



MADISON'S AMERICA:
DELIBERATIVE
REPUBLICANISM, POLITICAL
COMMUNICATION, &
THE SOVEREIGNTY
OF PUBLIC OPINION

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A MADISONIAN CONSTITUTION FOR ALL
ESSAY SERIES



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BY COLLEEN SHEEHAN

INTRODUCTION

KIM: Captain, we're being hailed on a subspace frequency.

JANEWAY: Are there ships in the vicinity?

PARIS: Negative. Tracking the source. Seems like it's coming from an unmanned buoy, coordinates one four zero mark three one seven.

KIM: It looks like a Kazon signal, Captain.

JANEWAY: Take us out of warp. Open a channel.¹

Officer Kim's report to Captain Janeway of the *Star Trek Voyager*, "We're being hailed on a subspace frequency," has become a Trekkie catchphrase, indicating faster than speed of light communications and spawning a good amount of controversy. Is it possible for communications to exceed the speed of light? Some physicists take exception to Operations Officer Kim's announcement, arguing that communications will never be faster than 186,000 miles per second.² Others claim that, though it would seem to break the laws of physics, some "workarounds" hold "the tantalizing promise of allowing for faster-than-light, or 'superluminal' communication."³ At present, however, light can only travel 50 times between New York and London in a second—which, nonetheless, is a whole lot faster than the six to 14 weeks it took for a letter to cross the Atlantic in the late eighteenth century!

The improvements in communications technology have been tremendously beneficial on many fronts, including for people whose family or friends live at a distance; for those engaged in international trade; and for communications between nations, particularly in tense, dangerous times. Resistance to totalitarian regimes has been substantially aided by electronic media, as in the case of Radio Free Europe during the Cold War, and the current battle against human rights violations in China, despite governmental attempts to squash its critics. The verdict is still out, however, about whether the warp speed communications of our time will prove more beneficial than not, particularly in respect to politics.

It is common to hear someone say today that the world has become a smaller place. What they mean, of course, is that it is easier to get places, easier to communicate, and things once distant and foreign have become familiar, whether because one has traveled to far-away lands, or because he is acquainted with another country and its culture through television or the Internet. What the telegraph, telephone, and radio first did to revolutionize

¹ *Star Trek: Voyager*, Season 2, Episode 26.

² Bruce Dorminey, "The Physics of Star Trek: Why Faster Than Light Communication Is Not In Anybody's Future," *Forbes*, August 24, 2015, retrieved from <https://www.forbes.com/sites/brucedorminey/2015/08/24/the-physics-of-star-trek-why-faster-than-light-communication-is-not-in-anybodys-future/#737c56901503>.

³ Peter Ray Allison, "Will we ever speak . . . faster than light speed?" *BBC Future*, March 19, 2015, retrieved from <http://www.bbc.com/future/story/20150318-will-we-ever-speak-across-galaxies>. See also Clara Moskowitz, "Warp Drive May Be More Feasible Than Thought, Scientists Say," *SPACE.com*, September 17, 2012.



communications and shrink the world in the nineteenth and early twentieth centuries, the television and Internet did in geometric proportions in the next 100 years. Today, one can watch CBS, ABC, NBC, CNN, FOX, or MSNBC to catch up with the daily political news. Depending on your location and access, you may also be able to tune into the BBC (UK), TRT (Turkey), RT (Russia), DW (Germany), IRIB (Iran), CGTN (China), i24NEWS (Israel), Al Jazeera (Qatar), ZEE (India), AfricaNEWS, France 24, and other international news broadcasting systems. The full reach and effect of electronic communications in making the world a smaller place are only beginning to be comprehended in our time. The Internet, Email, Facebook, Twitter. What's next? Certainly, more will come, and the changes wrought will be innovative, considerable, and exciting. But will these changes, on balance, be good for us?

Most people—certainly most parents—today are well aware of the social and psychological dangers associated with the electronic media age, and in particular with smartphones and messaging apps, social media sites and apps like Facebook, Snapchat, Instagram, online chatrooms, and the various forms of communications technology and social media that occupy so much of the time of America's youth. (Ninety-four percent of "mobile teens" are online every day, and nearly a quarter of them are on their smartphones "almost constantly."⁴) These problems, of course, aren't restricted to teenagers, nor are they limited to the social and psychological domains. In the sphere of politics, the progressive leaps and bounds of electronic communications technology have had an enormous impact on the speed, the reach, and the nature of political communications. As early as 1992, for example, the third party candidate, Ross Perot, advocated adopting a system of "electronic direct democracy" in presidential elections. Knocking out the middlemen of representation, "e-democracy" would mean that all citizens can participate equally in the proposal, development, and enactment of laws. Further, proponents argue, this direct system of democratic participation and decision-making would achieve the freer and more equal practice of self-determination. While the feasibility of e-democracy was somewhat controversial in 1996, now, just over twenty years later, only a troglodyte would argue that it can't be done.

The more interesting question, of course, is whether less representation and less filtering of public opinion is politically beneficial. At first blush it may seem obvious that purer democracy would be good for democracy. We may recall, however, the words of James Madison in *Federalist* 58: Beware democratizing measures that make the "countenance of the government . . . more democratic, but the soul that animates it . . . more oligarchic."⁵

Though we have not adopted e-democracy in the United States—yet, at least—in 2019 it is clear that many of the original spatio-temporal features associated with representational and deliberative politics, which served to decelerate the process and refine public opinion, have been weakened or devitalized. If deliberative republicanism starts with the clash of diverse sentiments and partial views, and is characterized by the filtering, moderation, refinement and enlargement of those views, ultimately producing *public* opinion, the current predominance of "filter bubbles" and "echo chambers" would seem to counteract that deliberative process. Rather than a political environment that tempers factionalized interests, prejudices, and views by setting them against other such factionalized opinions, allowing free argument and debate to do its dialectical work, a good amount of political information sources are chosen for their general ideological agreement with the consumer. This kind of balkanization of ideas, even perhaps ideological segregation, in which people hear only what they already believe allows them to escape the process of subjecting

⁴ Ann Brenoff, "7 Things You Need to Know About What Your Teens Are Doing: Follow Their Smartphones If You Want to Know What Your Teens Are Up To," *HuffPost*, July 10, 2015, retrieved from https://www.huffingtonpost.com/entry/tk-things-you-dont-know-about-what-your-teens-are-doing-online_us_559e9023e4b0967291559170.

⁵ Alexander Hamilton, James Madison and John Jay in *The Federalist Papers* 58: 358, ed. Clinton Rossiter, Introduction and Notes by Charles Kesler (New York: American Library, 1961).



their ideas to critical examination. It is a dodging of the political deliberative process that is a fundamental requisite for republican government. Add to this the warp-like speed of the communication of political opinions and demands today, whether it be in the form of constituents contacting their congresspersons, the 24-hour news cycles of CNN, CNBC, and FOX News, or websites and blogs, including the *Drudge Report*, *Huffington Post*, *National Review Online*, *Daily Kos*, and others. In effect, the days of Huntley and Brinkley are long gone. In their place are Maddow and Hannity.

I. JAMES MADISON AND THE POLITICS OF PUBLIC OPINION

How did James Madison envision deliberative republicanism working in the United States, and in what way have the advances in communications technology impacted Madison's vision of the politics of public opinion?

Let me begin by briefly summarizing Madison's well know theory of the problem of majority faction and his proposed "cure" for this disease, but add to this the less-familiar theory about how Madison intended political communication to operate in the extended republic.

According to Madison, factions are opposed to the rights of some citizens or to the public interest. When a majority composes a faction, power rather than right is the basis for rule. Since the causes of faction cannot be removed without destroying liberty or changing human nature, Madison advocated a political system that could control the effects of faction, including deterring the formation of majority faction. This would require constructing a socio-political environment in which the communication of factious views can effectually be thwarted.

In a small republic, Madison argued, it is easy for a majority to communicate and unite on the basis of selfish interests or prejudices, and thereby oppress the minority. By contrast, in an extensive republic there will be a larger population, greater diversity of interests and religious views, a greater distance over which opinions must be communicated, and a greater distrust of unjust or dishonorable purposes. This will make it more difficult for a majority to form on the basis of a narrow interest or harmful passion. In a large society, a coalition of the society will be necessary to achieve a majority; thus its demands will have to pass muster with a great variety of economic, geographical, religious, and other groups in society. As Madison well understood, this would be no easy task.

According to Madison, the task of representatives in popular government is to "refine and enlarge the public views." Although he hoped elected officials would be men "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," he was not naive about the temptations of power and ambition that accompany political life. He knew that "enlightened statesmen will not always be at the helm." To guard against personal ambition and the threat of governmental tyranny (i.e., minority faction), Madison endorsed a system of prudential devices, including institutional separation of powers, bicameralism, checks and balances, and federalism. These "inventions of prudence" are intended to channel, check, and control the self-seeking personal motives of political office holders and thereby enable government to police itself.

Madison made clear in *Federalist* 51, however, that these safeguards against governmental tyranny are only "auxiliary precautions." The primary control on the government, he declared, remains always with the people. In the final analysis, governmental decisions depend on the will of the society, or in other words, on the will of the majority.



As Madison well understood, his proffered “solution” of the extended territory and representation diminishes the odds that a majority faction will gain ascendance (or even form) in the American republic, but it does not forestall the possibility. If Americans lack a consciousness about what constitutes unjust or dishonorable purposes, then a majority faction will not find it so difficult for its members to communicate their schemes and unite to oppress others in society.

This is one side of the Madisonian communications strategy—the negative side. The other, positive aspect utilizes political communication to form, refine, and express the will of the society. Madison’s overall aim was not to stymie the will of the majority, but rather to place obstacles in the path of factions, including majority faction. At the same time, he sought to facilitate the development of a just majority, or in other words, the reason of the public. In general, communicative activity is both part of the problem and part of the solution in Madison’s republican design. Too swift and facile political communication allows the mere will of the majority, or sheer power, to rule in the regime. The slow, measured process of the communication of ideas, however, refines and modifies the will of the society, subjecting power to the test of right reason. In respect to the influence of public opinion on government, political communication enables the people to watch over government and guard against tyranny, at the same time that it provides the means to reach consensus and settle public opinion, thereby enabling the public to influence the measures of government.

Madison’s goal, then, was to encourage the type of communicative activity that involves deliberation and results in the measured exchange of ideas about public matters. His object was to promote this “commerce of ideas” at the level of government and throughout “the entire body of the people.” This is why, for example, he advocated the idea of a territory that is not “overgrown,” but rather of a “practicable sphere.”⁶ If the society is too large, communication across the territory is stymied and the public voice is silenced. Contrary to the view that Madison’s preoccupation with territorial size is for the sole purpose of preventing the formation of a factious majority, I would argue that his theory has another and larger purpose: It is ultimately intended to establish the conditions in which a certain kind of majority can feasibly form and rule.

“Public Opinion,” Madison proclaimed in 1791, “sets bounds to every government, and is the real sovereign in every free one.”⁷ When public opinion is settled, governmental representatives must obey it; when it is not settled, they may influence it. Madison’s notion of “public opinion” should be distinguished from what is generally meant by the term today, namely, daily polling aggregates. In Madison’s conception, there is a world of difference between the immediate reactions of the people to political issues, and the considered views of the public. The kind of public opinion that Madison called sovereign, and which government must obey, is the settled opinion of the community. This authoritative opinion is produced by the slow, complexly layered, communicative and deliberative processes that filter and enlarge the public views within the government and throughout the society. In this sense, public opinion is neither the fleeting whims of the multitude nor an imaginary entity constructed to give credence to elite rule. For Madison, there is a two-way street between the government and the people. Public opinion is both acted upon by the governmental representatives as well as itself an active and authoritative voice that influences the direction of government. The formation of public opinion involves the influence of representatives, of the literati, as well as of the laws on the views of the people. Once formed and settled, public opinion is the operational sovereign in free government.⁸

⁶ For Madison’s conception of the “practicable sphere” see *The Federalist* No. 14:95-97 and 51:322.

⁷ “Public Opinion,” in *The Mind of James Madison: The Legacy of Classical Republicanism* (Cambridge: Cambridge University Press, 2015), 245.

⁸ Madison’s conception of the dynamic relationship between public opinion and political leaders was hardly new; it constituted the core of the art of statesmanship in classical republicanism. Madison modified and applied this art to republican government in an extensive territory characterized by modes of modern communication, thus translating the classical task of civic education to the modern era.



Madison furthered his analysis of political communications in a large but practicable sphere by considering other factors that may act as equivalents to a contraction of the territorial limits. These include good transportation routes, domestic commerce, and a free press that circulates “*through the entire body of the people, and Representatives going from, and returning among every part of them.*”⁹ Also included among these factions is federalism, in the sense of the role of state and local institutions of government in the collection and formation of public opinion in regimes in which the borders might otherwise be too distant for effectual popular rule. It is in this way that federalism emerges as a “principle” of republican government in Madison’s theory. Without a sufficient attention to the principle of federalism, the republican experiment of an extended territory cannot succeed, for state and local institutions are necessary to collect, “combine” and “call into effect” the voice and sense of the people spread over a large nation.

The circulating print media also serve as means for the communication of ideas throughout the society. Madison expected leading citizens both within and without government—representatives and the literati—to educate and refine public views. Working through public and private communication channels, thoughtful and active citizens contribute to shaping a more considered, reasonable opinion of the public, thereby subjecting the will of the public to the reason of the public. Madison taught that it is not only the right, but “the duty . . . of intelligent and faithful citizens to discuss and promulgate [political information and ideas] freely” in order to control government by the “censorship of public opinion” and “according to the rules of the Constitution.”¹⁰ Via a multi-layered process, then, Madison devised a system of communicative politics in which the interests and passions of the public are regulated by the government, and in turn, the government is controlled and regulated by the reason of the public.¹¹

In sum, Madison’s solution is mechanistic only in the sense that institutional arrangements encourage the clash of political interests, ambitions, and views, thereby slowing down the legislative process. This design simultaneously establishes a milieu that calls representatives to act as statesmen and literati to enlist their fellow citizens in the exchange of ideas. It summons thoughtful citizens in both the public and private sectors to take up the task of civic education, engage in the art of argumentation and persuasion, and pursue the refinement and enlargement of the public views. Indeed, the wisest and best of men and women have a responsibility to their fellow citizens directed towards the highest of political and human ends, for they are “the cultivators of the human mind—the manufacturers of useful knowledge—the agents of the commerce of ideas—the censors of public manners—the teachers of the arts of life and the means of happiness.”

As critically important as statesmen and literati are in Madison’s design for civic education in the American republic, however, it cannot be over-emphasized that his ultimate reliance is not upon either of these elite minority groups within society, but upon public opinion—which, for all practical intents and purposes, is the opinion of the majority. “In republican government,” Madison wrote, “the majority however composed, ultimately give the law.”¹² In the final analysis, then, there is no substitute for the defect of better motives in the citizenry. Republican government is sustained only by citizens who are committed to and practice the republican way of life.

⁹ “Public Opinion,” *The Mind of James Madison*, 245.

¹⁰ William T. Hutchinson, et al., eds., *The Papers of James Madison* (Chicago and Charlottesville: University of Chicago Press and University Press of Virginia, 1962 –), 17:342.

¹¹ *The Federalist* No. 49:314.

¹² “Vices of the Political System of the United States,” *The Mind of James Madison*, 201.

II. OUR CURRENT POLITICAL PREDICAMENT

If the constitutional design of the United States once functioned as Madison envisioned, various historical, technological, and political changes that have occurred since the founding era have substantially altered the operation of the system. While it is true that Madison witnessed or anticipated a number of advances in travel and communications technology (he was, as historian Drew McCoy noted, “the last of the Framers,” living until 1836), he could hardly have imagined the extent of change that was on the horizon. In the eighteenth and nineteenth centuries the amount of time required to build a national constitutional majority was largely contingent on territorial size, or space. The effect of space upon time produced a milieu conducive to deliberative politics in eighteenth century America. In the current era, however, space cannot influence the factor of time sufficiently to produce such an environment. Today, no matter the earthly territorial distance, the speed of communication is almost instantaneous.

In Madison’s scheme there is a connection between space and time on the one hand, and reason and passion on the other. The process of refining, enlarging, and modifying the public passions into the reason of the public is in part contingent on the effect of spatial on temporal factors. With advances in communications technology and the negation of the impact of distance on promoting deliberation, one of the chief elements in Madison’s plan to achieve “the cool and deliberate sense of the community” is now missing.¹³

This change has prompted some to ask if our current political problems are, at least in part, a result of the swift and facile public communications of our time. In other words, are the instant and hardly deliberative communications practiced by Twitter users, for example, substantially to blame for the vitriol that characterizes American politics today? How much are the political problems of our time the result of the unregulated flow—even contagion—of public passions and interests across the nation, particularly by blogs and social media? Have we come full circle since the Founding period and are once again faced with the old challenge of how to remedy the disease of that most “dangerous vice,” faction?

This is certainly one way that the current situation might be assessed.¹⁴ Given the changes since the Founding period—including historical, demographic, geographic, and especially technological changes—there would seem to be no adequate check to the lightning-quick political communications in the nation today. Even the extension of the territory beyond sea to shining sea and the hundred-fold increase in population from 1790 to our day (from 3.5 million to 350 million) offer no equivalent counter-balance to the passion-fueled opinions transmitted by high-speed electronic devices. Is it the case, then, that we have entered a new reality in which the American political and constitutional design is simply no longer apposite?

For some today, a sea of red-capped heads bearing the logo “Make America Great Again,” and chanting “Drain the Swamp,” summarizes the problem. For a different set, alarm arises from black-masked and clad Antifa protestors chanting “No Trump, no wall, no USA at all!” Have the “cooling mechanisms [Madison] designed to slow down the formation of impetuous” factions been undermined, as Jeff Rosen queries? Has Madison’s worst nightmare been realized?¹⁵

¹³ *The Federalist* No. 63: 382.

¹⁴ See e.g., Jeffrey Rosen, “America is Living Madison’s Nightmare,” *The Atlantic* (Oct. 2018), retrieved from <https://www.theatlantic.com/magazine/archive/2018/10/james-madison-mob-rule/568351/>; cf. Dylan Matthews’ response, “The tyranny of the Majority isn’t a problem in America today, tyranny of the minority is: Minority rule brought us Trump, and worse,” *Vox*, September 12, 2018, retrieved from <https://www.vox.com/2018/9/12/17850980/democracy-tyranny-minority-mob-rule-james-madison>. For a different perspective on the “mob,” see Shari Goodman, “Mob Rule Comes to America,” *American Thinker*, October 5, 2018, https://www.americanthinker.com/articles/2018/10/mob_rule_comes_to_america.html.

¹⁵ Rosen, “America is Living Madison’s Nightmare.”



I do not believe Madison would assess the situation in quite the same terms, or think the current predicament incurable. While I do think he would have been seriously concerned about the deleterious effects of social media on aggravating the public passions, he would identify the problem as not only procedural, but also substantive.

Besides the increased speed of political communications, we should take note of those factors that remain relatively intact and continue to have a moderating influence on public opinion. We recall that in Madison's political design, the causes of faction are controlled in two ways: first, by slowing down communication over a vast geographical area, and second, by comprehending within the large republic a greater number of inhabitants and a multiplicity of interests, parties, and sects. If scientific advancements have negated the effects of the former, they have not invalidated the impact of the diversity of economic interests, religious sects, or ideological views associated with advanced civilizations. Thus, even with the increased speed of communication over an extensive territory, the continued presence of a plentiful variety of interests and sects counteracts the formation of majority faction. Thus, given the multiplicity and diversity of interests and passions within modern society, it is still less likely that there exists an overriding partial interest or prejudicial passion capable of uniting such sundry groups. Nevertheless, it is the case that social media has contributed to the contagion of passion in our society, sometimes verging on producing group think, and this phenomenon could manifest itself as an oppressive majority.¹⁶

The principle of representation also remains a mode of refining and enlarging the public views, even in the social media age, though it has been altered in two significant respects: first, the ratio of representatives to the people has decreased proportionate to the increase in population, and second, since 1913, U.S. senators have been elected directly by the people of their respective states rather than by state legislatures. The latter change has given Senators more independence (since answering to more people each with substantially less power loosens the routine answerability of the office-holder). This, along with a number of other factors, has contributed to the decline in the influence of state governments upon the power of the national government. In addition, the twentieth and twenty-first centuries have witnessed increased executive power and the unprecedented growth of a massive national bureaucracy.¹⁷ At the same time that the power and influence of the states have deteriorated, so too has that of the national Congress declined, with power shifting from the national legislative branch to the executive administration and the judiciary. The transfer of power to the bureaucracy has occurred largely as a result of Congress' abdication of responsibility to the executive branch; legislation from the bench has resulted from the unconstitutional exercise of legislative power by the contemporary judiciary.

This considerable diminution of power of Congress has substantially impacted the power of public opinion in contemporary American politics. In Madison's plan, when public opinion is fixed, governmental representatives must follow it. However, with so much legislative decision-making relegated to the bureaucracy or supplanted by the Supreme Court, the Congress—through whose prescribed legislative process public opinion is refined and enlarged—is largely closed for business.

¹⁶As is well known, Madison's remedy for majority faction in *Federalist* 10 is not to remove the causes, but rather to control the effects. This chosen solution is further divided into two sub-categories, i.e., 1) make it highly unlikely that there will exist a majority of citizens who hold the same factious views at the same time, or 2) if such a majority were to exist, make it difficult for them to unite together, given the large population and territorial distance over which they must communicate their views and coalesce them. It is the second sub-set of this second part of Publius's outline solution that is exacerbated by the speed of communications in the contemporary world.

¹⁷The "fourth branch" is the notion of a powerful non-constitutional entity that rivals the three traditional branches of government, viz., the legislative, the executive, and the judiciary. Occasionally, the media is referred to as the fourth branch. On the administrative state see the excellent work by John Marini, including John A. Marini, Gordon S. Jones, and Newt Gingrich, *The Imperial Congress: Crisis in the Separation of Powers* (World Almanac, 1989); and most recently, John Marini, ed. Ken Masugi, *Unmasking the Administrative State: The Crisis of American Politics in the Twenty-First Century* (Encounter Books, 2019).

So, while the speed of political communications has made it easier for a popular majority to form and express its views, the enfeebling of the national legislature has actually weakened the role of public opinion in the governing process. The diminished role of the state and local institutions of government has also negatively impacted the power of public opinion, that is, if such vehicles are needed at the front end of the process to collect and convey the public voice in a large nation, as Madison contended.

It should also be noted that many ordinary Americans today feel that public intellectuals, the media, Hollywood, and professional Washingtonians look upon them with a good amount of contempt. This “ruling class,” as middle America views them, consider themselves more broad-minded and “woke” than the average citizen, especially those who inhabit rural areas where people hunt, attend religious services, or watch NASCAR. This perceived disdain of an elite, ruling class towards average citizens is viewed as concomitant to the growth of a distant and unresponsive government, thus amplifying ordinary citizens’ feelings of being on the “outside” in their own country.¹⁸

The displacement of the views of ordinary American citizens is, I believe, the emphatic phenomenon of our time, much more of a risk to the present stability and health of the regime than the risk of majority faction. The breakdown in separation of powers, checks and balances, and federalism in the nation, caused by a government that legislates without Congress, has significantly damaged the processes of deliberative republicanism and the operational sovereignty of public opinion that these processes are intended to achieve.

III. ONE AMERICA, OR TWO? IF ONE — WHICH ONE?

At the same time that public opinion has been supplanted by the administrative state in America, the nation has become increasingly divided into two groups warring over the political future of the country (albeit there are a good many citizens not fully committed to either side).¹⁹ The leading cause of this fissure is not race, ethnicity, class, religion, age, sex, or geographic region. Rather, it is political partisanship, and the intensity of the split is such that each side sees the other as hateful and threatening the common good of the country.²⁰ In fact, the rivalry is deeper than party labels or public policy differences signify. It is a dispute over the meaning of the American constitution (small “c” constitution) in the sense of what constitutes the nation, what constitutes its way of life and gives it its particular character. On one side of this quarrel are those who defend the Constitution and the principles of the

¹⁸ See the excellent piece by Angelo M. Codevilla, “America’s Ruling Class and the Perils of Revolution,” *American Spectator*, July 16, 2010, retrieved from <https://spectator.org/39326-americas-ruling-class-and-perils-revolution/>; Angelo M. Codevilla, “After the Republic,” *Claremont Review of Books*, September 27, 2016, retrieved from <http://www.claremont.org/crb/basicpage/after-the-republic/>. See also Allan J. Lichtman, “Who Rules America?,” *The Hill*, August 12, 2014, retrieved from <https://thehill.com/blogs/pundits-blog/civil-rights/214857-who-rules-america>; Emily Badger, “Estranged in America: Both Sides Feel Lost and Left Out,” *The New York Times*, “The Upshot,” Oct. 4, 2018, retrieved from <https://www.nytimes.com/2018/10/04/upshot/estranged-america-trump-polarization.html>. It is not surprising that despite the advances in communications technology that “make the world a smaller place” and so would seemingly empower and energize citizens of a large republic, this has not actually happened. In fact, American citizens today feel their voice matters less than they did a half-century ago. (While a 2015 PEW Foundation study shows that more people feel that their voice matters, other studies by *The New York Times*, Suffolk University, and the Congressional Institute show that Americans feel their voice is not effectual). Madison himself worried about this: “[T]he more extensive a country, the more insignificant is each individual in his own eyes. This may be unfavorable to liberty” (“Public Opinion,” *The Mind of James Madison*, 243).

¹⁹ See Steve Chapman, “Is America more politically polarized than ever? Not quite,” *Chicago Tribune*, September 21, 2018, retrieved from <https://www.chicagotribune.com/news/opinion/chapman/ct-perspec-chapman-polarized-america-civil-war-0923-20180921-story.html>.

²⁰ See Shanto Iyengar and Sean J. Westwood, “Fear and Loathing across Party Lines: New Evidence on Group Polarization,” 59 *American Journal of Political Science* 3 (July 2015), 690–707; see also “Political Polarization in the American Public: How Increasingly Ideological Uniformity and Apathy Affects Politics, Compromise, and Our Everyday Lives.” *The Pew Research Center*. <https://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/>.



Founding, including the idea of natural law and natural rights. On the other side, this stance is challenged by the contemporary Progressive perspective, which either rejects the notion of natural law in favor of an evolving, inclusive egalitarianism, or its postmodern variant, which rejects natural law and the notion of human nature itself, in favor of social constructs, hierarchies of power, and identity politics.

Madison and the Founders believed that all men are by nature equal and possess natural rights, that a just government is based on consent, limited in its scope, and committed to securing the rights and liberties of its citizens. Human beings possess reason, he claimed, but since that reason is fallible and prone to the influence of selfish passions and partial interests—“the latent causes of faction are sown in the nature of man”—a constitutional system that separates and checks the power of those in government, and a geo-social environment that thwarts the formation of majority faction, are needed. In the early twentieth century, Progressives in the United States, including men such as John Dewey and Woodrow Wilson, rejected both the Madisonian model of government as well as the Enlightenment principles of natural law and natural rights. For them, evolution replaced human nature; organic growth and historical progress took the place of eternal truths and natural laws. In essence, changing historical circumstances and changing economic and social needs required a new constitutional and political framework to achieve social justice. For Wilson, separation of powers and checks and balances were obstacles in the way of economic and social progress; in place of this dispersed, conflict-driven model of politics Wilson called for specialized experts with differentiated functions in the ranks of government.²¹ Liberating government from the institutional restraints imposed by Madison and the Founders in the original Constitution and substituting efficient, highly trained bureaucrats would lend to efficiency and the achievement of the true interests of the people, Wilson contended.

The explicit rejection of the Madisonian system and the advocacy of the Progressive model initiated by Wilson still inform the core of the Progressive movement in our time (though some ultra-progressive proponents, including supporters of Antifa, would radicalize Wilson's historicism and give up on politics, calling for violence as the only option in a world devoid of rationality or ethics). We are, as it were, faced with choosing between two alternate regime ideas, between two different constitutions. The decision before us is whether to keep the America of the Declaration of Independence and the Constitution, and to continue to work to vindicate the experiment in republican self-government, or to leave these old ideas behind us and institute a new and different form of government that we think will be more conducive to our happiness. The battle we are engaged in is a battle over the mind and soul of America. It is a war over what it means to be human and how we should live our lives.

The fundamental nature of this disagreement points to a fissure in the nation that has led some commentators to declare that in America today there are actually two different countries.²² While I would certainly agree that the issue of whether we are still “one people” is at stake, I do not think the question has yet been answered. It is a question we have faced before, of course, most prominently in the 1860s. For some time it was unclear whether the union could be saved and “the people” of the United States would remain together as members of the same band of brothers and sisters. To have remained together without mutual dedication to the proposition and principles of the Declaration of Independence, however, would have meant the preservation of the union in name only. Without the central idea of the Declaration binding north and south, black and white, and all Americans together in a shared vision of justice, the union and the laws had no purpose.

²¹ See Woodrow Wilson, “What is Progress?” retrieved from <http://teachingamericanhistory.org/library/document/what-is-progress/>.

²² Alan I. Abramowitz, “America Today is Two Different Countries: They Don’t Get Along,” *The Washington Post*, March 10, 2016, retrieved from <https://www.washingtonpost.com/news/in-theory/wp/2016/03/10/america-today-is-two-different-countries-they-dont-get-along/>.

Lincoln's conception of the American union was one in which even more than justice, civic friendship undergirds the bonds of citizenship. When in his First Inaugural Lincoln appealed to all Americans to rise to the better angels of their nature, to come together not as enemies but as friends, he conveyed to his fellow citizens the moral character of the promise they made to one another when they adopted the appellation, "American." In this, Lincoln followed Madison's understanding of the moral character of the American social compact. In free governments, in the final analysis, the law is the expression of the opinion of the majority. In back of the law is a moral principle, and a pledge by the people to commit to that principle, which gives the law its authority and makes it worthy of respect and obedience. Without this promise, there can be no genuine republican community. With it the people reveal their mutual pledge and the bonds of friendship that constitute the basis of their legal and civic life.

Either explicitly or tacitly, every citizen of the United States consents to join the social compact which binds him to every other citizen. In becoming a member of the country, each makes the same promise the Founders made when they ratified the Constitution in 1787-1788. That pledge is an acknowledgment of what each citizen owes his or her fellow citizens, according to the precepts and rights of humanity. It is a commitment to protect the rights of others, even to consider a trespass on any one member a trespass on all.²³ It is a hallowed pledge to the republican way of life of self-government. For in the final analysis, the majority ultimately gives the law, and there is no arbiter that can protect the rights of the minority other than the majority, that is, the people themselves.

Madison's political theory is aimed towards making majority rule just rule, or as he termed it in "Vices," placing power on the side of right. His aspirations for America depended on the capacity of the people to govern themselves, which in turn depended on the willingness of the people to engage in the deliberative processes with the aim to—and in the spirit of—finding common ground. The willingness to engage with one another, despite our differences and perspectives, is the first condition of free government, prior even to subjecting the public views to the processes designed to regulate and control factious views. Re-establishing this primary condition is the challenge we are faced with in America today. It is the challenge of bringing together those who disagree on the most fundamental of political questions in sustained and productive dialogue. As such, the new communicative modes of social media are not the chief problem. Social media are merely the vehicles for the uncivil posts and Tweets that are exacerbating the current political divide. It is the messages, or rather the messengers, who must bear the ultimate responsibility for the damage that is being inflicted on (or the good that might be done for) our civic life.

In the current divisive and often wrathful political—and digital—environment, the task ahead may appear a daunting one, perhaps an impossible one. But we have, after all, faced similar if not identical challenges before. In the fight over the Constitution, Madison reminded his fellow Americans that, no matter their political differences, they must not listen "to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer . . . be fellow citizens of one great, respectable" nation.²⁴ In 1791, during the battle between fierce differences of opinion that would result in the origins of political parties in America, Madison appealed to Americans to "concur amiably and differ with moderation," and "by such examples, to guard and adorn the vital principle of our republican constitution."²⁵ The more concord the people have with one another, he reminded his fellow citizens, the more they can sympathize with one another and look past prejudices and "mistaken rivalships."²⁶

²³ Madison sets forth the argument demonstrating the moral basis of the social compact in his *National Gazette* essay, "Property," *The Mind of James Madison*, 262-64.

²⁴ *The Federalist* 14: 98-99.

²⁵ "Consolidation," *The Mind of James Madison*, 236.

²⁶ "Consolidation," *The Mind of James Madison*, 236.



This is good advice for us today. As Madison knew, no regime can sustain itself on the basis of legal agreement alone. The American social compact is at once a legal and moral agreement, but it is the latter which makes the former binding and obligatory. In becoming American, each of us makes a pledge to every other American based on the natural obligations we possess as human beings, one to another.

POSTSCRIPT

One of the most memorable lines in the Star Trek film series is “the needs of the many outweigh the needs of the few.” This “dictate of logic” is spoken by Mr. Spock, but it is not the last word on the subject. Captain Kirk immediately adds: “or the one.” Later in the series, when the Starship is in imminent danger, Spock sacrifices his life to save the crew. As he lies dying, he entreats Kirk not to grieve, for “the needs of the many outweigh...” – and Kirk finishes his sentence – “the needs of the one,” to which Spock adds, “or the few.” In yet a later episode, we learn that Spock is actually alive, his once-separated body and soul reunited by his crew. In the spirit of wonder, Spock remarks to Kirk, “My father says you have been my friend. You came back for me.” “You would have done the same for me,” Kirk responds. “Why would you do this?” Spock asks. Kirk replies: “Because the needs of the one outweigh the needs of the many.”²⁷

In an essay titled “Charters,” Madison explained that compacts of government are inviolable pledges “bound on the conscience[s]” of individuals. They are the most sacred of civic obligations “because every public usurpation is an encroachment on the private right, not of one, but of all.”²⁸ As the protracted exchange between Spock and Kirk taught, the relationship between the individual and the community is a layered and complex one. On the one hand, the common good sometimes requires individual sacrifice; on the other hand, the community is only as good as its care for and protection of each of its members. In respect to the latter, Spock’s cold logic of right was amended and elevated by the warmth of human and civic friendship.²⁹ The pledge of each citizen to care for the liberty and protect the rights of every other citizen constitutes the trust that anchors the American compact. This is more than following contract rules; it involves the kind of political bonds and concord that make the United States a genuine union, and the collection of individuals who inhabit it “one people.” This is the pledge of civic friendship that constitutes Madison’s America.

²⁷ See *Star Trek, The Wrath of Khan* (1982), *The Search for Spock* (1984), *The Voyage Home* (1986).

²⁸ “Charters,” in *The Mind of James Madison: The Legacy of Classical Republicanism* (Cambridge: Cambridge University Press, 2015), 247.

²⁹ The lesson of these exchanges between Spock and Kirk is that utilitarianism is not the “human” answer. Human beings living in community need justice, and justice is elevated and perfected by friendship.