

## 10. JAMES MADISON AND THE CLASSICAL REPUBLICAN TRADITION

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**ABSTRACT.** The thesis pursued here is that Madison, in articulating the principles of political philosophy underlying his defense of the proposed constitution in his contributions to the *Federalist Papers* of 1787-8, can best be understood as at once invoking, enriching, and on several key points all but abandoning the "classical republican" or "civic humanist" tradition. I analyze the ambivalent character of Madison's response to Plato and Aristotle, Machiavelli and Rousseau with respect to the quality and complexity of the body politic, the principle of representation, the containment of factionalism, and the nature of political legitimation and renewal.

**B**y general consensus, James Madison's renown as a political thinker rests on a dual foundation. Most historians continue to bestow on him the title "Father of the Constitution"; and all agree that his contributions to the *Federalist Papers*—a series of eighty-five hastily composed, anonymous "letters to the public" printed in New York's leading newspapers in 1787 and 1788—helped establish this remarkable document as the most authoritative commentary on the U.S. Constitution ever written, and perhaps as the one indisputable American classic in political theory.<sup>1</sup>

Much less widely recognized, and argued for only fairly recently,<sup>2</sup> is the fact that, thanks largely to Madison's influence, both documents belong to a single though complex tradition of experience and thought known as classical republicanism or civic humanism. Originally practiced in Periclean Athens and in pre-imperial Rome, it found its first great philosophical articulation in Aristotle. After a long hiatus, it flourished once more in the fifteenth-century Florence of Machiavelli and Guicciardini, had a brief rebirth in seventeenth-century Holland, and played a key role in the seventeenth- and eighteenth-century revolutionary political history of England and her American colonies. Characteristic of civic humanism from the first was broad popular participation, and on occasion even popular sovereignty, through the instrumentalities of "mixed" government in a tight-knit community that sought to minimize, or at least temper the political effects of, socioeconomic differences between individuals and classes. Republicanism provided a fourth alternative to the so-called "classical" options: monarchy, aristocracy, and democracy, embodying elements derived from each of them but itself reducible to none of them. Pervasive in this tradition is a fear of corruption from within, and a corresponding preoccupation with citizenly virtue,

rooted in such things as the patriotic bearing of arms and the prudent cultivation of property.

It was essentially classical republicanism that Madison at once invoked, enriched, and in certain points all but abandoned when he helped frame the provisions of the Constitution and set about to defend them in his *Federalist Papers*. My intention here is to focus closely on several of the more thought-provoking of Madison's contributions to the latter. My perspective on these passages, and on the tradition from which they take their departure, is that of a political philosopher rather than a political historian. That is to say, my overriding concern is to trace certain conceptual linkages and tease out their inner tensions rather than to support claims regarding who had actually read whom or what can be documented as having been in anyone's mind at any given time. I must also ask the reader's indulgence for a somewhat painstaking re-examination of the most familiar of the *Federalist Papers*. I know of no better way to prepare him for the more controversial suggestions offered in the second half of this essay. Besides, Hegel may have been right when he said "The familiar, precisely because it is familiar, is not known".

#### I: "A REPRESENTATIVE REPUBLIC"

To my knowledge only one modern civic humanist, Jean-Jacques Rousseau, remained unflaggingly loyal to the republican ideal in its classical purity. He sought to recover a "general will" concerned with the common good (see *The Social Contract*) through the re-education of personal and political virtue (See *Emile*) in a people he knew had all but irretrievably lost it (see *The Second Discourse*). Most others, beginning in some respects with Machiavelli and culminating in Montesquieu and de Tocqueville, had in common a nostalgic admiration for the virtuous citizen of the Roman republic—along with an almost total lack of confidence that such virtue could be retained or restored in the modern age. Contemplating Rousseau's fate, one is tempted to agree with them. Worshipped as the patron saint of human emancipation in his own time, Rousseau has since then more often been vilified for the self-defeating totalitarian devices to which he allegedly resorted in order to secure this emancipation. Both reactions strike me as excessive. But it may well be that Rousseau asked of modern humanity more than it has, thus far at least, shown the capacity to give.

The same can hardly be said of Madison. The opening sentence of the justly famous Number Ten, the first of his *Federalist Papers*, addresses a concern that had become almost an obsession with Machiavelli; but it does so from a perspective seemingly lying outside of republican theory altogether. "Among the numerous advantages promised by a well constructed *Union*, none deserves to be more accurately developed than its tendency to break and control the violence of *faction*".<sup>3</sup> None of the republican theorists, ancient or modern, had distinguished as sharply as Machiavelli between class conflict, which he regarded as the lifeblood of the republic, and faction, the evil offspring of overweening ambition among individuals and cliques *within* classes, which he saw as undermining virtue in and ultimately destroying the republic. "In every republic", Machiavelli had written, "there are two different dispositions, that of the populace and that of the upper class, and . . . all legislation favor-

able to liberty is brought about by the clash between them".<sup>4</sup> Madison, noting that the several sovereign State Constitutions, though models of popular government in many respects, have not "obviated the danger" of factions, spends the rest of Number Ten clarifying the nature of factionalism and proposing that nothing other than a federal union of the kind he was just then helping to bring into being at the Constitutional Convention in Philadelphia could effectively stem its abuses.

In so doing, Madison develops with unprecedented vigor—and quite possibly transcends—the traditionally somewhat heretical idea of a *large* and *expansive* republic first broached by Machiavelli<sup>5</sup> and much later contemplated casually and rather skeptically by Montesquieu. Hannah Arendt's formulation of what was essentially at issue in 1787 is the most cogent I have found.

What the founders were afraid of in practice was not power but impotence, and their fears were intensified by the view of Montesquieu . . . that republican government was effective only in relatively small territories. Hence, the discussion turned about the very viability of the republican form of government, and both Hamilton and Madison called attention to another view of Montesquieu, according to which a *confederacy* of republics could solve the problems of larger countries under the condition that the *constituted* bodies—small republics—were capable of *constituting* a new body politic, the confederate republic, instead of resigning themselves to a mere alliance.<sup>6</sup>

As for civic virtue, Madison does, to be sure, make frequent mention of it. Thus on the first page Number Ten: "Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith and of public and personal liberty, that our [State] governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority".(77) But although Madison is quick to invoke the images of citizenly virtue when it suits his purpose, he is little inclined, as we shall see, to rely on its reality.

Madison's analysis of factionalism is itself a model of cogency. "By a faction I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, *adverse* to the rights of other citizens, or to the *permanent* and *aggregate* interests of the community". (78; italics added) Like Machiavelli, Madison recognizes that a body politic consists of a variety of *bona fide* interests typically but not exclusively economic, often reflective of class divisions, and sometimes, as on the expanding American continent, indicative of regional and sectional differences as well. While such interests, in their partiality, are none of them identical with the common good, they are not as such inimical to it. Factions are, for in their single-minded zeal their aim is in effect to substitute a private good for the good of the whole and, given the power to do so, to carry this substitution through by whatever means necessary, not excluding despotic ones.

Madison continues (78):

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

This vindication of liberty resonates the rhetoric of civic humanism. Madison's very next words, however, make clear how little he intends to follow the classical tradition in its reliance on and appeal to civic virtue: "The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former [his opinions, I take it] will be objects to which the latter [his passions] will attach themselves". Madison thus takes for granted as an existential *fait accompli* in modern society what classical republicans from Aristotle to Rousseau had bemoaned and had worked to undermine. The paragraph ends as follows:

The diversity in the faculties of men, from which the rights of property originate [just the connection which Aristotle had already found suspect, and which Rousseau had attacked head-on: see the opening sentence of Part II of his *Second Discourse*], is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties [and thus, by obvious implication, of property] is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties.

For Madison, the conclusion to be drawn from all this is inescapable (79): "The latent causes of faction are thus sown into the nature of man". Narrow opinions and heated passions on all sorts of issues, including religious, social, political, and moral ones, have

divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good . . . But the most common and durable source of factions has been the various<sup>7</sup> and unequal distribution of property . . . Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations [a Marxist might note that here Yankee commercialism, indeed capitalism, has become definitive of "civilized nations"], and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.

This rather shocking conclusion (at least to classical republicans), namely that government itself is unavoidably riddled with faction, follows logically from Madison's premises and moreover is an accurate reflection of political reality—facts which Madison underscores with disarming candor (78-80).

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet . . . what are the different classes of legislators but advocates and parties to the causes which they determine? . . . Yet the parties are, and must be, themselves the judges; and the most numerous party, or in other words, the most powerful faction must be expected to prevail . . .

It is vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm . . .

The inference to which we are brought is that the *causes* of faction cannot be removed and that relief is only to be sought in the means of controlling its *effects*. (79-80; italics in the text)

In other words, we shall *not* attempt, as the likes of a Rousseau had on occasion deemed necessary, to change human nature.

Madison's argument proceeds as follows: "If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution". This sentence, it seems to me, is the perfect epitaph, almost two centuries ahead of its time, for Richard Nixon's unconstitutional war in Cambodia and his come-uppance in the wake of the Watergate scandal. As for the

alternative scenario: "When a majority is included in a faction, the [classical republican] form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and form of popular government, is then the great object to which our inquiries are directed". (80) Madison's formulation of his most difficult task is well worth comparing with Rousseau's in Book I of the *Social Contract*: "Find a form of association that defends and protects the person and goods of each associate with all the common force, and by means of which one, uniting with all, nonetheless obeys only himself and remains as free as before".<sup>8</sup> This statement introduces Rousseau's ill-fated discussion of the concept of the "general will". In contrast with Hobbes' *constituted* Sovereign, conceived as a separate entity to whom all subjects cede all political power and right, Rousseau's only legitimate and *constituting* sovereign is the individual human self writ large and achieving, in solemn assembly, a unanimous voice. Among the many consequences of their disagreement, one of the more interesting is that Hobbes' criminal is "entitled", though normally unable, to resist his own hanging, whereas Rousseau's criminal in some ultimate sense *wills* his own execution.

Back to Madison. It is at this point that he opts decisively for a republican rather than a democratic form of government (81):

By what means is this [great] object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such co-existent passion or interest, must be rendered . . . unable to concert and carry into effect schemes of oppression . . .

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual [a Socrates, for example]. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or [*sic*] the rights of property; and have in general been as short in their lives as they have been violent in their deaths.

There follows a masterstroke of ingenuous redefinition. "A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect . . ." No doubt it does. But notice that Madison is also rejecting out of hand the impassioned arguments of such as Rousseau—who was himself no democrat when it came to the form of constituted government—on behalf of the direct participation of *all* members of the body politic in egalitarian decision-taking whenever government

is constituted or in need of being reconstituted. Without this, Rousseau had insisted, the individual is prevented from expressing his autonomous higher will, popular sovereignty is a sham, and government—republican or otherwise—is lacking in political legitimacy. Madison, who may or may not have read Rousseau but who in regard to this issue would have understood him only too well, chooses at this moment not to address it. "The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter may be extended". (82) Madison's exercise in persuasive definition thus continues. By "the republic" we are to understand, first, a system of *representation* rather than full participation from start to finish, and secondly, a body politic that is by its very nature large and expansive. In Madison's fine Italian hands the classical republic has just been transmuted into the special set of political and geographical circumstances characteristic of the emergent American empire.

As Madison resumes, he sounds for a moment as if he had forgotten his own realistic conviction that no viable political system can rest on so shaky a foundation as civic virtue.

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it [the common good] to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. (82)

This in effect repudiates the Rousseauian principle of popular sovereignty. It is perhaps also a sop to "the wise, the rich, and the well-born" at the Constitutional Convention, namely those whose view of politics was incorrigibly paternalistic and who had every reason to expect that they would presently be the ones chosen for high offices. But the moment passes, and we find Madison rediscovering his skepticism and his consistency of argument. "On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal . . ." (82) The extensive republic triumphs again, because the larger number of citizens will be less easily victimized by rigged elections and will thus be freer to choose from a presumably larger pool of fit representatives (82-83). Interestingly enough, Madison's phrasing at this point is sufficiently non-elitist to describe the kind of mediocrities our body politic tends to elect nowadays: "men who possess the most attractive merit and the most diffusive and established characters".

The golden mean here envisaged by Madison introduces the beginning of the conclusion of his argument in Number Ten: "By enlarging too much the number of

electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures".(83)

The attentive reader recognizes what has happened here. In a bare seven pages, Madison has taken the republican tradition two steps, not just one, beyond its long-cherished starting point. The republic has become large not small, and it is now a republic of republics—a national union of federated states. "The other point of difference is the greater number of citizens and the extent of territory which may be brought within the compass of republican than of democratic government . . ." (83) How sweet such words must have been to the powerful expansionist wing of the Convention delegates! Needless to say, Madison's professed reason for raising this issue is not Manifest Destiny but political good health. "Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. Besides . . . where there is consciousness of unjust and dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary". (83) Once more Watergate comes to mind.

Just in case the reader did miss the central point, Madison now restates it with his customary candor. "Hence, it clearly appears that the same advantage which a republic has over a democracy in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it". (83) Knowing full well what he has done, Madison ends Number Ten by closing the conceptual circle, hoping, no doubt, that as long as the circle is sufficiently encompassing and comfortable for those inside, it will not be regarded as a particularly vicious one. "In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government". (84)

## II: "THE COMPOUND REPUBLIC OF AMERICA"

No single paper of Madison's after the celebrated Number Ten matches its sustained brilliance. But taken together the others significantly broaden and deepen his argument. Protesting a pervasive tendency to confuse the republican with the democratic principle, Madison in Number Fourteen restates the crucial differences. His redefinition of the essence of the republic in Number Ten is now taken for granted. ". . . in a democracy the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents. A democracy, consequently, must be confined to a small spot. A republic may be extended over a large region". (100) Modern Europe is assigned credit for having discovered "the great principle of representation . . . by the simple agency of which the will of the largest political body may be concentered [*sic*] and its force directed to any



object which the public good requires". (100-101) Conveniently overlooked, for the moment, are the questions What originally constitutes, and hence legitimates, representative government? and What is the nature of the corporate will here invoked? Both of these are questions which Rousseau had compelled the modern age to address, and, as we shall see shortly, Madison argues as if he were quite aware of it.

Noteworthy about the survey of political history ancient and modern in Numbers Eighteen, Nineteen, and Twenty (attributed to Madison and Hamilton jointly) is their silence concerning republican Rome. One senses that Madison, in opposition to Machiavelli, Montesquieu and Rousseau, has all but given up on the virtuous citizen as a lost cause. Yet the classical republican dialogue continues over the question of faction. In broad terms Machiavelli and Madison agree on its essential nature, but not on the remedy. Most scholars now believe that Machiavelli was not a "machievellian" in the sense of seriously urging rulers to be evil: *The Prince* is an ironic document. But in one important sense Machiavelli was something of a machievellian after all. The common good of the republic is the *summum bonum* so unequivocally that, when necessary and possible, a Legislator, modeled on Lycurgus, should be available to destroy a faction in order to discover or secure that good. Contemplating fifteenth-century Florence, Machiavelli seemed to think that such a remedy was still the correct one, but for want of a Legislator courageous and clear-headed enough to employ it efficaciously. By now we ourselves have advanced to the point of calling the destruction of factions "genocide". Madison, more conservative than Machiavelli and having less reason to abhor "ultimate political solutions" than do we, not only accepts the reality of factions but *seems* to build his political order around their existence.

The reason why one cannot be sure is to be found in the dialectical character of his Number Thirty-Seven, perhaps the second most memorable of Madison's contributions to *The Federalist*. Two passages in particular carry forward the burden of the argument. The first addresses with singular clarity the classical republican dilemma which the U.S. Constitution must somehow seek to resolve: how to reconcile the equally legitimate demands of "power" and "energy".

The genius of republican liberty seems to demand on one side not only that all power should be derived from the people, but that those intrusted [*sic*] with it should be kept in dependence on the people by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but in a number of hands. Stability, on the contrary, requires that the hands in which power is lodged should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men: whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand. (227)

The dilemma in question actually involves four, not two terms: liberty and power, stability and energy. There is no liberty unless the people retains the power to authorize and to control the actions of its own government. But there is no stability in gov-

ernment unless elected officials can retain their delegated powers long enough to energetically initiate and enforce legislation aimed at the common good.

If the first passage underscores the delicate balance which the republic's constitutional theory aims to establish and preserve, the second makes abundantly plain how difficult it is both to achieve and to maintain this balance in practice. Recalling his argument in *Ten*, Madison looks to the effective representation of genuinely diverse interests, especially at the federal level, to ensure the survival of liberty in the republic once formed. But "although this variety of interests . . . may have a salutary influence on the administration of the government when formed, yet every one must be sensible of the contrary influence which must have been experienced in the task of forming it". (230) A double distinction animates this intriguing sentence. There is first the difference between a body politic forming and a body politic already formed. It is as if, thanks to Madison, Spinoza's somewhat metaphysical distinction between *natura naturans* and *natura naturata* had found intelligible applicability in political thought and practice. And, attentive to this distinction, there is a second. What—thanks to a delicate but effective federal system of popular liberties and executive energies balancing and tempering one another—results at last in a healthy accommodation of conflicting interests, is, prior to and in the absence of such a system already instituted, the deadly conflict of factions.

We are back in Machiavelli's universe of discourse, and Madison is apparently quite conscious of that fact as he ends Number Thirty-Seven with "two important conclusions". "The first is that the convention must have enjoyed, in a very singular degree, an exemption from the pestilential influence of party animosities—the disease most incident to deliberative bodies and most apt to contaminate their proceedings. (231; cf. Number Forty, p. 254: "let me ask the man . . .") Such "party animosities" are of course Machiavelli's dreaded factions. And in place of Machiavelli's quasi-divine Legislator who, in founding a body politic, removes factions by whatever means necessary, we have here a body of Founders fortunate enough not to have succumbed to such factionalism as was in fact underfoot. No doubt the success of the State constitutions already in existence in curbing factionalism was a major contributing cause of such good fortune.

Continuing: "The second conclusion is that all deputations composing the convention were either satisfactorily accommodated by the final act, or were induced to accede to it by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good, and by a despair of seeing this necessity diminished by delays or by new experiments". (231) Here, in contemplating the foundational moment, Madison makes what is probably his biggest theoretical concession to the classical republican insistence on the need for citizenly virtue in general, and to a Rousseau-like articulation of the "general will" that must inform said virtue in particular. But precisely because for Madison this virtue is discernible, if at all, only during the moment of founding, he is determined to make no more of it. And since even during the founding moment what needs to be done is done by a representative elite rather than by Rousseau's "solemn assembly of the entire body", the kind of "general will" which Madison pauses to admire is markedly more selective and exclusive than anything Rousseau would have thought to countenance by way of a legitimatizing

foundational act. Finally, we might anticipate a later paper of Madison's by noting that although he seems here to acknowledge some truth in Jefferson's concern about the uniqueness and unrepeatability of the Constituting Moment in American politics, his closing words (note in particular "new experiments") seem already designed to forestall Jefferson's radical solution.

We skip to Number Thirty-Nine, in which the proposed Constitution is defended as being "strictly republican. It is evident that no other form would be reconcilable with the genius of the people of American; with the fundamental principles of the Revolution [it took quite a while for Madison to get around to mentioning it!]; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government". (240) Madison proceeds to make invidious comparisons with other modern "republics" generally so designated. In Holland he finds that "no particle of the supreme authority is derived from the people", whereas in Venice "absolute power . . . is exercised in the most absolute manner by a small body of hereditary nobles". In Poland he finds "a mixture of aristocracy and of monarchy in their worst forms". And even England "has one republican branch only, combined with an hereditary aristocracy and monarchy . . ." (240-241) The comparative superiority of the proposed American system now established, Madison seems content to redefine republican government once more so as to compromise its basis in popular sovereignty by invoking the language of political representation. Republican government "derives all its powers directly *or indirectly* from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior". (241, italics added. The difference between authorization and administration—in the language of Number Thirty-Seven, between "power", in one sense, and "energy"—should, however, be noted.)

The series of distinctions that takes up the rest of Number Thirty-Nine makes clear how carefully Madison hedges in the principle of popular sovereignty at all levels, including the foundational act. ". . . the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but . . . this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves". (243) Worthy of note is that this popular sovereignty, in as much as it is representationally constituted even in the several States, actually stands at two removes, not just one, from the foundational act authorizing the federal Constitution. As Madison quite cogently concludes: "The act, therefore, establishing the Constitution will not be a *national* but a *federal* act". (Italics in the text) Madison had assumed at the time that all thirteen States would ratify the Constitution unanimously. The very next paper already reflects the latest compromise with anything remotely resembling the Rousseauian General Will: nine of the thirteen States, it has been decided, will suffice. Pursuing his newest distinctions, Madison argues that the more popularly elected House of Representatives will be national rather than federal in character; the Senate, federal rather than national. The election of the President, as

well as the procedure for introducing Constitutional amendments, will reflect a mixture of both principles. (246)

Moving on to Number Forty-Seven, we find Madison involved in trying to sort out, in the so-called doctrine of the separation of powers, what Montesquieu actually intended by it from what less discerning students of politics have made of it. Madison takes seriously the objection that the proposed Constitution does not keep the powers of the several branches of government separate and distinct. He acknowledges the good intentions of those who make this objection, and grants them this much: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny". (301) However, Madison is persuaded "that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied". The maxim is that of "the celebrated Montesquieu", and we are assured that he "did not mean that these departments ought to have no *partial agency* in, or no *control* over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye [the English Constitution], can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted". (302-303; italics in the text)

The point at which Madison is driving has been addressed with uncommon force by Hannah Arendt in *On Revolution*. There and earlier, in *The Human Condition*, she argues that "power" itself, as a political concept, has been widely misunderstood and frequently subjected to criteria more appropriate for the assessment of physical strength. Political power, she argues, is the potentiality inherent in human coming together and is thus by nature an expression of human plurality. Where this plurality is not destroyed by the violence of tyranny (whose natural outcome is impotence), power can actually grow when "divided", "separated", or, better, "balanced". Therefore if political good health requires that power be checked without being destroyed, only power itself is of avail. The appeal to law to check power—a solution often proposed by democrats—is in vain. As such, law is too weak to resist the power of the many or the violence of a self-appointed few. A plurality in the heart of power itself, on the other hand, checks and generates power at the same time.<sup>9</sup> Convinced that the American Founding Fathers, and in particular Madison, has a conception of political power essentially like her own, Arendt writes:

Clearly, the true objective of the American Constitution was not to limit power but to create more power, actually to establish and duly constitute an entirely new power center, destined to compensate the confederate republic, whose authority was to be exerted over a large, expanding territory, for the power lost through the separation of the colonies from the English crown. This complicated and delicate system, deliberately designed to keep the power potential of the republic intact and prevent any of the multiple power sources from drying up in the event of further expansion . . . was entirely the child of the revolution. The American Constitution finally consolidated

the power of the Revolution, and since the aim of revolution was freedom, it indeed came to be what Bracton had called *Constitutio Libertatis*, the foundation of freedom. (*On Revolution*, 152-3)

It will long be a matter of controversy whether Madison and his co-Founders deserve so high a tribute—not, of course, for their quality as political thinkers or their skill as Constitution-makers, these being undeniable, but for so unflinching a devotion to the principles and institutions of political freedom, which is quite another matter. But if Arendt's judgment is at all near the mark, it might help us to better appreciate her other major claim regarding the distinctive character of the American Constitution. As Arendt redefines it, the proper end of revolution, as distinguished from rebellions and *coups d'état*, is the foundation of political freedom in enduring constitutional form. Accordingly, the perplexity confronting the revolutionary founders of political freedom and authority—among whom she counts the authors of the American Constitution—may be stated in the form of a vicious circle: the authority they create must somehow justify retrospectively their own authority to create it.

There would seem to be only one solution to this perplexity, only one way out of the circle (or at least out of its viciousness). The very act of founding—its principle—must carry its own authority with it. This can happen only when the greatness or excellence inherent in the act of founding itself is such that principle and authority are in effect one and the same, so that the act is dignified in the minds of the generations of citizens who follow and live under its disposition. This in effect did happen in Athens and in Rome before they became empires, and it happened once again in revolutionary America. However, Arendt reminds us (160ff), the greatness of the Founding Fathers was not the sole ingredient in the eventual resolution of their "legitimation dilemma". The assemblies of the newly emancipated colonies—already existing constituted powers which to various degrees preserved the isonomic character of decision-taking embodied in the Mayflower compact—"ratified" and thus helped legitimate the constituting federal power of the Founding Fathers, thereby enabling it to become the (relatively) supreme constituted power of an entire nation. Arendt's interpretation has the added virtue of clarifying why Madison explores at such length, here in Number Forty-Seven but on several occasions elsewhere as well, the constitutions of each of the thirteen States.

After Numbers Ten and Thirty-Seven, Paper Forty-Nine is probably the most important. Here the issue addressed is the frequency of Constitutional conventions, and the person Thomas Jefferson. Madison treats his esteemed colleague with respect, and begins by stressing the plausibility of Jefferson's proposal. "As the people are the only legitimate fountain of power . . . it seems strictly consonant to the republican theory to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others". (313-314) This, of course, is essentially the Rousseauian legitimation theory, and Jefferson may properly be regarded as its most eloquent champion in the New World. The concession with which Madison begins his critique of this theory makes plain how little its spirit appeals to him. "There is certainly great force in this reasoning, and it must be allowed to prove that a constitutional road to

the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions". (314) The last phrase in effect repudiates the major reason why Rousseau and Jefferson proposed the theory in the first place. They strongly believed in popular political experience of an active—at the constituting level even initiatory—nature.

Madison, clearly does not. Weighing in the balance the rights of popular opinion against the need for stability in government, Madison objects that frequent convocations to popular assembly would tend to weaken government and erode respect for it. All government is based on opinion; but opinion in its first and most proper form, that of differing individuals, is "timid and cautious", whereas in its massified form it quickly becomes overconfident and takes on the character of passion and prejudice. Inasmuch as "a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato . . . the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side". (315)

The danger of disturbing the public tranquility by interesting too strongly the public passions is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of government and which does so much honor to the virtue and intelligence of the people of America [a piece of disingenuous flattery if ever there was one], it must be confessed that the experiments are of too ticklish a nature to be unnecessarily multiplied. We are to recollect that all the existing constitutions [of the several colonies] were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; . . . (315)

The argument over frequency of assembly might be said to address two closely related issues: the character of constitution-making and the quality of the body politic. As Madison construes a position such as theirs, Rousseau and Jefferson, having for the most part European constitutions in mind, find them to be overly authoritarian and insufficiently legitimated by popular will. The latter, they believe, is a potential reservoir of reason, good judgment, and common sense needing only broad political experience and involvement in government at all levels in order to attain maturity and control over the baser passions. Madison himself, narrowing his focus upon the thirteen State constitutions, considers them to be as close to models of enlightened government as one could reasonably hope to find—and has lower expectations for the people at large.

These two issues, however, can be resolved into a single, albeit highly controversial question: Of what, politically speaking, are the masses capable? Madison consistently accepts an answer as old as Aristotle. Whereas only a few have the ability to rule, the many are quite capable of recognizing and assenting to a natural ability to

rule in others. And whereas the many are not, in general, competent to frame or even to debate laws, they are able to judge the merits of legislation once they have had the opportunity to experience its effects. In Aristotle's time, the idea of "mixed government" as pillar of republican theory, in as much as it argued for at least a limited, reactive form of popular participation where there had seldom been any at all before, was an enlightened and to some extent even a revolutionary one. By the time Madison declares his allegiance to it, however, it has become quite conservative—"elitist", in the verbiage of our own day. This is not to say that no traces of elitism are to be found in the thought and attitudes of Rousseau and Jefferson. It is rather that they were far less convinced than was Madison of the general correlation between being rich and well-born and being wise. Madison's skepticism regarding the improvement of the masses, on the other hand, leads him to repudiate not only Jefferson's call for frequent constitutional assemblies of a populist nature, but also, and for the same reason, a Rousseauian conception of a "general will" as being expressive, in most if not all men, of a higher self fit to found, legitimate, and renew a constitutional government on a consensual basis.

The rest of Madison's contributions to the *Federalist Papers* at once confirm and exploit his fundamental pessimism with respect to human nature. Convinced that men of reason and good will are too few in number and that even they display such qualities of mind only on rare occasions, Madison effectively relocates political virtue in "so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places". (Number Fifty-One, p. 320) This reliance on an inner dynamic of checks and balances within government already constituted instead of on constitutional renewal is Madison's vote, as it were, in favor of Aristotle and Montesquieu and against Rousseau and Jefferson. As Madison pursues this line of reflection in his memorable Number Fifty-One, he argues that the system he favors, by absorbing factional strife into government itself, not only reduces its destructiveness but transfigures it into something politically constructive.

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. (322)

Madison realizes full well the extent to which his argument presupposes a non-idealistic view of human nature. The policy he is advocating is one of "supplying, by opposite and rival interests, the defect of better motives". (322) "In the compound republic of America, the power surrendered by the people is first divided between distinct governments, and then the portion allotted to each subdivided among distinct

and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself". (323) But if it is the genius of the "compound republic" at once to concentrate and to disperse power, this is largely due to the manner in which it both reflects and neutralizes interests.

Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of society may as well espouse the unjust views of the major as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. (323-324. Notice how a "third method", the eliciting of a Rousseauian general will through the instrumentality of Jefferson's frequent populist constitutional conventions, is completely overlooked or ignored here.)

The structure of government itself, then, must be such as to first absorb and then to diffuse the power of factions. This is best accomplished by means of a broadly based representative government, preferably a republic compounded of several state governments and one federal government. As this system simultaneously mirrors and dilutes the force of diverse ambitions and interests as it were from bottom to top, it offers the best available guarantee of political freedom and security for all. And as a result of this system's successful workings, Madison envisages the emergence of something approximating to a concern for the public good after all. "In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good". (325)

The remaining nine papers flesh out details, so we shall ignore them here. Let us conclude instead with one more look at the controversy (let me re-emphasize that "real" or "imaginary" is for my purposes beside the point) between Rousseau and Madison. If Rousseau is right, the measure of the republic as a whole is the quality of its parts. There can be no legitimate government without the activation, in each member of the body politic, of a higher will sufficiently general or universal in scope to be capable of authorizing and critically sustaining such a government. If Madison is right, so exotic a faculty can be dispensed with. For in the republic of his designing the chemistry of the whole manifests an ingredient barely discernible in its parts. Precisely because the federal government remains rooted in the welter of a plurality of factional interests, its leaders, if not the broader body of its citizens, are driven toward a spirit of toleration and compromise which tends toward the general welfare without



actually presupposing a general will. As though he had descried far more in the image of the "invisible hand" than, judging by the single and rather casual reference to it in *Wealth of Nations*, did Adam Smith himself, Madison envisages in the forthcoming political life of America the generally unintended emergence of a second-order interest in reasonableness and harmony transcending the very war of factions that gives rise to it. To this extent, Madison might be said to have something in common after all with Rousseau beyond a basic commitment to republican principles of government. For Madison in his own fashion has conceptualized a political order capable of "forcing men to be free". □

### ENDNOTES

<sup>1</sup> Madison contributed 26 of these installments—29 counting three co-authored with Alexander Hamilton, who is credit with 51. The remaining five were penned by John Jay.

<sup>2</sup> See in particular Gordon S. Wood, *The Creation of the American Republic* (Chapel Hill: University of North Carolina Press, 1969) and J.G.A. Pocock, *The Machiavellian Moment* (Princeton: Princeton University Press, 1975). The bibliography lists a number of other recent sources.

<sup>3</sup> *The Federalist Papers*, edited by Clinton Rossiter (New York: New American Library (Mentor), 1961), 77 (italics added). This edition is used throughout; subsequent page references appear directly in the body of the text.

<sup>4</sup> *The Discourses* (c. 1513 ff.), translated by Leslie J. Walker, S.J. and Brian Richardson and edited by Bernard Crick (New York: Penguin, 1974), 113.

<sup>5</sup> With the Roman model before him as usual, Machiavelli considered expansionism the ineluctable price to be paid for an armed and enterprising citizenry ever on guard against domestic tyranny.

<sup>6</sup> *On Revolution* (New York: Viking, 1965), 152 (italics added).

<sup>7</sup> My best guess is that this is neither an archaic spelling of 'various' nor a typographical error. "Verjuice" is the sour acid or juice of green (>ver), unripe fruit. As a verb, 'verjuice' is 'to make sour'. Madison's adjectival form 'verious' seems to be alluding to the sour expression on the faces, or the bitter taste in the viscera, of the unpropertied.

<sup>8</sup> *On the Social Contract*, translated by Judith R. Masters and edited by Roger D. Masters (New York: St. Martin's Press, 1978), 53.

<sup>9</sup> *On Revolution*, 150-53; c.f. *The Human Condition* (Chicago: University of Chicago Press, 1958), 199-205.