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Martin Diamond

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DEMOCRACY AND *THE FEDERALIST*: A RECONSIDERATION OF THE FRAMERS' INTENT*

MARTIN DIAMOND
Claremont Men's College

It has been a common teaching among modern historians of the guiding ideas in the foundation of our government that the Constitution of the United States embodied a reaction against the democratic principles espoused in the Declaration of Independence. This view has largely been accepted by political scientists and has therefore had important consequences for the way American political development has been studied. I shall present here a contrary view of the political theory of the Framers and examine some of its consequences.

What is the relevance of the political thought of the Founding Fathers to an understanding of contemporary problems of liberty and justice? Four possible ways of looking at the Founding Fathers immediately suggest themselves. First, it may be that they possessed wisdom, a set of political principles still inherently adequate, and needing only to be supplemented by skill in their proper contemporary application. Second, it may be that, while the Founding Fathers' principles are still sound, they are applicable only to a part of our problems, but not to that part which is peculiarly modern; and thus new principles are needed to be joined together with the old ones. Third, it may be that the Founding Fathers have simply become; they dealt with bygone problems and their principles were relevant only to those old problems. Fourth, they may have been wrong or radically inadequate even for their own time.

Each of these four possible conclusions requires the same foundation: an understanding of the political thought of the Founding Fathers. To decide whether to apply their wisdom, or to add to their wisdom, or to reject it as irrelevant or as unwise, it is absolutely necessary to understand what they said, why they said it, and what they meant by it. At the same time, however, to understand their claim to wisdom is to evaluate it: to know wherein they were wise and wherein they were not, or wherein (and why) their wisdom is unavailing for our problems. Moreover, even if it turns out that our modern problems require wholly new principles for their solution, an excellent way to discover those new principles would be to see what it is about modernity that has outmoded the principles of the Founding Fathers. For example, it is possible that modern developments are themselves partly the outcome of the particular attempt to solve the problem of freedom and justice upon which this country was founded. That is, our modern difficulties may testify to fundamental errors in the thought of the Founding Fathers; and, in the process of discerning those errors, we may discover what better principles would be.

The solution of our contemporary problems requires very great wisdom indeed. And in that fact lies the greatest justification for studying anew the

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political thought of the Founding Fathers. For that thought remains the finest American thought on political matters. In studying them we may raise ourselves to their level. In achieving their level we may free ourselves from limitations that, ironically, they tend to impose upon us, *i.e.*, insofar as we tend to be creatures of the society they founded. And in so freeing ourselves we may be enabled, if it is necessary, to go beyond their wisdom. The Founding Fathers still loom so large in our life that the contemporary political problem of liberty and justice for Americans could be stated as the need to choose whether to apply their wisdom, amend their wisdom, or reject it. Only an understanding of them will tell us how to choose.

For the reflections on the Fathers which follow, I employ chiefly *The Federalist* as the clue to the political theory upon which rested the founding of the American Republic. That this would be inadequate for a systematic study of the Founding Fathers goes without saying. But it is the one book, "to which," as Jefferson wrote in 1825, "appeal is habitually made by all, and rarely declined or denied by any as evidence of the general opinion of those who framed and of those who accepted the Constitution of the United States, on questions as to its genuine meaning." As such it is the indispensable starting point for systematic study.

I

Our major political problems today are problems of democracy; and, as much as anything else, the *Federalist* papers are a teaching about democracy. The conclusion of one of the most important of these papers states what is also the most important theme in the entire work: the necessity for "a republican remedy for the diseases most incident to republican government."¹ The theme is clearly repeated in a passage where Thomas Jefferson is praised for displaying equally "a fervent attachment to republican government and an enlightened view of the dangerous propensities against which it ought to be guarded."² *The Federalist*, thus, stresses its commitment to republican or popular government, but, of course, insists that this must be an enlightened commitment.

But *The Federalist* and the Founding Fathers generally have not been taken at their word. Predominantly, they are understood as being only quasi- or even anti-democrats. Modern American historical writing, at least until very recently, has generally seen the Constitution as some sort of apostasy from, or reaction to, the radically democratic implications of the Declaration of Independence—a reaction that was undone by the great "democratic breakthroughs" of Jeffersonianism, Jacksonianism, etc. This view, I believe, involves a false understanding of the crucial political issues involved in the founding of the American Republic. Further, it is based implicitly upon a questionable modern approach to democracy and has tended to have the effect, moreover, of relegating the political teaching of the Founding Fathers to the pre-democratic past and thus of making it of no vital concern to moderns. The Founding

¹ *Federalist*, No. 10, p. 62. All references are to the Modern Library edition, ed. E. M. Earle.

² *Federalist*, No. 49, p. 327.

Fathers themselves repeatedly stressed that their Constitution was wholly consistent with the true principles of republican or popular government. The prevailing modern opinion, in varying degrees and in different ways, rejects that claim. It thus becomes important to understand what was the relation of the Founding Fathers to popular government or democracy.

I have deliberately used interchangeably their terms, "popular government" and "democracy." The Founding Fathers, of course, did not use the terms entirely synonymously and the idea that they were less than "democrats" has been fortified by the fact that they sometimes defined "democracy" invidiously in comparison with "republic." But this fact does not really justify the opinion. For their basic view was that *popular government was the genus, and democracy and republic were two species* of that genus of government. What distinguished popular government from other genera of government was that in it, political authority is "derived from the great body of the society, not from . . . [any] favoured class of it."³ With respect to this decisive question, of where political authority is lodged, democracy and republic—as *The Federalist* uses the terms—differ not in the least. Republics, equally with democracies, may claim to be wholly a form of popular government. This is neither to deny the difference between the two, nor to depreciate the importance *The Federalist* attached to the difference; but in *The Federalist's* view, the difference does not relate to the essential principle of popular government. Democracy means in *The Federalist* that form of popular government where the citizens "assemble and administer the government in person."⁴ Republics differ in that the people rule through representatives and, of course, in the consequences of that difference. The crucial point is that republics and democracies are equally forms of popular government, but that the one form is vastly preferable to the other because of the substantive consequences of the difference in form. Those historians who consider the Founding Fathers as less than "democrats," miss or reject the Founders' central contention that, while being perfectly faithful to the *principle* of popular government, they had solved the *problem* of popular government.

In what way is the Constitution ordinarily thought to be less democratic than the Declaration? The argument is usually that the former is characterized by

³ *Federalist*, No. 39, p. 244. Here Madison speaks explicitly of the republican form of government. But see on the same page how Madison compares the republican form with "every other popular government." Regarding the crucial question of the lodgement of political authority, Madison speaks of republic, democracy and popular government interchangeably. Consider that, in the very paper where he distinguishes so precisely between democracies and republics regarding direct versus representative rule, Madison defines his general aim both as a search for "a republican remedy" for republican diseases and a remedy that will "preserve the spirit and the form of popular government." (p. 58.) Interestingly, on June 6 at the Federal Convention, Madison's phrasing for a similar problem was the search for "the only defense against the inconveniences of democracy consistent with the *democratic* form of government." Madison, *Writings*, ed. G. Hunt, Vol. 3 (G. P. Putnam's Sons, New York, 1902), p. 103. Italics supplied throughout.

⁴ *Federalist*, No. 10, p. 58.

fear of the people, by preoccupation with minority interests and rights, and by measures therefore taken against the power of majorities. The Declaration, it is true, does not display these features, but this is no proof of a fundamental difference of principle between the two. Is it not obviously possible that the difference is due only to a difference in the tasks to which the two documents were addressed? And is it not further possible that the democratic principles of the Declaration are not only compatible with the prophylactic measures of the Constitution, but actually imply them?

The Declaration of Independence formulates two criteria for judging whether any government is good, or indeed legitimate. Good government must rest, procedurally, upon the consent of the governed. Good government, substantively, must do only certain things, *e.g.*, secure certain rights. This may be stated another way by borrowing a phrase from Locke, appropriate enough when discussing the Declaration. That "the people shall be judge" is of the essence of democracy, is its peculiar form or method of proceeding. That the people shall judge rightly is the substantive problem of democracy. But whether the procedure will bring about the substance is problematic. Between the Declaration's two criteria, then, a tension exists: consent can be given or obtained for governmental actions which are not right—at least as the men of 1776 saw the right. (To give an obvious example from their point of view: the people may freely but wrongly vote away the protection due to property.) Thus the Declaration clearly contained, although it did not resolve, a fundamental problem. Solving the problem was not its task; that was the task for the framers of the Constitution. But the man who wrote the Declaration of Independence and the leading men who supported it were perfectly aware of the difficulty, and of the necessity for a "republican remedy."

What the text of the Declaration, taken alone, tells of its meaning may easily be substantiated by the testimony of its author and supporters. Consider only that Jefferson, with no known change of heart at all, said of *The Federalist* that it was "the best commentary on the principles of government which was ever written."⁸ Jefferson, it must be remembered, came firmly to recommend the adoption of the Constitution, his criticisms of it having come down only to a proposal for rotation in the Presidency and for the subsequent adoption of a bill of rights. I do not, of course, deny the peculiar character of "Jeffersonianism" nor the importance to many things of its proper understanding. I only state here that it is certain that Jefferson, unlike later historians, did not view the Constitution as a retrogression from democracy. Or further, consider that John Adams, now celebrated as America's great conservative, was so enthusiastic about Jefferson's draft of the Declaration as to wish on his own account that hardly a word be changed. And this same Adams, also without any change of heart and without complaint, accepted the Constitution as embodying many of his own views on government.

The idea that the Constitution was a falling back from the fuller democracy

⁸ *The Works of Thomas Jefferson*, ed. Paul L. Ford (The Federal Edition), Vol. 5 (G. P. Putnam's Sons, New York, 1904), p. 434.

of the Declaration thus rests in part upon a false reading of the Declaration as free from the concerns regarding democracy that the framers of the Constitution felt. Perhaps only those would so read it who take for granted a perfect, self-sustaining harmony between consent (equality) and the proper aim of government (justice), or between consent and individual rights (liberty). This assumption was utterly foreign to the leading men of the Declaration.

II

The Declaration has wrongly been converted into, as it were, a super-democratic document; has the Constitution wrongly been converted in the modern view into an insufficiently democratic document? The only basis for depreciating the democratic character of the Constitution lies in its framers' apprehensive diagnosis of the "diseases," "defects" or "evil propensities" of democracy, and in their remedies. But if what the Founders considered to be defects *are* genuine defects, and if the remedies, without violating the principles of popular government, *are* genuine remedies, then it would be unreasonable to call the Founders anti- or quasi-democrats. Rather, they would be the wise partisans of democracy; a man is not a better democrat but only a foolish democrat if he ignores real defects inherent in popular government. Thus, the question becomes: are there natural defects to democracy and, if there are, what are the best remedies?

In part, the Founding Fathers answered this question by employing a traditional mode of political analysis. They believed there were several basic possible regimes, each having several possible forms. Of these possible regimes they believed the best, or at least the best for America, to be popular government, but only if purged of its defects. At any rate, an unpurged popular government they believed to be indefensible. They believed there were several forms of popular government, crucial among these direct democracy and republican—or representative—government (the latter perhaps divisible into two distinct forms, large and small republics). Their constitution and their defense of it constitute an argument for that form of popular government (large republic) in which the "evil propensities" would be weakest or most susceptible of remedy.

The whole of the thought of the Founding Fathers is intelligible and, especially, the evaluation of their claim to be wise partisans of popular government is possible, only if the words "*disease*," "*defect*," and "*evil propensity*" are allowed their full force. Unlike modern "value-free" social scientists, the Founding Fathers believed that true knowledge of the good and bad in human conduct was possible, and that they themselves possessed sufficient knowledge to discern the really grave defects of popular government and their proper remedies. The modern relativistic or positivistic theories, implicitly employed by most commentators on the Founding Fathers, deny the possibility of such true knowledge and therefore deny that the Founding Fathers *could* have been actuated by knowledge of the good rather than by passion or interest. (I deliberately employ the language of *Federalist* No. 10. Madison defined faction, in part, as a group "united and actuated by . . . passion, or . . . interest." That is, factions are groups *not*—as presumably the authors of *The Federalist* were—actuated by

reason.) How this modern view of the value problem supports the conception of the Constitution as less democratic than the Declaration is clear. The Founding Fathers did in fact seek to prejudice the outcome of democracy; they sought to alter, by certain restraints, the likelihood that the majority would decide certain political issues in bad ways. These restraints the Founders justified as mitigating the natural defects of democracy. But, say the moderns, there are no "bad" political decisions, wrong-in-themselves, from reaching which the majority ought to be restrained. Therefore, ultimately, nothing other than the specific interests of the Founders can explain their zeal in restraining democracy. And inasmuch as the restraints were typically placed on the many in the interest of the propertied, the departure of the Constitution is "anti-democratic" or "thermidorean." In short, according to this view, there cannot be what the Founders claimed to possess, "an *enlightened* view of the dangerous propensities against which [popular government] . . . ought to be guarded," the substantive goodness or badness of such propensities being a matter of opinion or taste on which reason can shed no light.

What are some of the arrangements which have been considered signs of "undemocratic" features of the Constitution? The process by which the Constitution may be amended is often cited in evidence. Everyone is familiar with the arithmetic which shows that a remarkably small minority could prevent passage of a constitutional amendment supported by an overwhelming majority of the people. That is, bare majorities in the thirteen least populous states could prevent passage of an amendment desired by overwhelming majorities in the thirty-six most populous states. But let us, for a reason to be made clear in a moment, turn that arithmetic around. Bare majorities in the thirty-seven least populous states can pass amendments against the opposition of overwhelming majorities in the twelve most populous states. And this would mean in actual votes today (and would have meant for the thirteen original states) constitutional amendment by a minority against the opposition of a majority of citizens. My point is simply that, while the amending procedure does involve qualified majorities, the qualification is not of the kind that requires an especially large numerical majority for action.

I suggest that the real aim and practical effect of the complicated amending procedure was not at all to give power to minorities, but to ensure that passage of an amendment would require a *nationally* distributed majority, though one that legally could consist of a bare numerical majority. It was only adventitious that the procedure has the theoretical possibility of a minority blocking (or passing) an amendment. The aim of requiring nationally distributed majorities was, I think, to ensure that no amendment could be passed simply with the support of the few states or sections sufficiently numerous to provide a bare majority. No doubt it was also believed that it would be difficult for such a national majority to form or become effective save for the decent purposes that could command national agreement, and this difficulty was surely deemed a great virtue of the amending process. This is what I think *The Federalist* really means when it praises the amending process and says that "it guards equally against that extreme facility, which would render the Constitution too mutable;

and that extreme difficulty, which might perpetuate its discovered faults."⁶ All I wish to emphasize here is that the actual method adopted, with respect to the numerical size of majorities, is meant to leave all legal power in the hands of ordinary majorities so long as they are national majorities. The departure from simple majoritarianism is, at least, not in an oligarchic or aristocratic direction. In this crucial respect, the amending procedure does conform strictly to the principles of republican (popular) government.

Consider next the suffrage question. It has long been assumed as proof of an anti-democratic element in the Constitution that the Founding Fathers depended for the working of their Constitution upon a substantially limited franchise. Just as the Constitution allegedly was ratified by a highly qualified electorate, so too, it is held, was the new government to be based upon a suffrage subject to substantial property qualifications. This view has only recently been seriously challenged, especially by Robert E. Brown, whose detailed researches convince him that the property qualifications in nearly all the original states were probably so small as to exclude never more than twenty-five per cent, and in most cases as little as only five to ten per cent, of the adult white male population.^{6a} That is, the property qualifications were not designed to exclude the mass of the poor but only the small proportion which lacked a concrete—however small—stake in society, *i.e.*, primarily the transients or "idlers."

The Constitution, of course, left the suffrage question to the decision of the individual states. What is the implication of that fact for deciding what sort of suffrage the Framers had in mind? The immediately popular branch of the national legislature was to be elected by voters who "shall have the qualifications requisite for electors of the most numerous branch of the State Legislature." The mode of election to the electoral college for the Presidency and to the Senate is also left to "be prescribed in each State by the legislature thereof." At a minimum, it may be stated that the Framers did not themselves attempt to reduce, or prevent the expansion of, the suffrage; that question was left wholly to the states—and these were, ironically, the very hotbeds of post-revolutionary democracy from the rule of which it is familiarly alleged that the Founders sought to escape.⁷

In general, the conclusion seems inescapable that the states had a far broader suffrage than is ordinarily thought, and nothing in the actions of the Framers suggests any expectation or prospect of the reduction of the suffrage. Again, as in the question of the amending process, I suggest that the Constitution represented no departure whatsoever from the democratic standards of the Revolu-

⁶ *Federalist*, No. 43, p. 286.

^{6a} *Middle Class Democracy and the Revolution in Massachusetts, 1691-1780*. (Cornell University Press, Ithaca, 1955).

⁷ Madison must have thought that he had established this point beyond misinterpretation in *The Federalist*, No. 57. "Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State." (p. 371.)

tionary period, or from any democratic standards then generally recognized.⁸

What of the Senate? The organization of the Senate, its term of office and its staggered mode of replacement, its election by state legislatures rather than directly by the people, among other things, have been used to demonstrate the undemocratic character of the Senate as intended by the Framers. Was this not a device to represent property and not people, and was it not intended therefore to be a non-popular element in the government? I suggest, on the contrary, that the really important thing is that the Framers thought they had found a way to protect property *without* representing it. That the Founders intended the Senate to be one of the crucial devices for remedying the defects of democracy is certainly true. But *The Federalist* argues that the Senate, as actually proposed in the Constitution, was calculated to be such a device as would operate only in a way that "will consist . . . with the genuine principles of republican government."⁹ I believe that the claim is just.

Rather than viewing the Senate from the perspective of modern experience and opinions, consider how radically democratic the Senate appears when viewed from a pre-modern perspective. The model of a divided legislature that the Founders had most in mind was probably the English Parliament. There the House of Lords was thought to provide some of the beneficial checks upon the popular Commons which it was hoped the Senate would supply in the American Constitution. But the American Senate was to possess none of the qualities which permitted the House of Lords to fulfill its role; *i.e.*, its hereditary basis, or membership upon election by the Crown, or any of its other aristocratic characteristics.¹⁰ Yet the Founding Fathers knew that the advantages of having both a Senate and a House would "be in proportion to the dissimilarity in the genius of the two bodies."¹¹ What is remarkable is that, in seeking to secure this dissimilarity, they did not in any respect go beyond the limits permitted by the "genuine principles of republican government."

Not only is this dramatically demonstrated in comparison with the English House of Lords, but also in comparison with all earlier theory regarding the division of the legislative power. The aim of such a division in earlier thought is to secure a balance between the aristocratic and democratic elements of a polity. This is connected with the pre-modern preference for a *mixed* republic, which was rejected by the Founders in favor of a *democratic* republic. And the tradi-

⁸ This is not to deny the importance of the existing property qualifications for the understanding of the Founders' political theory. The legal exclusion from the franchise of even a very small portion of the adult population may have enormous significance for the politics and life of a country. This is obvious in the case of a racial, ethnic or religious minority. And the exclusion of otherwise eligible adult males on the grounds of poverty may be equally important. The property qualification clearly praises and rewards certain virtues, implies that the voter must possess certain qualities to warrant his exercise of the franchise, and aims at excluding a "rabble" from the operations of political parties. But important, therefore, as the property qualification was, it does not demonstrate that the Founding Fathers departed radically from the most important aspects of the principle of majority rule.

⁹ *Federalist*, No. 62, p. 403.

¹⁰ *Federalist*, No. 63, p. 415.

¹¹ *Federalist*, No. 62, p. 403.

tional way to secure this balance or mixture was to give one house or office to the suffrages of the few and one to the suffrages of the many. Nothing of the kind is involved in the American Senate. Indeed, on this issue, so often cited as evidence of the Founders' undemocratic predilections, the very opposite is the case. The Senate is a constitutional device which *par excellence* reveals the strategy of the Founders. They wanted something like the advantages earlier thinkers had seen in a mixed legislative power, but they thought this was possible (and perhaps preferable) without any introduction whatsoever of aristocratic power into their system. What pre-modern thought had seen in an aristocratic senate—wisdom, nobility, manners, religion, etc.—the Founding Fathers converted into stability, enlightened self-interest, a “temperate and respectable body of citizens.” The qualities of a senate having thus been altered (involving perhaps comparable changes in the notion of the ends of government), it became possible to secure these advantages through a Senate based wholly upon popular principles. Or so I would characterize a Senate whose membership required no property qualification and which was appointed (or elected in the manner prescribed) by State legislatures which, in their own turn, were elected annually or biennially by a nearly universal manhood suffrage.

The great claim of *The Federalist* is that the Constitution represents the fulfillment of a truly novel experiment, of “a revolution which has no parallel in the annals of society,” and which is decisive for the happiness of “the whole human race.”¹² And the novelty, I argue, consisted in solving the problems of popular government by means which yet maintain the government “wholly popular.”¹³ In defending that claim against the idea of the Constitution as a retreat from democracy I have dealt thus far only with the easier task: the demonstration that the constitutional devices and arrangements do not derogate from the legal power of majorities to rule. What remains is to examine the claim that the Constitution did in fact remedy the natural defects of democracy. Before any effort is made in this direction, it may be useful to summarize some of the implications and possible utility of the analysis thus far.

Above all, the merit of the suggestions I have made, if they are accurate in describing the intention and action of the Founders, is that it makes the Founders available to us for the study of modern problems. I have tried to restore to them their *bona fides* as partisans of democracy. This done, we may take seriously the question whether they were, as they claimed to be, wise partisans of democracy or popular government. If they were partisans of democracy and if the regime they created was decisively democratic, then they speak to us not merely about bygone problems, not from a viewpoint—in this regard—radically different from our own, but as men addressing themselves to problems identical in principle with our own. They are a source from within our own heritage which teaches us the way to put the question to democracy, a way which is rejected by certain prevailing modern ideas. But we cannot avail ourselves of their assistance if we consider American history to be a succession of democratizations which overcame the Founding Fathers' intentions. On that view it is easy

¹² *Federalist*, No. 14, p. 85.

¹³ *Ibid.*, p. 81.

to regard them as simply outmoded. If I am right regarding the extent of democracy in their thought and regime, then they are not outmoded by modern events but rather are tested by them. American history, on this view, is not primarily the replacement of a pre-democratic regime by a democratic regime, but is rather a continuing testimony to how the Founding Fathers' democratic regime has worked out in modern circumstances. The whole of our national experience thus becomes a way of judging the Founders' principles, of judging democracy itself, or of pondering the flaws of democracy and the means to its improvement.

III

What was the Founding Fathers' view of the good life? Upon what fundamental theoretical premises did that view of the good life depend? How comprehensive was their understanding of the dangers against which popular government was to be guarded? How efficacious were their remedies and what may have been the unanticipated costs of those remedies? These questions are clearly too vast to answer here and now. What follows is only a series of notes which bear upon the problems raised, and which I think may serve as general guides to what it is important to seek in studying the Founding Fathers.

The Federalist does not discuss systematically, as would a theoretical treatise, the question of the ends or purposes of government. That is, it does not deal systematically with philosophical issues. This is not to say that its authors did not have a view in such matters. But what that view was, and what are its implications for the understanding of the Constitution, is a subject on which I find it difficult to speak with confidence. I must still regard as open the question whether the authors of *The Federalist*, or the other leading founders, had themselves fully reflected on these matters, or whether they treated them as settled by thinkers like Locke and Montesquieu, or whether crucial premises in their thought were unreflectively taken for granted. But men cannot act on a political scale so vast as they did without having and employing a view of the politically fundamental; and it is this view which provides the crucial perspective for the understanding of their particular actions and thoughts.

Perhaps the most explicit fundamental utterance of *The Federalist* is the statement regarding

the great principle of self-preservation . . . the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed.¹⁴

But self-preservation, it is made clear, includes more than mere preservation. This passage, which interestingly echoes the Declaration of Independence on the "laws of nature and of nature's God," emphasizes that preservation includes "happiness" as well as "safety." That is, *The Federalist* is aware of and explicitly rejects the kind of regime that would follow from a narrower view of self-preservation. For example, *The Federalist* seems explicitly to be rejecting Hobbes when, in another context, it rejects the view that "nothing less than the chains of despotism can restrain [men] from destroying and devouring one an-

¹⁴ *Federalist*, No. 43, p. 287.

other."¹⁶ But while it rejects the "chains of despotism," *i.e.*, the Hobbesean solution to the problem of self-preservation, it nonetheless seems to accept the Hobbesean statement of the problem. As it were, the primary fears of *The Federalist* are Hobbesean, that is, fears of "foreign war and domestic convulsion." Rejecting a despototic solution, the great aim of *The Federalist* is to supply a liberal and republican solution to the same problem. But while there is a great difference, never to be underestimated, between a liberal and a repressive, a republican and a monarchical solution, it may be that in making the same dangers and their solution *the desideratum* for the structure and functions of government much of the Hobbesean view is preserved.

The main object of *The Federalist* was to urge the necessity of a firm and energetic Union. The utility of such a Union, and therefore the chief ends it will serve, is that it will strengthen the American people against the dangers of "foreign war" and secure them from the dangers of "domestic convulsion." These functions of government are the most frequently discussed and the most vehemently emphasized in the whole work. To a very great extent, then, *The Federalist* determines the role of government with reference only, or primarily, to the extremes of external and internal danger. It is to avoid the pre-civil forms of these dangers that men form government and it is the civil solution of these dangers which, almost exclusively, determines the legitimate objects of government. But again, *The Federalist* repeatedly emphasizes that a "novel" solution is at hand. The means now exist—and America is uniquely in a position to employ them—for a republican solution which avoids the extremes of tyranny and anarchy. But notice that, on this view, liberalism and republicanism are not the means by which men may ascend to a nobler life; rather they are simply instrumentalities which solve Hobbesean problems in a more moderate manner. It is tempting to suggest that if America is a "Lockean" nation, as is so often asserted, it is true in the very precise sense that Locke's "comfortable preservation" displaces the harshness of the Hobbesean view, while not repudiating that view in general.

To be sure, *The Federalist* does make other explicit statements regarding the ends of government. For example: "Justice is the end of government. It is the end of civil society."¹⁶ But this statement, to the best of my knowledge, is made only once in the entire work; and the context suggests that "justice" means simply "civil rights" which in turn seems to refer primarily to the protection of economic interests. That justice has here this relatively narrow meaning, as compared with traditional philosophical and theological usage, is made more probable when we take account of the crucial statement in *Federalist* No. 10. There the "first object of government" is the protection of the diverse human faculties from which arise the "rights of property" and the unequal distribution of property. The importance of this statement of the function of government is underscored when it is recalled how large a proportion of *The Federalist* deals with the improvements in "commerce" made possible by the new Constitution.

¹⁶ *Federalist*, No. 55, p. 365.

¹⁶ *Federalist*, No. 51, p. 340.

For example, in a list of the four "principal objects of federal legislation,"¹⁷ three (foreign trade, interstate trade, and taxes) deal explicitly with commerce. The fourth, the militia, also deals with commerce insofar as it largely has to do with the prevention of "domestic convulsion" brought on by economic matters.

The very great emphasis of *The Federalist* on commerce, and on the role of government in nurturing it, may not be at all incompatible with the theme of "happiness" which is the most frequently occurring definition of the "object of government." The most definite statement is the following:

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people, secondly, a knowledge of the means by which that object can be best obtained.¹⁸

The Federalist is not very explicit in defining happiness. But there are firm indications that what it had in mind has little in common with traditional philosophical or theological understandings of the term. At one place, *The Federalist* indicates that happiness requires that government "provide for the security, advance the prosperity, [and] support the reputation of the commonwealth."¹⁹ In another, happiness seems to require "our safety, our tranquility, our dignity, our reputation."²⁰ Part of what these words mean is made clear by the fact that they summarize a lengthy indictment of the Articles of Confederation, the particulars of which deal in nearly every case with commercial shortcomings. Happiness, "a knowledge of the means" to which *The Federalist* openly claims to possess, seems to consist primarily in physical preservation from external and internal danger and in the comforts afforded by a commercial society; which comforts are at once the dividends of security and the means to a republican rather than repressive security.

What is striking is the apparent exclusion from the functions of government of a wide range of non-economic tasks traditionally considered the decisive business of government. It is tempting to speculate that this reduction in the tasks of government has something to do with *The Federalist's* defense of popular government. The traditional criticism of popular government was that it gave over the art of government into the hands of the many, which is to say the unwise. It would be a formidable reply to reduce the complexity of the governmental art to dimensions more commensurate with the capacity of the many. I use two statements by Madison, years apart, to illustrate the possibility that he may have had something like this in mind. "There can be no doubt that there are subjects to which the capacities of the bulk of mankind are unequal."²¹ But on the other hand, "the confidence of the [Republican party] in the capacity of mankind for self-government"²² is what distinguished it from the Fed-

¹⁷ *Federalist*, No. 53, p. 350-51.

¹⁸ *Federalist*, No. 62, p. 404.

¹⁹ *Federalist*, No. 30, p. 186.

²⁰ *Federalist*, No. 15, p. 88.

²¹ Letter to Edmund Randolph, January 10, 1788.

²² Letter to William Eustis, May 22, 1823. The letters to Randolph and Eustis were brought to my attention by Ralph Ketcham's article, "Notes on James Madison's Sources for the Tenth Federalist Paper," *Midwest Journal of Political Science*, Vol. 1 (May, 1957).

eralist party which distrusted that capacity. The confidence in mankind's capacities would seem to require having removed from government the subjects to which those capacities are unequal.

IV

So far as concerns those ends of government on which *The Federalist* is almost wholly silent, it is reasonable to infer that what the Founders made no provision for they did not rank highly among the legitimate objects of government. Other political theories had ranked highly, as objects of government, the nurturing of a particular religion, education, military courage, civic-spiritedness, moderation, individual excellence in the virtues, etc. On all of these *The Federalist* is either silent, or has in mind only pallid versions of the originals, or even seems to speak with contempt. The Founders apparently did not consider it necessary to make special provision for excellence. Did they assume these virtues would flourish without governmental or other explicit provision? Did they consciously sacrifice some of them to other necessities of a stable popular regime—as it were, as the price of their solution to the problem of democracy? Or were these virtues less necessary to a country when it had been properly founded on the basis of the new "science of politics"? In what follows I suggest some possible answers to these questions.

The Founding Fathers are often criticized for an excessive attention to, and reliance upon, mechanical institutional arrangements and for an insufficient attention to "sociological" factors. While a moderate version of this criticism may finally be just, it is nonetheless clear that *The Federalist* pays considerable and shrewd attention to such factors. For example, in *Federalist* No. 51, equal attention is given to the institutional and non-institutional strengths of the new Constitution. One of these latter is the solution to the "problems of faction." It will be convenient to examine *Federalist* No. 10 where the argument about faction is more fully developed than in No. 51. A close examination of that solution reveals something about *The Federalist's* view of the virtues necessary to the good life.

The problem dealt with in the tenth essay is how "to break and control the violence of faction." "The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice." Faction is, thus, *the* problem of popular government. Now it must be made clear that Madison, the author of this essay, was not here really concerned with the problem of faction generally. He devotes only two sentences in the whole essay to the dangers of *minority* factions. The real problem in a popular government, then, is *majority* faction, or, more precisely, *the* majority faction, *i. e.*, the great mass of the little propertied and unpropertied. This is the only faction that can "execute and mask its violence under the forms of the Constitution." That is, in the American republic the many have the legal power to rule and thus from them can come the greatest harm. Madison interprets that harm fairly narrowly; at least, his overwhelming emphasis is on the classic economic struggle between the rich and the poor which made of ancient democracies "spectacles of turbulence

and contention." *The* problem for the friend of popular government is how to avoid the "domestic convulsion" which results when the rich and the poor, the few and the many, as is their wont, are at each others' throats. Always before in popular governments the many, armed with political power, invariably precipitated such convulsions. But the friend of popular government must find only "a republican remedy" for this disease which is "most incident to republican government." "To secure the public good and private rights against the danger of . . . [majority] faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed."

Without wrenching Madison's meaning too greatly, the problem may be put crudely this way: Madison gave a beforehand answer to Marx. The whole of the Marxian scheme depends upon the many—having been proletarianized—causing precisely such domestic convulsion and usurpation of property as Madison wished to avoid. Madison believed that in America the many could be diverted from that probable course. How will the many, *the* majority, be prevented from using for the evil purpose of usurping property the legal power which is theirs in a popular regime? "Evidently by one of two [means] 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, by their number and local situation, unable to concert and carry into effect schemes of oppression." But "we well know that neither moral nor religious motives can be relied on" to do these things. The "circumstance principally" which will solve the problem is the "greater number of citizens and extent of territory which may be brought within the compass" of large republican governments rather than of small direct democracies.

Rather than mutilate Madison, let me complete his thought by quoting the rest of his argument before commenting on it:

The smaller the society, the fewer probably will be the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. 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 common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.

I want to deal only with what is implied or required by the first of the two means, *i.e.*, preventing the majority from having the same "passion or interest" at the same time. I would argue that this is the more important of the two remedial means afforded by a large republic. If the majority comes to have the same passion or interest and holds to it intensely for a period of only four to six years, it seems certain that it would triumph over the "extent of territory," over the barriers of federalism, and separation of powers, and all the checks and balances of the Constitution. I do not wish to depreciate the importance of those barriers; I believe they have enormous efficacy in stemming the tide Madison feared. But I would argue that their efficacy depends upon a prior weakening of the force applied against them, upon the majority having been

fragmented or deflected from its "schemes of oppression." An inflamed Marxian proletariat would not indefinitely be deterred by institutional checks or extent of territory. The crucial point then, as I see it, is the means by which a majority bent upon oppression is prevented from ever forming or becoming firm.

Madison's whole scheme essentially comes down to this. The struggle of classes is to be replaced by a struggle of interests. The class struggle is domestic convulsion; the struggle of interests is a safe, even energizing, struggle which is compatible with, or even promotes, the safety and stability of society. But how can this be accomplished? What will prevent the many from thinking of their interest as that of the Many opposed to the Few? Madison, as I see it, implies that nothing can prevent it in a small democratic society where the many are divided into only a few trades and callings: these divisions are insufficient to prevent them from conceiving their lot in common and uniting for oppression. But in a large republic, numerous and powerful divisions will arise among the many to prevent that happening. A host of interests grows up "of necessity in civilized nations, and divide[s] them into different classes, actuated by different sentiments and views." "Civilized nations" clearly means here large, commercial societies. In a large commercial society the interest of the many can be fragmented into many narrower, more limited interests. The mass will not unite as a mass to make extreme demands upon the few, the struggle over which will destroy society; the mass will fragment into relatively small groups, seeking small immediate advantages for their narrow and particular interests.

If the Madisonian solution is essentially as I have described it, it becomes clear that certain things are required for the solution to operate. I only mention several of them. First, the country in which this is to take place will have to be profoundly democratic. That is, all men must be free—and even encouraged—to seek their immediate profit and to associate with others in the process. There must be no rigid class barriers which bar men from the pursuit of immediate interest. Indeed, it is especially the lowly, from whom the most is to be feared, who must feel most sanguine about the prospects of achieving limited and immediate benefits. Second, the gains must be real; that is, the fragmented interests must from time to time achieve real gains, else the scheme would cease to beguile or mollify. But I do not want to develop these themes here. Rather, I want to emphasize only one crucial aspect of Madison's design: that is, the question of the apparently narrow ends of society envisaged by the Founding Fathers. Madison's plan, as I have described it, most assuredly does not rest on the "moral and religious motives" whose efficacy he deprecated. Indeed there is not even the suggestion that the pursuit of interest should be an especially enlightened pursuit. Rather, the problem posed by the dangerous passions and interests of the many is solved primarily by a reliance upon passion and interest themselves. As Tocqueville pointed out, Americans employ the principle of "self-interest rightly understood."

The principle of self-interest rightly understood is not a lofty one, but it is clear and sure. It does not aim at mighty objects, but it attains . . . all those at which it aims. By its admirable conformity to human weaknesses it easily obtains great dominion; nor is that

dominion precarious, since the principle checks one personal interest by another, and uses, to direct the passions, the very same instrument that excites them.²³

Madison's solution to his problem worked astonishingly well. The danger he wished to avert has been averted and largely for the reasons he gave. But it is possible to question now whether he did not take too narrow a view of what the dangers were. Living today as beneficiaries of his system, we may yet wonder whether he failed to contemplate other equally grave problems of democracy, or whether his remedy for the one disease has not had some unfortunate collateral consequences. The Madisonian solution involved a fundamental reliance on ceaseless striving after immediate interest (perhaps now immediate gratification). Tocqueville appreciated that this "permanent agitation . . . is characteristic of a peaceful democracy,"²⁴ one might even say, the price of its peace. And Tocqueville was aware of how great might be the price. "In the midst of this universal tumult, this incessant conflict of jarring interests, this continual striving of men after fortune, where is that calm to be found which is necessary for the deeper combinations of the intellect?"²⁵

V

There is, I think, in *The Federalist* a profound distinction made between the qualities necessary for Founders and the qualities necessary for the men who come after. It is a distinction that bears on the question of the Founding Fathers' view of what is required for the good life and on their defense of popular government. Founding requires "an exemption from the pestilential influence of party animosities";²⁶ but the subsequent governing of America will depend on precisely those party animosities, moderated in the way I have described. Or again, founding requires that "reason" and not the "passions," "sit in judgment."²⁷ But, as I have argued, the society once founded will subsequently depend precisely upon the passions, only moderated in their consequences by having been guided into proper channels. The reason of the Founders constructs the system within which the passions of the men who come after may be relied upon.

Founders need a knowledge of the newly improved "science of politics" and a knowledge of the great political alternatives in order to construct a durable regime; while the men who come after need be only legislators who are but interested "advocates and parties to the causes they determine."²⁸ *The Federalist* speaks, as has often been observed, with harsh realism about the shortcomings of human nature, but, as has not so often been observed, none of its strictures can characterize the Founders; they must be free of these shortcomings in order to have had disinterested and true knowledge of political things. While

²³ *Democracy in America*, ed. Phillips Bradley (Knopf, New York, 1951) Vol. 2, pp. 122-23.

²⁴ *Ibid.*, p. 42.

²⁵ *Idem.*

²⁶ *Federalist*, No. 37, p. 232.

²⁷ *Federalist*, No. 49, p. 331.

²⁸ *Federalist*, No. 10, p. 56.

"a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato,"²⁹ it is tempting to speculate that *The Federalist* contemplates a kind of philosopher-founder the posthumous duration of whose rule depends upon "that veneration which time bestows on everything,"³⁰ and in particular on a regime well-founded. But once founded, it is a system that has no necessary place and makes no provision for men of the founding kind.

It is clear that not all now regarded as Founding Fathers were thought by the authors of *The Federalist* to belong in that august company. Noting that "it is not a little remarkable" that all previous foundings of regimes were "performed by some individual citizen of pre-eminent wisdom and approved integrity,"³¹ *The Federalist* comments on the difficulty that must have been experienced when it was attempted to found a regime by the action of an assembly of men. I think it can be shown that *The Federalist* views that assembly, the Federal Convention, as having been subject to all the weaknesses of multitudes of men. The real founders, then, were very few in number, men learned in the new science of politics who seized upon a uniquely propitious moment when their plans were consented to first by a body of respectable men and subsequently, by equally great good fortune, by the body of citizens. As it were, America provided a rare moment when "the prejudices of the community"³² were on the side of wisdom. Not unnaturally, then, *The Federalist* is extremely reluctant to countenance any re-opening of fundamental questions or delay in ratifying the Constitution.

This circumstance—wisdom meeting with consent—is so rare that "it is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand."³³ But once consent has been given to the new wisdom, when the government has been properly founded, it will be a durable regime whose perpetuation requires nothing like the wisdom and virtue necessary for its creation. The Founding Fathers' belief that they had created a system of institutions and an arrangement of the passions and interests, that would be durable and self-perpetuating, helps explain their failure to make provision for men of their own kind to come after them. Apparently, it was thought that such men would not be needed.

But does not the intensity and kind of our modern problems seem to require of us a greater degree of reflection and public-spiritedness than the Founders thought sufficient for the men who came after them? One good way to begin that reflection would be to return to their level of thoughtfulness about fundamental political alternatives, so that we may judge for ourselves wisely regarding the profound issues that face us. I know of no better beginning for that thoughtfulness than a full and serious contemplation of the political theory that informed the origin of the Republic, of the thought and intention of those few men who fully grasped what the "assembly of demi-gods" was doing.

²⁹ *Federalist*, No. 49, p. 329.

³⁰ *Ibid.*, p. 328.

³¹ *Federalist*, No. 38, p. 233.

³² *Federalist*, No. 49, p. 329.

³³ *Federalist*, No. 38, p. 231.