. Madison, moreover, tried to show the short-leash republicans that their goal of maintaining popular (republican) control over government was facilitated, not opposed,

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[43] Ibid., June 12, 1787. (Farrand I, 214).

by the judicious use of gaps. For example, he favored the indefinite re-eligibility of representatives, which would indeed allow those who stood for office to think of themselves as professional politicians, seeking a career in public office. That would work beneficially, however, for it would give them both an opportunity and an incentive to attend to the views and the good of their constituents. The possibility of a career in Congress would make them more, not less responsive to the people in whose hands their future prospects lay.[44]

The upper house, an essential part of a free constitution, must be republican but cannot be drawn from or be responsible to the same constituency as the lower house, or else it will not be sufficiently independent in its action and operation. The original Madisonian solution, as embodied in the Virginia Plan, provided for election by the lower house, but the candidates for election would be nominated by the state legislatures and could not be members of the lower house, nor for that matter, hold any other office in either the state or the union governments. These provisions are attempts to make the upper house separate and independent of the lower house, but the election by the lower house itself shows how much the requirement of a completely republican system limits the options. Madison believed that the indirect election of the upper house was conformable to republican principle and that, strange to say, election by the lower house under the terms proposed would produce an upper house more independent of the lower house than would popular election. That independence could accrue only if the term of office were very long--Madison favored seven years; by the time a member of the upper house came up for reelection he would have been in office a long time without having to answer directly to his constituents (the lower house and the state legislators), and in that time, there would have been two elections to the lower house, (under the three year term comtemplated at the time) making likely a turnover in personnel such that the lower house would not well be able to impose any close control over members of the upper house. In some respects, selection by the

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[44]Cf. Resolution 4 of the Virginia Plan with the action of the convention on June 12. (Farrand, I, 20, 217).

states, as was ultimately provided for by the constitution, was better at making the upper house independent of the lower, but for reasons having to do with his attempts to curb the ability of the states to interfere with the general government, Madison did not at first favor this expedient. In any case, it is clear that Madison is relying here on gappiness to achieve separate and independent powers.

The free constitution must also conduce to competent governance. Madison stressed how multifarious and problematic the combination of qualities was that together added up to competence. Montesquieu had solved the problem, so far as it could be solved, with his overlay of a mixed regime model on the separation of powers. Madison attempted to mimic the effect of the mixed regime model by designing into the separation of powers scheme institutional features that would encourage the behavior the mixed regime model produced in its very different manner. The mixed regime model was, in its own way, a no-gap system, for it attempted to bring into government different elements of society that would operate in the government as they would on the basis of their pre-governmental social and personal qualities. Thus the upper house would be composed of aristocratic and wealthy men, members of old families of great standing in the community. The monarchy would be held by a member of the royal family, in the best case well-established, with a long history and the prospect of a long future. The king and his family would stand so far above the rest of society as to supply a certain neutrality and legitimacy to its actions.

Madison could rely on none of this. There could be no governance by "estates" and select families. The institutions themselves had to produce the behaviors required by the system. The ways in which this happens was the chief subject of the extensive discussions of each branch in The Federalist; I can only scratch the surface here. One of the greatest needs for competent governance, as Madison described those needs in Federalist 37, was for energy, coupled with stability and republican responsibility. Madison's first insight (probably taken from Montesquieu) was that the different institutions of the separation of powers scheme could be differently constructed to produce different institutional competencies. Energy requires unity

and a top-down mode of authority. The executive can be constructed in this way, although in the American context there were great barriers to doing so, the chief being the fear of monarchy and the suspicion that a unitary executive could be "the fetus of monarchy" as was often said at the constitutional convention. Stability has other requirements, which came to be met through the structure of the Senate, while the chief seat for meeting the requirement of republican liberty would be the House of Representatives. All of these efforts to construct institutions with differential modes of operation and specialized competencies depended on deploying the kind of gappiness the short-leash republicans abhorred. They distrusted concentrated power and they disliked long terms of office, so they debarred themselves from the outset from constructing institutions with the necessary qualities.

The free constitution required a way of keeping the powers separate. Office holders needed both the ability (sufficient powers) and the motives to resist encroachments by other branches. The former required defensive powers the branches could use to check encroachments by the others. Madison believed the greatest danger of encroachment derived from the legislature, a conclusion Montesquieu shared, but one which Madison saw to be much greater in a republic, where the legislature had the deepest and most immediate ties to the people, the ultimate source of all power. Madison then saw that the integrity of the free constitution depended on building in checks against the legislature above all. His preferred check was a Council of Revision, a body composed of the executive and some of the judges, which could exercise a veto power over the legislature. The two together would have both the strength and the separate competencies to exercise well the veto power. The Council of Revision, which the convention did not accept, violated several principles of short-leash republicanism. Most importantly it gave this very potent power to the two institutions of government most distant from the community, because of the indirect appointment of both and their long tenure in office, especially of the judges. It also violated the doctrinaire (and erroneous) interpretation of the doctrine of separation of powers held by many devotees of short-leash republicanism, for here was a clear case where the powers were being mixed in what appears anomalous ways--the

executive and judiciary sharing in the legislative power. Of course, that had already been the case in Montesquieu's classic formulation of separation of powers theory.

Madison also had to oppose the no-gap principles of short-leash republicanism in developing a way to supply the motives for maintaining the separation of powers. In direct opposition to the no-gap principles Madison famously said:

> The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments. . . . Ambition must be made to counteract ambition. The interest of the man, must be connected to the constitutional rights of the place.[45]

Rather than countering personal ambition and separate interest, Madison would indulge it and then use it to good effect. If the office-holders value their offices and find in them avenues for the satisfaction of their own ambitions and interests they will act to protect their offices against those who would diminish them. So officers of the general government will defend the union from encroachments by the states, Senators will defend against encroachments by the representatives, and the executive and judiciary will defend against encroachments by the legislature. This self-interested behavior, on its face so contrary to the short-leash demand for virtuous or purely public interested behavior, actually conduces more to the public benefit than cooler, less self-interested behavior would. Madison, in this regard like Machiavelli, shows that the less elevated but more reliable self-interested passions, if properly channeled, produce not only more reliable, but on the whole better results than behavior better motivated.

The most difficult problem Madison thought he faced was one that short-leash republicans thought they had most completely solved. If government operates in the no-gap manner, they thought, it might possibly not work wisely, but it would operate with a good will, that is, it would will the public good, for the will of the whole society would be expressed in it.

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[45]Federalist 51.

Madison, to the contrary, saw here the danger of injustice in addition to incompetence. As we have seen, he recognized that all societies, and especially modern "civilized," commercial societies are internally heterogeneous, with different interests marking different groups in society. Following Montesquieu again, he appreciated the paradox of political life: politics may benefit all, but it benefits some more than others and much of politics involves a struggle among competing groups for the differential benefits of social and political life.[46] So fierce can this struggle become that the genuine common good is frequently lost sight of and endangered because of it. Majorities, Madison insisted, can be equally as bent on unjustly taking advantage of others as any minority in society. Republican government, being government by majority, arms majorities--just or unjust--with power to transform their unbridled aims into law.

In a letter to George Washington on the eve of the Constitutional Convention Madison laid out the issue with his usual perspicacity and concision.

> The great desideratum, which has not yet been found for Republican Governments, seems to be some disinterested and dispassionate umpire in disputes between different passions and interests in the State. The majority who alone have the right of decision, have frequently an interest, real or supposed, in abusing it.[47]

The degree to which Madison's thinking on this as on so many issues was shaped by Montesquieu's earlier efforts to grapple with it is visible in his grasp of how the problem is soluble in non-republican regimes:

> In absolute monarchies the prince is sufficiently neutral toward his subjects, but frequently sacrifices their happiness to his ambition or his avarice. In small

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[46]Montequieu, Spirit I, 3; Federalist 10.

[47]Madison to George Washington, April 16, 1787, in Mind, 96.

> Republics, the sovereign will is sufficiently controuled from such a sacrifice of the entire society, but is not sufficiently neutral towards the parts composing it.[48]

The Montesquieuean solution Madison sees is the combination of the two pure forms--"a limited monarchy tempers the evils of an absolute one." The "limited monarchy," constructed like England, combines the kingly and the popular forms so that the king's neutrality counters the popular partiality, and popular control counters royal irresponsibility. The Montesquieu mixed regime can succeed as the republic by itself cannot.

Madison's most famous innovation, the idea of the extended republic, is his attempt to supply a wholly republican solution to this problem hitherto soluble only on non-republican grounds. The theory of the extended republic is not only the most famous, but the most misunderstood of all the elements of Madison's political science, as is visible in how he describes it in his memorandum on the "Vices" of politics in America: "As a limited monarchy tempers the evils of an absolute one; so an extensive Republic meliorates the administration of a small Republic." Just as the "limited monarchy" combines the absolute monarchy and the republic, so Madison seeks to combine the extended and the small republic.

Appreciating his analysis here requires familiarity with a proposal he was promoting assiduously before and at the convention. He sought to arm the general government with certain positive powers to carry out the rather limited but very important business entrusted to that government; he sought to include "over and above this positive power, a negative <u>in all cases whatsoever</u> on the legislative acts of the states, as heretofore exercised by the kingly prerogative."[49] He considered this extraordinary power to be "absolutely necessary," not only to protect the government of the union from state encroachments, but even more importantly to put some "controul on the internal vicissitudes of state policy, and the aggressions of interested

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[48]Madison, "Vices," in <u>Mind</u>, 91.

[49]Madison to Washington, April 16, 1787, in <u>Mind</u>, 96.

majorities on the rights of minorities and of individuals."[50] The constitutional scheme Madison projects mimics the Montesquieuean model by combining the Congress of the government of the union, playing the part of the monarch, but being itself a republican body, with the small republics of the states, playing the part of Parliament.

This proposal is premised on the assumption that most of the most significant governance that concerns the rights and interests of individuals and groups will be conducted in the states. The Congressional involvement is to embody monarchical neutrality and exercise the monarchical veto. The goal is neutrality or fair "umpiring," i.e., umpiring that pays attention to the true rights and interests of the parties involved, a practice not to be relied on from the partisans directly involved in the conflicts.

The obvious question, however, is why should Madison expect Congress, an elected majoritarian body, to be more neutral and fairer than the state legislatures? Madison has two answers, one simpler, the other a bit more complex. The simpler answer is this: the larger the unit, the more different interests are likely to exist within it and are likely to find representation in a republican legislature. Relative to the interests present in any given state legislature the number of interests present in Congress is likely to be much greater. An interest that makes up a majority faction within a state is unlikely to do so within Congress. The parties most present in any given state are likely to be a small part of Congress and therefore likely to be greatly outnumbered by Congressmen more or less neutral and uninvolved in the division of interests within the state. Thus the large republic of the union can reproduce the neutrality of the monarch and can (under Madison's proposed veto power) intervene in the states to prevent the dominance there of unjust and overbearing majorities.

The more complex mechanism involves the replacement of natural majorities by artificial or constructed majorities. In a small, relatively undifferentiated society there is a greater likelihood that there will exist a "natural majority," that is, a set (or sets) of interests that

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[50]Ibid.

naturally amount to a majority of the politically empowered population and thus of the republican legislature. In a larger, more heterogeneous society, it is much less likely that majorities will exist naturally; most interests will be distinct minorities. But governance requires majorities in the large as much as in the small republic; majorities will now have to be constructed or put together from the smaller packets of interested minorities.

In Federalist 51 Madison makes one of his most telling but also important claims: "In the extended republic of the United States, and among the great variety of interests, parties, and sects, which it embraces, a coalition of a majority of the whole society could seldom take place upon any other principles than those of justice and the general good." Notice that Madison is not looking to a stalemate system where no majorities can form, or to rule by minorities, as many of his interpreters believe, but rather to a process that almost by magic allows only good majorities to form. How can that be? Madison has in mind here the difference in character between natural and constructed majorities. Natural majorities have an immediate interest in common and are able to translate it, more or less unmodified, into law. Where there is no natural majority, however, the pre-existing interests must undergo a process of transformation before they can become a majority. Common ground must be found on which the different interests can coalesce. That requires transformation and modification of the original interests in the direction of finding broader kinds of commonality. The process of majority construction leads to a search for common ground that approaches something like a common good and a more neutral stance than any of the parties began with. There are, moreover, moderating effects imposed by the process of coalition formation in a system of fragmented interests. Coalition forming is not likely to be a once and for all matter; majorities are likely to be fluid and changing. Today's coalition partner is very possibly tomorrow's coalition opposition--and vice versa. Parties and interests come to view each other as long-run potential majority partners and recognize their mutual interest in treating each other moderately and fairly. Madison recognized that he overstated the case when he said that the majorities would seek only justice and the common good, but he had a serious point beneath his hyperbole. The process pushes parties toward

justice and the common good in a way that majority rule in small republics does not. The large republic is thus likely to have better majorities and the Congressional power to negative state laws provides a rough equivalent to the monarch's neutrality and fairness on a completely republican basis. All this is possible, once again, only on the basis of the "gappiness" Madison builds into his institutional science.

Madison was not able to convince his fellow convention delegates to adopt several of the most central parts of his plan; the Council of Revision and the Congressional negative over state laws were particularly irksome losses and led to his skepticism over the likely longevity of the constitution the convention proposed. The loss of these features, together with an over emphasis on The Federalist, has, for the most part, prevented us from grasping the full scope or character of the Madisonian political science.

Notes