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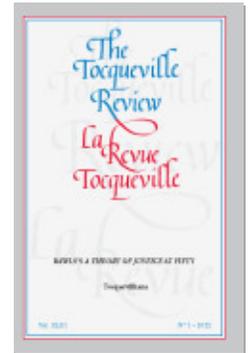
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James T. Kloppenberg

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## JOHN RAWLS AND “OUR TRADITION” OF DEMOCRACY

James T. KLOPPENBERG

Diving back into *A Theory of Justice* fifty years after its publication induces vertigo. I cannot write about justice in liberal democracy today without acknowledging that Americans are writhing about our crisis of self-government. Democracy in America, as Tocqueville made clear, has been developing slowly, albeit in fits and starts, since the early seventeenth century. For that reason many Americans have assumed that we can withstand the threat of authoritarian rule. Unlike, say, Tocqueville’s native France, where recurrent revolutions against, and restorations of, various anciens regimes long delayed the emergence of stable popular government, the institutions of American democracy have remained resilient—even during the ordeal of civil war.<sup>1</sup>

In *Political Liberalism* (henceforth PL), Rawls explained that democratic citizenship imposes “the duty of civility,” citizens’ obligation “to be able to explain to one another how the principles and policies they advocate and vote for can be supported by the political values of public reason” (PL, 217). In *Justice as Fairness* (henceforth JF), Rawls endorsed “the cooperative political virtues of reasonableness and a sense of fairness, of a spirit of compromise and the will to honor the duty of public civility” (JF, 118). As I will show in this essay, the United States was established on those principles, which facilitated the slow, unsteady widening of the category of

citizenship across the lines of gender, ethnicity, and race for two and a half centuries.

Unfortunately, the unwillingness of elected officials in the Republican Party to put the nation's welfare above their partisan interests, an inclination that has grown steadily stronger for three decades now, has poisoned our political culture. A considerable majority of Republican voters continues to embrace conspiratorial fantasies with no basis in reality. They believe that Donald Trump won an election he lost, that President Joe Biden's presidency is illegitimate, and that Barack Obama was a Muslim socialist born in Africa. Republicans' acceptance of Trump's Big Lie about the election of 2020, and their elected officials' continuing refusal to engage in good-faith debates about substantive policy issues, let alone respect the "duty of civility," is a sorry spectacle without precedent in US history.

This reality framed my return to Rawls's writings and the half century of scholarly debates they inspired.<sup>2</sup> I first read *A Theory of Justice* (henceforth TJ) during my years as a graduate student at Stanford in the mid-1970s. Like so many readers, I was inspired by Rawls's soaring ambition and impressed by the intricacy of his arguments. When Rawls spoke at Stanford, he focused so narrowly on intramural battles with his fellow analytic philosophers that the architect of TJ seemed to have become its custodian, content to squeegee streaks from the windows and vacuum up dust in the corners. Only later did I understand that Rawls was refining his ideas to make later iterations of his "ideal theory" more precise and more persuasive.<sup>3</sup>

In this essay I will argue that Rawls's ideas remain a rich resource for us today. Especially in his later work, Rawls affirmed the importance of rights without neglecting the indispensability of solidarity and reciprocity for democracy. Rawls's dual focus on liberty and equality should be seen as a dynamic extension of ideas present in American political thought since the eighteenth century, ideas often misunderstood because of persistent misreadings of John Locke and Jean-Jacques Rousseau as founders of allegedly separable traditions designated "liberal" and "republican." Here I will situate Rawls's ideas in the history of American thought and politics in ways that Rawls himself, like most analytic political philosophers since World War II,

did not attempt to do. A gulf appears to separate Rawls's ideas, even as articulated in his later, "realistically utopian" books *Political Liberalism* and *Justice as Fairness*, from American history, especially from the deep conflicts roiling twentieth- and twenty-first century American political, economic, and social life. Yet locating Rawls's ideas in the longer sweep of American democratic thought, and linking them explicitly to the acute problem of incivility we face in 2022, might help us chart an escape from the cul-de-sacs of remorseless selfishness, mindless hedonism, and obdurate partisanship.

Rawls built *A Theory of Justice* on two principles, the first insuring equal liberties for all individuals, the second, fair equality of opportunity complemented by what he called the "difference principle," pointing toward equality by stipulating that any inequalities must be in the interest of the "least advantaged members of society" (TJ, 15). Rawls envisioned "the parties in the initial situation" of his thought experiment, which he called the "original position," operating behind "a veil of ignorance." He conceived of them "as rational and mutually disinterested," which "does not mean that the parties are egoists," only that "they are conceived as not taking an interest in one another's interests" (TJ, 13). The apparently atomistic and self-interested individualism of parties in the original position, evidently concerned above all with maximizing their own prospects, attracted much criticism, and for good reason.

In TJ Rawls gave the impression that his "ideal theory" was a model of universal applicability. In PL he clarified that he was writing only "for us," by which he meant members of liberal democratic societies of the late twentieth century. Without going into detail, he later claimed to be drawing on what he called "the history of democratic thought" (JF, 44-45) and "our tradition of political philosophy" (JF, 83). The focus of that tradition, he claimed, "has been on achieving certain specific rights and liberties as well as specific constitutional guarantees, as found, for example, in various bills of rights and declarations of the rights of man. Justice as fairness follows this traditional view" (JF, 45). By giving priority to the first over the second principle in TJ, and by identifying "our tradition" with rights and liberties above all, Rawls misconstrued his heritage and, as he admitted in his later work, misled his readers about the relation between liberty and equality in democracy. In TJ Rawls

distinguished between what Benjamin Constant called the “liberty of the moderns” and the “liberty of the ancients,” a distinction reformulated after World War II by Isaiah Berlin as the difference between negative and positive freedom, “freedom from” and “freedom to.” Rawls traced the former, which he endorsed, to Locke, and the latter, from which he initially distanced his ideas, to Rousseau.

That formulation, viewed in relation to traditions of Atlantic political thought, is now recognized as a caricature. First, the sharp distinction Rawls drew between Locke and Rousseau, although conventional during the 1940s and 1950s, gets both of them wrong. Although many commentators since WWII have ignored Locke’s religiosity, he wrote self-consciously within the tradition of dissenting Protestantism. The idea that freedom meant the absence of constraints was as abhorrent to Locke as it was to earlier Puritans. In 1630, John Winthrop sketched a political framework for the Massachusetts Bay Colony within which God’s chosen people could live upright lives. In the 1640s John Milton defended regicide and the principle of popular sovereignty while arguing that legitimate freedom can be exercised only within the limits of God’s law. Imagining that Locke inaugurated a tradition in which individuals are free to choose their own vision of the good as well as the right, their own “comprehensive doctrine” in Rawls’s terminology, projects onto Locke ideas that he could not have entertained.<sup>4</sup>

Rawls presented Rousseau as a representative of the tradition he identified as republican or civic humanist, a tradition that “specifies the chief, if not the sole human good as our engaging in political life, often in the form associated historically with the city-state, taking Athens and Florence as exemplars” (JF, 143). Although Rawls distanced justice as fairness from the tradition of republicanism or civic humanism, he nevertheless aligned himself with Kant, who “sought to give a philosophical foundation to Rousseau’s idea of the general will,” and contended that his theory of justice offers “a natural procedural rendering of Kant’s conception of the kingdom of ends, and of the notions of autonomy and the categorical imperative” (TJ, 264).

Elsewhere Rawls made clear how indebted he was to the conception of selfhood laid out in Rousseau’s *Emile*. There the protagonist’s multi-stage education culminates in his having learned

to "reign over himself," which means that he will voluntarily "sacrifice his interest to the common interest."<sup>5</sup> In short, *Emile* learns to internalize the general will. He learns that his "intérêt bien entendu," to use Tocqueville's phrase, or his "self-interest properly understood," inevitably involves integrating his own will into the will of his community. In his later work, Rawls denied that there is an "fundamental opposition" between classical republicanism and Constant's and Berlin's liberalism. "Weighing competing political values" such as liberty and political participation, he wrote, "is a matter political sociology and institutional design. Since classical republicanism does not involve a comprehensive doctrine, it is also fully compatible with political liberalism, and with justice as fairness" (JF, 144). Finally, he contended that justice as fairness actually leaves room for both the liberty of the ancients and the liberty of the moderns, and for positive as well as negative liberty (TJ, 222; JF, 177).

My point is not that Rawls was confused. To the contrary, as his occasional endorsements of Kant and Rousseau as well as Locke, Constant, and Berlin should make clear, it is the false dichotomy between so-called "liberal" and "republican" traditions that has led so many commentators to misunderstand both sets of ideas, at least when they are considered historically. The same is true of the distinction between utilitarianism and intuitionism, which Rawls claimed to reject in his own moral philosophy. Examining the ideas of John Adams, Thomas Jefferson, James Wilson, and James Madison, and showing their debts to Rousseau as well as Scottish moral philosophers Thomas Hutcheson and Adam Smith, this essay shows that Rawls's mature ideas were congruent with "our tradition" of American political thinking. Instead of emphasizing the tensions between the liberal and republican traditions, between negative and positive liberty, and between utilitarian and intuitionist ethics, as Rawls did in most of his early writing, he might have acknowledged more forthrightly that balancing liberty and equality, and taking into account sympathy and benevolence as well as individual interests, has been the principal concern of many American political thinkers since the eighteenth century.

Today, in the wake of both the "Me Too" and "Black Lives Matter" movements, it is imperative to acknowledge the blindnesses of almost all eighteenth-century white males, on both sides of the Atlantic, to the problems of gender and race discrimination. In TJ

Rawls did not address those issues in detail. In his later writings, as a result of the feminist and Civil Rights movements—and the criticism Rawls received—gender and race did come into focus as problems for justice as fairness.<sup>6</sup> Acknowledging the blindnesses of most eighteenth-century white men, and the neglect of race and gender in TJ, should not blind us from seeing in the ideas of Adams, Jefferson, Wilson, and Madison valuable resources from which twenty-first century Americans committed to liberty and equality might fruitfully draw.

#### RAWLS AND THE LEGACY OF ROUSSEAU

The primary purpose of government, according to influential American thinkers and Constitution writers including Adams, Wilson, and Madison, was emphatically not to protect individual rights, or property, or the freedom to do whatever self-interested individuals want to do. Whereas Rawls stressed the importance of guaranteeing rights, Madison and Wilson in particular dismissed the idea of a bill of rights as incoherent. Popular government, unlike governments controlled by monarchs or oligarchs, was the people's own creation, and the people had no need to defend themselves against themselves. Indeed, Madison helped draft a bill of rights for the US Constitution only because so many of his contemporaries, including, to his dismay, his friend and ally Jefferson, considered it essential. From Madison's and Wilson's perspective, the bills of rights that Rawls judged central to "our tradition" indicated a fundamental misunderstanding of self-rule. The purpose of government, at least from the perspective of these thinkers, was not merely to secure rights. Its purpose was instead to advance the common good, or the public interest, or to use Rawls's term, justice.

Consider first the *Constitution of the Commonwealth of Massachusetts*, drafted in 1780 by John Adams and still in force today. Adams had earlier provided the template for the first round of state constitutions in an essay he wrote in the tumultuous spring of 1776, *Thoughts on Government*. The framework he sketched there, written in response to a request from William Hooper of North Carolina, served as the model for the state constitutions of North Carolina, New Jersey, and Virginia, and its influence rippled out far beyond those three states. When invited to write the Massachusetts Constitution four years later, Adams followed the same template.<sup>7</sup> He wrote to a friend that his Constitution was "Locke, Sidney, and Rousseau and de Mably,

reduced to practice."<sup>8</sup>

Rousseau's presence in that list might seem surprising. It has often been assumed, and not only by Rawls, that Locke and Rousseau inaugurated two very different traditions of thought and of government, the one liberal and the other either republican, or communitarian, or statist—or perhaps even proto-totalitarian, if only because Robespierre invoked Rousseau to justify the Terror. Locke is said to have enshrined the rights long cherished by Anglo-Americans, Rousseau to have enabled the use of the guillotine. So why did Adams write that both of them had inspired the Massachusetts Constitution?<sup>9</sup>

It is important to understand that Rousseau's central ideas lie behind the constitutional thinking of Adams, Wilson, and Madison, their emphasis on the common good rather than individual interests, and their embrace of representative democracy. Since Rousseau savaged the idea of representation in *The Social Contract*, that claim seems counterintuitive. Rousseau pointed to the horribly corrupt system of elections in Britain, where a tiny fraction of the population chose for the House of Commons a few wealthy individuals to "represent" them. He used that example to show the *distance* between conventional but flawed systems of representative government and his own radical ideal.

Rousseau sought a form of government in which all citizens would internalize the general will, his controversial and widely misunderstood concept of the enduring common good. Rousseau denigrated governments that merely added together, in what would come to be known as utilitarian fashion, the particular interests of particular individuals or particular groups. Such governments privileged what he called the will of all, which he contrasted to the general will.<sup>10</sup> In Rousseau's article "Political Economy," in Denis Diderot and Jean le Ronde d'Alembert's *Encyclopédie* (1755), Rousseau wrote that the general will is "the source of the laws" and provides "the rule of what is just and unjust." For Rousseau, the general will served as an abstract standard of judgment, an ideal of justice, a principle that provides a norm against which all considerations of individual or group interests must be measured. By definition, "the general will is always in favor of the common good." For that reason Rousseau favored popular government over the monarchies and

aristocracies of Europe, but he acknowledged that the problem of justice would persist even in democracies because in any legislative assembly, individuals or groups are likely to try to advance their own interests instead of those of the whole people. Since “personal interest is always found in inverse ratio to duty,” narrow self-interest, or the particular interests of particular groups, often masquerade as the general will.<sup>11</sup>

Rousseau proposed a disarmingly simple solution to this problem: the first duty of legislators is to “make the laws conform to the general will.” Rousseau insisted that “the leaders know very well that the general will is always for the side most favorable to the public interest—that is, for the most equitable; so that it is only necessary to be just and one is assured of following the general will.” Remove the filter of self-interest; the luminous truth of justice can shine forth. Only if the authority of the general will “penetrates to the inner man,” and only if it “is exerted no less on his will than on his actions,” can self-interest give way to genuine commitment to the common good. “When citizens love their duty,” Rousseau concluded, “all difficulties vanish.”<sup>12</sup>

In order to understand what Rousseau meant by the general will, his essay “Political Economy” and *The Social Contract* should be read alongside *Emile*. In Rousseau’s treatise on education, which had a powerful impact on Jefferson and Madison as well as John Rawls, he explained why the key to self-government is education. Through careful cultivation, Emile learned to love his duty, and to will what he *ought* to will, rather than simply following his inclinations. Thus he was prepared to shoulder his responsibilities as a citizen in a self-governing polity.<sup>13</sup>

Rousseau was drawing on a tradition that dates back to the ancient world when he argued that those who follow their animal instincts are slaves to their senses. Only those individuals are free who see beyond their shallow, momentary impulses, or their whims, and act according to the dictates of reason. Rousseau wrote in *The Social Contract* that sometimes people must be “forced to be free,” which of course sounds ominous. But he meant by it nothing more sinister than that they must be required to follow the law rather than permitted, let alone encouraged, to follow their personal preferences. In his words, citizens must learn to “substitute justice for instinct”

and "the voice of duty" for "physical impulse."<sup>14</sup> When Rawls wrote about how indispensable citizens' "reasonableness" is in a society oriented toward the ideal of justice as fairness, he was veering close to Rousseau. In Rawls's late *Lectures on the History of Political Philosophy*, he interpreted Rousseau's *Social Contract* in a way that clearly indicates its parallels with his theory of justice as fairness.<sup>15</sup>

Rousseau laid out his arguments in a string of texts. Not only in "Political Economy" and *Emile* but also in the Preface to his *Discourse on Inequality*, the preliminary draft of *The Social Contract* known as the *Geneva Manuscript*, and the *Constitutions* that he was invited to draft for Poland and for Corsica, Rousseau made clear that he saw the value, indeed the necessity, of a properly constituted representative democracy for any population larger than that of a small village. To reiterate the point, in "Political Economy" he described the general will succinctly as "the source of the laws" and "the rule of what is just and unjust." In other words, the general will should be understood as a Constitution, or what Rawls described as the "basic framework" of a well-ordered society.

Most so-called republics in the eighteenth century, including that of Rousseau's native Geneva, were oligarchies. They did not come any closer to what Rousseau was looking for than did the sham of self-government in Britain. Rousseau argued that the people themselves must remain sovereign, not a monarch, or a landed aristocracy, or government officials. In a sentence that prefigures Madison's and Wilson's central arguments for the US Constitution, Rousseau wrote that the people should elect what he called "the most capable and upright of their fellow citizens" because they would best discern the good of the whole, the 'general will', rather than trying to advance the narrow, partial interests of their constituencies.<sup>16</sup>

Rousseau was offering an updated, secular version of a very old ideal. Present in various forms in the Stoics, Cicero, Augustine, and Calvin, it was the idea that true freedom, as well as civic responsibility, involves learning to channel the will toward the good. Individuals exercise their autonomy not by indulging their appetites but by restraining them.<sup>17</sup> When Rawls insisted, in his late lectures on the history of political philosophy and in JF, that critics' were mistaken to contend that he was assuming a selfish disregard for others in the original position, his stipulation that "reciprocity" and

“mutuality” are indispensable to justice as fairness echoes one of Rousseau’s principal ideas.

That is why John Adams, good New England Congregationalist that he was, found Rousseau so appealing. Adams owned three copies of *The Social Contract*, and before 1780 he enthusiastically recommended the book to his wife Abigail and to his friends. After the Terror had transformed the French Revolution, and after the United States had split into rival Jeffersonian and Federalist parties, Adams changed his mind and began to criticize everything French, including Rousseau. But that reversal, which is apparent from Adams’s marginalia in the books in his library, comes in the edition of *The Social Contract* that he bought after the fall of Robespierre. In the 1770s and 1780s, however, Adams saw things very differently. He believed that the *Massachusetts Constitution*, which identified equality and the education of all citizens as necessary for identifying and advancing the common good, should be understood as Rousseau “reduced to practice.” Adams wrote in his Preamble, “It is a social compact by which the whole people covenants with each citizen and each citizen with the whole people, that all shall be governed by certain laws for the common good.” Not a compact of the people with their government, as Hobbes and Locke both had it, but of the sovereign people with themselves.<sup>18</sup>

This way of thinking persisted through the 1780s. After the new nation had established its independence and John Adams had been sent off to Europe as an emissary, the United States were struggling (and I use the plural deliberately; that was the standard formulation for decades after independence) to recover from the economic chaos that followed the war. Many Americans worried that their state constitutions, almost all of them similar to the original framework laid out by Adams in 1776, might not survive the challenge of independence. Would the Articles of Confederation hold the states together?

#### RAWLS, PLURALISM, AND THE AMERICAN TRADITION OF DELIBERATIVE DEMOCRACY

Among those who wanted a stronger central government were Virginian James Madison and the Scottish-born attorney James Wilson of Pennsylvania. Together with others anxious about the survival of the new nation, they engineered the audacious gamble that

became the Constitutional Convention. Madison arrived at the Convention intent on creating a new form of government. In the weeks before the Convention opened, he wrote for himself a little essay, "The Vices of the Political System of the United States," on which he drew for his speeches in Philadelphia, his essays in *The Federalist*, and his speeches at the Virginia Ratifying Convention. Madison wanted to bring into being a nation with a shared set of values beyond the narrow interests of its individual states and citizens. Far from operating behind a veil of ignorance, however, his contemporaries brought with them to Philadelphia very real, and very disparate, interests as well as convictions.

Madison had studied at the College of New Jersey, later renamed Princeton, under John Witherspoon, a Scottish-born minister and follower of the Scottish moral philosopher Francis Hutcheson, whose ideas Rawls likewise encountered at Princeton two centuries later. Like Adams, Jefferson, Wilson, and most other Americans interested in theories of ethics, throughout his life Madison proclaimed an ethics of sympathy, or benevolence. He believed that God had implanted in humans a moral sense, which registers our understanding of God's will that we treat others with benevolence. In Jefferson's words, this moral sense "is the true foundation of morality," and it "is as much a part" of human nature as "the sense of hearing, seeing feeling."<sup>19</sup> It was this conviction that forced Jefferson to agonize about the unjustifiable cruelty of slavery even though he never freed his own slaves. Adams referred more directly to the role of what Adam Smith called "the ideal spectator" in guiding an individual's conscience toward sympathy for others rather than the satisfaction of one's own interests or ambitions. Earning others' admiration through benevolent action, Adams wrote, difficult as it was because of the temptation to selfishness, was the goal toward which individuals should strive.<sup>20</sup>

Madison too understood the friction between individual impulse and conscience.<sup>21</sup> He perceived the gap between immediate perceptions of self-interest and the dictates of Hutcheson's rational benevolence. In Madison's essay "Vices," he laid out all the ways in which the people of the United States, like sinful humans always and everywhere, were putting their own interests above the good of the whole.<sup>22</sup> In "Vices" Madison offered a shrewd—and too seldom fully understood—analysis of social conflict. "All civilized societies," he

wrote, “are divided into different interests and factions.” Madison listed seven such conflicts, including those between [1] creditors and debtors; [2] rich and poor; [3] farmers, merchants, and manufacturers; [4] members of different religious sects; [5] followers of different political leaders; [6] inhabitants of different regions; and [7] owners of different kinds of property. Madison’s sophisticated understanding of conflict cannot be captured by a simple division between “elites” and the “people.” He had seen wealthy and prominent planters disgraced and rejected, as he was in the elections of 1777 and 1785, and as his friend Jefferson was at the end of his term as Governor of Virginia. He had seen recent immigrants, such as the Pennsylvanian Wilson and the New Yorker Alexander Hamilton, rise quickly from poverty and anonymity to become figures of wealth and power—and then to become targets of public abuse. Madison understood, better than many later commentators on his thought, that no single rift, whether of class, or occupation, or religion, or region, captured all the complicated dimensions of human interaction.<sup>23</sup>

Madison’s solution lay in harnessing these cross-cutting divisions and putting them to use. Through political institutions, he believed autonomous and benevolent citizens could create a culture of democracy devoted to pursuing the common good. How would it work? Madison denied that majoritarianism would be enough. He offered a version of the familiar observation that any group of three can yield a majority of two who can decide to enslave the other one. Madison knew that different regimes had tried to meet these ancient objections to majority rule in different ways. Monarchies relied on the neutrality of the king. Small republics counted on limiting the power government could use against its people. But history showed how frequently such measures failed.<sup>24</sup>

Madison had a different idea, one that resembled those of Rousseau and Adams in ways seldom acknowledged. He conceived of representative democracy as a process of continuing deliberation and experimental truth testing. He leveraged Aristotle’s insight about the moderation of conditions in large states against Montesquieu’s admonition that republics must remain small. In a large, self-governing nation, Madison called for, in words echoing Rousseau’s, “such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it contains; such as will feel most strongly the proper motives to pursue

the end of their appointment."<sup>25</sup>

The similarity between that formulation and Rousseau's is uncanny. Also like Rousseau, Madison stipulated the purpose that representatives should keep in mind, which many commentators on Madison's thought have missed. The goal of government for Madison was not merely to manage conflict or preserve order, as many liberal pluralists and tough-minded political scientists have claimed ever since the 1950s. Instead, in Madison's words, "Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it is obtained, or until liberty be lost in the pursuit."<sup>26</sup>

The advantage of a large over a small republic, Madison first argued in "Vices" and then explained in his speeches at the Constitutional Convention and in *The Federalist*, depends precisely on the cross-cutting interests that he had identified. Given the myriad complexities of those conflicts, he judged it all but impossible that any single constellation of interests could form, or mobilize a majority, around any interest other than what he called the "public interest." By the time Madison wrote *Federalist* 51, he had come up with his best formulation of this crucial point: "In the extended republic of the United States," he wrote, "and among the great variety of interests, parties and sects which it embraces, a coalition of a majority of the whole society could seldom take place upon any other principles than those of justice and the general good."<sup>27</sup> Note those words: justice and the general good.

Madison envisioned a system that would do more than balance competing groups, or play off factions against each other, or allow for contests of naked self-interest. Instead Madison remained committed to an ideal he drew from Witherspoon, and from Witherspoon's teacher Hutcheson. It was an ideal that resembled those of Rousseau and Adams, the ideal that individuals might, through the mechanisms of representative democracy, create laws that would treat all citizens with justice. Not content with the idea of politics as a bare-fisted brawl, a slugfest in which individuals compete by advancing their own narrow conceptions of self-interest, Madison was struggling in "Vices" to find the words to express his alternative.<sup>28</sup> Although Madison had not yet come up with the metaphors of filters and sieves that would become clear to him as he participated in the

Constitutional Convention, he was already trying to explain how the democratic process of multiple elections, the deliberations of representatives, and the two-way communication between representatives and their constituents might—through an endless series of apparently conflict-ridden arguments—bring into being the closest approximation of the common good that flawed human beings could create.<sup>29</sup> Madison experienced his share of defeats at the Constitutional Convention. The Constitution hardly conformed to his model. He rejected as undemocratic the idea that the Senate should represent states rather than population because it gave disproportionate power to the states with the fewest people. Like Wilson, he preferred the direct election not only of Congressmen and Senators but also of the president. Madison was ambivalent about slavery, which some delegates condemned but which Georgia and South Carolina refused to allow even to come to the Convention floor.<sup>30</sup>

Gradually Madison reconciled himself to the compromises necessary to placate the small states and the slave states. To help secure ratification of the Constitution in New York state, he agreed to help Alexander Hamilton and John Jay write, under the pseudonym Publius, what we now know as *The Federalist*.<sup>31</sup> Madison's *Federalist* 10 has long been misinterpreted because he was forced to adopt Hamilton's terminology in *Federalist* 9, which sophistically differentiated the "republic" Hamilton defended from the "democracy" that Madison had endorsed in speeches at the Constitutional Convention.<sup>32</sup>

Throughout the Convention, Madison and Wilson had taken the more democratic side on most controversial issues. Wilson played a role in the Convention and the ratification debates second only to Madison's. In Wilson's speech on June 6, 1787, he advanced an argument on popular sovereignty that proved indispensable for those in favor of the Constitution and a target (then as now) for those who opposed it. The only source of power anywhere in the Constitution, Wilson pointed out, was the people, "the legitimate source of all authority." Representation was necessary only because "it is impossible for the people to act collectively." By electing their representatives in Congress, and electing those who would choose all other office holders, the people would see to it that their government would "possess not only firstly the force but secondly the 'mind or

sense' of the people at large."<sup>33</sup> Wilson also delivered the most widely reproduced and circulated speech in favor of ratifying the Constitution, which was printed in thirty-four newspapers in twelve of the thirteen states. Wilson admitted that the Constitution was *less* democratic than he and some other delegates had wanted, but the people could make it right because it was the first charter of government to include a provision for amendment.

Why do Madison and Wilson matter for understanding of Rawls's place in the history of American political thought? In Wilson's most influential speeches, he echoed central arguments of Rousseau's *Social Contract*. Under the Constitution, the American people would not alienate their sovereignty but retain and exercise it, just as they had done during the struggle for independence and in the current debate over the Constitution. Their engagement showed their commitment to the common good, which Wilson distinguished from the sum of their individual preferences exactly as Rousseau distinguished the general will from the will of all. The parallel is no accident. Wilson wrote his speeches with a copy of *The Social Contract* at his elbow, the same English translation that John Adams used when he was writing the Massachusetts Constitution.<sup>34</sup> Wilson declared that "the aggregate of liberty is more in society, than it is in a state of nature," because, precisely as Rousseau had argued and Rawls endorsed in his lectures on Rousseau, in a properly constituted society individuals are governed by the laws they have made for themselves.<sup>35</sup> In Rawls's parlance, Wilson's Americans had embraced principles designed to secure the background conditions for justice as fairness.

Europeans, Wilson explained, still failed to understand the nature of representation. They still thought in terms of distinct social orders, which played different roles in mixed governments. The entire American citizenry, by contrast, was empowered vote to authorize the creation of the Constitution. Under the Constitution, what Wilson called "the welfare of the whole," his phrase for Rousseau's general will, "shall be pursued and not a part." For that reason, Wilson concluded, "the measures necessary to the good of the community," that is to say the law, "must consequently be binding upon the individuals that compose it." When laws emanate from the people themselves, through their elected representatives, and those laws embody the welfare of the whole, then individuals must obey—even if, Wilson might have added, they must thereby be forced to be

free.”<sup>36</sup>

For Madison, as for Adams and Wilson, faction did not represent a healthy sign of a vibrant culture, as some pluralists and defenders of limited government have claimed since the mid-twentieth century. The causes of faction lay in the human propensity to sin, the inclination to favor one’s own interest over the common interest. The solution required cultivating the human capacity for virtue. Although Madison has conventionally been identified as the epitome of American liberal pluralism, the evidence points in a different direction. Madison was self-consciously engaged in a strategic project. He was not writing political philosophy. “If any Constitution is to be established by deliberation and choice,” Madison wrote to Archibald Stuart on October 30, 1787, “it must be examined with many allowances and must be compared, not with the theory which each individual may frame in his own mind, but with the system which it is meant to take the place of and with any other which there might be a probability of obtaining.”<sup>37</sup> Much as he might have enjoyed writing a *Republic*, a *Utopia*, an *Oceana*, or perhaps *A Theory of Justice*, Madison had a different objective.

Madison continued to develop his ideal of the common good in his later contributions to *The Federalist*, which demonstrate his continuing commitment to the ideas of popular sovereignty, civic virtue, and representative democracy. In response to the anxiety that those elected to the federal government would somehow form an oligarchy, an exasperated Madison pointed out that the entire system was to be in the hands of ordinary voters, an observation that haunts Americans in 2022: “Who are to be the electors?” Madison asked. “Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the correspondent branch of the Legislature of the State.” If Americans could not trust ordinary people to choose the best qualified of their peers to serve in government, then government by the people would be impossible.<sup>38</sup> The problem, perhaps, is not with the Constitution itself but rather with the ways in which so many American voters have, for half a century or more, reverted to a conception of government oriented not toward the common good, or justice, but

toward the satisfaction of their own individual interests.

Madison and Wilson instead believed that giving multiple interests a chance to advance their claims would provide an opportunity for genuine democratic debate. They believed that the filtering process of electing representatives would provide the best possible means to reach the goal of justice that all Americans shared. In Madison's words, not the expression or satisfaction of individuals' self-interest or the interest of a single group but "justice is the end of government." Given the size and complexity of the extended republic, "a coalition of the majority of the whole society could seldom take place on any other principles than those of justice and the general good."

Given the disagreements that democracy both allows and engenders, and given the bitter conflicts that began almost as soon as the Constitution and the Bill of Rights took effect, Wilson's claim that popular sovereignty is "not a principle of discord, rancor, or war" but of melioration, contentment, and peace" might seem peculiar. But Madison and Wilson saw clearly that when no-holds-barred contests occur within the framework of an underlying cultural commitment to individual autonomy, equality, and reciprocity, such debates do not undercut democracy but enrich and perpetuate it. Instead of allowing discontent to fester and develop into the cancer of civil war, deliberation by democratically chosen representatives can—not must, but can—enable them to reach shared understandings unavailable through any other mechanism. Representative institutions, in Madison's words, served "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." When representatives deliberate, Madison argued, they have a better chance to find the common interest, the public good, the spirit beyond faction and self interest.<sup>39</sup>

That public good was of course what Rousseau had designated the general will, and Adams the common good. Knowledge of that common good could emerge, as it did for Madison and the other delegates who convened in Philadelphia, only through the process of deliberation, compromise, and creative rethinking. That was why, in

*Federalist* 55, Madison wrote that even if every Athenian had been a Socrates, every assembly of the whole citizenry would still have been a mob. When there is no possibility of deliberation, no give and take of arguments but only the choice of voting up or down, yes or no, popular decision-making is fatally flawed. That is why plebiscites are problematical and why Madison, like Rousseau, Adams, and Wilson, thought that members of representative assemblies should aim to do more than mirror the self-interested preferences of their constituents.<sup>40</sup>

Here is the point readers of *The Tocqueville Review* should consider in 2022: The purpose of representation, as Adams, Wilson, and Madison understood it, was to facilitate deliberation, not just horse trading. Their goal was not merely, or even primarily, to defend individual rights, let alone the right to property. Their refusal to include women in the ranks of citizens, and Madison's willingness to countenance slavery, in order to secure a Constitution, mean that they were hardly democrats by our twenty-first-century standards. They detested the idea of parties because they saw the dangers that have become all too clear in our own day. But in the context of the eighteenth century, they stood on the side of popular government rather than rule by elites. Their goal was Rousseau's goal, and Rawls's goal, to imagine a way to advance the welfare of the public, the common good. The Constitution is, above all, designed to enable the citizenry to search for the common good, for justice, which requires that individuals view each other with sympathy or benevolence rather than merely "disinterest." John Adams, Wilson, and Madison were engaged in a project similar to Rawls's, predecessors in "our tradition" as useful for his purposes as was Rousseau.

In his *Lectures on the History of Moral Philosophy*, Rawls referred to Hutcheson only to contrast his ideas, dependent as they were on the idea of a benevolent deity, with those of Hume and Kant. It is true that most eighteenth-century Americans shared the Scots' Protestant theology, which undergirded their moral philosophy as well as their ideas about society and politics. Rawls's turn away from the explicit Christian faith that shaped his earliest writings might have blinded him to resources, and caused him to miss parallels, between eighteenth-century Americans' ideas about ethics and politics and his theory of justice as fairness. Like Madison, Rawls argued consistently that people in a well-ordered society come together for one purpose:

justice. "If men's inclination to self-interest makes their vigilance against one another necessary," he wrote in the opening pages of TJ, "their public sense of justice makes their secure association together possible" (TJ, 5). Having been besieged by communitarian critics for privileging individuals and their rights, Rawls insisted in JF that he had always seen not only the possibility but the necessity of community. A well-ordered society "is not, then, a private society; for citizens do have final ends in common," the end of justice. (JF, 199).

Even though Rawls insisted that community was not only possible but necessary in a well-ordered society, he nevertheless denied that all citizens, under the conditions of "reasonable pluralism" that he, like Jefferson, Madison, and Wilson, considered inevitable in the contemporary world, should be required to share a single "comprehensive doctrine." Given the fact of diversity, Rawls contended that the rich experiences of voluntary associations, which Tocqueville thought gave American democracy its vibrancy, could exist only outside the fundamental framework of justice as fairness. Although a well-ordered society left plenty of room for various groups to organize around their own philosophical, theological, or political principles, none of those groups could demand compliance with their own view without violating the first principle of equal liberty for all. Jefferson and Madison were justifiably proud of their role in establishing the separation of church and state, first in Virginia and then in the new nation. Their arguments for sealing off faith from civic authority, because in Madison's words our obligations to our creator are prior to our obligations to government, have sometimes been misunderstood by secular Americans as warnings against religious dogmatism. They were instead warnings against the official establishment of any religious creed. Like their ideal of the common good, their arguments in defense of pluralism would have served Rawls well had he chosen to engage with the logic of their case.<sup>41</sup>

#### RAWLS, INEQUALITY, AND THE AMERICAN TRADITION OF PROPERTY-OWNING DEMOCRACY

Rawls's *Theory of Justice* was hailed immediately as a major contribution to political philosophy, and so it has remained. Thomas Nagel, to cite but one example among many, accords Rawls "a special place" in the liberal tradition because he "explored and developed its

philosophical foundations to an unprecedented depth” and “defended a distinctive, strongly egalitarian view” distinct from the ideas of many other liberals. In both respects, however, as a theorist of the social contract and as a champion of equality as well as liberty, Rawls should perhaps not be credited with having “transformed the subject of political philosophy,” as Nagel put it, but rather with having inherited a rich tradition and having translated it into the language of analytic philosophy.<sup>42</sup>

Rawls also drew criticism from all directions. Leftists faulted TJ for the alleged individualism of those gathering behind the veil of ignorance and because they thought the second principle could serve to legitimate the inequalities typical of capitalist welfare states. Libertarians, obsessed with individual rights, challenged the second principle. Rawls’s responses, as early as his Preface to the French edition of TJ and later in PL and in JF, made clear that his early commitment to the Christian idea of love, or agapism, survived his immersion in analytic and post-Wittgensteinian moral philosophy even though he adopted different terminology to make his case. Commitments to mutuality and reciprocity are essential qualities of “reasonable persons,” he wrote, as are the capacities for “a sense of justice” and “a conception of the good.”<sup>43</sup>

In his later writings, Rawls adopted the concept of “property-owning democracy,” a concept that clarified his ideas about equality and mooted much of the criticism emanating from the Left. Citing a brilliant, paradigm-shifting article by Richard Krouse and Michael McPherson, in JF Rawls insisted that not only laissez-faire liberalism but also a capitalist welfare state violates the principles of justice.<sup>44</sup> He considered only two options viable: liberal democratic socialism or property-owning democracy. Welfare states that allowed the concentration of wealth and power, like laissez-faire regimes, were inconsistent with the commitments of a well-ordered society, because “very large inequalities in the ownership of real property (productive assets and natural resources)” mean that “control of the economy and much of political life rests in few hands.” Even though “welfare provisions may be quite generous and guarantee a decent social minimum covering the basic needs,” in capitalist welfare states “a principle of reciprocity to regulate economic and social inequalities is not recognized” (JF, 138-140).

The idea of property owning democracy, which emerged in the 1920s thanks to the conservative Scottish politician Noel Skelton, has been deployed ever since by champions of the unregulated free market and also by democratic socialists. During the 1950s and early 1960s, when Rawls was piecing together his theory of justice as fairness, the idea was being reformulated for the British Left by the economist James Meade. In TJ Rawls cited Meade briefly (TJ, 273n, 274n, 277n). In JF, evidently due to Krouse and McPherson's landmark article, the idea became central. Not merely redistribution through taxation and social insurance programs but "predistribution," to be achieved by providing equal access to education and training, far more equal compensation of workers, and serious taxes on inheritance, emerged as indispensable features of justice as fairness.

The idea of property-owning democracy, which shows up in Rawls's papers from the early 1950s, has an old but contested lineage. James Harrington, Thomas Paine, and Rousseau referred to the agrarian law of the ancient Roman republic, which was said to limit land holdings to prevent the emergence of a powerful elite. As with concepts of the general will and the common good, however, there are American sources as well. Those sources stretch from Winthrop's impassioned insistence that his flock of saints "abridge ourselves of our superfluities" through Jefferson and Madison's Democratic Republican Party, which likewise envisioned a nation of yeoman farmers whose independence was insured by decentralized government authority and widespread landholding. Prohibitions of primogeniture and insistence on partible inheritance were central features of eighteenth-century American constitution writing. From northern New England, where small farms and independent artisans were the rule, to the Carolinas and Georgia, where even the reality of planters' great wealth did not dampen enthusiasm for Jeffersonian ideals, the notion that democracy depends on citizens' rough equality of condition was all but universally embraced, in theory if hardly in practice.

Although Rawls's inclination toward property owning democracy predated the publication of TJ by almost two decades, it was only with the publication of JF that its significance became clear. Whether his ideas changed or not, his emphasis certainly did. He first studied American political thought as an undergraduate with Alpheus Mason, a Princeton political scientist committed to antimonopoly and

decentralization. Rawls inherited plenty of reasons to be wary of centralized state authority, a resistance that runs from Jefferson through John Dewey to the New Left, besides the often-emphasized threat of totalitarianism. His insistence in his late writing that justice as fairness requires equality as well as liberty—and that the capitalist welfare state is inconsistent with both principles of justice—made irrelevant many of the debates about his ideas that raged from the '70s through the '90s.

Again Rawls's ideas about equality, which in TJ he traced only to the 1964 publication of Meade's *Liberty, Equality, and Efficiency*, descend from much earlier sources in American thought. "Our tradition" includes a rich vein of egalitarianism, which runs from Jeffersonians through the free soil movement of the 1850s and into the reformist crusades of 1890s populism and the progressive era. When Rawls brought into focus his critiques of laissez-faire and welfare state capitalism, he did not mention earlier American thinkers who shared his judgment that grossly unequal income and property ownership, which became increasingly obvious features of American society after the publication of TJ in 1971, violate the fundamental principles of American democracy.

Adams, Jefferson, Madison, and Wilson were convinced that self-government in the United States would succeed only if citizens' economic condition remained roughly equal, a fact seldom noted today by conservatives or, surprisingly, by radicals. Given the dispossession of the lands occupied by indigenous people, the monstrosity of chattel slavery, the absence of women's rights, and the fact that so few prominent white American men respected Indians' cultures, worked to abolish slavery, or wished women to become citizens, it strikes twenty-first century readers as peculiar to call attention to these thinkers' emphasis on equality among white male property-holders. Nevertheless, Adams, Benjamin Franklin, Wilson, and even the slave holders Jefferson and Madison all agreed that only rough social, economic, and political equality would enable American democracy to survive. All pointed to the nations of Europe and contrasted, accurately enough, the presence of landed aristocracies that dominated political life and shaped cultural ideals. Prohibiting inherited privileges was among the principal points of emphasis of all eighteenth-century American constitution writers. White men were more equal in the northern and middle regions of North America

than were the subjects of any European monarchy in the same period. Adams, Franklin, Wilson, Jefferson, and Madison agreed that the emergence of an American elite with outsized power and privileges, possessing the ability to pass on their power and privileges to their progeny, would spell the end of self-rule.<sup>45</sup>

As Tocqueville correctly observed in the second volume of *Democracy in America*, in large part because of what he witnessed during his visit to England in 1835 and his correspondence with John Stuart Mill, the rise of industrial capitalism facilitated the emergence of just such a new aristocracy on both sides of the Atlantic. During the closing decades of the nineteenth century, that elite emerged as the dominant force in American life; populists and progressives challenged their power. Among those leading the call for a renewed egalitarianism were disparate thinkers including economist Richard T. Ely, champion of the Social Gospel Walter Rauschenbusch, political thinker Herbert Croly, Black sociologist W. E. B. Du Bois, feminists Jane Addams and Florence Kelley, and above all the philosopher John Dewey. Like reformist intellectuals in Europe, including Fabian socialists and "new liberals" such as L. T. Hobhouse in England, and solidarist Léon Bourgeois and democratic socialist Jean Jaurès in France, these American progressives and social democrats sought to rein in the excesses of capitalism. By regulating the economy, restructuring the tax system, adjusting conditions of labor and levels of income, and addressing injustices of race and gender, reformers in the early twentieth century worked to expand political democracy and establish social democracy.<sup>46</sup> Not only did these thinkers write prolifically, they engaged actively in reform politics. Progressives transformed both major parties so thoroughly that in the election of 1912 three self-proclaimed progressives—Democrat Woodrow Wilson, Republican William Howard Taft, and Progressive Party nominee Theodore Roosevelt—competed for the presidency with the socialist Eugene Debs, who attracted more than a million votes.

The line separating Rawls's idea of property-owning democracy from the agendas of progressive reformers, and from the later efforts of Franklin D. Roosevelt's New Deal, is hard to draw. When Rawls stipulated, in JF, the necessity of guaranteeing a "social minimum," and using taxes on inheritance and the restructuring of education and income to shrink the gap between the richest and poorest, he was pointing in the same direction as FDR's proposals, in the 1940s, to

secure freedom from want and freedom from fear. The New Deal was staffed by students and champions of John Dewey's ideas, and Dewey's commitments to experimentation, democracy, and the equalization of Americans' wealth and status shaped the programs put forward during those years.<sup>47</sup>

Yet the differences between Rawls and his social democratic predecessors are just as important as the similarities. Whereas Rawls's "ideal theory" provided no strategy for moving from the inequality of his day to the property-owning democracy that was implicit in TJ and explicit in papers leading up to the publication of JF, the Dewey-influenced activists of the executive and judicial branches in the 1940s did their best to make the ideals of positive liberty and substantial equality real. They succeeded in establishing programs such as social security and unemployment compensation, and they engaged in judicial activism and legal reform in order to challenge the privileges enjoyed by wealthy Americans and protected by the conservative justices on the Supreme Court. If the New Deal never reached all the ambitious goals that FDR laid out in his 1944 State of the Union address and hammered home in his campaign speeches that year, his administration nevertheless worked to confirm that aspirations to equality across economic, political, and social lines are authentically American.<sup>48</sup>

Rawls's concept of property-owning democracy stands in a direct line that stretches from progressive reformers through the New Deal to the calls by 1960s student radicals, feminists, and Civil Rights activists for a more thorough-going social democracy in America. When Martin Luther King, Jr., observed accurately that the US had "socialism for the rich and rugged hard individualistic capitalism for the poor," he was acknowledging facts rather than engaging in hyperbole. When King broadened his critique to include economic justice as well as legislative reform, and when Robert F. Kennedy emerged as the champion of Americans still untouched by the brief flurry of legislation that promised but failed to deliver the Great Society, they became assassins' targets. Both were murdered while campaigning for the ideals that Rawls called justice as fairness.<sup>49</sup>

#### CONCLUSIONS

What conclusion should we draw from these observations about the submerged roots of Rawls's ideas? First, Rawls was correct to

claim that TJ already contained within it, implicitly at least, the rejection of laissez-faire and welfare state capitalism and the embrace of either social democracy or liberal socialism. He failed to chart a course from the United States of his day to the "reasonable utopia" he sought because he insisted that such a course was to be decided by legislative bodies rather than philosophers. Yet he did issue a challenge to the principles of the Reagan Revolution. He denied that the Republican Party's strategy, launched in the 1960s attacks on the New Deal's legacy and culminating in the take-no-prisoners approach of Congressional Republicans since the 1990s, could be considered consistent with democratic principles, which require commitments to the common good, deliberation, and compromise rather than unyielding partisanship. In JF he called for experimentation to see what steps might lead toward the well-ordered society of justice as fairness. He might have paid more attention to the steps, limited as they have been, toward property-owning democracy in the far-less-unequal nations of northern Europe, where excellent public education, higher taxes, and less extreme differences between the best- and worst-paying jobs have stood in stark contrast to the situation in the US.

Rawls noted that the "favorable conditions" necessary for a stable democracy depend on, among other things, "a society's political culture and traditions, its religious and ethical composition," which is exactly what I sought to show in *Toward Democracy*. Self-government does not fall from the sky. It cannot be pasted onto authoritarian cultures without traditions of civic engagement and reciprocity that, as Tocqueville was among the first to see, require centuries of development. Germany from 1870 to 1945, Rawls observed, might have developed just such "favorable conditions," yet it lacked the "political will for a democratic regime" (JF, 101). The same seems true of the United States today. The challenge issued by Rawls's later writings, a challenge to take seriously both equality and liberty, was the challenge issued at the founding of the United States. It has become only more urgent in the years since Rawls's death. Can American citizens who share Rawls's commitments mobilize effectively around those ideals, or will the nation continue to move, as it has been doing for the last four decades, further and further away from justice as fairness? That is a question for us not only to ponder. It is a question that should impel us to action.<sup>50</sup>

## NOTES

- [1] I am grateful to Catherine Audard, Arthur Goldhammer, and David Hollinger for their incisive comments and helpful suggestions on this essay.
- [2] On those debates, see Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (Princeton, 2019). For reasons that will become apparent, I do not agree with the thrust of Forrester's conclusion, which is that we can now consign Rawls's ideas to history and move on to unspecified "new frameworks" (p. 279). Instead, for reasons that will become apparent, Rawls's ideas point toward the political ideals we need now. For the European reception of Rawls, see Mathieu Hauchecome, *La gauche américaine en France. La réception de John Rawls et des théories de la justice* (Paris, 2019).
- [3] I have wrestled with Rawls for decades. I have assigned selections from Rawls's work ever since I began teaching American and European intellectual history in 1980, and Rawls figured prominently in two of my own books. In *The Virtues of Liberalism* (New York, 1998) I located his changing ideas, and the ideas of his critics right and left, in the force fields of late twentieth century American thought. In *Reading Obama: Dreams, Hope, and the American Political Tradition* (Princeton, 2011), I showed the impact of Rawls's ideas on Obama's education at Harvard Law School, Obama's teaching as a lecturer at the University of Chicago Law School, and Obama's writing, notably his second book *The Audacity of Hope*. More recently, in *Toward Democracy: The Struggle for Self-Rule in European and American Thought* (New York, 2016), I argued that democracy requires commitments to autonomy, equality, and popular sovereignty and that it rests on crucial cultural predispositions toward deliberation, pluralism, and reciprocity. Immersing myself again in Rawls's writings now, especially his last books *Justice as Fairness* and his *Lectures on the History of Political Philosophy*, reveals that my analysis, although rooted in historical evidence rather than the abstractions of Rawls's "ideal theory," is fully congruent with his mature ideas.
- [4] For competing perspectives on the contemporary significance of Locke's religiosity, see John Dunn, *The Political Thought of John Locke* (Cambridge, 1969); Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (Cambridge, 2002); and Claire Rydell Arcenas, *America's Philosopher: John Locke in American Intellectual Life* (forthcoming in 2022).
- [5] Rousseau, *Emile, or, On Education*, ed. and trans. Allan Bloom (New York, 1979), 444-46, 473, 325; and Kloppenberg, *Toward Democracy*, 220-221.
- [6] Brandon Terry, "Conscription and the Color Line: Rawls, Race, and Vietnam," *Modern Intellectual History* 18 (2021): 960-83.
- [7] On the writing and the influence of Adams's *Thoughts on Government*, see Kloppenberg, *Toward Democracy*, pp. 318-344.
- [8] John Adams, *The Works of John Adams*, ed. Charles Francis Adams, 10 vols. (Boston, 1850-56) 2: 216.

- [9] Reinterpreting Locke, Rousseau, Sidney, and de Mably and showing their impact on American thinkers is among the central aims of Kloppenberg, *Toward Democracy*.
- [10] On Rousseau's ideas, and for the interpretation of the *Social Contract* that lies behind my claim for his influence on Adams, Wilson, and Madison, see James T. Kloppenberg, "To Promote the General Welfare: Why Madison Matters," *Supreme Court Review* 1919 (Chicago, 2020): 355-384.
- [11] Rousseau, "Political Economy," in *On the Social Contract with "Geneva Manuscript" and "Political Economy"*, ed. Roger D. Masters and trans. Judith R. Masters (New York, 1978), pp. 211-16. It is this edition of Rousseau that Rawls cites in his *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge, 2007), and it is clear how much Masters's interpretation of Rousseau shaped Rawls's own.
- [12] *Ibid.*, pp. 216-218.
- [13] *Ibid.*, pp. 223-224; on *Emile*, see *Toward Democracy*, pp. 220-221.
- [14] Rousseau, *On the Social Contract*, pp. 55-56.
- [15] See John Rawls, *Lectures on The History of Political Philosophy*, especially the second and third of his lectures on Rousseau.
- [16] Rousseau, *Second Discourse*, in *The First and Second Discourses*, ed. Roger D. Masters and trans. Judith R. Masters and Roger D. Masters (New York, 1964), pp. 82-83.
- [17] See especially Patrick Riley, *The General Will before Rousseau: The Transformation of the Divine into the Civic* (Princeton, 1986).
- [18] John Adams, "The Report of a Constitution, or Form of Government, for the Commonwealth of Massachusetts," in *The Revolutionary Writings of John Adams*, ed. C. Bradley Thompson (Indianapolis, 2000), pp. 297-322.
- [19] Jefferson to Peter Carr, August 10, 1787, in Thomas Jefferson, *Writings*, ed. Merrill D. Peterson (New York, 1984), pp. 900-06; and see Kloppenberg, *Toward Democracy*, pp. 248-52, and 446-49, on Scottish moral sense philosophy and its significance in eighteenth-century America.
- [20] On the role of Scottish philosophy in shaping Adams's sensibility, see Kloppenberg, *Toward Democracy*, pp. 270-73.
- [21] On Madison and benevolence, see Kloppenberg, *Toward Democracy*, pp. 389-91. Gideon Mailer, *John Witherspoon's American Revolution* (Chapel Hill, 2017), stresses the tension between Witherspoon's respect for Thomas Hutcheson's philosophy and the persistent Calvinist emphasis on man's sinfulness, which explains why Madison acknowledged not only men's ethical potential but also their propensity to sin.
- [22] Some commentators, notably Jack Rakove in *A Politician Thinking: The Creative Mind of James Madison* (Norman, 2017), pp. 47-53, attribute to Madison early versions of what we now call the problems of collective action and free riders. Madison worried that some states were proving themselves unwilling to shoulder their share of the burdens of being part of a nation.
- [23] Madison, "Vices of the Political System of the United States," in Madison, *Writings*, ed. Jack Rakove (New York, 1999) pp. 71-76.
- [24] See Kloppenberg, *Toward Democracy*, pp. 386-391.

- [25] Madison, "Vices," in *Writings*, pp. 79-80.
- [26] Madison writing as Publius, *Federalist* 51, February 6, 1788, in *The Federalist*, ed. Jacob E. Cooke, p. 352.
- [27] *Ibid.*
- [28] On Hutcheson and eighteenth-century Scottish moral philosophy more generally, see Kloppenberg, *Toward Democracy*, pp. 241-249.
- [29] Madison, "Vices," in *Writings*, pp. 78-80; Madison writing as Publius, *Federalist* 51, in *The Federalist*, ed. Cooke, p. 351. On the related versions of this argument offered by Rousseau and by Thomas Paine, see Kloppenberg, *Toward Democracy*, pp. 225-235 and 319-324; and see also Robert Burt, *The Constitution in Conflict* (Cambridge, 1992), pp. 96-98.
- [30] For competing views of Madison and the Constitution, see Michael Klarman, *The Framers' Coup: The Making of the United States Constitution* (New York, 2016); and Ganesh Sitaraman, *The Crisis of the Middle-Class Constitution: Why Economic Inequality Threatens Our Republic* (New York, 2017).
- [31] For Hamilton's oligarchic plan of government, see Madison, *Notes on Debates in the Federal Convention of 1787 Reported by James Madison*, ed. Adrienne Koch (New York, 1987), pp. 129-39.
- [32] Madison writing as Publius, *Federalist* 10, in *The Federalist*, ed. Cooke, p. 65. In his first speech at the Constitutional Convention, Madison had recommended framing a new Constitution that would be, in his words, "the only defence against the inconveniencies of democracy consistent with the democratic form of government." For further exposition of this complicated argument concerning Madison's ideas, see James T. Kloppenberg, "To Promote the General Welfare: Why Madison Matters," *Supreme Court Review* 1919 (Chicago, 2020): 355-384.
- [33] James Wilson, "Speech in the Federal Convention," June 6, 1787, in *Notes on Debates*, p. 74; and on Wilson's role in the debates more generally, see Kloppenberg, *Toward Democracy*, pp. 398-403.
- [34] James Wilson, "Speech at a Public Meeting," October 6, 1787, in *Debates on the Constitution: Federalist and Antifederalist Speeches, Articles, and Letters during the Struggle over Ratification*, ed. Bernard Bailyn, 2 vols. (New York, 1963), 1: 63-69 (hereafter DOTC).
- [35] James Wilson, "Opening Address" at the Pennsylvania Ratifying Convention, November 24, 1787, in DOTC 1:791-803.
- [36] *Ibid.*; and cf. Wilson's elaborate closing speeches at the Convention, December 1, 1787, and December 3, 1787, in DOTC 1: 820-828, 829-830, 832-868. His final speech went on for four and a half hours.
- [37] Madison to Archibald Stuart, October 30, 1787, in *Papers of James Madison*, ed. William T. Hutcheson et al. (Chicago, 1962-91), 10: 232.
- [38] Madison writing as Publius, *Federalist* 57, February 19, 1788, in *The Federalist*, ed. Cooke, pp. 384-390.
- [39] Madison writing as Publius, *Federalist* 10, November 22, 1787, *The Federalist*, ed. Cooke, pp. 56-65.
- [40] Madison writing as Publius, *Federalist* 55, February 13, 1788, *The Federalist*, ed. Cook, pp. 372-78.

- [41] Madison, "Memorial and Remonstrance against Religious Assessments," in *Writings*, pp. 29-36; and Kloppenberg, *Toward Democracy*, pp. 377-380.
- [42] Thomas Nagel, "Rawls and Liberalism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge, 2003), pp. 62-85, an excellent essay in one of the many outstanding collections of commentaries on Rawls that have enriched our understanding of his work.
- [43] Rawls, "Preface for the French Edition of A Theory of Justice" [1987], in John Rawls, *Collected Papers*, ed. Samuel Freeman, p. 415-420; and see also Rawls, "The Idea of Public Reason Revisited" [1997], in *Collected Papers*, p. 611; and Rawls, "Commonweal Interview" [1998], in *Collected Papers*, pp. 616-22. On the enduring significance for Rawls of the Christian ideal of agapism, see P. Mackenzie Bok, "To the Mountaintop Again: The Early Rawls and Post-Protestant Ethics in America," *Modern Intellectual History* 14 (2017): 153-85; P. Mackenzie Bok, "The Latest Invasion from Britain: Young Rawls and His Community of Ethical Theorists," *Journal of the History of Ideas* 78 (2107): 275-85; and P. Mackenzie Bok, "The Early Rawls and His Path to a Theory of Justice," PhD thesis, University of Cambridge, 2015.
- [44] Richard Krouse and Michael McPherson, "Capitalism, 'Property-Owning Democracy,' and the Welfare State," in *Democracy and the Welfare State*, ed. Amy Guttmann (Princeton, 1988), pp. 79-105.
- [45] See Kloppenberg, *Toward Democracy*, pp. 252-443.
- [46] On these progressives and social democrats, See Kloppenberg, *Uncertain Victory*, pp. 199-416.
- [47] See William Novak, *New Democracy: The Creation of the Modern American State* (Cambridge, 2022); and Kloppenberg, *Virtues of Liberalism*, chapters 6-9.
- [48] See James T. Kloppenberg and John Gee, "Social and Economic Democracy," in *A Cultural History of Democracy in the Modern Age*, ed. Eugenio F. Biagini and Gary Gerstle (London, 2021), pp. 81-106; and James T. Kloppenberg, "American Democracy and the Welfare State," in *The American Century in Europe*, ed. R. Laurence Moore and Maurizio Vaudagna (Ithaca, 2003), pp. 195-218.
- [49] King delivered his speech "The Other America" at Grosse Point High School on March 14, 1968. On King and Robert F. Kennedy as social democrats, see *To Shape a New World: Essays on the Political Philosophy of Martin Luther King, Jr.*, ed. Tommie Shelby and Brandon M. Terry (Cambridge, 2018); and Patricia Sullivan, *Justice Rising: Robert Kennedy's America in Black and White* (Cambridge, 2021).
- [50] For fruitful ideas about what can and should be done to redeem American democracy today, see Michael Tomasky, *If We Can Keep It: How the Republic Collapsed and How It Might Be Saved* (New York, 2019); E. J. Dionne, Jr., *Code Red: How Progressives and Moderates Can Unite to Save Our Country* (New York, 2020); and especially Robert D. Putnam, *The Upswing: How America Came Together a Century Ago and How We Can Do It Again* (New York, 2020).

## ABSTRACT

The notion of a clear distinction between Rawls's liberalism and social democracy rests on a caricatured conception of the liberal tradition and Rawls's place in it. From Rousseau, John Adams, and Madison through Tocqueville to Dewey, notable political theorists have sought to balance the two principles at the core of Rawls's *A Theory of Justice*. In this essay I sketch the ways in which American thinkers and activists escaped the cages in which commentators have tried to confine them, not only the false binary between liberalism and democratic socialism but also that between secularism and religious belief. As Rawls himself tried to make clear in his later writing, his ideal of justice drew from earlier theorists who understood the constitutive role of social interaction and inherited traditions, and he envisioned a society with room for people animated by comprehensive philosophical and religious ideas not shared by everyone else. Rawls's political liberalism, historicist as well as pluralist, was attuned as much to the threat inequality poses to freedom as to the endangered status of freedom in mass society. Rawls's ideas, especially as articulated in his book *Justice as Fairness*, remain a vital resource for social democrats who prize social and economic equality as well as individual liberty.