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“OUR COMPLICATED SYSTEM”

James Madison on Power and Liberty

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It has been remarked 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. . . . It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power, and that the line which divides the extremes should be so inaccurately drawn by experience.

—Madison, letter to Jefferson,
October 17, 1788

How is it possible to make government *more powerful* without making those subject to its authority *less free*? That was one of the challenges Madison faced as he prepared for the Constitutional Convention (and faced again in drafting the Bill of Rights and in opposing Hamilton’s policies in the 1790s). “According to the views of every member, the General Government will have powers far beyond those exercised by the British Parliament when the States were part of the British Empire,” Madison observed on June 29 at the Constitutional Convention.¹ How could any government, even one Republican in form, be other than oppressive if it is to be more powerful than the British Parliament had been with respect to the colonies? Madison must be able to argue, against the grain of much political thought of the time,² that more governmental power does not necessarily mean less liberty—that they are not simply opposites to be balanced.

My purpose in this essay is to explore the complicated relation between liberty and power in Madison’s writings, especially in the crucial period

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between 1787 and 1791. Within a relatively short span of time Madison seems to change from an extreme advocate of centralized power (1787) to an outraged critic of centralized power in its Hamiltonian form (1791). Before and during the Philadelphia Convention he calls for a national government that can immediately strike down any law passed by a state legislature (which goes even further than present-day judicial review). It is necessary, he writes in a letter to Jefferson in March of 1787,

to arm the federal head with a negative *in all cases whatsoever* on the local Legislatures. Without this defensive power, experience and reflection have satisfied me that, however ample the federal boundaries may be delineated on paper, they will be easily and continually baffled by the Legislative sovereignties of the States.³

He sticks to this position through most of the convention and worries about its absence from the final document.⁴

Yet, when Hamilton proposes in 1791 that the federal government charter a national bank—a power which Madison himself had supported at the Philadelphia Convention and which would seem to be a far less intrusive exercise of central power than Madison’s proposed negative—Madison is shocked and honestly fears that it undermines the foundations of constitutional government. His Virginia Resolutions of 1798 (protesting, among other things, the Alien and Sedition Acts) call upon the states to resist the unjust actions of the federal government and appear (although Madison denied it) to support the doctrine of nullification—a doctrine he strove with all his might to oppose in the last years of his life.

Is there any theoretical consistency here? Or is this merely a pragmatist’s response to shifting political alignments and diverse problems of policy? Throughout his life Madison was dogged with the accusation of inconsistency (an accusation made by many historians and biographers as well). He insisted, on the contrary, that he was more consistent than anyone else of his age.⁵

According to Hamilton and the Federalists, Madison’s “apostasy” from his former nationalist principles was the act of a “weak and timid soul who had been seduced by the devilish Jefferson.”⁶ Others, in his own time and in ours, have portrayed him as at heart an advocate of states’ rights and very limited national power who was led by the extreme conditions of the 1780s to favor powers (such as the negative on state laws) that went contrary to his later, and better, judgment.⁷ Still others would attribute his shift to a tragic conflict that arose in the 1790s between his nationalism and his republicanism in which Madison felt he could preserve republican principle only by sacrificing his nationalism.⁸

There is nothing necessarily inconsistent about favoring an increase in central power at one point in time and opposing it at another. One can trim in practice while holding to consistent underlying principles. The problem in Madison's case is that he does not make entirely clear the principles that guide his trimming. I attempt here to clarify his political thought in a way that demonstrates an underlying consistency across his "nationalizing" work at the Federal Convention, his contributions to the *Federalist*, his advocacy of a Bill of Rights, and his opposition to centralized power in Hamiltonian form in the 1790s.

My argument, in brief, is this. For Madison the possibility of reconciling governmental power and liberty ("public" as well as "personal" liberty) depends above all on the existence of *clear boundaries* to governmental power publicly agreed-upon by an enduring majority of the people of the United States. In some cases (as with religious liberty) these boundaries are marked by natural right; in other cases (whether or not the federal government can charter a bank) they are artificial; but in either case, once they have been agreed upon, liberty is threatened if they are trespassed. Protecting liberty from governmental power does not depend on *how much* power, in an absolute sense, is invested in a government; nor on *where* the greatest power is lodged (whether in the nation as a whole or in the states). These questions were especially important for Madison's contemporaries, but his thinking ran along different lines (which partly explains why he appeared inconsistent to them).

The question of how power and liberty are, and should be, interconnected goes to the heart of Madison's republicanism. In a 1792 *National Gazette* essay (published soon after his open break with Hamilton) Madison writes:

In Europe, charters of liberty have been granted by power. America has set the example and France has followed it, of charters of power granted by liberty. This revolution in the practice of the world, may, with an honest praise, be pronounced the most triumphant epoch of its history, and the most consoling presage of its happiness.⁹

Later in the same essay he describes republican constitutions as "instruments, every word of which decides a question between power and liberty." The liberty Madison refers to here is not private liberty but *public* liberty: political participation, the activity of the people in their sovereign capacity.

What is new about the American (and the Republican French) constitutions, compared to traditional forms, is not simply that in some mechanical fashion they strike a different balance between the power of government and the liberty of citizens; *who draws the line* has also changed. One might suppose that once "liberty" becomes the fountain of "power" all tension between them, and thus all need for limitation on power, disappears—but that

is not Madison's meaning. Instead, he means that *liberty must restrain itself*. In practice this requires, not that majorities can only be restrained by something outside themselves (a common misinterpretation of Madison's thought), but that majorities learn to respect the lines majorities themselves have drawn.

There has been much discussion recently of tension between two traditions that shaped the American Founding: a "Lockean liberal" and a "civic republican" tradition, the former characterized by concern for individual (natural) rights and limited government, the latter by its focus on republican virtues and popular self-government.¹⁰ I do not here address the question of how accurate it is to characterize the American Founding in terms of a tension between republicanism and liberalism. But in any event Madison himself cannot be easily placed into either category; he draws on both traditions and would not have perceived any contradiction in doing so.

DOES PROTECTION OF LIBERTY REQUIRE MORE POWER OR LESS?

Madison's sponsorship of the Bill of Rights, and his support of civil liberties more generally in national as well as state politics, provides an ideal starting point for our search for underlying consistencies in his thought and action over time. At the very least—however consistent or inconsistent Madison may have been with regard to other questions of national power—he was a consistent civil libertarian (unlike so many of his erstwhile Federalist allies).

His first significant political act (1776) was a successful effort to strengthen the clause concerning religious liberty in Virginia's Declaration of Rights (from mere "toleration" to an absolute right of "free exercise according to the dictates of conscience").¹¹ Most important for our purposes is the fact that support for civil liberties is the most visible link between the periods in which Madison greatly favored expanding national power and those in which he opposed it: his proposed negative on state legislation (the apogee of his so-called nationalist period) had as one of its principal objectives preventing violations of individual rights by factious majorities; his Virginia Resolutions of 1798, which call upon the states "to interpose for arresting the progress of the evil" of the policies of the national government (the high point of his supposed states' rights period), are especially directed toward the violation of freedom of speech and press under the Alien and Sedition Acts.

Moreover, his original draft of a Bill of Rights would have prevented *both* the national government and the states from violating religious liberty, freedom of the press, and jury trial (unlike the version finally passed which restricted only the national government). Madison explains in a speech in Congress on June 8, 1789, in which he presents his draft of a Bill of Rights,

I have stated in the 5th resolution, that no state shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases. . . . It must be admitted, on all hands, that the state governments are as liable to attack these invaluable privileges as the general government is, and therefore ought to be as cautiously guarded against.¹²

Madison claims this resolution is the most important of all. It is especially significant given the commonplace assertion that the original purpose of the Bill of Rights was exclusively to place limits on the national government; this may be accurate as a characterization of the form in which it passed but it greatly misrepresents the purposes of its principal sponsor.¹³

What primarily interests us, however, are the links between Madison's civil libertarianism and his broader theorizing about the relation between power and liberty. The passage that I used as epigraph to this essay (in which Madison rejects any simple opposition between liberty and governmental power) comes from a letter to Jefferson written just as Madison is beginning to shift from opposition to support for a national Bill of Rights. Neither this letter nor Madison's 1789 speech in Congress introducing a Bill of Rights treat civil liberties in isolation but instead explicitly link them to his wider political thought.

But first we must back up a few years. The most effective Anti-Federalist argument against the proposed Constitution was that, unlike many of the state constitutions, it lacked a bill of rights. But such objections would not have been significantly diminished had a declaration of *individual* rights been included in the Constitution, if nothing were done at the same time to augment the rights and powers of the *states*. For the Anti-Federalists saw the freedom of individuals and the "freedom" (or independence, or sovereignty) of states as closely connected. The state governments, under a federal system, have a special role as protectors of the people's liberties against a more distant, alien national government whose powers cannot be as easily checked by a watchful community. "There is no power, privilege or liberty of the state governments, or of the people, but what may be affected by virtue of this [national] power," writes the Pennsylvania Minority. "For the moderate exercise of this power there is no control left in the state governments, whose intervention is destroyed."¹⁴ When a national government is able to operate directly on individuals (the great difference between the Constitution and the Articles of

Confederation), individuals would suffer because the states will no longer be able to interpose to protect them. One should notice here that the liberty of individuals and the “liberty” of states as corporate entities are mentioned in the same breath. (Madison, along with Hamilton and James Wilson, explicitly rejects this parallel between the liberty of an individual and the “liberty” of a state.¹⁵)

One might suppose that different meanings of liberty are at stake here. Perhaps in some cases understandings of “liberty” may have differed; certainly there are differences over application to practice (e.g., does inflated paper money used to pay debts count as a violation of property rights?). But what is striking is the degree to which the core of important individual liberties is agreed upon by both sides: freedom of speech and of the press, jury trial, protection from arbitrary confiscation of property, freedom of religious worship. There is also broad agreement on the key elements of a republican form of government: written constitutions, frequent elections, separation of powers. Insofar as the overworked distinction between “positive” and “negative” (or between “republican” and “liberal”) freedom can be applied here, one will find both “positive” and “negative” on both sides. (Madison speaks of “public” and “personal” liberty in Federalist 10 as equally worthy of protection.) Both the advocates of strong national government and of state sovereignty stress the importance of identification with, and participation within, a political community—but communities of different scale; both speak of protection of individuals *from* government actions—but they differ as to which level of government (national or state) is most likely to violate one’s liberties. The fact that there were many on both sides who would readily violate these liberties when it was convenient to do so does not prove that they had different *understandings* of liberty but only that some were more committed to it than others.

What especially distinguishes Madison, besides the seriousness of his commitment to civil liberties, is his appreciation of the extremely broad range from which threats to liberty can proceed. The Anti-Federalists were certain that the greatest threat proceeded from government, and that the more powerful (and physically distant) the government the greater the threat would be. Madison, without denying the danger posed by powerful government, believed that an equal or greater threat proceeded from society itself in the form of a factious majority taking control of government. (In Anti-Federalist writing one will not find much concern for the danger of majorities tyrannizing over minorities *within states*.) In such a case governmental power is not the source, but merely the instrument, of the threat to liberty; in other circumstances it is the only available guard against that threat. Such considerations make any *simple* opposition between liberty and governmental

power (of the kind Madison criticizes in his October 17, 1788 letter to Jefferson) a mistake.

But the opposite judgment, a simple identification of governmental power and protection of liberty, would be equally false. During the height of his battle with Hamilton, Madison wrote an essay for the *National Gazette* entitled "Who Are the Best Keepers of the People's Liberties?" In it he imagines a dialogue between a Republican, who expresses his own view, and an anti-republican who seems a caricature of Hamilton:

Republican: "What a perversion of the natural order of things! to make *power* the primary and central object of the social system, and *Liberty* but its satellite."

Anti-republican: "Wonderful as it may seem, the more you increase the attractive force of power, the more you enlarge the sphere of liberty; the more you make government independent and hostile towards the people, the better security you provide for their rights and interests."¹⁶

The fictional anti-republican here takes to an absurd extreme a general premise on which Hamilton and Madison had once agreed: that at least *some* increases of governmental power are to the benefit of liberty. Madison must be able to describe the relation between power and liberty in a way that gets beyond simple connections of any kind. His thinking at the time of his conversion to support for a bill of rights may give us some clues.

Madison's original opposition to the Anti-Federalist call for a bill of rights was grounded in his unwillingness to make ratification of the Constitution conditional on any amendments, thereby "giving an opportunity to the secret enemies of the union to promote its dissolution"¹⁷; the reason for this opposition had now passed. What about the argument (which originated with James Wilson, and which Hamilton repeats in Federalist 84) that a Bill of Rights is *unnecessary* because the powers of the national government are limited to those enumerated in the document? Madison says that he accepts this argument to a certain degree "though not in the extent argued by Mr. Wilson."¹⁸

He writes to Jefferson that

[My] own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others.

He points to the different purpose of a bill of rights in a monarchy, where the greatest threat to liberty comes from the government, and in a republic where the threat comes from society itself; he doubts that the "parchment barriers"

of a bill of rights will be effective against “overbearing majorities.” What then is the use of a bill of rights in a popular government? Madison identifies two:

1. The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. 2. Altho' it be generally true as above stated that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter sources; and on such, a bill of rights will be a good ground for an appeal to the sense of the community.¹⁹

Notice that “the sense of the community” is central to both of these arguments: in the first case, a bill of rights may help *create* such a sense; in the second case (which prefigures the Alien and Sedition Acts controversy), it is a rallying point.

In his speech in Congress introducing a bill of rights Madison makes the point again:

It may be thought all paper barriers against the power of the community, are too weak to be worthy of attention... yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one mean to controul the majority from those acts to which they might be otherwise inclined.²⁰

He also makes the argument in a negative way: given that the sentiment in favor of a bill of rights—as expressed in the various ratifying conventions—is so overwhelming, what kind of message would it send *not* to make such amendments?

It will be a desirable thing to extinguish from the bosom of every member of the community any apprehensions, that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled.

Although he has little faith in the efficacy of words, Madison is enormously impressed with the power of *the public opinion behind the words* that would constitute a bill of rights. It is all the more impressive in that the sentiment is truly national (in drafting his bill of rights Madison sorted through recommendations originating in the ratifying conventions of seven states) and that it was expressed by the people in their ratifying conventions, which Madison regards as *the* most legitimate expression of the will of the sovereign people (a point I take up below).

From Madison's perspective this is a revelation, a political windfall: a national majority committing itself to the principle of restrictions on the power of majorities. This has the effect of filling an important gap in Madison's own thinking about the problem of protecting individual liberties. In his original idea of a negative on state legislation vested somewhere in the national government, his reasoning was that the national government, like a monarch, would be sufficiently distant and neutral with regard to disputes within states to play the role of umpire.²¹ But what moral force could a distant, merely neutral, quasi-monarchical power have in a republic? A national majority passionately and explicitly committed to individual liberties, expressed through constitutional amendments, would provide much-needed support to the national judiciary in any effort it should make to prevent violations in the states and at the same time serve as a check on any attempt on the part of the national government to violate those same rights.

Madison failed to get an amendment prohibiting states from violating freedom of religion, the press, and jury trial included in the Bill of Rights, just as he had failed earlier to get a national veto on state legislation. Yet he accomplished at least part of his purpose, which was to respond to, and further encourage, a national sense of the value of the most important public and personal liberties. An enduring national majority explicitly committed to these liberties makes it safer to vest significant power in a national government.

TOO MUCH AND TOO LITTLE POWER AS DIFFERENT FORMS OF THE SAME PROBLEM

If civil liberties provide the clearest example of Madison's consistency over time, the story of his intense opposition to a national bank (which Hamilton as Treasury Secretary proposed in 1791) would seem to be the clearest example of dramatic inconsistency. The bank controversy marks the point at which Madison seems to make a sudden shift away from support for strong national powers broadly interpreted, to strong opposition to national power, strict constructionist constitutional theory, and defense of states' rights. At the Constitutional Convention Madison had himself proposed a power "to grant charters of incorporation where the interests of the U.S. might require & the legislative provisions of individual states may be incompetent"—and this would have included banks as well as internal improvements. Madison's opposition surprised Hamilton most of all. He had shown the bank plan to Madison before making it public, hoping for his support. How, he

may have wondered, could this be the same Madison who had once been willing to expand national power to the extreme of granting it a negative on all state legislation?²²

Madison's opposition to Hamilton's flexible construction of national power becomes even more intense when the latter proposes to charter monopolies for the purpose of encouraging manufactures; commenting on Hamilton's "Report on Manufactures" Madison writes:

The federal government has been hitherto limited to the specified powers, by the greatest Champions of Latitude in expounding those powers. If not only the *means*, but the *objects* are unlimited, the parchment had better be thrown into the fire at once.²³

To further confuse the matter, and augment the impression of Madison's inconsistency, later in life as president (1815) he vetoed a bill to recharter the National Bank, but on policy rather than constitutional grounds: he states explicitly, on the contrary, that the National Bank was no longer unconstitutional because it had operated now for twenty years with "the concurrence of the general will of the nation" even though the relevant constitutional language had not changed since 1791! A year later he signed into law a new Bank of the United States.²⁴

The easiest explanation for these shifts is that they are simply political: Madison subordinated his constitutional theory to his policy goals. Thus, when he realized that Hamilton wanted to use a bank to enrich a privileged class and encourage manufacturers at the expense of agriculture and westward expansion, Madison contrived constitutional arguments against banks and corporations even though he had supported both earlier for his own policy reasons. Yet Madison was capable of rejecting as unconstitutional even some policies he favored.²⁵ Let us consider whether there might be a better explanation for his apparent reversals on national power. It would be helpful to take a fresh look at the period of his most intense commitment to national power: his criticism of the Articles of Confederation and advocacy of a new Constitution with greatly increased powers.

A careful examination of Madison's criticism of the Articles of Confederation shows that the problem he diagnoses was not *simply* that the national government lacked power vis-à-vis the states. The problem was that there was a gulf between the powers the Continental Congress possessed in principle (which reflect what the American people expected it to accomplish), and the powers it actually exercised. In principle, for example, Congress could call out military force to punish a state that did not comply with its requisitions; this mode of enforcement (which was never attempted) was the only one possible where the national government cannot tax individuals

directly. As it turned out, the Continental Congress was chronically weak, a “lifeless mass” (as Madison describes it in the *Federalist*). But this great gulf between the powers expected of a government and those it actually possesses can just as well lead to usurpation and even despotism as it strives in underhanded ways to grab the powers denied to it. In *Federalist* 38 Madison makes an argument that will appear very strange unless this point is understood; he catalogues the alarming abuses of power by the Continental Congress:

Out of this lifeless mass has already grown an excrescent power, which tends to realize all the dangers that can be apprehended from a defective construction of the supreme government of the Union . . . [The Continental Congress] have proceeded to form new states, to erect temporary governments, to appoint officers for them, and to prescribe the conditions on which such states shall be admitted into the Confederacy. All this has been done; and done without the least color of constitutional authority. Yet no blame has been whispered; no alarm has been sounded. . . . The public interest, the necessity of the case, imposed upon them the task of overleaping their constitutional limits. But is not the fact an alarming proof of the danger resulting from a government which does not possess regular powers commensurate to its objects?

This is not the language of one who favors sweeping, loosely defined powers! The passage perfectly illustrates Madison’s complicated perspective which cannot at any point in his career be reduced to simple advocacy of more power or less power.

If the problem under the Articles of Confederation was a dangerous disjunction between the powers Congress possessed in principle (which reflected what the American people expected it to be able to do) and its actual power, the solution is to design a national government in which all of these things coincide. In practice this will mean giving it much greater power, but this follows from a national consensus about its purposes, not because national power is an end in itself.

With this in the background, let us return to the bank controversy. On the surface the argument seems to be one of constitutional interpretation, Hamilton favoring broad construction while Madison falls back on a naive, and contrived, strict constructionism. The latter claims that the “necessary and proper” clause covers only such implied powers as are strictly *necessary*, not merely useful, to the execution of an enumerated power; Hamilton, on the other hand, believes that so cribbed a rule of interpretation “would at once arrest the motions of the government.”²⁶

If Madison’s constitutional argument here depends on the premise that the language of the Constitution is perfectly clear, then it would not only reflect a naive faith in the possibilities of language but also contradict Madison’s

own frequently expressed views on the inherent ambiguity of legal language (Federalist 37) and the inefficacy of parchment barriers. But the core of Madison's argument does not depend on this questionable rule of textual analysis.

His main point, instead, is that the power Hamilton proposes had been explicitly and clearly considered and rejected, not only at the Philadelphia Convention (where Madison himself had proposed it) but, more important, by numerous state ratifying conventions. Throughout his life Madison insisted that the most legitimate guide to constitutional interpretation lay, not in the words considered in isolation, nor in the deliberations of those who drafted the Constitution, but in *how it was understood by the people when they gave it their approval in ratifying conventions*.²⁷ One clear statement of the view comes in a speech Madison gave in Congress on 6 April 1796:

But after all, whatever veneration might be entertained for the body of men who formed our constitution, the sense of that body could never be regarded as the oracular guide in expounding the constitution. As the instrument itself came from them, it was nothing but a dead letter, until life and validity were breathed into it, by the voice of the people, speaking through the several state conventions. If we were to look therefore, for the meaning of the instrument, beyond the face of the instrument, we must look for it not in the general convention, which proposed, but in the state conventions, which accepted and ratified the constitution.²⁸

What then follows for the proposal to charter a bank? In his speech in Congress against the bank bill Madison

read sundry passages from the debates of the Pennsylvania, Virginia and North-Carolina conventions, shewing the grounds on which the constitution had been vindicated by its principal advocates, against a dangerous latitude of its powers, charged on it by its opponents. . . . The explanatory declarations and amendments accompanying the ratifications of the several states formed a striking evidence, wearing the same complexion. . . . With all this evidence of the sense in which the constitution was understood and adopted, will it not be said, if the bill should pass, that its adoption was brought about by one set of arguments, and that it is now administered under the influence of another set?²⁹

Madison adds that no one present in the chamber has had the opportunity to consult their constituents on the issue, so Congress would be proceeding altogether without popular endorsement.

If—as Madison believes—a national government power to charter banks and other corporations has been explicitly considered and rejected, then Hamilton's decision to proceed appears in quite a different light: not merely as an instance of broad constitutional construction but a deliberate attempt to override a clear expression of the will of the people. If the Articles of

Confederation were dangerous because of a disjunction between legitimate expectation and actual power in one direction, then Hamilton's policies are characterized by a disjunction in the opposite direction: powers above those expected and agreed-upon. If one is willing to go contrary to clearly defined boundaries in one respect, what will prevent one from doing it in others? Madison even fears that Congress may begin incorporating religious societies.³⁰

Madison, unlike Hamilton, takes very seriously what has been agreed upon; for that reason there is no inconsistency in Madison's proposing at one time to charter a bank and other corporations and opposing it now. He had originally desired a government more powerful than the one the Convention proposed and the people ratified; but the matter having been settled it would be illegitimate to press for additional powers. From the perspective of the proper relation between power and liberty it is a secondary question how much power in absolute terms the central government is entrusted with; what is important is that it stay within whatever broad or narrow limits have been agreed upon. Power and liberty are reconciled only if power—which in a republican government is the *creation*, not the *creator* of liberty—remains within those limits.

Whether there in fact existed in 1791 a clear public mandate against the power to charter a bank is of course an open question; Madison may have articulated an important principle yet applied it to practice in inappropriate ways. His later acceptance of the bank's constitutionality may have been a backhanded admission of mistaken judgment. But his shift of position can also be defended on grounds of principle: the fact that the bank was approved by ten successive Congresses, under widely varying political circumstances, and its operations accepted by state authorities over time, proves that it has the support of an enduring, not a transient, majority.

POPULAR SOVEREIGNTY AND NATIONAL COMMUNITY

During the ratification debate the Anti-Federalists grasped immediately that the preamble to the Constitution and the mode of its ratification (approval of nine states, not thirteen was required) assumed precisely what they questioned: namely, that there existed a national political community. The language of the Declaration of Independence was ambiguous on the question of whether this was the act of one people or thirteen; and the Articles of Confederation had used the language of a compact among sovereign states.

But the opening words of the Constitution—"We the people"—implied the existence of a single "consolidated" political community rather than a confederation of states, and some Anti-Federalists criticized it on these grounds.³¹

Why is it of importance, with regard to the problem of reconciling power and liberty, whether the United States be regarded as a single political community or several? Because one cannot be free while obeying an alien power, even one republican in form. One of the Anti-Federalist arguments was that the national government, because it would be both distant and alien, would not possess the confidence of the people; as a result its measures "must be executed by force, or not executed at all; either case would lead to the total destruction of liberty."³² The strongest attachments and loyalties of the people are to their state, not to a nonexistent nation.

Several supporters of the proposed Constitution (James Wilson, for example) argued, on the contrary, that there is a united American people, forged through the crisis of independence; that this sovereign people created both the state and federal governments and can delegate to either level of government whatever powers it chooses.³³ The power of the national government is *our own* power, not something foreign.

Now on precisely this question Madison seems to have pulled his most dramatic reversal. According to the conventional account Madison was an extreme nationalist before and during the Convention, had settled for some kind of mixture by the time of the *Federalist*, and by 1798 (when he drafted the Virginia Resolutions) had completely accepted the view of the Union as a compact among states who retain their original sovereignty. How accurate is this characterization?³⁴

Let us begin with the *Federalist*: Madison's observations on the subject at hand are complex and certainly exhibit some surface contradictions. On the one hand, he often enough treats the American people as a single sovereign entity. The clearest statement of this position comes in *Federalist* 46:

The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designed for different purposes. The adversaries of the Constitution seem to have lost sight of the people altogether on this subject; and to have viewed these different establishments not only as mutual rivals and enemies, but as uncontrolled by any common superior in their efforts to usurp the authorities of each other.

He uses this argument, among other things, to justify any irregularities with regard to the existing rules under the Articles of Confederation that may have occurred in drafting a new Constitution. (See also *Federalist* 40 and *Federalist* 45.) If a sovereign people wishes to alter their form of government—a sacred

right they always retain—then they are not bound by any rules that prevent them from doing so. James Wilson himself could not have presented a stronger and clearer statement of the position that there exists a single sovereign people. (One should note that the premise of a single sovereign people does not necessarily entail a single consolidated government, which Madison himself opposed; for this single people could choose any degree of centralization or decentralization they wish.)

But Federalist 39, in contrast to Federalist 46, which assumes the existence of a single sovereign people, treats the *states* as sovereign communities that willingly divest themselves of certain parts of their sovereignty. “Each state, in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its own voluntary act.” Does this mean that the states *give up* their sovereignty in the act of ratifying the Constitution? Or do they retain it, in the sense that they (like the people in a consolidated republic) can always take it back if they choose? In the first case, Madison’s formulation would go contrary to two classic premises regarding sovereignty: that it is indivisible and that it is inalienable—neither of which are violated if one regards the Constitution as the act of a single sovereign people. If the second is the case—states as states keep their sovereignty—then Madison not only contradicts what he says in Federalist 46 but accepts a principle which would call into question the legitimacy of the convention’s total disregard of the Articles of Confederation.

The difficulty does not end once the Constitution is ratified, because Madison here speaks (in contrast to Federalist 46) as though the United States is not a single political community but several communities “united for particular purposes.”

Perhaps the best explanation is that Madison is making no effort to use the words “sovereignty” and “community” in a consistent fashion, trusting instead that his readers will understand clearly enough what he means.³⁵ He does after all make it clear that the national government will exercise whatever powers the people of nine out of thirteen states agree it should have; and that in a dispute about where the boundary between national and state power should be drawn it is the national government that must judge.

One could even argue that the very inconsistencies one encounters in Madison’s contributions to the *Federalist* regarding the locus of sovereignty and the single or plural character of American political community are, paradoxically, the result of a consistent respect for the people’s will. For if the people freely draft and ratify a document that is fundamentally unclear on this, that mixes the logic of one sovereign people with that of several semisovereign communities, then it is Madison’s duty to respect and argue for it. To make it more consistent than it is on this point (which is what Wilson

does, especially in his *Chisholm v. Georgia* opinion) would be to do violence to the concretely expressed will of the people.

To what extent Madison himself saw inconsistencies in his mode of expression is hard to determine. What might appear to post-Civil War Americans as an evasion of a crucial question (which came to crisis in 1860) may have appeared in a different light to Madison. But even if he saw inconsistencies he had faith in the ability of a free people to make them workable. In a *National Gazette* essay of 1791 he writes:

Here then is a proper object presented, both to those who are more jealously attached to the separate authority reserved to the states, and to those who may be more inclined to contemplate the people of America in the light of one nation. Let the former continue to watch against every encroachment, which might lead to a gradual consolidation of the states into one government. Let the latter employ their utmost zeal, by eradicating local prejudices and mistaken rivalships, to consolidate the affairs of the states into one harmonious interest; and let it be the patriotic study of all, to maintain the various authorities established by our complicated system, each in its respective constitutional sphere.³⁶

It seems not to matter to him that some see the United States as a union of many communities and others as a single community. Both have something useful to add to the working of “our complicated system.” He seems to believe that practical political convergence of aims is possible among those with quite different theoretical views as to the single or plural character of the American people—so long as both recognize the need to keep government within the limits that have been agreed to.

What then should we make of Madison’s Virginia Resolutions, which, in protesting against the Alien and Sedition Acts, seem to side altogether with the states against the nation? A careful reading of the document (together with his “Report of 1800” which explains his reasoning more fully), and a comparison with Jefferson’s Kentucky Resolutions (drafted at the same time), shows that Madison was not a convert to “states’ rights.”

Jefferson’s Kentucky Resolutions (which Madison sharply criticized)³⁷ maintain that *the states*

constituted a General Government for special purposes,—delegated to that government certain definite powers, reserving each State to itself, the residuary mass of right to their own self-government. . . . That to this compact each state acceded as a State, its co-States forming, as to itself, the other party. . . . Each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.³⁸

This is the language of a treaty that can be dissolved by any one of the parties to it. His declaration that each individual state has the right to declare the

acts of the national government “unauthoritative, void, and of no force” was later used, without distortion, to support the doctrines of nullification and secession.

Madison’s Virginia Resolutions call upon the states “to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties appertaining to them.” He does not say, as Jefferson does, that the federal government is the creation of the states; he views instead “the powers of the federal government, as resulting from *the compact to which the states are parties*” (my emphasis), which is a rather different thing. A single, though complex, American people can draw up a “compact to which the states are parties,” and in doing so decides authoritatively which powers shall be delegated to which level of government.

Madison intends the Virginia Resolutions as Virginia’s contribution to a national expression of protest, on the part of a national majority, against the unjust policies of a minority faction that has seized control of the national government and threatens to “transform the present republican system of the United States, into an absolute, or at best a mixed monarchy.” He nowhere claims the right of a state to oppose a clear majority of the American people; he does not maintain, as Jefferson does, that a single state can void the acts of the national government. The protest uses the vehicle of the states because no other institutional mechanism is available. That it may be necessary in the last resort to use the states against the national government in this way is admitted in the *Federalist*, not only in Madison’s contributions but even in Hamilton’s.

FILLING THE GAPS IN FEDERALIST TEN

Madison’s *Federalist* 10 is justly famous for its reversal of the assumption common at the time that republican government could survive only in a small territory; he argues that the larger the territory, the greater the variety of interests and factions, the *more* stable republican government will be, provided it is properly designed.³⁹ And yet, read in isolation, the essay can leave a distorted impression of Madison’s thought. I wish to make some very brief observations here about how one might connect the argument of *Federalist* 10 to the themes I have developed in this article and to correct at least some of the misinterpretations that result from reading *Federalist* 10 out of context.

In *A Preface to Democratic Theory* Robert Dahl characterizes Madisonian democracy as an incoherent mix of clashing principles, majority power and minority power.⁴⁰ Dahl regards as central to Madison’s fractured theory the

premise that minority tyranny poses no danger whatsoever in a republican government (taking as definitive Madison's quick dismissal of the problem in Federalist 10) and thus that the only important political task is to break the power of majorities. (Dahl can thus maintain that Calhoun "enlarged upon" Madison's thought.) He claims that Madison ruled out any possibility of a majority restraining itself through some ethical principle; hence everything depends on constitutionally prescribed external checks. Dahl overlooks Madison's equal fear of minority obstruction (which is central to Madison's criticism of the Articles of Confederation) and the importance he placed on educating the "sense of the community" to respect individual rights (as I pointed out in my discussion of Madison on the Bill of Rights). Such are the consequences of reading Federalist 10 as though it were the definitive expression of Madison's thought.⁴¹

Federalist 10 should be understood along a line of development in Madison's thought beginning with his proposed negative on state legislation (for which Federalist 10 represents the same problem, different solution) and proceeding at least through his draft of a bill of rights whose most important guarantees would be enforceable against the states as well as the national government. "Rights" for Madison always meant more than property rights alone (although that is what he concentrates on in Federalist 10). And it is worth pointing out that he favored whatever measures could maintain a broad equality of property without violating property rights. His rage against inflated paper money comes from the fact that in his view it amounts to confiscation of property without due process of law—in short, a violation of civil liberties, not an ordinary question of economic policy.

Federalist 10 dismisses minority faction in a single sentence. Everywhere else in his writing, including his other *Federalist* contributions, he worries about both majority and minority faction: his criticism of the Articles of Confederation centers on the tremendous obstructive powers of a minority; and in "Vices of the Political System of the United States" (April 1787), which develops many of the ideas presented in Federalist 10, he observes that "according to fact and experience a minority may in an appeal to force, be an overmatch for the majority."⁴² Madison did not experience a sudden conversion to majoritarianism in 1791 any more than he "converted" at that time to strict constructionism.

I have stressed the importance for Madison of the existence of an enduring—as opposed to a transient and passionate—majority. It is on this account that he was so impressed by the overwhelming popular support for a Bill of Rights; and it grounds his claim that the sense in which the Constitution was understood by the people who ratified it forms the proper boundary of the national government's powers. Madison would see no contradiction between

this and his attack on majority faction: an enduring national majority will, with the proper institutional forms, be more than a match for a local factious majority.

However, there is nothing in Federalist 10 about the character of good as opposed to bad majorities. Madison opposed faction to “the rights of other citizens, or to the permanent and aggregate interests of the community,” but the latter phrase is given no content in the essay. The force of the argument is overwhelmingly negative—how to prevent a majority from forming—while remaining silent about how the necessary majority is to form; thus lending credence to the possibility that the argument is a shrewd divide-and-conquer strategy on the part of a well-connected elite.

Whether what he says later about the “sense of the people” in their ratifying conventions was an idea already present in his mind when he wrote Federalist 10 or one that he only developed later to fill a conspicuous hole in his theory, I cannot say. And even when he does express the idea, it is inadequately justified: we have a better idea of *what* counts as a good majority, but *why* majorities should be able to rise above themselves on such occasions remains unexplained. We know from Federalist 49 that Madison does not regard conventions as panaceas, that when resorted to at the wrong time for the wrong reasons they will simply reproduce the same factions one finds in a legislature. One fruitful line of inquiry for future studies of Madison’s thought would be to trace the origins, development, and justification of his claim that the sense of the people in their ratifying conventions is the best expression of majority rule in its highest form.

CONCLUSION

I have argued that Madison held to a consistent, although complicated, view of the relation between liberty and governmental power. I do not mean to suggest that his views never changed or that his political thought was unaffected by the demands and distractions of practical politics. Madison was always mindful of the need to temper theory with considerations of what Neal Riemer calls “prudent guidance.” But his apparent reversals on the crucial question of how much power should be vested in the national government cannot be explained on the basis of prudent guidance alone: one must grasp the theory underlying it. This is not easy: Madison’s reasoning was not well understood even in his own time.

For Madison governmental power and liberty are not simple opposites (as though so much of the one always entailed so much less of the other): because

the threats to liberty are so numerous and proceed from so many different sources, preserving liberty will sometimes require more governmental power, sometimes less. The degree to which governmental power threatens liberty depends less on the *quantity of power* vested in government than on the existence of *clear boundaries* to whatever level of power has been agreed upon. This, in turn, depends less on crystal-clear constitutional language (the possibility of which Madison always doubted) than on an enduring “sense of the community” (as distinguished from a passionate, transient majority) best exemplified by the records of the several ratifying conventions.

The concern for harmonizing governmental power and personal and public liberty has not diminished since Madison’s time, although the forms that both power and liberty have taken may have changed over the years. Nor has the temptation to draw simple conclusions about power and liberty been overcome. Ronald Reagan’s 1980 campaign maxim that “Government is not the solution—Government is the problem” expresses the kind of simple antagonism that Madison rejected. A resurrected Madison, even if he could not take sides in our partisan disputes, would surely advise us against reducing problems of power and liberty to a simple formula.

The range and scope of governmental activity in the United States today is greater than anything Madison could have imagined. Far more spheres of activity are subject to laws or regulations than in Madison’s time (partly, of course, because many of the problems to which they are addressed did not exist in his time). Is there something about this accumulation of governmental power and activity that chokes off human freedom even if it respects freedoms of speech, press, religion, and the like? Many people believe this and think that governmental activity as such must be reduced.

What might Madison say? One might attempt to resurrect his strict constructionism and argue that most of these historically accumulated powers should be cut away. Such a line of argument would fail for reasons Madison himself would be the first to understand: if these added powers are, in fact, accepted, desired, and expected by an enduring majority over a long period of time then they acquire a presumptive legitimacy (just as the Bank eventually did). We could not restore Madison’s constitution even if we wanted to.

Perhaps instead Madison would ask us whether or not this expansion of governmental power has occurred with the considered acceptance of an enduring majority. If it has, then it need not threaten our freedom.

On precisely this question Madison would observe great disagreements among us (which tend to follow party lines). If—as is sometimes charged—the growth of government results from the success with which “special interests” have captured government and created a mass of programs neither desired by nor beneficial to the majority of Americans, then fears for our

freedom are justified (just as Madison's fears of the "special interests" who stood to benefit from Hamilton's policies were probably justified). If, on the other hand, these expanded activities (such as social security, aid to education, environmental protection, employment policy, national defense) do, in fact, serve purposes accepted by an enduring majority of Americans, then the problem is not that our freedom is threatened but simply that we want to avoid paying the bill. Madison would have understood this too: the battle he fought in the 1780s was against those who refused to be taxed on grounds that it threatened their liberty.

Madison would not pretend to answer the question of whether solving our urgent problems requires more government or less. He would, however, advise us that in the long run our liberty requires that we establish some kind of equivalence—one we clearly lack at present—between the functions we demand of government and the powers we are willing to vest in it.

NOTES

1. Max Farrand, ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven, CT: Yale University Press, 1937), 1:464.

2. In *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967), 56-59, Bernard Bailyn describes the dissident Whig tradition which the American colonists had incorporated into their political worldview.

Most commonly the discussion of power centered on its essential characteristic of aggressiveness: its endlessly propulsive tendency to expand itself beyond legitimate boundaries . . . [Power] inhered naturally in government and was the possession and interest of those who controlled government, just as liberty, always weak, always defensive . . . inhered naturally in the people and was their peculiar possession and interest.

See also the chapter on "The Whig Science of Politics" in Gordon Wood's *The Creation of the American Republic* (New York: Norton, 1969), 3-45.

3. Madison to Jefferson, March 19, 1787. From *The Papers of James Madison*, vol. 9, eds. William T. Hutchinson and William M. E. Rachel (Chicago: University of Chicago Press, 1975), 318. Madison's proposed negative is discussed in Charles Hobson, "The Negative on State Laws: James Madison, the Constitution, and the Crisis of Republican Government," *William and Mary Quarterly* 36, no. 2 (1979): 215-35.

4. Farrand, *The Records of the Federal Convention*, 1:318-19; 2:440, 589.

5. "How, many wonder, could Madison, the powerful and prophetic nationalist of 1787, become by the late 1790's the narrow, pedantic advocate of states' rights?" Neal Riemer, *James Madison: Creating the American Constitution* (Washington, DC: Congressional Quarterly, Inc., 1986), 5. Riemer follows with a capsule description of various explanations offered over the years for Madison's political shifts.

6. Riemer, *James Madison: Creating the American Constitution*, 7. Two of Madison's nineteenth-century biographers follow this original Federalist characterization. Sidney Howard Gay, *James Madison* (Boston: Houghton Mifflin, 1890), 172, writes:

Madison was a Federalist until, unfortunately, he drifted into the opposition. He was swept away partly, perhaps, by the influence of personal friends, particularly of Jefferson, and partly by the influence of locality—that go with the state doctrine, which is a harmless kind of patriotism when kept within proper limits, but dangerous in a mixed government like ours when unrestrained.

See also Gaillard Hunt, *The Life of James Madison* (New York: Russell & Russell, 1968 [1900]), 211.

7. Edward McNall Burns in *James Madison: Philosopher of the Constitution* (New York: Octagon Books, 1968 [1938]) presents Madison as an advocate of strictly limited government who respected the principle of state sovereignty despite some occasional inconsistencies on that score.

8. "In policy he remained an advocate of the use of federal power for the public good, up to the limit of its discernible existence. But the spectacle of chronic abuse of that power propelled him into a lifelong argument against some of the most important principles he had helped to plant in the Constitution." Irving Brant, *James Madison: Father of the Constitution 1787-1800* (Indianapolis: Bobbs-Merrill, 1950), 332. See also 12-13, 102, 132-39. In a recent series of essays, Lance Banning has challenged Brant's reading of Madison, arguing that Madison always favored an enumeration of powers and that there were great differences between Madison's and Hamilton's nationalism even during the period of their closest cooperation. See Lance Banning, "The Hamiltonian Madison: A Reconsideration," *Virginia Magazine of History and Biography* 92, no. 1 (1984): 2-28; "James Madison and the Nationalists, 1780-1783," *William and Mary Quarterly* 40, no. 2 (1983); "James Madison and the Dynamics of the Constitutional Convention," *The Political Science Review* 17 (Fall 1987): 5-49.

9. *Papers of James Madison*, vol. 13, 380-81.

10. For description of tension between civic republican and liberal traditions see J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975). Ian Shapiro in *Political Criticism* claims that Pocock's opposition between liberalism and republicanism is greatly overdrawn (Berkeley: University of California Press, 1990), 166-203.

11. Ralph Ketcham, *James Madison: A Biography* (New York: Macmillan, 1971), 72-73. It is significant that much later, as president during the War of 1812, Madison "never hinted at measures abridging freedom of speech or press, even in the face of rampant obstruction of his government's policies and countless cases of outright treason in the 'eastern states' of New England." Drew McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (Cambridge: Cambridge University Press, 1989), 12.

12. *Papers of James Madison*, vol. 13, 208.

13. The argument that the original purpose of the Bill of Rights was exclusively to protect states' rights against the national government is advanced in Arthur E. Wilmarth, Jr., "The Original Purpose of the Bill of Rights: James Madison and the Founders' Search for a Workable Balance between Federal and State Power," *The American Criminal Law Review* 26, no. 4 (Spring 1989): 1261-1321. Wilmarth does not mention the fact that Madison's draft would have restricted the states too.

14. Herbert J. Storing, ed., *The Anti-Federalist: Writings by the Opponents of the Constitution* (Chicago: University of Chicago Press, 1985), 217.

15. Hamilton says at the Philadelphia Convention:

It has been said that if the smaller states renounce their equality, they renounce at the same time their liberty. The truth is it is a contest for power, not for liberty. Will the men composing the small states be less free than those composing the larger? (Farrand, *The Records of the Federal Convention*, 1:466)

16. *Papers of James Madison*, vol. 14, 427.

17. Madison to George Eve, January 2, 1789. *Papers of James Madison*, vol. 11, 404-5; "To a Resident of Spotsylvania County," January 27, 1789, *Papers of James Madison*, vol. 11, 428-29.

18. Madison to Jefferson, October 17, 1788. *Papers of James Madison*, vol. 11, 297.

19. Madison to Jefferson, October 17, 1788. *Papers of James Madison*, vol. 11, 298-99.

20. Speech in Congress, June 8, 1789. *Papers of James Madison*, vol. 12, 204-5.

21. Madison to Washington, April 16, 1787. *Papers of James Madison*, vol. 9, 382-87.

22. For Hamilton's broad interpretation of the powers of the national government, see his "Opinion of the Constitutionality of an Act to Establish a Bank" (1791). *The Papers of Alexander Hamilton*, vol. 8 (New York: Columbia University Press, 1965), 97-134.

23. Madison to Henry Lee, January 1, 1792. *Papers of James Madison*, vol. 14, 180.

24. McCoy, *The Last of the Fathers*, 80-81.

25. As President Madison vetoed an internal improvements bill which he considered to be excellent public policy, because no constitutional amendment had been passed to legitimize the power. McCoy, *The Last of the Fathers*, 92-98.

26. Madison, speech in Congress, February 3, 1791. *Papers of James Madison*, vol. 13, 376. Hamilton, "Opinion on the Constitutionality of a Bank," *Papers of Alexander Hamilton*, vol. 8, 107.

27. McCoy, *The Last of the Fathers*, 75-78.

28. *Papers of James Madison*, vol. 16, 295-96.

29. Speech in Congress, February 2, 1791. *Papers of James Madison*, vol. 13, 380-81.

30. Madison's fear of a slippery slope comes up again in a 1792 speech in which the innocent-appearing proposal to provide bounty payments for the cod-fishing industry, because it involves an unconstitutional power, could lead to a government that would "take up the care of religion into their own hands." *Papers of James Madison*, vol. 14, 223.

31. "Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania" in Storing, *The Anti-Federalist*, 213.

32. "Essays of Brutus, IV" in Storing, *The Anti-Federalist*, 130. See also "The Federal Farmer, II" in the same volume.

33. "Mr. Wilson could not admit the doctrine that when the Colonies became independent of G. Britain, they became independent also of each other. . . . [They] were independent, not individually but *Unitedly*" (Farrand, *The Records of the Federal Convention*, 1:324; June 19). The best introduction to Wilson's views on the existence of a single sovereign people is his opinion, as Associate Justice of the U.S. Supreme Court, in *Chisholm v. Georgia* in Leon Friedman and Fed L. Israel, eds., *The Justices of the United States Supreme Court: Their Lives and Major Opinions*, vol. 1 (New York: Chelsea House, 1969). See also the discussion of popular sovereignty in his "Lectures of Law" from *The Works of James Wilson*, ed. Robert McCloskey (Cambridge: Harvard University Press), 1967, 1:268.

In *To Make a Nation: The Rediscovery of American Federalism* (Cambridge: Harvard University Press, 1993) Samuel Beer argues in favor of Wilson's claim that the Revolution was consciously the act of a single sovereign people which subsequently *created* the states (195-214).

34. Samuel Beer's discussion of the complicated nature of Madison's views on sovereignty—especially the tension between Federalist 46 and Federalist 39—follows lines similar to my own. See Beer, *To Make a Nation*, 308-40. Beer characterizes Federalist 39 as a fatal gap in Madison's reasoning; my own reading is somewhat more sympathetic to Madison on this point.

35. "If, Madison seems to think, the compound republic of the United States is incompatible with the abstract doctrine of sovereignty, then so much the worse for the doctrine of sovereignty." Michael P. Zuckert, "Federalism and the Founding," *Review of Politics* 48, no. 2 (1986): 186.

36. *Papers of James Madison*, vol. 14, 139.

37. For discussion of Madison's and Jefferson's disagreements over the wording of the protest resolutions, see McCoy, *The Last of the Fathers*, 139-49.

38. The document is included in Merrill D. Peterson, ed., *The Portable Thomas Jefferson* (New York: Penguin, 1977), 281-89.

39. There is an enormous literature on Federalist 10. The best starting point is Douglass Adair, "That Politics May Be Reduced to a Science: David Hume, James Madison, and the Tenth Federalist," in *Fame and the Founding Fathers* (New York: Norton, 1974).

40. Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), 4-33.

41. See also James MacGregor Burns, *The Deadlock of Democracy: Four Party Politics in America* which characterizes Madison's purpose as deliberate production of deadlock and ignores Madison's fear of minority obstruction. (Englewood Cliffs, NJ: Prentice-Hall, 1963), 6-23.

42. *Papers of James Madison*, vol. 9, 350.

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