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* * * *Notes and Suggestions* * * *

The Federal Convention:
Madison and Yates

ARNOLD A. ROGOW

IT may be said, with only slight exaggeration, that it was something like a slip of the pen that cost Robert Yates everlasting fame. Suppose, for example, that Yates, delegate from New York to the Federal Convention in 1787, had taken copious and detailed instead of rough notes on the proceedings¹ and, further, that instead of quitting the Convention in early July he had remained until the closing session in September. Yates, of course, has a claim on history as an opponent of the Constitution; but it is a fair speculation that had his account of the Convention been more complete, his place in history would have been more secure. Unfortunately, the Yates *Secret Debates* did less than justice to the thought and language of the delegates. The representative from New York tended to squeeze or compress meanings, and frequently to distort them. And, as noted, his account ends when the Convention is barely six weeks old. For these and other reasons, histories of the Convention have largely been based on Madison's notes.² Yet it is possible that the *Secret Debates* deserve more attention than they have received. There are some grounds for belief, at any rate, that the Yates account is, or should be, an important source of information on the Convention and, in particular, on the philosophy of Madison at the time of the Convention.

It should be noted, to begin with, that Madison himself had a considerable, if concealed, respect for the *Secret Debates*. When the Yates account appeared in 1821, presenting Madison in the role of nationalist or "consolidationist" at the Convention,³ Madison was quick to reject the account as a "very er-

¹ The Yates notes were published as the *Secret Proceedings and Debates of the Convention, Assembled at Philadelphia, in the Year 1787, For the Purpose of Forming the Constitution of the United States of America. From Notes Taken by the Late Robert Yates, Esquire, Chief Justice of New York, and Copied by John Lansing, Jun. Esquire, Late Chancellor of That State, Members of That Convention* (Albany, 1821). The Yates account also appears in Max Farrand, ed., *The Records of the Federal Convention of 1787* (3 vols., New Haven, 1911); but the references in this article to the Yates notes, hereafter cited as the *Secret Debates*, are taken from the second edition, published at Richmond, Virginia, in 1839.

² Madison's notes, first published in 1840, are reprinted in Farrand, *op. cit.*

³ A somewhat distorted version of the *Secret Debates* had appeared, in 1808, in *A Letter to the Electors of President and Vice-President of the United States*, by a "Citizen of New York" (E. C. E. Genet). It is reprinted in Farrand, III, 410-16.

roneous edition of the matter.”⁴ In a letter to J. G. Jackson, December 27, 1821, he wrote: “. . . I cannot doubt that the prejudices of the author guided his pen, and that he has committed egregious errors at least, in relation to others as well as to myself.”⁵ And in an introduction to his own notes which appeared in 1840 he thought it “proper to remark, that with a very few exceptions, the speeches were neither furnished, nor revised, nor sanctioned, by the speaker, but written out from my notes, aided by the freshness of my recollections.”⁶ The “exceptions,” he made clear, did not include reliance on Yates. But, as Farrand observed, Madison copied from Yates on over fifty occasions, adding to his own notes material he found in Yates. Generally, Farrand observed, the additions “were a number of speeches or remarks, including several of his own, that Madison failed to note in any form, but later thought worthy of inclusion. And there were also new ideas or shades of thought which Yates had noticed but which Madison failed to catch.”⁷

The additions, however, did not materially alter Madison’s account of the Convention, or bring it into agreement with Yates’s *Secret Debates*. A comparison of the two reports reveals important differences, particularly in the respective accounts of the speeches of Hamilton and Madison. Hamilton, of course, was an outspoken admirer of the British system of government, and, equally, there can be little question that he wanted political power to reside with the property interest. But it is worth noting that he is somewhat more republican in Madison’s notes than he is in Yates’s account. Compare, for example, their treatments of one of his Convention speeches:

Madison’s notes
June 18, 1787

Hamilton. . . . This progress of the public mind led him to anticipate the time, when others as well as himself would join in the praise bestowed by

Yates’s *Secret Debates*
June 18, 1787

Hamilton. . . . I believe the British government forms the best model the world ever produced, and such has been its progress in the minds of the many, that

⁴ Quoted in Farrand, I, xviii.

⁵ *Ibid.*, III, 449. Yates’s “prejudices,” apparently, were not entirely in evidence at the Convention. William Pierce, in his “Character Sketches of Delegates to the Federal Convention,” observed of Yates: “Some of his enemies say that he is an anti-federal man, but I discovered no such disposition in him.” Farrand, III, 90.

⁶ “Introduction to the Debates in the Convention,” *Journal of the Federal Convention* (reprinted from the edition of 1840, Chicago, 1898), p. 50.

⁷ Farrand, I, xviii. Madison’s hostility to the Yates notes was chiefly occasioned by the Yates account of Madison’s own speeches in the Convention. As Irving Brant has observed, in 1821 “publication of the Yates notes revealed Madison’s long-buried nationalism and hostility to state sovereignty. . . . But by 1821 he had become an oracle of strict construction and a bulwark of state sovereignty. His contrary position, before and during the writing of the Constitution, was unsuspected. He could not admit the validity of what Yates had written without a shattering blow to his own prestige and an implied verification of the Marshall-Hamilton conception of national power. He combated it, therefore, by countercharge, avoidance and implied denial . . . not actually denying his previous hostility to the states, but toning it down far more than Yates had sharpened it.” Brant, *James Madison: Father of the Constitution* (New York, 1950), p. 21.

Mr. Neckar on the British Constitution, namely, that it is the only Govt. in the world "which unites public strength with individual security."—In every community where industry is encouraged, there will be a division of it into the few & the many. Hence separate interests will arise. There will be debtors & Creditors &c. Give all power to the many, they will oppress the few. Give all power to the few they will oppress the many. Both therefore ought to have power, that each may defend itself agst. the other. To the want of this check we owe our paper money—instalment laws &c. To the proper adjustment of it the British owe the excellence of their Constitution. Their house of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest by means of their property, in being faithful to the National interest, they form a permanent barrier agst. every pernicious innovation, whether attempted on the part of the Crown or of the Commons. [Farrand, I, 288–89.]

this truth gradually gains ground. This government has for its object public strength and individual security. It is said with us to be unattainable. If it was once formed it would maintain itself. All communities divide themselves into the few and the many. The first are the rich and well born, the other the mass of the people. The voice of the people has been said to be the voice of God; and, however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give, therefore, to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second, and, as they cannot receive any advantage by a change, they therefore will ever maintain good government. Can a democratic assembly, who annually revolve in the mass of the people, be supposed steadily to pursue the public good? Nothing but a permanent body can check the imprudence of democracy. Their turbulent and uncontrolling disposition requires checks. . . . It is admitted, that you cannot have a good executive upon a democratic plan. See the excellency of the British executive. He is placed above temptation. He can have no distinct interests from the public welfare. Nothing short of such an executive can be efficient. [Yates, pp. 144–45.]

According to Madison, Hamilton, in effect, is insistent that each of the two major interests in society have power to check the other, although he is more concerned that the propertied class, here as in Britain, "form a permanent barrier agst. every pernicious innovation." In the Yates account, however, the flavor of Hamilton's opinion is unmistakably Hobbesian, and only the propertied class is to have a "distinct, permanent share in the government." Yates, sharply opposed to Hamilton, was throughout inclined to exaggerate Hamilton's anti-Republican sentiments, but it is undeniable that Hamilton's own notes for his speech are more in keeping with Yates than with Madison. To be sure, Hamilton in his notes observes that the tendency of minority government is to "tyrannize over the many" and the tendency of

majority government is to “tyrannize over the few,” and that, therefore, government “ought to be in the hands of both.” But there follows a long listing of reasons why, in fact, effective minority rule is to be preferred. The power of the aristocracy, says Hamilton, “should be permanent . . . so circumstanced that they can have no interest in a change. . . . There ought to be a principle in government capable of resisting the popular current. . . . The principle chiefly intended to be established is this—that there must be a permanent *will*.”⁸ In short, Yates apparently got the significance of the word “chiefly” in Hamilton’s remarks; Madison apparently did not.

But the contrast in their respective treatments of Hamilton’s speeches, while important, is less interesting than a comparison of Madison’s self-portrait with Yates’s picture of the “Father of the Constitution.” Madison’s speeches as reported by himself are subdued and restrained; he emerges as a cautious, hesitant, even compromising supporter of the Virginia Plan. On June 5, reports Madison of himself, he “disliked the election of the Judges by the Legislature . . . was not satisfied with referring the appointment to the Executive . . . rather inclined to give it to the Senatorial branch. . . .”⁹

For Yates this tentative mood simply will not do. Madison, he writes, “opposed the motion, and inclined to think, that the executive ought by no means to make the appointments, but rather that branch of the legislature called the senatorial; and moves, that the words ‘of the appointment of the legislature,’ be expunged.”¹⁰ Three days later, on June 8, according to Yates, Madison declared, “It is impossible that the articles of confederation can be amended; they are too tottering to be invigorated; nothing but the present system, or something like it, can restore the peace and harmony of the country.”¹¹ These remarks appear nowhere in Madison’s account. Similarly unreported by Madison is a statement attributed to him by Yates on June 22: “Our national government must operate for the good of the whole, and the people must have a general interest in its support; but if you make its legislators subject to, and at the mercy of, the State governments, you ruin the fabric. . . .”¹²

Even where Madison’s remarks are treated by both, and at length, the differences in shading and emphasis are hardly less striking. As the following excerpts show, Yates places Madison in the Convention much closer to Hamilton than Madison places himself.

⁸ Hamilton’s notes appear in Farrand, I, 304–11.

⁹ *Ibid.*, I, 120.

¹⁰ Yates, *Secret Debates*, p. 109.

¹¹ *Ibid.*, p. 116.

¹² *Ibid.*, p. 163.

Madison's notes

June 26, 1787

Madison. . . . In all civilized Countries the people fall into different classes havg. a real or supposed difference of interests. There will be creditors & debtors, farmers, merchts. & manufacturers. There will be particularly the distinction of rich & poor. . . . In framing a system which we wish to last for ages, we shd. not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, & secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this Country, but symptoms of a leveling spirit, as we have understood, have sufficiently appeared in a certain quarters to give notice of the future danger. How is this danger to be guarded agst. on republican principles? How is the danger in all cases of interested co-alitions to oppress the minority to be guarded agst.? Among other means by the establishment of a body in the Govt. sufficiently respectable for its wisdom & virtue, to aid on such emergencies, the preponderance of justice by throwing its weight into that scale. . . . [Farrand, I, 422-23.]

Yates's *Secret Debates*

June 26, 1787

Madison. . . . in all civilized countries, the interest of the community will be divided. There will be debtors and creditors, and an unequal possession of property, and hence arise different views and different objects in government. . . . The government we mean to erect is intended to last for ages. The landed interest, at present, is prevalent; but, in process of time, when we approximate to the states and kingdoms of Europe; when the number of landholders shall be comparatively small, through the various means of trade and manufactures, will not the landed interest be over-balanced in future elections, and unless wisely provided against, what will become of your government. In England, at this day, if elections were open to all classes of people, the property of the landed proprietors would be insecure. An agrarian law would soon take place. If these observations be just, our government ought to secure the permanent interests of the country against innovation. Land-holders ought to have a share in the government, to support these invaluable interests, and to balance and check the other. They ought to be so constituted as to protect the minority of the opulent against the majority. The Senate, therefore, ought to be this body; and to answer these purposes, they ought to have permanency and stability. . . . [Yates, pp. 182-83.]

In the Yates account, in other words, Madison is essentially echoing Hamilton's appeal of June 18 that the power of the aristocracy "be permanent . . . capable of resisting the popular current. . . ." Madison's own notes, on the other hand, while they show him cognizant of the future danger from a landless proletariat, suggest only a solution "on republican principles." In both accounts the Senate, of course, is to represent "the preponderance of justice," but the conception of *Realpolitik* underlying Madison's position is more forcefully stated in the Yates account.

It has been noted that Madison was sharply critical of the Yates *Secret*

Debates in general, but his most determined attempt to discredit Yates was occasioned by Yates's account of one of his speeches of June 29. Although, as Farrand observes, Madison incorporated a portion of the account when he revised his own notes, he accused Yates of a number of "self-condemned" errors. "Who can believe," he wrote N. P. Trist in December, 1831, "that so crude and untenable a statement could have been made on the floor of the Convention as 'that the *several States* were political Societies, *varying* from the *lowest Corporations*, to the *highest sovereigns*' or 'that the States had vested *all the essential rights* of Government in the *old Congress*.'"¹³ Yates, however, hardly deserved such censure, for in point of fact both statements are misquotations, not in Yates but *of* Yates. As the following excerpts show, Madison altered the Yates account, thereby exaggerating the conflict between the Yates report and his own notes.

Madison's notes
June 29, 1787

Madison . . . thought too much stress was laid on the rank of the States¹⁴ as political societies. There was a gradation, he observed from the smallest corporation, with the most limited powers, to the largest empire with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the States as now confederated; (their laws in relation to the paramount law of the Confederacy were analogous to that of bye laws to the supreme law, within a State.)¹⁵ Under the proposed Govt. the (powers of the States)¹⁶ will be much further reduced. According to the views of every member, the Genl. Govt. will have powers far beyond those exercised by the British Parliament when the States were part of the British Empire. . . . [Farrand, I, 463-64.]

Yates's *Secret Debates*
June 29, 1787

Madison. . . Some contend, that States are sovereign, when, in fact, they are only political societies. There is a gradation of power in all societies, from the lowest corporation to the highest sovereign. The States never possessed the essential rights of sovereignty. These were always vested in Congress. Their voting as States, in Congress, is no evidence of sovereignty. . . . The States, at present, are only great corporations, having the power of making by-laws, and these are effectual only if they are not contradictory to the general confederation. The States ought to be placed under the control of the general government; at least as much so as they formerly were under the King and British Parliament. . . . [Yates, pp. 199-200.]

It is curious, indeed, that Madison, in his letter to Trist, should have altered "essential rights of sovereignty" in Yates to "all the *essential rights* of Government." Perhaps he was quoting Yates from memory, but the substitu-

¹³ Farrand, III, 517.

¹⁴ According to Brant, in revising his notes Madison crossed out the word "equal" before "rank of the States." Brant, p. 86.

¹⁵ Farrand observes: "Substance taken from Yates," I, 464.

¹⁶ Originally "their character" in Madison's notes. Brant concludes that the original version contained "practically everything Yates ascribed to Madison . . . except the remark about by-laws." Brant, p. 86.

tion was of crucial importance. In the corrected, and original, form, the statement in Yates can be reconciled with Madison's own account of the limitations on the sovereignty of the states within the Confederation, and, in particular, his attempt to equate state laws in the Confederation to "bye laws . . . within a State." But by misquoting the Yates account of his speech, to the effect that Congress had possessed essential rights of *government* as distinct from an implied sovereignty, which was manifestly not true, Madison was able to discredit the Yates report.

Two years later, in a letter to W. C. Rives, Madison again commented on the Yates report of his speech of June 29, 1787. On this occasion, however, he correctly quoted the Yates account, and went some distance toward agreement with it. It was on Yates's authority alone, he wrote Rives, "that J. M. is charged with having said 'that the States never possessed the essential *rights of sovereignty*; that these were always vested *in Congress*.'"¹⁷ Yates had misunderstood him, he cautioned Rives, but

It is quite possible that J. M. might have remarked that certain powers attributes of sovereignty had been vested in Congs; for that was true as to the powers of war, peace, treaties, &c. But that he should have held the language ascribed to him in the notes of Mr. Yates, is so far from being credible, that it suggests a distrust of their correctness in other cases where a strong presumptive evidence is opposed to it.

Again, J. M. is made to say "that the States were only great political corporations having the power of making by-laws, and these are effectual only if they were not contradictory to the general confederation."

Without admitting the correctness of this statement in the sense it seems meant to convey, it may be observed that according to the *theory* of the old confederation, the laws of the States contradictory thereto would be ineffectual. That they were not so in *practice* is certain. . . .¹⁸

But, again, the apparent attempt to correct Yates somewhat distorts Yates's account. For no one at the Convention, least of all Madison, argued that state laws, in practice, *were* ineffectual. Nor can it be believed that Yates was somehow confused as to Madison's position. In the Yates account Madison is engaged in an almost continuous examination of the weaknesses of the Confederation, and especially its inability to nullify "contradictory" state legislation.

Indeed, the notes of both Madison and Yates present Madison as a strong supporter of national supremacy. To be sure, in Madison's notes the national supremacy argument is linked to the interests of the smaller states, but an attempt to link the two was, after all, an imperative of Convention politics. At any rate, there can be little doubt that Madison thought in terms of "a

¹⁷ Farrand, III, 521.

¹⁸ *Ibid.*, III, 522.

perfect incorporation” of the states under a national government. “In a word,” he told the delegates on June 28,

the two extremes before us are a perfect separation & a perfect incorporation, of the 13 States. In the first case they would be independent nations subject to no law, but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case the smaller states would have everything to fear from the larger. In the last they would have nothing to fear. The true policy of the small States therefore lies in promoting those principles & that form of Govt. which will most approximate the States to the condition of Counties. . . .¹⁹

It is also worth noting that Madison originally favored granting to the President or Congress a veto power over state laws “*in all cases whatsoever*,”²⁰ not merely in order to maintain the purity of the Constitution, but to prevent, in his own words, “a constant tendency in the States to encroach on the federal authority; to violate national Treaties, to infringe the rights & interests of each other; to oppress the weaker party within their respective jurisdictions.”²¹

In the Yates account, of course, the complete rationale underlying Madison’s position is often omitted; stripped of their nuances and shadings, his speeches are uncompromisingly nationalist. Similarly, Yates’s rough transcripts give the impression that Madison’s general political philosophy was rather closely related to Hamilton’s. If, on the other hand, Madison’s extensive notes are credited, Madison was more concerned with the preservation of the states, and less Hamiltonian in general than Yates suggests. The question, then, is: how important is the Yates *Secret Debates* in evaluating Madison’s role in the Convention during the period that Yates was in attendance?

There is considerable corroborative evidence to support the Yates account of Madison’s nationalism in 1787. To begin with, it should be noted that Yates presumably was able to make notes on Madison’s speeches while Madison was speaking. Madison, we can assume, filled in his own notes only after the Convention concluded its daily sessions; he could hardly have had time, in the Convention, to write out his own speeches and those of the speakers who followed him. His reports of his own remarks, in other words, were probably included in his notes only after some delay, and after his speeches had been discussed, debated, or criticized. It is at least possible that

¹⁹ *Ibid.*, I, 449.

²⁰ Letter to Thomas Jefferson, Mar. 19, 1787, *Letters and Other Writings of James Madison*, published by order of Congress (Philadelphia, 1865), I, 285. “The effects of this provision,” Madison wrote, “would be not only to guard the national rights and interests against invasion, but also to restrain the States from thwarting and molesting each other; and even from oppressing the minority within themselves by paper money and other unrighteous measures which favor the interest of the majority.”

²¹ Farrand, I, 164.

Madison's report of some of his speeches, particularly those which were extemporaneous, was affected by the ensuing discussion or the effect of it on his own thinking. Yates, by contrast—although we cannot be certain of this—may have transcribed Madison's remarks as given. One thing is certain: Yates was remarkably silent in the Convention and apparently did little else but take notes on the debates.

But the most substantial support for the Yates account comes not from the Convention but from Madison's own writings apart from his Convention notes. The Yates account of Madison as a strong supporter of national supremacy is essentially consistent with Madison's essay *Vices of the Political System of the United States*, which was written in April, 1787. The principal "vices," Madison made clear, were the "failures," "encroachments," "violations," and "trespasses" of the states; and he was in agreement with Hamilton in noting that the Articles of Confederation had never received "ratification by the people."²² Nor was he satisfied that the Convention had gone far enough in the direction of national supremacy. The "Father of the Constitution," his letters make clear, was hardly a proud parent. The Constitution, he wrote Jefferson on September 6, 1787, "will neither effectually answer its national object, nor prevent the local mischiefs which everywhere excite disgusts against the State Governments."²³ A year later he was no more enthusiastic. "I agreed to the Constitution," he observed to Philip Mazzei, October 8, 1788, "because I thought it safe to the liberties of the people, and the best that could be obtained from the jarring interests of States, and the miscellaneous opinions of Politicians; and because experience has proved that the real danger to America & liberty lies in the defect of *energy & stability* in the present establishments of the United States."²⁴

There is little evidence, however, that either before or during the Convention Madison favored the obliteration of the states in what was then termed a "consolidated" government. There were, to be sure, a few delegates at Philadelphia who demanded the outright destruction of the states as governmental units, but in Madison's view the states were to play an important, although subsidiary role in the new national system. According to the Virginia Plan, which Madison undoubtedly drafted, the states were not only to be guaranteed a republican form of government and territorial integrity but they were also to nominate, through their legislatures, members of the upper and more important house of the national legislature. The term "consolidate," Madison pointed out in 1824, had not meant in the Convention

²² *Letters and Other Writings of James Madison*, I, 320–28.

²³ *Ibid.*, I, 338.

²⁴ *Writings of James Madison*, ed. Gaillard Hunt (New York, 1900–10), II, 67.

“destruction of the States,” or the substitution of monarchical for republican government. “Consolidate,” Madison wrote Henry Lee in June, 1824, meant the need “to give strength and solidity to the union of the States,”²⁵ through a strengthening of the authority of the central government.

The term “national,” on the other hand, had a somewhat more extensive meaning in 1787 than the one Madison ascribed to it after publication of the Yates notes. The expression “National,” Madison observed to Thomas Cooper in December, 1826, “as contradistinguished from the term ‘federal,’ . . . was not meant to express the *extent* of power, but the *mode of its operation*, which was to be not like the power of the old Confederation operating on States; but like that of ordinary Governments operating on individuals. . . .”²⁶ “National” in 1787 meant that, of course, but it also meant something more. It was used to signify a central government with a far greater “extent of power” than the Confederation government had enjoyed in practice, and about which there was some doubt it enjoyed in theory.²⁷ It referred to a government that was not only constitutionally superior to the states in the vital matters of sovereignty and jurisdiction, but a government that was able to maintain its sovereign position *over* the states.²⁸ In the context of the state rights controversy, Madison in 1826 had good reason to modify his earlier nationalism; 1826, after all, was more than halfway between the Constitutional Convention and the Civil War. But taking all the evidence into account, it is a fair conclusion that Madison’s nationalism in 1787 was more accurately reported in the Yates notes than it was in his own notes and subsequent writings.

Similarly, although Yates exaggerated Madison’s conservatism in the Convention, there is evidence that the *Secret Debates* are important in evaluating Madison’s general political philosophy in 1787. To begin with, Madison’s analysis, as distinct from his solution, of the basic problem in 1787, was not dissimilar, in certain respects, to Hamilton’s diagnosis. “Representative appointments,” he noted in the *Vices*, in a statement with which Hamilton would not have disagreed, “are sought from 3 motives: 1. Ambition. 2. Personal interest. 3. Public good. Unhappily, the two first are proved by experience to be most prevalent.”²⁹ Much has been made of Madison’s interpretation of “faction” set forth in the *Federalist* No. 10. There, he observed, factions may base themselves on different opinions concerning religion, govern-

²⁵ Letter to Henry Lee, June 25, 1824, in Farrand, III, 464.

²⁶ Letter to Thomas Cooper, Dec. 26, 1826, in *ibid.*, III, 474-75.

²⁷ See in particular Madison’s speech of June 29, 1787, in *ibid.*, I, 463-64.

²⁸ “State sovereignty had virtually no place in the scheme of government Madison outlined to Washington, Randolph and Jefferson on the eve of the Constitutional Convention. The state governments were to be regarded as ‘subordinately useful’ local authorities subject to ‘a due supremacy of the national legislature.’” Brant, p. 13.

²⁹ *Letters and Other Writings of James Madison*, I, 325.

ment, "and many other points. . . . But the most common and durable source of factions, has been the various and unequal distribution of property."³⁰ On the other hand, the attitude expressed in a letter to Jefferson, October 24, 1787, is Hamiltonian in the sense that, like Hamilton, Madison saw property as the only fundamental or "natural" source of social cleavage. "In all civilized societies," he suggested to Jefferson,

distinctions are various and unavoidable. A distinction of property results from that very protection which a free Government gives to unequal faculties of acquiring it. There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest. These classes may again be subdivided according to the different productions of different situations and soils, and according to different branches of commerce and manufactures. In addition to these natural distinctions, artificial ones will be founded on accidental differences in political, religious, or other opinions, or an attachment to the persons of leading individuals.³¹

Madison's analysis of "natural distinctions" in society led him to develop a conception of majority rule which was rather more qualified than Jefferson's, and he went further than Jefferson in demanding safeguards. Whereas Jefferson feared the tyranny of government, and believed that it was the natural tendency of government to encroach on majority rights and liberties, Madison was more concerned with the problem of tyranny *through* government as a result of majority power. Indeed, he clearly anticipated the modern conservative analysis of the welfare state in arguing, in 1788, that "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."³² Although he was sympathetic to Jefferson's view, based on observations of "abuses of power issuing from a very different quarter," he nevertheless insisted that he was stating "a truth of great importance, but not yet sufficiently attended to."

Majority power was to be qualified by adopting, in Madison's words, a "middle way" with regard to the suffrage. Commenting on Jefferson's proposed constitution for Virginia, which gave the suffrage to "all free male citizens" with one year's residence in the state, Madison suggested that a

³⁰ John C. Hamilton, ed., *The Federalist* (Philadelphia, 1864), p. 106.

³¹ *Letters and Other Writings of James Madison*, I, 351.

³² *Ibid.*, I, 425. "There is no maxim, in my opinion," he wrote James Monroe, October 5, 1786, "which is more liable to be misapplied, and which, therefore, needs more elucidation, than the current one, that the interest of the majority is the political standard of right and wrong. Taking the word 'interest' as synonymous with 'ultimate happiness,' in which sense it is qualified with every necessary moral ingredient, the proposition is no doubt true. But taking it in the popular sense, as referring to the immediate augmentation of property and wealth, nothing can be more false. In the latter sense . . . it is only re-establishing, under another name and a more specious form, force as a measure of right. . . ." *Ibid.*, I, 250-51.

“freehold or equivalent of a certain value be annexed to the right of voting for Senators, and the right left more at large in the election of the other House.”³³ To extend the suffrage to all citizens, Madison wrote Caleb Wallace in 1785, “or even to all who possess a pittance may throw too much power into hands which will either abuse it themselves or sell it to the rich who will abuse it.”³⁴ The “middle way,” he noted, would secure the two principal objects of government: personal rights and property rights. It might “offend the sense of equality,” but he saw “no reason why the rights of property which chiefly bears the burden of Government & is so much an object of legislation should not be respected as well as personal rights in the choice of rulers.”

In general, Madison placed greater emphasis than Jefferson on authority and property rights, and less emphasis on majority liberty. Unlike Jefferson, he did not believe that invariably “power tends to corrupt”; too much power in government could result from “abuses of liberty,” and in 1788 the danger was from an insufficiency of power. “It has been remarked,” he confided to Jefferson in a letter of October 17, 1788,

that there is a tendency in *all* Governments to an augmentation of power at the expense of liberty. But the remark, as usually understood, does not appear to me well founded. Power, when it has attained a certain degree of energy and independence, goes on generally to further degrees. But when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power. With this explanation the remark may be true; and in the latter sense only it is, in my opinion, applicable to the existing Governments in America.³⁵

Placing the emphasis elsewhere, Madison differed with Jefferson and other liberal critics of the Constitution on the addition of a bill of rights. “I never thought the omission,” he wrote Jefferson in the same letter, “a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others.”³⁶ He now favored a bill of rights, he continued, because “it might be of use, and, if properly executed, could not be of disservice.” Clearly, his attitude toward a bill of rights was casual and even indifferent.

The evidence, in short, suggests that the Yates notes merit careful consideration in appraising Madison’s position at the time of the Convention. The Yates account and Madison’s own writings of the period tend to demonstrate that Madison analyzed the pre- and post-Convention scene in much

³³ “Remarks on Mr. Jefferson’s ‘Draught of a Constitution for Virginia,’ sent from New York to Mr. John Brown, Kentucky, October 1788.” *Ibid.*, I, 187.

³⁴ *Writings of James Madison*, ed. Hunt, II, 171–72.

³⁵ *Letters and Other Writings of James Madison*, I, 426.

³⁶ *Ibid.*, I, 424.

the same way as Hamilton; that both were supporters of national supremacy; and that both were disappointed that the Constitution, in Madison's words, did not "effectually answer its national object." They were also agreed on the primacy of economic divisions in society.

Beyond these points there was disagreement; it is not correct to observe that there was no difference between the two men "in fundamental principles of government."³⁷ It is quite clear that Yates exaggerated the Hamiltonian elements in Madison's Convention speeches if, indeed, he did not sharpen Hamilton's own critique of representative government. There is no evidence, for example, that Madison ever supported the major proposals in Hamilton's plan of government, nor was he in entire accord with the philosophy that had produced it. Although he distrusted majority power, he was much less willing than Hamilton to entrust government to a minority of the "rich and well-born." In general, the New Yorker demanded weight in government and was willing to achieve it at the expense of balance; Madison, it is clear, insisted on both.

But if Madison was to the "left" of Hamilton in certain respects, he was, in the early period, to the "right" of Jefferson in general outlook. The "Jeffersonian view," Adrienne Koch has succinctly commented,

placed greater confidence than the Madisonian in the people themselves. . . . Jefferson located the center of tyrannical infection in centralized power. Madison, on the contrary, located the center of tyrannical infection in the undisciplined and overbearing impulses of local majorities to trample on private rights (and property rights) of minorities.³⁸

He was therefore more conservative than Jefferson in working out political equations for authority and liberty, and it was the former he chose to stress in 1787-1788. He did not, however, neglect the other side of the equation, and it is beyond dispute that he rapidly absorbed democratic views after the adoption of the Constitution. Needless to say, in 1787 democracy and republicanism did not go together, but it is important to note that Madison's republicanism was a seedbed for a future democracy. Indeed, the successful joining of democracy and republican government in the nineteenth century owes much to Madison's contribution at Philadelphia and subsequent career. The Yates notes and other documents are important in providing us with an understanding of Madison's position in 1787, but they should not confuse us as to his achievement.

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³⁷ Charles A. Beard, *Economic Origins of Jeffersonian Democracy* (New York, 1949), p. 51.

³⁸ Adrienne Koch, *Jefferson and Madison: The Great Collaboration* (New York, 1950), pp. 43-44.