

SEVENTH EDITION

# PRINCIPLES AND PRACTICE OF AMERICAN POLITICS

CLASSIC AND  
CONTEMPORARY  
READINGS



SAMUEL KERNELL | STEVEN S. SMITH  
EDITORS



**PRINCIPLES AND PRACTICE OF  
AMERICAN POLITICS**

7th Edition

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# PRINCIPLES AND PRACTICE OF AMERICAN POLITICS

**Classic and Contemporary Readings**

7th Edition

## **Editors**

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# PREFACE

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Assembling this set of readings for students of American politics has been a pleasure and a challenge. The pleasure has come in discovering so many articles that illuminate American politics. The challenge has come in finding far more than can be contained in a single volume. Consequently, despite its heft, *Principles and Practice of American Politics* represents a small sampling of the available literature.

Our shared perspective on politics has guided the selection of articles. Political actors pursue goals informed by self-interest. This perspective does not require abandoning all hope that politics can result in public policy that serves the common interests of the public today and for future generations. It says simply that to understand politics we need to understand what different political actors want and how this leads them to engage in various strategies to achieve their goals. For government actors, these goals will largely reflect the offices they hold, the constituents they represent, and the constitutional obligations and opportunities that define their roles. Other major actors—the public, the news media, and activists in political parties and interest groups—are similarly motivated by self-interest. They do not occupy government positions, and so their behavior is regulated by a different constellation of opportunities and limitations. Each chapter's readings introduce the interests, rules, and strategic contexts of political action in a major national political forum.

Conflict over social issues, polarization in Washington and the nation, legislative gridlock, and the tremendous challenges facing policymakers are among the subjects of the new selections for this edition. Our selections reflect the changing federal–state relationship; the growing number of states enacting voter identification laws; the continuing debates over the polarization of the American electorate and Congress; the role of media in influencing public views of politicians and issues; and the ever-evolving state of civil rights and civil liberties.

We have chosen the readings to serve two audiences. Many instructors will employ *Principles and Practice of American Politics* as a supplement to an introductory American politics textbook. For others, this book may constitute the core reading material for a course. For the former, we have selected readings that will animate the institutional processes described in the text. For the latter, we have sought readings that can stand alone and do not assume more than an elementary knowledge of American government and politics. Based on feedback from our reviewers, we have streamlined the articles available in this edition, removing those that saw little use. In this edition, we have added essays that challenge students to think more carefully about alternative institutions and political arrangements. The essays present institutions of majority rule, the nature of racial discrimination, and the proper role of the court as less settled issues that provide students an opportunity to think through (and discuss) their views on the future direction of American civic life.

Some of the selections are classics that all instructors will recognize; others, which may be less familiar, address contemporary political developments or proposals for reform. Each article adds emphasis and depth to textbook coverage and illustrates an important theme;

most also introduce an important writer on American politics. We hope all the articles enrich students' understanding of American politics.

We have taken care to include as much of each original source as possible. We have edited some of the pieces to make them appropriate for classroom use. Ellipses indicate where material has been excised, and brackets enclose editorial interpolations. Other changes are explained in the source note for the reading.

We wish to thank the editorial staff of CQ Press, an imprint of SAGE Publications, for their expertise, energy, and patience in helping us bring this project to completion. Charisse Kiino offered essential encouragement and guidance throughout the effort and provided superb editorial assistance, and Zachary Hoskins persisted in acquiring permission to reprint the selections and managed the project into production. Several anonymous reviewers and the following political scientists provided very helpful comments on our plans for this edition: Harold F. Bass, Ouachita Baptist University; William Bendix, Keene State College; James D. Buthman, Hartwick College; Beth Ginsberg, University of Connecticut; Leif Hoffman, Lewis-Clark State College; Blake Jones, Ohio Valley University; Nicole Kalaf-Hughes, Bowling Green State University; Jonathan Keller, Manhattan College; and Carl Palmer, Illinois State University.

Samuel Kernell  
Steven S. Smith

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**Samuel Kernell** is distinguished professor of political science at the University of California, San Diego, where he has taught since 1977. Kernell's research interests focus on the presidency, political communication, and American political history. His books include *Going Public: New Strategies of Presidential Leadership*, 4th edition; *Strategy and Choice in Congressional Elections*, 2nd edition (with Gary C. Jacobson); and *Party Ballots, Reform, and the Transformation of America's Electoral System* (with Erik J. Engstrom). He has also edited *Parallel Politics: Economic Policymaking in Japan and the United States*; *The Politics of Divided Government* (with Gary W. Cox); and *James Madison: The Theory and Practice of Republican Government*.

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# 1

## DESIGNING INSTITUTIONS

### 1-1 From *The Logic of Collective Action*

Mancur Olson Jr.

*With the publication of *The Logic of Collective Action* in 1965, Mancur Olson Jr. introduced the fundamental dilemma of collective action to all who study politics. When members of a group agree to work together to achieve a collective goal, each member as an individual faces powerful disincentives, Olson showed, that can frustrate the efforts of the group as a whole. For example, when each can foresee that his or her relatively small contribution to a collective enterprise will not affect its overall success, many will fail to contribute—a phenomenon known as free riding—and leave to everyone else the burden of supplying the collective good. As a consequence, collective enterprises based on cooperation, and supported by the entire collectivity, nevertheless often fail.*

It is often taken for granted, at least where economic objectives are involved, that groups of individuals with common interests usually attempt to further those common interests. Groups of individuals with common interests are expected to act on behalf of their common interests much as single individuals are often expected to act on behalf of their personal interests. This opinion about group behavior is frequently found not only in popular discussions but also in scholarly writings. Many economists of diverse methodological and ideological traditions have implicitly or explicitly accepted it. This view has, for example, been important in many theories of labor unions, in Marxian theories of class action, in concepts of “countervailing power,” and in various discussions of economic institutions. It has, in addition, occupied a prominent place in political

science, at least in the United States, where the study of pressure groups has been dominated by a celebrated “group theory” based on the idea that groups will act when necessary to further their common or group goals. Finally, it has played a significant role in many well-known sociological studies.

The view that groups act to serve their interests presumably is based upon the assumption that the individuals in groups act out of self-interest. If the individuals in a group altruistically disregarded their personal welfare, it would not be very likely that collectively they would seek some selfish common or group objective. Such altruism is, however, considered exceptional, and self-interested behavior is usually thought to be the rule, at least when economic issues are at stake; no one is surprised when individual businessmen seek higher profits, when individual

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Source: *The Logic of Collective Action: Public Goods and the Theory of Groups* by Mancur Olson, Cambridge, Mass.: Harvard University Press, Copyright © 1965, 1971 by the President and Fellows of Harvard College. Some text and accompanying endnotes have been omitted. Please consult the original source.

workers seek higher wages, or when individual consumers seek lower prices. The idea that groups tend to act in support of their group interests is supposed to follow logically from this widely accepted premise of rational, self-interested behavior. In other words, if the members of some group have a common interest or objective, and if they would all be better off if that objective were achieved, it has been thought to follow logically that the individuals in that group would, if they were rational and self-interested, act to achieve that objective.

But it is *not* in fact true that the idea that groups will act in their self-interest follows logically from the premise of rational and self-interested behavior. It does *not* follow . . . that they would act to achieve that objective, even if they were all rational and self-interested. Indeed, unless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, *rational, self-interested individuals will not act to achieve their common or group interests*. In other words, even if all of the individuals in a large group are rational and self-interested, and would gain if, as a group, they acted to achieve their common interest or objective, they will still not voluntarily act to achieve that common or group interest. The notion that groups of individuals will act to achieve their common or group interests, far from being a logical implication of the assumption that the individuals in a group will rationally further their individual interests, is in fact inconsistent with that assumption. . . .

## A THEORY OF GROUPS AND ORGANIZATIONS

### The Purpose of Organization

Since most (though by no means all) of the action taken by or on behalf of groups of individuals is taken through organizations, it will be helpful to consider organizations in a general or theoretical way.<sup>1</sup> The logical place to begin any systematic study of organizations is with their purpose. But there are all types and shapes and sizes of organizations, even of economic organizations, and there is then some

question whether there is any single purpose that would be characteristic of organizations generally. One purpose that is nonetheless characteristic of most organizations, and surely of practically all organizations with an important economic aspect, is the furtherance of the interests of their members. That would seem obvious, at least from the economist's perspective. To be sure, some organizations may out of ignorance fail to further their members' interests, and others may be enticed into serving only the ends of the leadership.<sup>2</sup> But organizations often perish if they do nothing to further the interests of their members, and this factor must severely limit the number of organizations that fail to serve their members.

The idea that organizations or associations exist to further the interests of their members is hardly novel, nor peculiar to economics; it goes back at least to Aristotle, who wrote, "Men journey together with a view to particular advantage, and by way of providing some particular thing needed for the purposes of life, and similarly the political association seems to have come together originally, and to continue in existence, for the sake of the *general* advantages it brings."<sup>3</sup> More recently Professor Leon Festinger, a social psychologist, pointed out that "the attraction of group membership is not so much in sheer belonging, but rather in attaining something by means of this membership."<sup>4</sup> The late Harold Laski, a political scientist, took it for granted that "associations exist to fulfill purposes which a group of men have in common."<sup>5</sup>

The kinds of organizations that are the focus of this study are *expected* to further the interests of their members.<sup>6</sup> Labor unions are expected to strive for higher wages and better working conditions for their members; farm organizations are expected to strive for favorable legislation for their members; cartels are expected to strive for higher prices for participating firms; the corporation is expected to further the interests of its stockholders;<sup>7</sup> and the state is expected to further the common interests of its citizens (though in this nationalistic age the state often has interests and ambitions apart from those of its citizens).

Notice that the interests that all of these diverse types of organizations are expected to further are for the most part *common* interests: the union members'

common interest in higher wages, the farmers' common interest in favorable legislation, the cartel members' common interest in higher prices, the stockholders' common interest in higher dividends and stock prices, the citizens' common interest in good government. It is not an accident that the diverse types of organizations listed are all supposed to work primarily for the *common* interests of their members. Purely personal or individual interests can be advanced, and usually advanced most efficiently, by individual, unorganized action. There is obviously no purpose in having an organization when individual, unorganized action can serve the interests of the individual as well as or better than an organization; there would, for example, be no point in forming an organization simply to play solitaire. But when a number of individuals have a common or collective interest—when they share a single purpose or objective—individual, unorganized action (as we shall soon see) will either not be able to advance that common interest at all, or will not be able to advance that interest adequately. Organizations can therefore perform a function when there are common or group interests, and though organizations often also serve purely personal, individual interests, their characteristic and primary function is to advance the common interests of groups of individuals.

The assumption that organizations typically exist to further the common interests of groups of people is implicit in most of the literature about organizations, and two of the writers already cited make this assumption explicit: Harold Laski emphasized that organizations exist to achieve purposes or interests which “a group of men have in common,” and Aristotle apparently had a similar notion in mind when he argued that political associations are created and maintained because of the “general advantages” they bring. . . . As Arthur Bentley, the founder of the “group theory” of modern political science, put it, “there is no group without its interest.”<sup>8</sup> The social psychologist Raymond Cattell was equally explicit, and stated that “every group has its interest.”<sup>9</sup> This is also the way the word “group” will be used here.

Just as those who belong to an organization or a group can be presumed to have a common interest,<sup>10</sup> so they obviously also have purely individual interests,

different from those of the others in the organization or group. All of the members of a labor union, for example, have a common interest in higher wages, but at the same time each worker has a unique interest in his personal income, which depends not only on the rate of wages but also on the length of time that he works.

## Public Goods and Large Groups

The combination of individual interests and common interests in an organization suggests an analogy with a competitive market. The firms in a perfectly competitive industry, for example, have a common interest in a higher price for the industry's product. Since a uniform price must prevail in such a market, a firm cannot expect a higher price for itself unless all of the other firms in the industry also have this higher price. But a firm in a competitive market also has an interest in selling as much as it can, until the cost of producing another unit exceeds the price of that unit. In this there is no common interest; each firm's interest is directly opposed to that of every other firm, for the more other firms sell, the lower the price and income for any given firm. In short, while all firms have a common interest in a higher price, they have antagonistic interests where output is concerned. . . .

For these reasons it is now generally understood that if the firms in an industry are maximizing profits, the profits for the industry as a whole will be less than they might otherwise be.<sup>11</sup> And almost everyone would agree that this theoretical conclusion fits the facts for markets characterized by pure competition. The important point is that this is true because, though all the firms have a common interest in a higher price for the industry's product, it is in the interest of each firm that the other firms pay the cost—in terms of the necessary reduction in output—needed to obtain a higher price.

About the only thing that keeps prices from falling in accordance with the process just described in perfectly competitive markets is outside intervention. Government price supports, tariffs, cartel agreements, and the like may keep the firms in a competitive market from acting contrary to their interests. Such aid or intervention is quite common.



It is then important to ask how it comes about. How does a competitive industry obtain government assistance in maintaining the price of its product?

Consider a hypothetical, competitive industry, and suppose that most of the producers in that industry desire a tariff, a price-support program, or some other government intervention to increase the price for their product. To obtain any such assistance from the government, the producers in this industry will presumably have to organize a lobbying organization; they will have to become an active pressure group.<sup>12</sup> This lobbying organization may have to conduct a considerable campaign. If significant resistance is encountered, a great amount of money will be required.<sup>13</sup> Public relations experts will be needed to influence the newspapers, and some advertising may be necessary. Professional organizers will probably be needed to organize “spontaneous grass roots” meetings among the distressed producers in the industry, and to get those in the industry to write letters to their congressmen.<sup>14</sup> The campaign for the government assistance will take the time of some of the producers in the industry, as well as their money.

There is a striking parallel between the problem the perfectly competitive industry faces as it strives to obtain government assistance, and the problem it faces in the marketplace when the firms increase output and bring about a fall in price. *Just as it was not rational for a particular producer to restrict his output in order that there might be a higher price for the product of his industry, so it would not be rational for him to sacrifice his time and money to support a lobbying organization to obtain government assistance for the industry. In neither case would it be in the interest of the individual producer to assume any of the costs himself. A lobbying organization, or indeed a labor union or any other organization, working in the interest of a large group of firms or workers in some industry, would get no assistance from the rational, self-interested individuals in that industry.* This would be true even if everyone in the industry were absolutely convinced that the proposed program was in their interest (though in fact some might think otherwise and make the organization’s task yet more difficult).

Although the lobbying organization is only one example of the logical analogy between the

organization and the market, it is of some practical importance. There are many powerful and well-financed lobbies with mass support in existence now, but these lobbying organizations do not get that support because of their legislative achievements. . . .

Some critics may argue that the rational person will, indeed, support a large organization, like a lobbying organization, that works in his interest, because he knows that if he does not, others will not do so either, and then the organization will fail, and he will be without the benefit that the organization could have provided. This argument shows the need for the analogy with the perfectly competitive market. For it would be quite as reasonable to argue that prices will never fall below the levels a monopoly would have charged in a perfectly competitive market, because if one firm increased its output, other firms would also, and the price would fall; but each firm could foresee this, so it would not start a chain of price-destroying increases in output. In fact, it does not work out this way in a competitive market; nor in a large organization. When the number of firms involved is large, no one will notice the effect on price if one firm increases its output, and so no one will change his plans because of it. Similarly, in a large organization, the loss of one dues payer will not noticeably increase the burden for any other one dues payer, and so a rational person would not believe that if he were to withdraw from an organization he would drive others to do so.

The foregoing argument must at the least have some relevance to economic organizations that are mainly means through which individuals attempt to obtain the same things they obtain through their activities in the market. Labor unions, for example, are organizations through which workers strive to get the same things they get with their individual efforts in the market—higher wages, better working conditions, and the like. It would be strange indeed if the workers did not confront some of the same problems in the union that they meet in the market, since their efforts in both places have some of the same purposes.

However similar the purposes may be, critics may object that attitudes in organizations are not at all like those in markets. In organizations, an emotional or ideological element is often also involved.

Does this make the argument offered here practically irrelevant?

A most important type of organization—the national state—will serve to test this objection. Patriotism is probably the strongest non-economic motive for organizational allegiance in modern times. This age is sometimes called the age of nationalism. Many nations draw additional strength and unity from some powerful ideology, such as democracy or communism, as well as from a common religion, language, or cultural inheritance. The state not only has many such powerful sources of support; it also is very important economically. Almost any government is economically beneficial to its citizens, in that the law and order it provides is a prerequisite of all civilized economic activity. But despite the force of patriotism, the appeal of the national ideology, the bond of a common culture, and the indispensability of the system of law and order, no major state in modern history has been able to support itself through voluntary dues or contributions. Philanthropic contributions are not even a significant source of revenue for most countries. Taxes, *compulsory* payments by definition, are needed. Indeed, as the old saying indicates, their necessity is as certain as death itself.

If the state, with all of the emotional resources at its command, cannot finance its most basic and vital activities without resort to compulsion, it would seem that large private organizations might also have difficulty in getting the individuals in the groups whose interests they attempt to advance to make the necessary contributions voluntarily.<sup>15</sup>

The reason the state cannot survive on voluntary dues or payments, but must rely on taxation, is that the most fundamental services a nation-state provides are, in one important respect, like the higher price in a competitive market: they must be available to everyone if they are available to anyone. The basic and most elementary goods or services provided by government, like defense and police protection, and the system of law and order generally, are such that they go to everyone or practically everyone in the nation. It would obviously not be feasible, if indeed it were possible, to deny the protection provided by the military services, the police, and the courts to those who did not voluntarily pay their share of the

costs of government, and taxation is accordingly necessary. The common or collective benefits provided by governments are usually called “public goods” by economists, and the concept of public goods is one of the oldest and most important ideas in the study of public finance. A common, collective, or public good is here defined as any good such that, if any person  $X_i$  in a group  $X_1, \dots, X_i, \dots, X_n$  consumes it, it cannot feasibly be withheld from the others in that group.<sup>16</sup> In other words, those who do not purchase or pay for any of the public or collective good cannot be excluded or kept from sharing in the consumption of the good, as they can where noncollective goods are concerned.

Students of public finance have, however, neglected the fact that the achievement of any common goal or the satisfaction of any common interest means that a public or collective good has been provided for that group.<sup>17</sup> The very fact that a goal or purpose is common to a group means that no one in the group is excluded from the benefit or satisfaction brought about by its achievement. As the opening paragraphs of this chapter indicated, almost all groups and organizations have the purpose of serving the common interests of their members. As R. M. MacIver puts it, “Persons . . . have common interests in the degree to which they participate in a cause . . . which indivisibly embraces them all.”<sup>18</sup> It is of the essence of an organization that it provides an inseparable, generalized benefit. It follows that the provision of public or collective goods is the fundamental function of organizations generally. A state is first of all an organization that provides public goods for its members, the citizens; and other types of organizations similarly provide collective goods for their members.

And just as a state cannot support itself by voluntary contributions, or by selling its basic services on the market, neither can other large organizations support themselves without providing some sanction, or some attraction distinct from the public good itself, that will lead individuals to help bear the burdens of maintaining the organization. The individual member of the typical large organization is in a position analogous to that of the firm in a perfectly competitive market, or the taxpayer in the state: his own efforts will not have a noticeable effect on the

situation of his organization, and he can enjoy any improvements brought about by others whether or not he has worked in support of his organization.

There is no suggestion here that states or other organizations provide *only* public or collective goods. Governments often provide noncollective goods like electric power, for example, and they usually sell such goods on the market much as private firms would do. Moreover . . . large

organizations that are not able to make membership compulsory *must also* provide some noncollective goods in order to give potential members an incentive to join. Still, collective goods are the characteristic organizational goods, for ordinary noncollective goods can always be provided by individual action, and only where common purposes or collective goods are concerned is organization or group action ever indispensable.<sup>19</sup>

## NOTES

1. Economists have for the most part neglected to develop theories of organizations, but there are a few works from an economic point of view on the subject. See, for example, three papers by Jacob Marschak, "Elements for a Theory of Teams," *Management Science*, I (January 1955), 127–137, "Towards an Economic Theory of Organization and Information," in *Decision Processes*, ed. R. M. Thrall, C. H. Combs, and R. L. Davis (New York: John Wiley, 1954), pp. 187–220, and "Efficient and Viable Organization Forms," in *Modern Organization Theory*, ed. Mason Haire (New York: John Wiley, 1959), pp. 307–320; two papers by R. Radner, "Application of Linear Programming to Team Decision Problems," *Management Science*, V (January 1959), 143–150, and "Team Decision Problems," *Annals of Mathematical Statistics*, XXXIII (September 1962), 857–881; C. B. McGuire, "Some Team Models of a Sales Organization," *Management Science*, VII (January 1961), 101–130; Oskar Morgenstern, *Prolegomena to a Theory of Organization* (Santa Monica, Calif.: RAND Research Memorandum 734, 1951); James G. March and Herbert A. Simon, *Organizations* (New York: John Wiley, 1958); Kenneth Boulding, *The Organizational Revolution* (New York: Harper, 1953).
2. Max Weber called attention to the case where an organization continues to exist for some time after it has become meaningless because some official is making a living out of it. See his *Theory of Social and Economic Organization*, trans. Talcott Parsons and A. M. Henderson (New York: Oxford University Press, 1947), p. 318.
3. *Ethics* viii.9.1160a.
4. Leon Festinger, "Group Attraction and Membership," in *Group Dynamics*, ed. Dorwin Cartwright and Alvin Zander (Evanston, Ill.: Row, Peterson, 1953), p. 93.
5. *A Grammar of Politics*, 4th ed. (London: George Allen & Unwin, 1939), p. 67.
6. Philanthropic and religious organizations are not necessarily expected to serve only the interests of their members; such organizations have other purposes that are considered more important, however much their members "need" to belong, or are improved or helped by belonging. But the complexity of such organizations need not be debated at length here, because this study will focus on organizations with a significant economic aspect. The emphasis here will have something in common with what Max Weber called the "associative group"; he called a group associative if "the orientation of social action with it rests on a rationally motivated agreement." Weber contrasted his "associative group" with the "communal group," which was centered on personal affection, erotic relationships, etc., like the family. (See Weber, pp. 136–139, and Grace Coyle, *Social Process in Organized Groups*, New York: Richard Smith, Inc., 1930, pp. 7–9.) The logic of the theory developed here can be extended to cover communal, religious, and philanthropic organizations, but the theory is not particularly useful in studying such groups. See Olson, pp. 61n17, 159–162.
7. That is, its members. This study does not follow the terminological usage of those organization theorists who describe employees as "members" of the organization for which they work. Here it is more convenient to follow the language of everyday usage instead, and to distinguish the members of, say, a union from the employees of that union. Similarly, the members of the union will be considered employees of the corporation for which they work.

8. Arthur Bentley, *The Process of Government* (Evanston, Ill.: Principia Press, 1949), p. 211. David B. Truman takes a similar approach; see his *The Governmental Process* (New York: Alfred A. Knopf, 1958), pp. 33–35. See also Sidney Verba, *Small Groups and Political Behavior* (Princeton, N.J.: Princeton University Press, 1961), pp. 12–13.
9. Raymond Cattell, “Concepts and Methods in the Measurement of Group Syntality,” in *Small Groups*, eds. A. Paul Hare, Edgard F. Borgatta, and Robert F. Bales (New York: Alfred A. Knopf, 1955), p. 115.
10. Any organization or group will of course usually be divided into subgroups or factions that are opposed to one another. This fact does not weaken the assumption made here that organizations exist to serve the common interests of members, for the assumption does not imply that intragroup conflict is neglected. The opposing groups within an organization ordinarily have some interest in common (if not, why would they maintain the organization?), and the members of any subgroup or faction also have a separate common interest of their own. They will indeed often have a common purpose in defeating some other subgroup or faction. The approach used here does not neglect the conflict within groups and organizations, then, because it considers each organization as a unit only to the extent that it does in fact attempt to serve a common interest, and considers the various subgroups as the relevant units with common interests to analyze the factional strife.
11. For a fuller discussion of this question see Mancur Olson, Jr., and David McFarland, “The Restoration of Pure Monopoly and the Concept of the Industry,” *Quarterly Journal of Economics*, LXXVI (November 1962), 613–631.
12. Robert Michels contends in his classic study that “democracy is inconceivable without organization,” and that “the principle of organization is an absolutely essential condition for the political struggle of the masses.” See his *Political Parties*, trans. Eden and Cedar Paul (New York: Dover Publications, 1959), pp. 21–22. See also Robert A. Brady, *Business as a System of Power* (New York: Columbia University Press, 1943), p. 193.
13. Alexander Heard, *The Costs of Democracy* (Chapel Hill: University of North Carolina Press, 1960), especially note 1, pp. 95–96. For example, in 1947 the National Association of Manufacturers spent over \$4.6 million, and over a somewhat longer period the American Medical Association spent as much on a campaign against compulsory health insurance.
14. “If the full truth were ever known . . . lobbying, in all its ramifications, would prove to be a billion dollar industry.” U.S. Congress, House, Select Committee on Lobbying Activities, *Report*, 81st Cong., 2nd Sess. (1950), as quoted in the *Congressional Quarterly Almanac*, 81st Cong., 2nd Sess., VI, 764–765.
15. Sociologists as well as economists have observed that ideological motives alone are not sufficient to bring forth the continuing effort of large masses of people. Max Weber provides a notable example:  
  
All economic activity in a market economy is undertaken and carried through by individuals for their own ideal or material interests. This is naturally just as true when economic activity is oriented to the patterns of order of corporate groups. . . .  
  
Even if an economic system were organized on a socialistic basis, there would be no fundamental difference in this respect. . . . The structure of interests and the relevant situation might change; there would be other means of pursuing interests, but this fundamental factor would remain just as relevant as before. It is of course true that economic action which is oriented on purely ideological grounds to the interest of others does exist. But it is even more certain that the mass of men do not act this way, and it is an induction from experience that they cannot do so and never will. . . .  
  
In a market economy the interest in the maximization of income is necessarily the driving force of all economic activity (Weber, pp. 319–320). Talcott Parsons and Neil Smelser go even further in postulating that “performance” throughout society is proportional to the “rewards” and “sanctions” involved. See their *Economy and Society* (Glencoe, Ill.: Free Press, 1954), pp. 50–69.
16. This simple definition focuses upon two points that are important in the present context. The first point is that most collective goods can only be defined with respect to some specific group. One collective good goes to one group of people, another collective good to another group; one may benefit the whole world, another only two specific people. Moreover, some goods are collective goods to those in one group and at the same time private goods to those in another, because some individuals can be kept from

consuming them and others can't. Take for example the parade that is a collective good to all those who live in tall buildings overlooking the parade route, but which appears to be a private good to those who can see it only by buying tickets for a seat in the stands along the way. The second point is that once the relevant group has been defined, the definition used here, like Musgrave's, distinguishes collective good in terms of infeasibility of excluding potential consumers of the good. This approach is used because collective goods produced by organizations of all kinds seem to be such that exclusion is normally not feasible. To be sure, for some collective goods it is physically possible to practice exclusion. But, as Head has shown, it is not necessary that exclusion be technically impossible; it is only necessary that it be infeasible or uneconomic. Head has also shown most clearly that nonexcludability is only one of two basic elements in the traditional understanding of public goods. The other, he points out, is "jointness of supply." A good has "jointness" if making it available to one individual means that it can be easily or freely supplied to others as well. The polar case of jointness would be Samuelson's pure public good, which is a good such that additional consumption of it by one individual does not diminish the amount available to others. By the definition used here, jointness is not a necessary attribute of a public good. As later parts of this chapter will show, at least one type of collective good considered here exhibits no jointness whatever, and few if any would have the degree of jointness needed to qualify as pure public goods. Nonetheless, most of the collective goods to be studied here do display a large measure of jointness. On the definition and importance of public goods, see John G. Head,

"Public Goods and Public Policy," *Public Finance*, vol. XVII, no. 3 (1962), 197–219; Richard Musgrave, *The Theory of Public Finance* (New York: McGraw-Hill, 1959); Paul A. Samuelson, "The Pure Theory of Public Expenditure," "Diagrammatic Exposition of a Theory of Public Expenditure," and "Aspects of Public Expenditure Theories," in *Review of Economics and Statistics*, XXXVI (November 1954), 387–390, XXXVII (November 1955), 350–356, and XL (November 1958), 332–338. For somewhat different opinions about the usefulness of the concept of public goods, see Julius Margolis, "A Comment on the Pure Theory of Public Expenditure," *Review of Economics and Statistics*, XXXVII (November 1955), 347–349, and Gerhard Colm, "Theory of Public Expenditures," *Annals of the American Academy of Political and Social Science*, CLXXXIII (January 1936), 1–11.

17. There is no necessity that a public good to one group in a society is necessarily in the interest of the society as a whole. Just as a tariff could be a public good to the industry that sought it, so the removal of the tariff could be a public good to those who consumed the industry's product. This is equally true when the public-good concept is applied only to governments; for a military expenditure, or a tariff, or an immigration restriction that is a public good to one country could be a "public bad" to another country, and harmful to world society as a whole.
18. R. M. MacIver in *Encyclopaedia of the Social Sciences*, VII (New York: Macmillan, 1932), 147.
19. It does not, however, follow that organized or coordinated group action is *always* necessary to obtain a collective goal.

## 1-2 The Tragedy of the Commons

Garrett Hardin

*In this seminal article, Garrett Hardin identifies another class of collective action problems, the “tragedy of the commons.” The concept—a “tragedy” because of the inevitability with which public goods, or the “commons,” will be exploited—is generally applied to study cases in which natural resources are being misused. Unlike the problems we have already encountered, which concern the production of public goods, the tragedy of the commons affects their conservation. Because public goods are freely available, members of the community will be tempted to overly consume them—to overfish, to overuse national parks, to pollute public water or air—even as they realize their behavior and that of their neighbors is destroying the goods. Hardin discusses social arrangements that can substitute for the commons, or public ownership of scarce resources, and argues that the tragedy of the commons is becoming a more pressing concern as the population increases. As with the problem of free riding described by Mancur Olson Jr., government authority offers one solution extricating participants from their bind.*

At the end of a thoughtful article on the future of a nuclear war, Wiesner and York concluded that: “Both sides in the arms race are . . . confronted by the dilemma of steadily increasing military power and steadily decreasing national security. *It is our considered professional judgment that this dilemma has no technical solution.* If the great powers continue to look for solutions in the area of science and technology only, the result will be to worsen the situation.”<sup>1</sup>

I would like to focus your attention not on the subject of the article (national security in a nuclear world) but on the kind of conclusion they reached, namely that there is no technical solution to the problem. An implicit and almost universal assumption of discussions published in professional and semipopular scientific journals is that the problem under discussion has a technical solution. A technical solution may be defined as one that requires a change only in the techniques of the natural sciences, demanding little or nothing in the way of change in human values or ideas of morality.

In our day (though not in earlier times) technical solutions are always welcome. . . . [Yet of the] class of human problems which can be called “no

technical solution problems” . . . [i]t is easy to show that [it] is not a null class. Recall the game of tick-tack-toe. Consider the problem, “How can I win the game of tick-tack-toe?” It is well known that I cannot, if I assume (in keeping with the conventions of game theory) that my opponent understands the game perfectly. Put another way, there is no “technical solution” to the problem. I can win only by giving a radical meaning to the word “win.” I can hit my opponent over the head; or I can drug him; or I can falsify the records. Every way in which I “win” involves, in some sense, an abandonment of the game, as we intuitively understand it. (I can also, of course, openly abandon the game—refuse to play it. This is what most adults do.)

The class of “No technical solution problems” has members. My thesis is that the “population problem,” as conventionally conceived, is a member of this class. How it is conventionally conceived needs some comment. It is fair to say that most people who anguish over the population problem are trying to find a way to avoid the evils of overpopulation without relinquishing any of the privileges they now enjoy. They think that farming the seas or

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developing new strains of wheat will solve the problem—technologically. I try to show here that the solution they seek cannot be found. The population problem cannot be solved in a technical way, any more than can the problem of winning the game of tick-tack-toe.

## WHAT SHALL WE MAXIMIZE?

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Population, as Malthus said, naturally tends to grow “geometrically,” or, as we would now say, exponentially. In a finite world this means that the per capita share of the world’s goods must steadily decrease. Is ours a finite world?

A fair defense can be put forward for the view that the world is infinite; or that we do not know that it is not. But, in terms of the practical problems that we must face in the next few generations with the foreseeable technology, it is clear that we will greatly increase human misery if we do not, during the immediate future, assume that the world available to the terrestrial human population is finite. “Space” is no escape.<sup>2</sup>

A finite world can support only a finite population; therefore, population growth must eventually equal zero. . . . When this condition is met, what will be the situation of mankind? Specifically, can [Jeremy] Bentham’s goal of “the greatest good for the greatest number” be realized? . . .

The . . . reason [why not] springs directly from biological facts. To live, any organism must have a source of energy (for example, food). This energy is utilized for two purposes: mere maintenance and work. For man, maintenance of life requires about 1600 kilocalories a day (“maintenance calories”). Anything that he does over and above merely staying alive will be defined as work, and is supported by “work calories” which he takes in. Work calories are used not only for what we call work in common speech; they are also required for all forms of enjoyment, from swimming and automobile racing to playing music and writing poetry. If our goal is to maximize population it is obvious what we must do: We must make the work calories per person approach as close to zero as possible. No gourmet meals, no vacations, no sports, no music, no literature, no art. . . . I think that

everyone will grant, without argument or proof, that maximizing population does not maximize goods. Bentham’s goal is impossible. . . .

The optimum population is, then, less than the maximum. The difficulty of defining the optimum is enormous; so far as I know, no one has seriously tackled this problem. Reaching an acceptable and stable solution will surely require more than one generation of hard analytical work—and much persuasion. . . .

We can make little progress in working toward optimum population size until we explicitly exorcize the spirit of Adam Smith in the field of practical demography. In economic affairs, *The Wealth of Nations* (1776) popularized the “invisible hand,” the idea that an individual who “intends only his own gain,” is, as it were, “led by an invisible hand to promote . . . the public interest.”<sup>3</sup> Adam Smith did not assert that this was invariably true, and perhaps neither did any of his followers. But he contributed to a dominant tendency of thought that has ever since interfered with positive action based on rational analysis, namely, the tendency to assume that decisions reached individually will, in fact, be the best decisions for an entire society. If this assumption is correct it justifies the continuance of our present policy of laissez-faire in reproduction. If it is correct we can assume that men will control their individual fecundity so as to produce the optimum population. If the assumption is not correct, we need to reexamine our individual freedoms to see which ones are defensible.

## TRAGEDY OF FREEDOM IN A COMMONS

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The rebuttal to the invisible hand in population control is to be found in a scenario first sketched in a little-known pamphlet in 1833 by a mathematical amateur named William Forster Lloyd (1794–1852).<sup>4</sup> We may well call it “the tragedy of the commons,” using the word “tragedy” as the philosopher Whitehead used it: “The essence of dramatic tragedy is not unhappiness. It resides in the solemnity of the remorseless working of things.”<sup>5</sup> He then goes on to say, “This inevitableness of destiny can only be illustrated in terms of human life by

incidents which in fact involve unhappiness. For it is only by them that the futility of escape can be made evident in the drama.”

The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy.

As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, “What is the utility *to me* of adding one more animal to my herd?” This utility has one negative and one positive component.

1. The positive component is a function of the increment of one animal. Since the herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly +1.
2. The negative component is a function of the additional overgrazing created by one more animal. Since, however, the effects of overgrazing are shared by all the herdsmen, the negative utility for any particular decision-making herdsman is only a fraction of −1.

Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another. . . . But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

Some would say that this is a platitude. Would that it were! In a sense, it was learned thousands of years ago, but natural selection favors the forces of psychological denial.<sup>6</sup> The individual benefits as an individual from his ability to deny the truth even though society as a whole, of which he is a part, suffers. Education can counteract the natural tendency to do the wrong thing, but the inexorable succession of generations requires that the basis for this knowledge be constantly refreshed.

A simple incident that occurred a few years ago in Leominster, Massachusetts, shows how perishable the knowledge is. During the Christmas shopping season the parking meters downtown were covered with plastic bags that bore tags reading: “Do not open until after Christmas. Free parking courtesy of the mayor and city council.” In other words, facing the prospect of an increased demand for already scarce space, the city fathers reinstituted the system of the commons. (Cynically, we suspect that they gained more votes than they lost by this retrogressive act.)

In an approximate way, the logic of the commons has been understood for a long time, perhaps since the discovery of agriculture or the invention of private property in real estate. But it is understood mostly only in special cases which are not sufficiently generalized. Even at this late date, cattlemen leasing national land on the western ranges demonstrate no more than an ambivalent understanding, in constantly pressuring federal authorities to increase the head count to the point where overgrazing produces erosion and weed-dominance. Likewise, the oceans of the world continue to suffer from the survival of the philosophy of the commons. Maritime nations still respond automatically to the shibboleth of the “freedom of the seas.” Professing to believe in the “inexhaustible resources of the oceans,” they bring species after species of fish and whales closer to extinction.<sup>7</sup>

The National Parks present another instance of the working out of the tragedy of the commons. At present, they are open to all, without limit. The parks themselves are limited in extent—there is only one Yosemite Valley—whereas population seems to grow without limit. The values that visitors seek in the parks are steadily eroded. Plainly, we must soon



cease to treat the parks as commons or they will be of no value to anyone.

What shall we do? We have several options. We might sell them off as private property. We might keep them as public property, but allocate the right to enter them. The allocation might be on the basis of wealth, by the use of an auction system. It might be on the basis of merit, as defined by some agreed-upon standards. It might be by lottery. Or it might be on a first-come, first-served basis, administered to long queues. These, I think, are all the reasonable possibilities. They are all objectionable. But we must choose—or acquiesce in the destruction of the commons that we call our National Parks.

## POLLUTION

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In a reverse way, the tragedy of the commons reappears in problems of pollution. Here it is not a question of taking something out of the commons, but of putting something in—sewage, or chemical, radioactive, and heat wastes into water; noxious and dangerous fumes into the air; and distracting and unpleasant advertising signs into the line of sight. The calculations of utility are much the same as before. The rational man finds that his share of the cost of the wastes he discharges into the commons is less than the cost of purifying his wastes before releasing them. Since this is true for everyone, we are locked into a system of “fouling our own nest,” so long as we behave only as independent, rational, free-enterprisers.

The tragedy of the commons as a food basket is averted by private property, or something formally like it. But the air and waters surrounding us cannot readily be fenced, and so the tragedy of the commons as a cesspool must be prevented by different means, by coercive laws or taxing devices that make it cheaper for the polluter to treat his pollutants than to discharge them untreated. We have not progressed as far with the solution of this problem as we have with the first. Indeed, our particular concept of private property, which deters us from exhausting the positive resources of the earth, favors pollution. The owner of a factory on the bank of a stream—whose

property extends to the middle of the stream—often has difficulty seeing why it is not his natural right to muddy the waters flowing past his door. The law, always behind the times, requires elaborate stitching and fitting to adapt it to this newly perceived aspect of the commons.

The pollution problem is a consequence of population. It did not much matter how a lonely American frontiersman disposed of his waste. “Flowing water purifies itself every 10 miles,” my grandfather used to say, and the myth was near enough to the truth when he was a boy, for there were not too many people. But as population became denser, the natural chemical and biological recycling processes became overloaded, calling for a redefinition of property rights.

## HOW TO LEGISLATE TEMPERANCE?

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Analysis of the pollution problem as a function of population density uncovers a not generally recognized principle of morality, namely: *the morality of an act is a function of the state of the system at the time it is performed*.<sup>8</sup> Using the commons as a cesspool does not harm the general public under frontier conditions, because there is no public; the same behavior in a metropolis is unbearable. A hundred and fifty years ago a plainsman could kill an American bison, cut out only the tongue for his dinner, and discard the rest of the animal. He was not in any important sense being wasteful. Today, with only a few thousand bison left, we would be appalled at such behavior.

In passing, it is worth noting that the morality of an act cannot be determined from a photograph. One does not know whether a man killing an elephant or setting fire to the grassland is harming others until one knows the total system in which his act appears. “One picture is worth a thousand words,” said an ancient Chinese; but it may take 10,000 words to validate it. It is as tempting to ecologists as it is to reformers in general to try to persuade others by way of the photographic shortcut. But the essence of an argument cannot be photographed: it must be presented rationally—in words.

That morality is system-sensitive escaped the attention of most codifiers of ethics in the past. “Thou shalt not . . .” is the form of traditional ethical directives which make no allowance for particular circumstances. The laws of our society follow the pattern of ancient ethics, and therefore are poorly suited to governing a complex, crowded, changeable world. Our epicyclic solution is to augment statutory law with administrative law. Since it is practically impossible to spell out all the conditions under which it is safe to burn trash in the back yard or to run an automobile without smog-control, by law we delegate the details to bureaus. The result is administrative law, which is rightly feared for an ancient reason—*Quis custodiet ipsos custodes?*—“Who shall watch the watchers themselves?” John Adams said that we must have “a government of laws and not men.” Bureau administrators, trying to evaluate the morality of acts in the total system, are singularly liable to corruption, producing a government by men, not laws.

Prohibition is easy to legislate (though not necessarily to enforce); but how do we legislate temperance? Experience indicates that it can be accomplished best through the mediation of administrative law. We limit possibilities unnecessarily if we suppose that the sentiment of *Quis custodiet* denies us the use of administrative law. We should rather retain the phrase as a perpetual reminder of fearful dangers we cannot avoid. The great challenge facing us now is to invent the corrective feedbacks that are needed to keep custodians honest. We must find ways to legitimate the needed authority of both the custodians and the corrective feedbacks.

## FREEDOM TO BREED IS INTOLERABLE

The tragedy of the commons is involved in population problems in another way. In a world governed solely by the principle of “dog eat dog”—if indeed there ever was such a world—how many children a family had would not be a matter of public concern. Parents who bred too exuberantly would leave

fewer descendants, not more, because they would be unable to care adequately for their children. David Lack and others have found that such a negative feedback demonstrably controls the fecundity of birds.<sup>9</sup> But men are not birds, and have not acted like them for millennia, at least.

*If* each human family were dependent only on its own resources; *if* the children of improvident parents starved to death; *if*, thus, overbreeding brought its own “punishment” to the germ line—*then* there would be no public interest in controlling the breeding of families. But our society is deeply committed to the welfare state,<sup>10</sup> and hence is confronted with another aspect of the tragedy of the commons.

In a welfare state, how shall we deal with the family, the religion, the race, or the class (or indeed any distinguishable and cohesive group) that adopts overbreeding as a policy to secure its own aggrandizement?<sup>11</sup> To couple the concept of freedom to breed with the belief that everyone born has an equal right to the commons is to lock the world into a tragic course of action.

Unfortunately this is just the course of action that is being pursued by the United Nations. In late 1967, some 30 nations agreed to the following: “The Universal Declaration of Human Rights describes the family as the natural and fundamental unit of society. It follows that any choice and decision with regard to the size of the family must irrevocably rest with the family itself, and cannot be made by anyone else.”<sup>12</sup> It is painful to have to deny categorically the validity of this right; denying it, one feels as uncomfortable as a resident of Salem, Massachusetts, who denied the reality of witches in the 17th century. At the present time, in liberal quarters, something like a taboo acts to inhibit criticism of the United Nations. There is a feeling that the United Nations is “our last and best hope,” that we shouldn’t find fault with it; we shouldn’t play into the hands of the archconservatives. However, let us not forget what Robert Louis Stevenson said: “The truth that is suppressed by friends is the readiest weapon of the enemy.” If we love the truth we must openly deny the validity of the Universal Declaration of Human Rights, even though it is promoted by the United

Nations. We should also join with Kingsley Davis in attempting to get Planned Parenthood–World Population to see the error of its ways in embracing the same tragic ideal.<sup>13</sup> . . .

The argument has here been stated in the context of the population problem, but it applies equally well to any instance in which society appeals to an individual exploiting a commons to restrain himself for the general good—by means of his conscience. To make such an appeal is to set up a selective system that works toward the elimination of conscience from the race.

## PATHOGENIC EFFECTS OF CONSCIENCE

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It is a mistake to think that we can control the breeding of mankind in the long run by an appeal to conscience. . . . If we ask a man who is exploiting a commons to desist “in the name of conscience,” what are we saying to him? What does he hear?—not only at the moment but also in the wee small hours of the night when, half asleep, he remembers not merely the words we used but also the nonverbal communication cues we gave him unawares? Sooner or later, consciously or subconsciously, he senses that he has received two communications, and that they are contradictory: (i) (intended communication) “If you don’t do as we ask, we will openly condemn you for not acting like a responsible citizen”; (ii) (the unintended communication) “If you *do* behave as we ask, we will secretly condemn you for a simpleton who can be shamed into standing aside while the rest of us exploit the commons.” . . .

To conjure up a conscience in others is tempting to anyone who wishes to extend his control beyond the legal limits. Leaders at the highest level succumb to this temptation. Has any President during the past generation failed to call on labor unions to moderate voluntarily their demands for higher wages, or to steel companies to honor voluntary guidelines on prices? I can recall none. The rhetoric used on such occasions is designed to produce feelings of guilt in noncooperators.

For centuries it was assumed without proof that guilt was a valuable, perhaps even an indispensable, ingredient of the civilized life. Now, in this post-Freudian world, we doubt it.

Paul Goodman speaks from the modern point of view when he says: “No good has ever come from feeling guilty, neither intelligence, policy, nor compassion. The guilty do not pay attention to the object but only to themselves, and not even to their own interests, which might make sense, but to their anxieties.”<sup>14</sup>

One does not have to be a professional psychiatrist to see the consequences of anxiety. We in the Western world are just emerging from a dreadful two-centuries-long Dark Ages of Eros that was sustained partly by prohibition laws, but perhaps more effectively by the anxiety-generating mechanisms of education. Alex Comfort has told the story well in *The Anxiety Makers*; it is not a pretty one.<sup>15</sup>

Since proof is difficult, we may even concede that the results of anxiety may sometimes, from certain points of view, be desirable. The larger question we should ask is whether, as a matter of policy, we should ever encourage the use of a technique the tendency (if not the intention) of which is psychologically pathogenic. We hear much talk these days of responsible parenthood; the coupled words are incorporated into the titles of some organizations devoted to birth control. Some people have proposed massive propaganda campaigns to instill responsibility into the nation’s (or the world’s) breeders. But what is the meaning of the word responsibility in this context? Is it not merely a synonym for the word conscience? When we use the word responsibility in the absence of substantial sanctions are we not trying to browbeat a free man in a commons into acting against his own interest? Responsibility is a verbal counterfeit for a substantial *quid pro quo*. It is an attempt to get something for nothing.

If the word responsibility is to be used at all, I suggest that it be in the sense Charles Frankel uses it.<sup>16</sup> “Responsibility,” says this philosopher, “is the product of definite social arrangements.” Notice that Frankel calls for social arrangements—not propaganda.

## MUTUAL COERCION, MUTUALLY AGREED UPON

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The social arrangements that produce responsibility are arrangements that create coercion, of some sort. Consider bank-robbing. The man who takes money from a bank acts as if the bank were a commons. How do we prevent such action? Certainly not by trying to control his behavior solely by a verbal appeal to his sense of responsibility. Rather than rely on propaganda we follow Frankel's lead and insist that a bank is not a commons; we seek the definite social arrangements that will keep it from becoming a commons. That we thereby infringe on the freedom of would-be robbers we neither deny nor regret.

The morality of bank-robbing is particularly easy to understand because we accept complete prohibition of this activity. We are willing to say "Thou shalt not rob banks," without providing for exceptions. But temperance also can be created by coercion. Taxing is a good coercive device. To keep downtown shoppers temperate in their use of parking space we introduce parking meters for short periods, and traffic fines for longer ones. We need not actually forbid a citizen to park as long as he wants to; we need merely make it increasingly expensive for him to do so. Not prohibition, but carefully biased options are what we offer him. A Madison Avenue man might call this persuasion; I prefer the greater candor of the word coercion.

Coercion is a dirty word to most liberals now, but it need not forever be so. As with the four-letter words, its dirtiness can be cleansed away by exposure to the light, by saying it over and over without apology or embarrassment. To many, the word coercion implies arbitrary decisions of distant and irresponsible bureaucrats; but this is not a necessary part of its meaning. The only kind of coercion I recommend is mutual coercion, mutually agreed upon by the majority of the people affected.

To say that we mutually agree to coercion is not to say that we are required to enjoy it, or even to pretend we enjoy it. Who enjoys taxes? We all grumble about them. But we accept compulsory taxes because we recognize that voluntary taxes would favor the

conscienceless. We institute and (grumblingly) support taxes and other coercive devices to escape the horror of the commons.

An alternative to the commons need not be perfectly just to be preferable. With real estate and other material goods, the alternative we have chosen is the institution of private property coupled with legal inheritance. Is this system perfectly just? As a genetically trained biologist I deny that it is. It seems to me that, if there are to be differences in individual inheritance, legal possession should be perfectly correlated with biological inheritance—that those who are biologically more fit to be the custodians of property and power should legally inherit more. But genetic recombination continually makes a mockery of the doctrine of "like father, like son" implicit in our laws of legal inheritance. An idiot can inherit millions, and a trust fund can keep his estate intact. We must admit that our legal system of private property plus inheritance is unjust—but we put up with it because we are not convinced, at the moment, that anyone has invented a better system. The alternative of the commons is too horrifying to contemplate. Injustice is preferable to total ruin.

It is one of the peculiarities of the warfare between reform and the status quo that it is thoughtlessly governed by a double standard. Whenever a reform measure is proposed it is often defeated when its opponents triumphantly discover a flaw in it. As Kingsley Davis has pointed out,<sup>17</sup> worshippers of the status quo sometimes imply that no reform is possible without unanimous agreement, an implication contrary to historical fact. As nearly as I can make out, automatic rejection of proposed reforms is based on one of two unconscious assumptions: (i) that the status quo is perfect; or (ii) that the choice we face is between reform and no action; if the proposed reform is imperfect, we presumably should take no action at all, while we wait for a perfect proposal.

But we can never do nothing. That which we have done for thousands of years is also action. It also produces evils. Once we are aware that the status quo is action, we can then compare its discoverable advantages and disadvantages with the predicted advantages and disadvantages of the proposed

reform, discounting as best we can for our lack of experience. On the basis of such a comparison, we can make a rational decision which will not involve the unworkable assumption that only perfect systems are tolerable.

## RECOGNITION OF NECESSITY

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Perhaps the simplest summary of this analysis of man's population problems is this: the commons, if justifiable at all, is justifiable only under conditions of low-population density. As the human population has increased, the commons has had to be abandoned in one aspect after another.

First we abandoned the commons in food gathering, enclosing farm land and restricting pastures and hunting and fishing areas. These restrictions are still not complete throughout the world.

Somewhat later we saw that the commons as a place for waste disposal would also have to be abandoned. Restrictions on the disposal of domestic sewage are widely accepted in the Western world; we are still struggling to close the commons to pollution by automobiles, factories, insecticide sprayers, fertilizing operations, and atomic energy installations.

In a still more embryonic state is our recognition of the evils of the commons in matters of pleasure. There is almost no restriction on the propagation of sound waves in the public medium. The shopping public is assaulted with mindless music, without its consent. Our government is paying out billions of dollars to create supersonic transport which will disturb 50,000 people for every one person who is whisked from coast to coast 3 hours faster. Advertisers muddy the airwaves of radio and television and pollute the view of travelers. We are a long

way from outlawing the commons in matters of pleasure. Is this because our Puritan inheritance makes us view pleasure as something of a sin, and pain (that is, the pollution of advertising) as the sign of virtue?

Every new enclosure of the commons involves the infringement of somebody's personal liberty. Infringements made in the distant past are accepted because no contemporary complains of a loss. It is the newly proposed infringements that we vigorously oppose; cries of "rights" and "freedom" fill the air. But what does "freedom" mean? When men mutually agreed to pass laws against robbing, mankind became more free, not less so. Individuals locked into the logic of the commons are free only to bring on universal ruin; once they see the necessity of mutual coercion, they become free to pursue other goals. I believe it was Hegel who said, "Freedom is the recognition of necessity."

The most important aspect of necessity that we must now recognize, is the necessity of abandoning the commons in breeding. No technical solution can rescue us from the misery of overpopulation. Freedom to breed will bring ruin to all. At the moment, to avoid hard decisions many of us are tempted to propagandize for conscience and responsible parenthood. The temptation must be resisted, because an appeal to independently acting consciences selects for the disappearance of all conscience in the long run, and an increase in anxiety in the short.

The only way we can preserve and nurture other and more precious freedoms is by relinquishing the freedom to breed, and that very soon. "Freedom is the recognition of necessity"—and it is the role of education to reveal to all the necessity of abandoning the freedom to breed. Only so, can we put an end to this aspect of the tragedy of the commons.

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# 2

## THE CONSTITUTIONAL FRAMEWORK

### 2-1 *Federalist No. 10*

James Madison  
November 22, 1787

*When one reads this tightly reasoned, highly conceptual essay, it is easy to forget that it was published in a New York newspaper with the purpose of persuading that state's ratification convention to endorse the Constitution. Although after ratification this essay went unnoticed for more than a century, today it stands atop virtually every scholar's ranking of The Federalist essays. Written in November 1787, it was James Madison's first contribution to the ratification debate. In responding to Brutus's claim that only small democracies are viable, Madison develops a persuasive rationale for a large, diverse republic—one that he had employed several times in debates at the Convention and that his pro-ratification allies had popularized. The modern reader can appreciate how it resonates with the nation's diversity of interests in the twenty-first century. And everyone, then and now, can admire the solid logic employed by this intelligent man, who begins with a few unobjectionable assumptions and derives from them the counterintuitive conclusion that the surest way to avoid the tyranny of faction is to design a political system in which factions are numerous and none can dominate. This essay repays careful reading.*

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. 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. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases

under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. 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 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. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

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, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

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 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.

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 will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties 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.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, 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. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. 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, 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 the government.

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 many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. 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. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in 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. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole. 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.

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. When a majority is included in a faction, the 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 the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this 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 coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

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 result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized

this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

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. 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 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. 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 more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations.

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two

constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives 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.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer 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. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

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. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority?

Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

**2-2 Federalist No. 51**

James Madison  
February 8, 1788

*Where Federalist No. 10 finds solution to tyranny in the way society is organized, No. 51 turns its attention to the Constitution. In a representative democracy, citizens must delegate authority to their representatives. But what is to prevent these ambitious politicians from feathering their own nests or usurping power altogether at their constituencies' expense? The solution, according to James Madison, is to be found in "pitting ambition against ambition," just as the solution in No. 10 lay in pitting interest against interest. In this essay, Madison explains how the Constitution's system of checks and balances will accomplish this goal. Note that he does not try to refute Brutus directly by defending the design of the Senate, which would have been a tough argument. Rather he assumes a different premise—namely, the popularly elected House of Representatives will push the envelope of its authority. He then avers that the Senate and the executive may find the House irresistible, requiring some future Convention to strengthen these institutions to buttress separation of powers.*

To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by 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. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of

authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer

each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. 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. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual may be a sentinel over the public rights. These

inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? . . .

## 2-3 “The True Principles of Republican Government”: Reassessing James Madison’s Political Science

Samuel Kernell

*On casual reading, Federalist Numbers 10 and 51 so resemble each other, one might well view them as parts of the same argument. In both, James Madison, writing as Publius, considers how government can be configured to prevent politicians in power from keeping it by tyrannizing their opponents. In Number 10, we read how the solution rests with a legislature whose members represent a large, diverse nation. In Number 51, the secret lies in dispersing government power across the legislative, executive, and judicial branches. In this essay, Samuel Kernell argues that the resemblance between Numbers 10 and 51 is deceptive. The government system designed to mitigate active tyranny in Number 10 works at odds with the separation of powers in Number 51. In the former, all that is required to protect liberty is the healthy political competition found in a well-designed, popularly elected assembly—really, the House of Representatives. In the latter, however, Publius worries that the president and Senate might be too weak to keep the House of Representatives in its proper place. After examining Madison’s views expressed at the Constitutional Convention and elsewhere, Kernell concludes that Number 10 reflects Madison’s sincere views on the subject, while Number 51 marshals the best case for ratifying the Constitution that he (or anyone) could muster.*

Since Thomas Jefferson made *The Federalist* required reading for all University of Virginia students, professors have enlisted these essays to instruct each generation of undergraduates in the principles of American government. The two favorites in today’s classroom are James Madison’s *Federalist* Numbers 10 and 51. Each essay identifies an essential and distinguishing characteristic of the American political system. Number 10 offers an ingenious rationale for the nation’s pluralist politics, while Number 51 dissects the formal constitutional system. The first grapples with the tyrannical impulses of society’s factions and the second with self-interested politicians who might be tempted to usurp their authority. In both cases concentration is the threat for which Madison finds similar solutions in “divide and conquer,” a principle he had once described as the “reprobated axiom of tyrants.” In Number 10 his solution takes the form of an extended republic containing numerous, diverse factions whose representatives reconcile their

competing interests in a well designed, deliberative national legislature. In Number 51 a republican equilibrium requires a strong form of separation of powers containing checks and balances. Given that factional competition and checks and balances are based on the same strategic idea and the fact that Number 51 closes with a recapitulation of the main points of Number 10, it is not hard to see that these twin principles should be regarded as establishing the theoretical foundation of the Constitution.

Harder to understand is how this “Madisonian model” went unrecognized for so long, from shortly after ratification until Charles A. Beard reintroduced it more than a century later in his classic *An Economic Interpretation of the Constitution of the United States* (1913). According to Beard, Madison and his nationalist allies fused these principles in a scheme to hamstring government action and prevent national majorities from raiding the purses of the propertied class. While Beard was not the first to level these



charges, he appears to have been the first since the ratification campaign to fashion these two principles into a unified theoretical model.<sup>1</sup> Beard's class conspiracy long ago lost favor, but the Madisonian model and its conservative bias remain the conventional wisdom of modern scholarship on James Madison and the Constitution's founding.

Subsequent scholars, many of whom rank among the Who's Who of twentieth-century political science, have relied on Beard to berate the Madison model. "If the multiplicity of interests in a large republic makes tyrannical majorities impossible," complained E. E. Schattschneider (1942), "the principal theoretical prop of the separation of powers has been demolished." By the 1950s, even those students of American pluralism who might be expected to number among Madison's most faithful boosters had joined the ranks of critics. Citing the presumed duplication of these principles, Robert A. Dahl (1956) concluded that the Constitution goes "about as far as . . . possible [in frustrating majority control] while still remaining within the rubric of democracy." And a few years later James MacGregor Burns (1963) joined the chorus, again charging that Madison "thrust barricade after barricade against popular majorities." . . .

. . . The Madisonian model is a misnomer. It does not represent Madison's sincere theoretical views on the Constitution—at least before and during the Constitutional Convention, when they were consequential. Instead, the Madisonian model was formulated after the fact, specifically in *Federalist* Number 51 and its companion essays, in order to promote the Constitution's ratification. In parrying the nearly apocalyptic Anti-Federalist charges that the Constitution took a short path to tyranny, the nationalist campaign needed desperately to show that the new plan was constructed on sound republican principles and assuage the worries of fence-sitting delegates to the states' ratification conventions. The Madisonian model fulfilled that need.

I arrive at this conclusion after examination of several kinds of evidence—the internal validity of the central arguments of Numbers 10 and 51 and the consistency between them; similarities and differences between the Madisonian model and Madison's previous political science . . . ; and the

model's value as campaign rhetoric during the ratification debates. In the next section (I), I argue that the Madisonian model is fundamentally flawed. Beyond the familiar charges of duplication—which, after all, may amount to no more than "too much of a good thing"—the Madison model contains a serious contradiction between its core principles. One simply cannot design a constitution that optimizes the performance of both factional competition and checks and balances. While the former prescribes essentially a majoritarian solution to the potential dilemma of majority tyranny, separation of powers—as implemented with the Constitution's strong checks and balances described in Number 51—succeeds only to the extent it frustrates this same majority control. . . . This raises the question of how Madison could embrace a contradictory argument. The answer is simply that he did not. A review in Section II of Madison's relevant writings and activities fails to turn up an instance where he combined these principles prior to Number 51.

The joint appearance of factional competition and checks and balances in his *Federalist* essays might, as some have argued (Banning 1995), reflect the continuing development of Madison's theoretical views. Perhaps so, but there is little evidence from Madison's subsequent writings that he seriously revised his theoretical views on institutional design from those he took to the Convention (Riley 2001, 176–82). At least as strong an argument can be made that Number 51 springs from a strategic desire to dress up the Constitution in familiar principles in order to reassure delegates who were deliberating its fate at their states' ratification conventions. In section III I test this possibility by examining its value as campaign rhetoric. The Madisonian model presents a compelling case for ratification that is both different from the standard nationalist position and one Anti-Federalists probably found difficult to refute.

I conclude that Madison went to Philadelphia committed to replacing the Articles of Confederation with a constitutional system capable of positive action, both responsive to national majorities and protective of minorities in the states. He left Philadelphia with something quite different in hand. Despite privately expressing disappointment and



lingering misgivings with the Constitution, he accepted it as superior to the Confederation and defended it vigorously in the ratification campaign. In doing so he combined the principles of factional competition and separation of powers into a rationale for legitimizing a Constitution born of politics and its contradictions.

## I. THE DISPARATE LOGICS OF NUMBER 10 AND NUMBER 51

The *Federalist* Numbers 10 and 51 are canon. And yet, I argue, they contradict each other. Nowhere is this more evident and destructive for the Madisonian model than in these essays' treatment of the House of Representatives. In Number 10, Publius unconditionally reposes government authority in a well designed legislature, which closely resembles the House of Representatives in all of its essential features—membership composition, size and extent of its constituencies. . . . Yet writing Number 51 several months later, Publius singles out the House as posing the greatest potential threat to liberty and against which the Constitution must array the full force of checks and balances. To understand how these principles could generate such contradictory prescriptions, we need to understand their disparate logics.

### I.A. Number 10: Institutionalizing Factional Competition

Madison opens this famous essay by declaring that the chief virtue of a “well-constructed Union” lies in “its tendency to break and control the violence of faction.” He defines faction as “a number of citizens, whether amounting to a majority or 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.” After exploring its properties, Madison concludes: “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*.” This lays the groundwork for a government founded on factional competition.

Madison then constructs a constitutional system from some simple, mostly unobjectionable assumptions about the effects of size and diversity. He begins by noting that the advantage of representative over direct democracy lies in conveniently incorporating a large number of citizens. Greater numbers mean greater variety of interests, or factions, that will participate in the nation's collective decisions. As factions compete they hold each other in check and enact only those policies that command broad support. It is a simple yet profound idea. In that an extended republic supplies the diversity of interests vital for keeping factional tyranny in check, this argument allowed Publius to counter the favorite Anti-Federalist shibboleth that only small republics could endure.

As for institutional design, Number 10 presents two mechanisms for containing and aggregating preferences of numerous, potentially “turbulent” factions. These are representation and a deliberative legislature. On the former, Madison introduces a theoretical novelty, “a scheme of representation” that “promises the cure for [faction] which we are seeking.” Republican theorists had traditionally regarded representatives as serving essentially as agents of a particular interest. Members of Britain's House of Lords, Montesquieu explained, were selected in such a manner as to guarantee their undistracted representation of the aristocracy. When Alexander Hamilton and John Adams explored possible constitutional arrangements in America, they had held fast to this conventional republican principle in formulating an American variant of “mixed government” in which the lower house of the legislature would represent the poor; the upper, the rich; and at least for Hamilton, the disinterested executive, the public good. For Madison, however, multiple-cleaved constituencies implied a more complex role for politicians. These actors, he sensed, would embody “a change in the principle of representation” (Hunt 1900, 338). Like present-day members of the House of Representatives, but unlike all models of representation that preceded this essay, Madison's politicians succeeded electorally by building consensus (i.e., coalitions) across factions by discovering common policies that served their constituencies' competing interests.

On the legislative process, Madison again enlists pluralism to take the rough edges off factionalism. He is clearly sanguine about the moderating effects of this new scheme of representation but allows that even were representatives “of factious tempers, of local prejudices, or of sinister designs” elected, they would be constrained by their need to coalesce with differently minded representatives. The only additional ingredient required was a sufficient variety of interests so that none could dominate. This fortuitously came in precisely the form that responded to the Anti-Federalist fears of a large republic. “Extend the sphere,” Publius reassures us, “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.” All three of Number 10’s key features—representation, a well-proportioned legislature, and an extended republic—follow logically from the presence of multiple factions whose divergent and conflicting interests must be represented and combined. Moreover, by identifying these institutional attributes as desirable, the argument served the ratification cause by highlighting prominent features of the House of Representatives as well as by rendering the Constitution suitable for a growing nation.

... Certainly if factional competition *is* the solution, then it should be the criterion for judging the internal design and power relations among the other branches of government as well. Of course, the Constitution did not implement the logic of factional competition beyond the House of Representatives, which undoubtedly explains why Publius failed to continue his exercise beyond a well-proportioned, popularly elected legislature. After all, the presidency, the Supreme Court, and even the Senate fall far short of satisfying the design requirements identified in Number 10 for generating moderate policy. This raises the question, how in the absence of factional competition do these other branches avoid capture by some faction or inappropriately configured coalition bent on pursuing immoderate policies? The answer, at least for the second part of the question, is offered in Number 51’s checks and balances.

## I.B. Number 51: Institutionalizing Separation of Powers

Where Number 10 makes a tightly reasoned, deductive argument, Number 51 approaches its task in a more empirical, discursive, and speculative fashion. Experience and widely accepted republican notions of good government are summoned to endorse the Constitution’s provisions and to rule out governmental arrangements that do not survive in the final plan. Consequently, the constituent parts of Number 51’s overall argument depend less on one another than did those in Number 10. Where all of Number 10 rests or falls on the integrity of factional competition, here particular claims or causal statements stand more on their own. . . .

This essay proceeds from a definition (stated in Number 47) that tyranny is tantamount to the “accumulation” of government power. Madison does not initially explain just why this should be so, but later in Number 51 he elliptically hints at two possible reasons. First, despite factional competition, aggrandizing majorities might occasionally materialize to endanger the civil rights of those factions in the minority. . . . Second, politicians pursue their self-interests, just as do their constituents, and if left unchecked, they will exploit their authority to the detriment of the general welfare. So, “first government must control the populace and then control itself.” In the language of modern principal-agency theory, the problem of tyranny from politicians represents a severe form of “agency loss.” This is an apt expression capturing Madison’s conception of citizens as principals who delegate authority to representatives who act as their agents.<sup>2</sup> We adopt it here to distinguish it from Number 10’s majority tyranny.

For the most part, Publius concentrates on agency tyranny in fashioning checks and balances as a system of “auxiliary” controls. . . . Publius acknowledges that in a democracy direct popular election is the preferred method for keeping politicians responsive to the citizenry. This passing homage to democratic creed immediately throws into question the need for separation of powers and, ultimately, wreaks havoc on the seemingly neat division of labor between Numbers 10 and 51.

Why not minimize agency loss by simply electing everyone? Indeed, this was standard practice in the states at the time and . . . remained so decades later. Moreover, in his essay “The Vices of the Political System of the United States,” written shortly before the Constitutional Convention, Madison appeared to judge direct and indirect elections as fully adequate to the task of checking agency tyranny. After distinguishing these two forms of tyranny in much the same way as he would in Number 51, Madison observes that though agency tyranny is a particular curse of monarchies, republics may not be immune from it either.<sup>3</sup> Yet it is less likely to pose a serious threat to republics because “the melioration of the Republican form is such a process of elections as will most certainly extract from the mass of the Society the . . . noblest characters . . . [who] will at once feel most strongly the proper motives to pursue the end of their appointment, and be most capable to devise the proper means of attaining it.” Elections are at the core of Madison’s new scheme of representation developed in this pre-Philadelphia essay—just as they are in Number 10, but not in Number 51—and are presented as adequate for solving the agency problem. . . .

Writing Number 51 eight months later, Publius finds elections to be problematic. The difficulty they present has more to do, I suspect, with political strategy than with any newly discovered theoretical concerns. Specifically, if elections sufficed to keep politicians in line, they would threaten to terminate the argument before Publius can make his case for the Constitution’s checks and balances. Clearly, if Number 51 were to promote ratification, Madison had to get past the electoral solution to the one actually provided in the Constitution. He tries to extricate himself from this bind with what must be one of the most anemic (and charitably ignored) arguments Madison ever authored. He discounts the utility of universal elections as causing “some difficulties” and “additional expense.” . . .

He forges on, but a little later . . . returns to elections as if to suggest a reconciliation. Again, Madison the democrat reminds us that elections must constitute the “primary” control mechanism in a republic, but here, . . . he applies these “auxiliary”

controls exclusively to the only branch of the new American government that will already be subject to direct elections, the House of Representatives. Publius endorses a presidential veto that can be sustained by a one-third minority of the Senate. Even this check, he cautions, might prove inadequate to rein in a House of Representatives inclined, by virtue of its singular popular mandate, to act “with an intrepid confidence in its own strength.” In sum, writing as Publius, Madison developed a rationale for a strong form of separation of powers best suited for checking the ambitions of unelected politicians in the executive and judiciary, but then, he turned it against the popularly elected House of Representatives. . . .

Where does the Constitution’s separation of powers leave factional competition as *the* “republican solution?” It is unclear that factional competition will have more than an incidental, moderating influence on national policy. Given the vetoes held by the Senate and presidency, successful policy will have to pass through these institutions whose members are neither selected via the carefully configured representational scheme of Number 10 nor subject to the countervailing pressures from politicians representing other interests. Policies arising from the Senate and presidency can be expected to deviate frequently from the preferences of the median member of the House of Representatives, and where they do they will be less desirable. The likely results are gridlock and bad public policy.

. . . If the inconsistencies of the Madisonian model reappear in his earlier political science, they might confirm Dahl’s assessment of Madison as a brilliant politician but a second-rate theorist. But if Madison’s previous political science turns up free from the flaws revealed here, we would be on firmer ground in suspecting that under the guise of Publius, Madison promulgated these contradictory principles to promote ratification. There are several episodes that deserve close investigation occurring in the mid-1780s when Madison crossed swords with Virginia’s political leader Patrick Henry over religious subsidies and revision of that state’s constitution and involving Madison’s proposals for a new national constitution.

## II. JAMES MADISON'S POLITICAL SCIENCE PRIOR TO PUBLIUS

... Even as the youngest member of Congress during the Revolution, he gained colleagues' notice for his compelling arguments in behalf of a strengthened national government. These included proposals to give the government coercive authority to remedy states' chronic shirking of their contributions to the war effort and beefed up executive agencies to which Congress could delegate important administrative decisions (e.g., the number of uniforms to purchase), thus freeing its time for making war policy. Not until he was back in Virginia in the mid-1780s, however, did he find himself confronting systematic institutional reform.

### II.A. Virginia's Religious Wars: An Education in Factional Competition

On his return to Virginia after the war Madison discovered Patrick Henry firmly in control of the state through his leadership in the Assembly and in turn through that chamber's domination of the other branches. The contrast with his recent experiences in the feeble national Congress was stark and instructive. And it helps explain the resolve with which Madison headed to Philadelphia in 1787 to strengthen national authority and set it up as a check on majority power in the states.

In the spring of 1784, Patrick Henry proposed a general tax on Virginians to support "teachers of the Christian religion." When a legislative majority appeared poised to pass this legislation, Madison rallied Methodist, Baptist, and Presbyterian leaders who had chafed under years of Virginia's tax subsidy for the Episcopal Church and were understandably wary of any new proposals that would reintroduce state subsidies of religion (Ketcham 1971, 162–68). In the fall election they successfully challenged some of the bill's chief boosters and sent a message to other would-be supporters of the legislation. When the assembly returned to session the next spring, the leadership quietly dropped the measure.<sup>4</sup> Reporting candidly on the home front to Jefferson in Paris in August 1785, Madison (*The Papers of James Madison* [hereafter MP] 8,345) noted, perhaps for the first time, the political

benefits of factional competition: "The mutual hatred of these sects has been much inflamed. . . . I am far from being sorry for it, as a coalition between them could alone endanger our religious rights."

During the next several years leading up to the Convention, Madison frequently returned to this theme. According to his first biographer and next door neighbor, Madison often recited Voltaire: "If one religion only were allowed in England, the government would possibly be arbitrary; if there were but two, the people would cut each other's throats; but, as there are such a multitude, they all live happy and in peace" (Ketcham 1971, 166). Not until the spring of 1787, however, in his penetrating essay "Vices of the Political System of the United States," did Madison fully secularize this principle: "The Society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert." Establishing the desirability of a "greater variety of interests" allowed Madison to then conclude that an "extended" republic would limit the power of imprudent majorities.

James Madison was not the first to offer this rationale favoring large over small republics. Credit for that belongs to David Hume, who had made a similar argument nearly a half-century earlier. Until Douglass Adair (1974) identified striking similarities between the language of several of Hume's essays and Number 10, however, few scholars fully appreciated Madison's debt to this Scottish philosopher. So similar are some passages of Number 10—particularly, those defining factions—with those in Hume's essays "Of Parties in General" and "Idea of a Perfect Commonwealth," one might be tempted to conclude that without Hume's coaching Madison might not have made the transition from sects to factions or recognized the advantages of a large republic.

Hume undoubtedly influenced Madison's thinking, probably beginning with his undergraduate course work at Princeton under Professor John Witherspoon, a student of the Scottish Enlightenment. Yet Hume did not lead Madison toward factional competition as offering the "republican solution" to the conundrum of majority tyranny. To appreciate the development

of Madison's political science and its original contribution to republican theory, consider what Hume had to offer on the subject and where his thinking stopped. Declaring "democracies are turbulent," Hume proposed an elaborate (and to Madison nonsensical) constitutional order designed to isolate society's different interests from one another as much as possible. The representatives to the political institutions that ultimately controlled decisions would not meet, but would vote from their communities, as if in a referendum. For Hume the virtue of an extended republic lay exclusively in its expanse (Hume 1985 [1777], 528): "The parts are so distant and remote, that it is very difficult, either by intrigue, prejudice, or passion, to hurry them into any measures against the public interest." Only by disengaging politics could a peaceful republic, "steady and uniform without tumult and faction," be realized.<sup>5</sup>

In a little noted passage of "The Perfect Commonwealth," Hume caught a glimpse of the path Madison would take nearly a half-century later. "The chief support of the British government is," Hume admits, "the opposition of interests; but that, though in the main serviceable, breeds endless factions." His own scheme (*ibid.*, 525), conversely, "does all the good without any of the harm." This passage offers a rare instance in which an earlier generation theorist, locked in a paradigm based on the cultivation of virtue rather than interest, discerns a critical, anomalous fact but does not know what to make of it. Whether standing on Hume's shoulders or not, Madison is the first to examine pluralism unflinchingly and to discover within it the "remedy for the diseases most incident to republican government." He traveled to the Convention armed with this insight and a plan for the new government derived from it.

...

At the Constitutional Convention, Madison can be read as having promoted two distinct constitutional plans neither of which corresponds to the Madisonian model. From the opening day until July 14, he ardently pursued the Virginia Plan. This constitutional blueprint closely follows the logic of factional competition with only modest employment of checks and balances. After its defeat with the adoption of the Grand Compromise, Madison

abruptly switched principles. With a Senate controlled by the states, he began to search for ways to salvage independent national authority and fence in the Senate's jurisdiction; he found it in checks and balances. At the same time factional competition became irrelevant and disappeared from Madison's discourse for the remainder of the summer.

## II.B. The Virginia Plan

In the spring of 1787, after months of scholarly research and with the Convention drawing near, Madison approached fellow Virginia delegates on the need to prepare a substitute plan of government that would be capable of "positive" action. Madison's correspondence sketches out a popularly elected legislature whose members would be apportioned across the states by population. This legislature would possess unequivocal authority to veto state laws to prevent them from "oppressing the minority within themselves by paper money and other unrighteous measures which favor the interests of the majority."<sup>6</sup> This passage and others like it show Madison arriving at Philadelphia, preoccupied with immoderate factional majorities in the states. In none of this preparatory correspondence does he address agency tyranny, the problem that subsequently motivates much of his discussion in Number 51. Madison arranged for the Virginia delegation to assemble in Philadelphia a few days early to draft a reform proposal and probably to plot strategy. The product of their collaboration (Matthews 1995) soon came to be known as the Virginia Plan.<sup>7</sup>

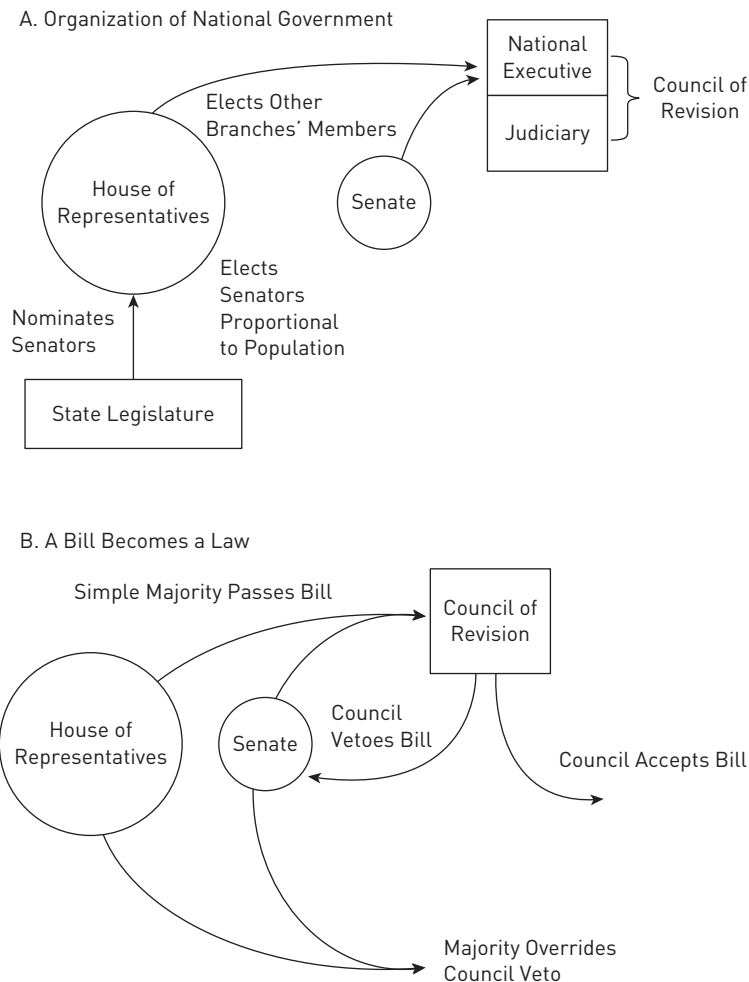
In this plan Madison envisioned a government organized around an elective, bicameral National Legislature with representation to both chambers based on population. Members of the second chamber—soon to be referred to as the Senate—would be elected by those in the first from nominations provided by the state legislatures. Each chamber could originate laws "to legislate in all cases to which the separate states are incompetent." This included the authority "to negative [veto] all laws passed by the several States, contravening in the opinion of the National Legislature the articles of the Union; and to call forth the force of the Union" against any state failing to perform its constitutional duties.

Nowhere is the National Legislature's supremacy more apparent than in the organization of the other branches diagrammed in Figure 1. The National Legislature would elect the National Executive for a fixed term and without eligibility for re-election. This officer (or officers) would exercise general authority to administer national laws. Similarly, the National Legislature would create a national judiciary and elect its members, who would then serve for a term of good behavior. Together, the executive and a "convenient

number of judges" would constitute a Council of Revision with the sole task of vetoing imprudent legislation.<sup>8</sup> If legislative selection of the executive and judiciary did not ensure the Council's sympathetic oversight, the National Legislature's ultimate authority was secure in a provision for a veto override.<sup>9</sup>

Remarkably, the vast literature on Madison's contribution to the Constitution's development fails to credit the Virginia Plan with faithfully and extensively implementing the principle of factional competition.

**FIGURE 1 ■ The Virginia Plan**





Perhaps the five-month interval between presentation of the plan and Number 10 obscures their association. Yet at the Convention, Madison offered early, partially developed versions of Number 10's argument in defense of the Virginia Plan. In one of his most important and, for us, theoretically revealing speeches, Madison employed factional competition to counter claims by Delaware's John Dickinson and others that tyranny could be avoided only through strict separation of powers with "the legislative, executive and judiciary departments . . . as independent as possible." Madison beat back strict separation of powers and defended legislative supremacy with factional competition.<sup>10</sup> During floor debates on June 4, Madison unveiled the argument that would become Number 10. William Pierce from South Carolina discerned in it "a very able and ingenious" outline of "the whole scheme of government" (Rakove 1996, 61). During the next four days, Madison repeated the argument no less than four times, and fellow nationalists picked it up in their speeches. At one point, after listening to the familiar recitation of the small state arguments, James Wilson (1990, 67) reminded everyone: "No answer has been given to the observations of [Madison] on the subject."

Madison, no less than anyone else, also wanted to associate his proposals with separation of powers, but during these early deliberations, he employed it mostly to describe the division of labor that would strengthen the capacity of the new national government. Reminding his colleagues of the wartime Congress's dismal performance in administering the government with legislative committees, Madison commended separation of power as fostering government efficiency.

There are elements of checks and balances in the Virginia Plan. These remained implicit in the general outline in "Vices," but Madison drew them out more explicitly during the Convention's deliberations. In that these mild checks were tendered in response to other delegates' insistence for creating truly "separate" branches, one might be tempted to dismiss them as rhetorical embroidery offered to allay some small state delegates' misgivings. Yet, the weak form of checks and balances Madison offers at the Convention is wholly consistent with the Virginia Plan's legislative supremacy. The two

constitutional features that Madison emphasized as checks are the Council of Revision with its weak veto and the Senate with nearly coequal legislative authority. . . . Clearly, in Madison's view the checking benefits from the Senate derived not from representing different interests, since these men would in fact be elected by the "popular branch." Rather it came by representing the same interests in a different deliberative setting. "Enlarge their number," added Madison in the next sentence, "you communicate to them the vices which they are meant to correct." The upper chamber's "coolness" and "system" buys time and opportunity for reconsideration. . . .

With the demise of the Virginia Plan, Madison's interest in separation of powers turns from efficiency and a system of modest checks to a radically different form of checks and balances. He had worked against a hemmed in Congress when the Virginia Plan was under consideration, but now needing a means to quarantine the state-infested Senate he switched to a dispersion of governmental authority—stronger on some checking provisions, in fact, than those contained in the final Constitution.

## II.C. After the Grand Compromise

After losing the legislature and the national veto over the states in the Grand Compromise, Madison sought unfettered national authority in a more independent executive and judiciary.<sup>11</sup> To achieve this Madison continued to invoke separation of powers during the second half of the Convention and apparently succeeded in that no one in the sometimes heated exchanges accused him of changing his mind.<sup>12</sup> From Madison's numerous statements, proposals and votes during this period one can fashion a second plan—a plan that does not so much add up to a formal system of government as a collection of provisions that consistently worked to shift authority away from the poorly designed Congress. Most directly, he endorsed the proposed enumeration of powers for Congress, an idea he had resisted during consideration of his Virginia Plan. When the states' rights delegates advocated state election of the president, Madison countered with direct national election. The result was yet another compromise, the Electoral College. Similarly, some states' rights

supporters wanted the president to serve at the pleasure of Congress. Madison had equivocated on this matter earlier, but now he insisted that separation of powers required a fixed term without term limits. Others wanted administrative and judicial officials appointed by Congress, but Madison, sounding increasingly like Hamilton, countered that the appointment power struck to the core of executive responsibility. By late July this recent proponent of legislative supremacy was fashioning an independent, assertive president. Noting the tendency of a “legislature to absorb all power in its vortex,” Madison (MP 2, 586–87) defended a veto with a three-fourths override provision as necessary “to check legislative injustice and encroachments.”

When it came to the judiciary, neither side appears to have decided which arrangement best served its interest. Early on, the nationalists won adoption of a judicially enforceable supremacy clause—consolation, they were reminded, for losing the national veto over state laws. Subsequently, Madison and his allies faced down a half-hearted attempt to leave constitutional interpretation and enforcement of federal laws to the separate state judiciaries. During the late days of the Convention, . . . Madison used these numerous, small victories to fend off additional state incursions and to stamp onto the Constitution his nationalist preferences, at least as best one could with the negative instruments of checks and balances.

...

### III. FEDERALIST NUMBER 51 AS CAMPAIGN RHETORIC

Right up to the time he began writing his *Federalist* essays, Madison privately expressed reservations about the Constitution and could bring himself to muster only tepid support for the overall plan. In his letter (MP 10, 163–64) to Jefferson on September 6, 1787, in which he explains the Convention’s work during the summer, Madison devoted more space to excusing the Constitution’s deficiencies than to celebrating its strengths. The new national government will “neither effectually answer its national object nor prevent the local mischiefs which everywhere

excite disgusts against the state governments.”<sup>13</sup> This and other private statements reveal Madison working for ratification mostly from an aversion to the Articles of Confederation. They certainly give a hollow ring to Publius’s boosterism.

From his private views and public activities before and during the Convention one can reasonably surmise that Madison’s *sincere* public endorsement of the Constitution would have gone something like this: “The nation is presented with a choice between two imperfect governmental systems. Unquestionably, the Constitution is superior to the Articles of Confederation and therefore, deserves ratification. Its advantages include a popularly elected and fairly apportioned House of Representatives, federal taxation authority, and provisions for amendment that will allow it to be strengthened as the need arises.” This halfhearted endorsement would have befitted Madison’s modest won-lost record at the Convention, but it would not, of course, have served the ratification cause.<sup>14</sup> All this adds up to an image of Madison wanting Publius to succeed, but not having much to offer in the way of compelling, sincere arguments.

Normally, politicians’ issue stances are anchored in the vicinity of core constituency commitments and by the threatened loss of credibility were they to drift too far from their established positions. But the guise of Publius relaxed these constraints and freed Madison to tailor his message closely to the preferences of his audience. Thomas Jefferson (*The Papers of Thomas Jefferson* [hereafter JP] 11, 353) thought he had detected such strategic writing in Madison’s *Federalist* essays and averred to his friend: “In some parts it is discoverable that the author means only to say what may be best said in defense of opinions in which he did not concur.” If so, the contradiction that arises in Number 10 and Number 51 might reflect Madison’s need to modify his sincere views with campaign rhetoric to appeal to fence-sitting voters and delegates.

The absence of public opinion data for this eighteenth-century, national election severely handicaps our ability to assess the relative merits of campaign arguments. The situation is not hopeless, however. If one assumes that each side’s campaign strategists knowledgeably adapted their issue stances



to the median voter or delegate, we can by tracking the course of campaign rhetoric discover which issue stances received the greatest play and required a response from the other side. By examining the shifting positions and issues over the seven-month campaign we can evaluate the merits of Number 10 and Number 51 as campaign statements.

The data for this exercise comes from William H. Riker (1991, 1996), who systematically compiled and analyzed all of the pro and con arguments that appeared in the nation's newspapers during the ratification campaign.<sup>15</sup> The antirratification side conducted essentially a negative, single-issue campaign. More than 90 percent of their published arguments raised the specter of tyranny.<sup>16</sup> Clearly, the untested Constitution gave the Anti-Federalists superior material for imagining hypothetical dangers, and wherever they searched among the Constitution's provisions, they uncovered a potential source of tyranny.<sup>17</sup> Ultimately, the Federalist had to answer these charges. "Just as the plaintiff-like position of the Anti-Federalists forced them to be negative," observed Riker (1996, 244), "so the defendant-like position of the Federalists forced them to be positive in the sense that they had to refute the Anti-Federalists' criticisms." The Constitution's provision for a standing army supplied early fodder for Anti-Federalist attack. They dropped it after the nationalists successfully answered that with America flanked by three foreign powers, this feature of the Constitution remedied one of the glaring vulnerabilities of the defenseless confederation. A little later the antirratification forces discovered that the missing Bill of Rights exposed a major chink in the nationalists' armor. After initial insistence that "paper guarantees" were neither effective nor necessary in a limited government, Madison and his allies recognized that these responses were not working and agreed to introduce appropriate constitutional amendments as soon as the new government was under way.

A careful examination of the charges and countercharges flying back and forth when Numbers 10 and 51 were written shows both essays directly responding to a variant of the tyranny currently being advanced by the Constitution's opponents.<sup>18</sup> On October 17, 1787, Brutus (probably Robert

Yates, who served as one of New York's delegates to the Constitutional Convention) published an article in a New York paper charging "a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression." Hamilton quickly countered (Ball 1988, 162) with *Federalist* Number 9, arguing that Montesquieu's prescriptions, on which Brutus relied, were based on societies with aristocracies that had to be accommodated. Shortly thereafter, Madison issued Number 10. Fortunately for Madison, Brutus's essay limited its attack to the "extended republic" variant of tyranny and did not venture into the structure of new national government for which factional competition could offer no justification. Brutus's narrow argument allowed Madison to truncate his factional competition discussion precisely at the point where this principle's institutional prescriptions diverge from the Constitution's provisions.

Later in the fall, the Anti-Federalist campaign began hammering the new government as providing insufficient checks and balances against national tyranny. The arguments took a variety of forms, from name-calling to informed theoretical exposition. One widely reprinted Anti-Federalist article, "Dissent of Pennsylvania Minority," stated a familiar mainstay of the opposition to which the ratification forces clearly needed to respond.

The constitution presents . . . undue mixture of the powers of government: the same body possessing legislative, executive, and judicial powers. The senate is a constituent branch of the legislature, it has judicial power in judging on impeachment, and in this case unites in some measure the character of judge and party, as all the principal officers are appointed by the president-general, with the concurrence of the senate and therefore they derive their offices in part from the senate. . . . Such various, extensive, and important powers combined in one body of men, are inconsistent with all freedom; the celebrated Montesquieu tells us, that "when the legislative and executive powers are united

in the same person, or in the same body of magistrates, there can be no liberty.” . . . The president general is dangerously connected with the senate; his coincidence with the views of the ruling junta in that body, is made essential to his weight and importance in the government, which will destroy all independence and purity in the executive department. (*Debate* 1993, 1, 546)

Of the various charges in “Dissent,” possibly the most damaging is the image of a “junta” forming between the president and the Senate. Riker (1996) logged more Anti-Federalist references to a presidency that might evolve into an elective monarchy than any other dire scenario. As with the extended republic variant on the tyranny argument, one can imagine a couple of rebuttals available to proratification strategists. They could, as did Hamilton in Number 9, deny the premise from which tyranny could be deduced. In the following passage, fellow nationalist Americanus (John Stevens, Jr.) adopts this approach and ices it with a vivid *ad hominem*.

Montesquieu’s *Spirit of the Laws* is certainly a work of great merit. . . . On an attentive perusal, however, of this celebrated performance, it will manifestly appear, that the main object of the author, and what he seems ever to have most at heart, was to mollify the rigors of Monarchy, and render this species of Government in some degree compatible with Liberty. . . . But tho’ his work has been of infinite service to his country, yet the principles he has endeavored to establish will by no means stand the test of the rigid rules of philosophic precision. . . . It ever has been the fate of *system mongers* to mistake the productions of their own imaginations, for those of nature herself. (*Debate* 1993, 1, 487–93, emphasis added)

Madison could have sincerely signed his name to this argument, including the slap at Montesquieu.<sup>19</sup> Instead Publius takes a more ambitious, if circuitous, approach by reconciling Montesquieu and separation

of powers doctrine with the Constitution. The volume and variety of pro-ratification campaign arguments suggest that this issue had to be neutralized, but could it be by simply denying its validity for the American case?

Consider, in comparison, the gambit Number 51 offers. After elevating Montesquieu as “the oracle who is always consulted,” Publius stipulates that tyranny is indeed a serious threat for which a well configured separation of powers is the preferred solution. No problem so far, since he has matched Anti-Federalist arguments almost word for word. Only late into the argument does Publius depart from the path taken by the Constitution’s opponents. Sizing up the distribution of authority across the branches differently, he reassures readers that they need not worry about a coalition forming between the president and a Senate junta. These politicians, if they are lucky, might manage to stave off an overreaching House of Representatives prone to act with “intrepid confidence.” If they are not so lucky, the Constitution might need to be amended to bring interbranch relations into balance. But certainly, one need not worry that the executive and judiciary possess the kind of authority that would allow them to usurp a democratic government.

This is a terrific campaign argument. First, Publius shifts the debate to safer ground for engaging his adversaries. He takes exception to Anti-Federalist conjecture over the operation of a hypothetical government rather than by arguing against the universally accepted separation-of-powers principle and needlessly picking a fight with the illustrious Montesquieu. Second, Publius adroitly configures his argument to avoid a variety of possible Anti-Federalist rebuttals. He might, alternatively, have invoked the judicial branch in its acknowledged role—with or without judicial review—as referee over jurisdictional disputes, but he would have opened the door to a favorite Anti-Federalist retort that Publius was prepared to entrust the fate of the Republic on unelected justices. . . . But instead, he minimizes the president-Senate threat by introducing the possibility that all of its authority might be insufficient to withstand an overreaching House of Representatives. He knows full well, as Riker’s analysis verifies, that the Anti-Federalists will not attack the House of Representatives, the one popular branch.

Whatever difficulties Number 51 presents Madison's political science, its strategic value cannot be doubted. Clearly, the generality of separation of powers doctrine opened the way for this tactic, but its success depended on a sophisticated understanding of subtle, institutional design arguments, a talent for which Madison was peerless. He, more than anyone else, could figure out a way to abduct Montesquieu and steal the separation-of-powers issue from the opposition.<sup>20</sup>

...

#### IV. CONCLUSION: MADISON, A NATIONALIST AND PLURALIST

Several weeks after the close of the Constitutional Convention in September 1787, James Madison (MP 10, 163–65) wrote a long letter to Jefferson in Paris reporting the results of the recently concluded Constitutional Convention. After singling out various provisions of the new Constitution for praise and criticism, Madison noted that on balance private rights would be more secure “under the Guardianship of the General Government than under the State Governments.” Madison then posed to his friend a riddle: why should this be so, assuming both levels are “founded on the republican principle which refers the ultimate decision to the will of the majority, and are distinguished . . . by extent . . . than by any material difference in their structure?” Solving this puzzle, Madison averred, would “unfold the true principles of Republican Government.” Indeed it does. Without explicitly solving the puzzle, Madison proceeded to lay out the rationale for factional competition. The puzzle fully encapsulates the goal orientation of Madison's political science. The stated goal of republican government is to protect private rights while empowering majority rule. Moreover, the “principles” for achieving this goal are found less in the “interior” design of institutions (as in Number 51) than in the quality of pluralism. Where this condition is satisfied, the task of institutional design is to harness this pluralism with factional competition.

This is a riddle composed by a nationalist and pluralist. The former label is a familiar one for Madison. His nationalist credentials were well established

among his contemporaries. Calling Madison a pluralist is more controversial. It squarely disputes familiar critiques of Madison and the Constitution that began most prominently with Beard and continued with Dahl (1956), both of whom judged Madison as embracing “the goal of avoiding majority control.” He “goes about as far as possible,” Dahl added, without having to drop the republican label, but in reality he belongs “in the camp of the great antidemocratic theorists.” Both critiques rely chiefly on Number 51.

Madison's pluralism does not make him a majoritarian democrat in the modern sense of the phrase. He accepted unfettered representative democracy only in circumstances that imposed serious collective action problems for the formation of governing majorities. These conditions could be satisfied in an extended republic in which governmental institutions gave full expression to the nation's pluralism. When these conditions were met, the design requirements of America's national government could be simple: representation that reflected the preferences of the population and a fairly apportioned, well designed national legislature. This Madison implemented, not in the Constitution, but in the Virginia Plan. . . .

Where does this leave the Madisonian model, the presumed theory behind the Constitution? First, associating it with Madison is a misnomer, since Madison does not offer it until late in the ratification campaign in Number 51, and then only behind the cloak of Publius. It might not represent Madison's political science, but the model does describe the Constitution. Number 51's combination of factional competition and checks and balances should be recognized as Madison's brilliant effort to justify theoretically a Constitution born of politics and facing an uncertain future. The Madisonian model (or perhaps more felicitously, the “Publius model”) rationalizes a plan created from numerous logrolls and compromises that reconciled competing interests. . . . To conclude, Numbers 10 and 51 carry a division of labor quite different from that with which we opened the discussion. Number 10 states James Madison's prescriptions for republican government, when the necessary conditions are present, while Number 51 explains the Constitution.

## NOTES

1. Beard reintroduced readers to the long neglected Number 10, “the most philosophical examination of the foundations of political science”; then, several pages later he grafted it onto the already famous checks and balances provisions of Number 51. Beard characterized Number 51’s argument as “fundamental theory . . . the basis of the original American conception of the balance of powers.”
2. One familiar passage of Number 10 illustrates Madison’s agency perspective. In distinguishing democracy from republic Madison notes “the delegation of the government, in the latter, to a small number of citizens elected by the rest.” Wood (1969, 543–53) cites numerous instances of the widespread use of agency theory at the Philadelphia convention and in the ratification debates. In the Virginia ratification convention, John Marshall maintained that since the citizenry could not “exercise the powers of the government personally,” they “must trust to agents.”
3. “The great desideratum in Government is such a modification of the Sovereignty as will render it sufficiently neutral between the different interests and factions, to controul one part of the Society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole Society.”
4. Sensing his sudden advantage in the backlash, Madison dusted off Jefferson’s stalled “Bill for Establishing Religious Freedom” and won its speedy enactment. Three years later at the Virginia ratification convention, Madison (Miller 1992) reminded delegates of this recent controversy while defending the absence of a bill of rights from the Constitution. Declarations are merely “parchment barriers.” “The utmost freedom of religion” rests with the “multiplicity of sects . . . which is the best and only security for religious liberty in any society.”
5. Adair p. 148. David Epstein (1984, p. 102) also stresses the fundamental dissimilarities of Madison and Hume. To achieve such a solution, Hume constructs a dubious, three-tiered system of government. The nation is divided into 100 equally populous counties whose citizens elect 100 county representatives (for 10,000 in all), who in turn elect eleven county magistrates and one senator. Only the 100 senators ever convene as a deliberative body, and any policy they adopt must be ratified by a majority of the county magistrates or representatives meeting in their separate locales. Ultimate authority would reside with officeholders who never meet.
6. Madison listed other advantages of the “negative” over state policies: resolve state boundaries; “guard the national rights and interests against invasion”; and restrain the states from “molesting each other” (Papers, March 19, 1787, 9: 318–19). In his subsequent letter to Randolph, Madison suggests that the veto be lodged with the upper chamber (the Senate) because its membership would be more divorced from politics (Papers, April 8, 1787, 9:369). Hobson (1979) persuasively places this frequently neglected federal veto at the center of Madison’s republican theory.
7. Historians agree (Miller 1992; Ketcham 1990) that it represents Madison’s ideas for the new Constitution.
8. Madison’s paternal preference for the Virginia plan is revealed in the extent to which he resisted proposed changes. Early on, he opposed the convention’s decision to substitute a presidential veto for the Council of Revision. He subsequently sought to reinstate it. See Farrand (1937, 1:236 and 2:74, 298).
9. Unlike Madison’s endorsement of a three-fourths supermajority override rule later in the summer, after the Great Compromise, the Virginia Plan did not broach a supermajority requirement.
10. Moreover, he used this tactic on other occasions, but once the Great Compromise was narrowly adopted, he dropped the argument until Number 10. In his record of the day’s events, William Pierce of Georgia described it as “a very able and ingenious speech” (Farrand 1937: 1, p. 110). On June 26 Madison returned to this argument in defending a population basis for representation in the Senate. Jillson and Eubanks (1984) examine the theoretical novelty of Madison’s ideas.
11. The loss of the national veto came in two stages. Over Madison’s objection, the Convention limited it to instances when national and state authority intersected. Then the *coup de grace* came when any mention of this essential feature was left out of the Grand Compromise.
12. His success continues today as scholars locate Madison’s *Federalist* arguments in his Convention

- speeches but fail to recognize that he was enlisting the same language to promote much different conceptions of the Constitution. Carey (1978), for example, enlists passages of Madison's June Convention speeches in behalf of the Virginia Plan to validate for Madison's support in Number 51 for provisions of the Constitution that are inimical to the Virginia Plan.
13. It would probably soon require fixing, he added. In fashioning a rationale for the actual Constitution—whether designed to be persuasive or not—many of Madison's sincere views on republican governance were simply irrelevant. In *Federalist* Number 37, he speculates, "the convention must have been compelled to sacrifice theoretical propriety to the force of extraneous considerations."
  14. Lance Banning (1995), one of the few scholars to confront the striking inconsistencies between Madison's earlier writings and his *Federalist* essays, asserts that this is precisely what happened. "Madison's opinions changed as he was working on the series," Banning (1995, 400) concludes, "a possibility that ought to seem entirely likely to anyone who has completed a major piece of writing." The main evidence Banning offers for this claim is that Madison never subsequently retracted or contradicted positions taken in these essays. The absence of evidence, however, does not offer a very compelling case for anything other than a null hypothesis. Moreover, this explanation does not resolve the contradictions that appear within Madison's *Federalist* essays.
  15. Riker's analysis covered some 617 entries ranging from "minor squibs" to *The Federalist*. These he decomposed into 3,268 segments which he then weighted according to the frequency with which they were reprinted across the states.
  16. Riker's (1996) classification found 49% of Anti-Federalists' appeals concerned tyranny: General threat stated: 14%; With respect to civil liberties: 14%; With respect to governmental structure: 14%; With respect to national authority: 7%; Total: 49%.
  17. In a frequently cited essay, Cecilia Kenyon (1955) judged Anti-Federalists to be "men of little faith." If one considers the decision facing the nation, a negative campaign has a lot of strategic merit. Why make promises, on which Anti-Federalists might disagree, when a negative campaign succeeds in keeping one's adversaries on the defensive? This, and not the absence of core beliefs about the character of government, might explain the distinct differences that emerged across the two sides' campaigns. Perhaps the best known Federalist effort at scare tactics is John Jay's *Federalist* Number 2 in which he predicted the nation would splinter into regional, competing confederacies if the national government were not strengthened.
  18. New York's support was critical and yet most of the delegates elected in the fall had publicly stated varying degrees of displeasure with the Constitution. When the Anti-Federalist governor, George Clinton, delayed consideration in the hope that Virginia and other states would vote down ratification, making it easier to do so, the state became one of the most hotly contested battlegrounds of ratification. Campaign editorials, essays and letters flowed daily through New York City's five newspapers—three of which were declared supporters of ratification, one opposing and one neutral. In addition to reprinting articles published outside the state, the New York campaign spawned substantial local campaign writing enterprises that included some of the most persuasive and theoretically ambitious essays from both sides of the issue. See Eubanks (1989).
  19. In the February 18, 1792, issue of the *National Gazette*, Madison was more reserved: "Montesquieu was in politics not a Newton or a Locke, who established immortal systems, the one in matter, the other in mind. He was in his particular science what Bacon was in universal science: He lifted the veil from the venerable errors which enslaved opinion, and pointed the way to those luminous truths of which he had but a glimpse himself." See MP 14: 233–34.
  20. This is not all the nationalists stole. They had beaten the more deserving opposition to the Federalist label, occasioning Patrick Henry's complaint that the nationalists would be better named the "Rats," presumably because they favored ratification.

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