

JAMES T. KLOPPENBERG

TO PROMOTE THE GENERAL WELFARE:
WHY MADISON MATTERS

This essay addresses an aspect of constitutional law that never gets old—the relation between the Constitution and the ideas of James Madison. When I began thinking about writing this essay, I considered addressing the issue of Madison and originalism. But I decided against that. Recent books by Mary Sarah Bilder, Saul Cornell and Gerald Leonard, Jonathan Gienapp, Michael Klarman, Jack Rakove, and chapters of Alison LaCroix’s forthcoming book *The Interbellum Constitution* have convinced me that for serious scholars in the field of legal history, the idea of originalism, whether it’s 1.0, 2.0, or 3.0, has been so thoroughly discredited that there is little left to say about it.¹

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¹ Mary Sarah Bilder, *Madison’s Hand: Revising the Constitutional Convention* (Harvard, 2015); Saul Cornell and Gerald Leonard, *The Partisan Republic: Democracy, Exclusion and the Fall of the Founders’ Constitution, 1780s–1830s* (Cambridge, 2019); Jonathan Gienapp, *Second Creation: Fixing the American Constitution in the Founding Era* (Harvard, 2018); Jack N. Rakove, *A Politician Thinking: The Creative Mind of James Madison* (Oklahoma, 2017); Alison LaCroix, *The Interbellum Constitution* (forthcoming).

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Instead, this essay examines a way of thinking about the purpose of law and government common to several prominent and influential thinkers in the late eighteenth century. It is a way of thinking that might strike some readers as odd, and others as naive, particularly those whose training came from studying recent work in the mainstream social sciences, especially neoclassical economics, political science, evolutionary psychology, or any field bewitched by the idea of so-called rational choice. I argue that the primary purpose of government, not only for Madison but also for other influential American Constitution writers in the late eighteenth century, John Adams and James Wilson, was not to protect individual rights, or property, or the freedom to do whatever a self-interested individual wants to do. The purpose of government, at least from the perspective of Adams, Wilson, and Madison, was to advance the common good, or, in the words of the Preamble to the Constitution, to “promote the general Welfare.” That, I will argue, is why Madison matters.

I will begin with 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.² Adams followed that same template when asked to write the Massachusetts Constitution four years later. Voters had rejected the first attempt, but the version Adams proposed became law. Adams wrote to a friend that his Constitution was “Locke, Sidney, and Rousseau and de Mably, reduced to practice.”³

The presence of Rousseau in that list surprises many people. We often take for granted, mistakenly, that Locke and Rousseau are responsible for two very different traditions of thought and of government, the one liberal and the other, well, *not* liberal but communitarian, or statist, or perhaps proto-totalitarian, if only because Robespierre

² On the writing and the influence of Adams’s *Thoughts on Government*, see James T. Kloppenberg, *Toward Democracy: The Struggle for Self-Rule in European and American Thought* 318–44 (Oxford, 2016) (“*Toward Democracy*”).

³ John Adams, in Charles Francis Adams, ed, 4 *The Works of John Adams* at 216 (Boston, 1850–56).

invoked Rousseau to justify the Terror. Locke is said to have enshrined the rights cherished by Anglo-Americans ever since, and Rousseau is said to have enabled the use of the guillotine. So why did Adams write that both of them had inspired the Massachusetts Constitution? The answer to that question involves reinterpreting both Locke and Rousseau—as well as Sidney and de Mably—and doing that is one of the central challenges I tried to meet in my book *Toward Democracy*. It's a complicated story, which is why the book is so long. Here I will sketch just the contours of a few parts of my larger argument.⁴

I will begin with Rousseau, because it is important to understand that some of his ideas do lie behind the constitutional thinking of Adams, Wilson, and Madison. 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 what he called the general will, his controversial and widely misunderstood concept of the enduring common good. Rousseau denigrated governments that merely added together the particular interests of particular individuals or particular groups. They privileged what he called the will of all, which he contrasted to the general will.⁵

Rousseau credited Denis Diderot with having coined the term *volonté générale*, conventionally translated as “general will,” in the article in which Rousseau first discussed—and transformed—the idea. In his article “Political Economy,” published in 1755, in volume 5 of Diderot and Jean le Ronde d’Alembert’s *Encyclopedia*, Rousseau wrote that the general will “always tends toward the preservation and welfare of the whole and of each part.” It is “the source of the laws” and provides “the rule of what is just and unjust.” It is quite possible that the

⁴ See, in *Toward Democracy*, ch 4 (on Sidney and Locke), 5 (on Rousseau and the Enlightenment of England, France, and Scotland), 6–9 (on the American Enlightenment, the American Revolution, and the writing and ratification of the US Constitution), and 11–13 (on the French Revolution and its consequences). *Toward Democracy* at 137–88, 191–251, 252–453, 505–46 (cited in note 2).

⁵ 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 *Toward Democracy* at 212–34 (cited in note 2).

will of any individual, or of any group, might not correspond to the general will. 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 would persist even in democracies. In any legislative assembly, individuals or groups are likely to try to advance their own interests instead of those of the whole people. Because “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. Even “the most corrupt men always render some sort of homage to the public faith.”⁶

How can this problem be solved? Rousseau’s response was disarmingly simple: 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. Since virtue consists in the “conformity of the private will to the general,” the objective of government is simply to “make virtue reign.” 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 egoism give way to genuine commitment to the common good. “When citizens love their duty,” Rousseau concluded, “all difficulties vanish.”⁷

In order to understand what Rousseau meant by the general will, his essay “Political Economy” and *The Social Contract* must be read alongside several of his other texts. In his book *Emile*, a book about education that had a powerful impact on Thomas Jefferson and Benjamin Rush, among many others, Rousseau explained why he believed the key to self-government was education. He traced the process by which the protagonist, Emile, was taught by his tutor to internalize his

⁶ Jean-Jacques Rousseau, “Political Economy,” in Roger D. Masters, ed., *On the Social Contract with “Geneva Manuscript” and “Political Economy”* 211–16 (New York, 1978) (Judith R. Masters, trans).

⁷ *Id.* at 216–18.

duty. Through careful cultivation, Emile learned to love his duty, and to will what he *ought* to will, rather than simply following his inclinations, thus preparing him for his responsibilities as a citizen in a self-governing polity. More generally, Rousseau believed that such commitment to the common good, inculcated through “public education, under rules prescribed by the government and magistrates established by the sovereign,” that is, by the power of the people themselves, “is therefore one of the fundamental maxims of popular or legitimate government.”⁸

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 made to follow the law rather than be permitted, let alone encouraged, to follow their personal preferences. In his words, they must learn to “substitute justice for instinct” and substitute “the voice of duty” for “physical impulse.”⁹

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.

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

⁸ Id at 223–24. On *Emile* see *Toward Democracy* at 220–21 (cited in note 2).

⁹ Rousseau, *On the Social Contract* at 55–56 (cited in note 6).

government officials. The *people* should elect what Rousseau 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.¹⁰ I am far from the first scholar to argue that 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.¹¹

That, I contend, 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. He later changed his mind. After the Terror had transformed the French Revolution, and after the United States had split into rival parties, with Jefferson siding with France and Adams with Britain, Adams criticized everything French, including Rousseau. But that reversal, which you can track if you look at 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, 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, and not a compact designed above all to protect individual rights, but instead intended to promote the common good of the whole people.¹²

¹⁰ Jean-Jacques Rousseau, *Second Discourse*, in Roger D. Masters, ed, *The First and Second Discourses* 82–83 (New York, 1964) (Judith R. Masters and Roger D. Masters, trans).

¹¹ See especially Patrick Riley, *The General Will before Rousseau: The Transformation of the Divine into the Civic* (Princeton, 1986).

¹² John Adams, *The Report of a Constitution, or Form of Government for the Commonwealth of Massachusetts*, in Gordon S. Wood, ed, *Revolutionary Writings, 1775–1783* 297–322 (New York, 2011).

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, because that was the standard formulation for decades after independence—to recover from the economic chaos that followed the war. Many Americans in the mid-1780s were uneasy. Would those state constitutions, almost all of them similar to the original framework laid out by Adams in 1776, survive the challenge of independence? Would the Articles of Confederation hold the states together?

Among those who wanted a stronger central government were Virginian James Madison, all of thirty-six years old in the spring of 1787; the Scottish-born attorney James Wilson of Pennsylvania; and that now-familiar (thanks to Lin-Manuel Miranda) “bastard, orphan, son of a whore” Alexander Hamilton. Some of those who feared that the new nation was coming apart managed to engineer what became the Constitutional Convention. It was an audacious gamble. As many readers will know, those who gathered in Philadelphia lacked the authority to do what they did.

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 that would serve him as a source book for the next couple of years. He drew on it for his speeches in Philadelphia, for the twenty-nine essays he wrote for the project now known as *The Federalist*, and for his speeches at the Virginia Ratifying Convention. This essay, “The Vices of the Political System of the United States,” or “Vices” for short, gives us a look inside Madison’s head as he was thinking about a new Constitution. In what follows, I will examine some of Madison’s central texts, not only his essay “Vices” but also his speeches and his contributions to *The Federalist*. I will stress dimensions of his thought overlooked by many tour guides who have taken visitors around Madison’s world, dimensions that tie his ideas, like those of his friend and closest ally James Wilson, to those of John Adams—and to those of Jean-Jacques Rousseau. I am aware this is an unconventional claim. I can imagine a few readers squirming in their seats and a few eyebrows knitting up. Some readers might even be singing to themselves the closing line from the number in *Hamilton* that Miranda gives King George after being told that John Adams will be the next president: “Gooood luck.” But stay with me.

In an article that will become part of her book *The Interbellum Constitution*, Alison LaCroix offers an image of Madison that captures what was distinctive about him: “Madison is often portrayed as a theoretical scientist of politics, but he was also a practical mechanic, sleeves rolled up, tinkering in the works. For him, structure was not an arid set of design sketches but a model of interlocking wheels, cogs, and pistons. . . . The most pressing issue, as [Madison] saw it, was the debate over the nature of the Union: was it a nation, with a shared set of interests or values, or a collection of states that jealously guarded their borders and powers?”¹³ Today I want to show you Madison working to create something more than a collection of states with different ambitions. He sought to bring into being a nation with a shared set of values beyond the narrow interests of its individual citizens.

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. Madison understood the friction between individual impulse and conscience.¹⁴ He perceived the gap between immediate perceptions of self-interest and the dictates of what Hutcheson called 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. Some commentators, notably Jack Rakove, 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.¹⁵ Reading through “Vices,” it’s hard to see how he thought this experiment in self-government could be saved from chaos.

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

¹³ LaCroix, *The Interbellum Constitution*, forthcoming (cited in note 1).

¹⁴ Gideon Mailer, *John Witherspoon’s American Revolution* (North Carolina, 2017), stresses the tension between Witherspoon’s respect for Thomas Hutcheson’s philosophy and the Calvinist emphasis on man’s sinfulness. Madison imbibed both, Mailer argues, and that accounts for his belief that it is necessary to acknowledge not only men’s ethical nature but also their propensity to sin.

¹⁵ Rakove, *A Politician Thinking* at 47–53 (cited in note 1).

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 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 Hamilton, rise quickly from poverty and anonymity to become figures of wealth and power—and then to become targets of public abuse. Madison understood that no single rift, whether of class, or occupation, or religion, or region, captured all the complicated dimensions of human interaction.¹⁶

The key to Madison's solution lay in harnessing all of these cross-cutting divisions and putting them to use. Through political institutions, he believed autonomous 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.¹⁷

Madison had a different idea, one that resembled those of Rousseau and Adams. 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 his words, "such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it

¹⁶ James Madison, "Vices of the Political System of the United States," in Jack Rakove, ed, *James Madison: Writings* 71–76 (New York, 1999).

¹⁷ *Toward Democracy* at 386–91 (cited in note 2).

contains; such as will feel most strongly the proper motives to pursue the end of their appointment.”¹⁸

The similarity between that formulation and Rousseau’s is uncanny. Also like Rousseau, Madison stipulated the purpose that representatives should keep in mind. This is the issue that I think many commentators on his 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.”¹⁹

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.”²⁰ 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

¹⁸ Madison, “Vices,” in *Writings* at 79–80 (cited in note 16).

¹⁹ *Federalist* 51 (Madison) in Jacob E. Cooke, ed, *The Federalist* 352 (Wesleyan, 1977).

²⁰ *Id.*

narrow conceptions of self-interest, Madison was struggling in “Vices” to find the words to express his alternative.²¹

In April of 1787, 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. But 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.²² Because Madison experienced his share of defeats at the Constitutional Convention, scholars now rarely describe him as “the founder.” The Constitution hardly conformed to his model. He opposed the idea that the Senate should represent states rather than population. He rejected that provision as undemocratic, as many of us do now, because it gave disproportionate power to the states with the smallest populations. Like his friend and chief ally, Pennsylvania’s James Wilson, he expressed a preference for 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. Madison wanted the federal government to have a veto over state legislation, just another of his ideas that the Convention rejected.²³

²¹ On Hutcheson and eighteenth-century Scottish moral philosophy more generally, see *Toward Democracy* at 241–49 (cited in note 2).

²² *Id.* at 78–80; see Federalist 51 (Madison) in Jacob E. Cooke, ed, *The Federalist* 352 (cited in note 19). On the related versions of this argument offered by Rousseau and by Thomas Paine, see *Toward Democracy* at 225–35, 319–24 (cited in note 2). See also Robert Burt, *The Constitution in Conflict* 96–98 (Harvard, 1992).

²³ Because Madison was not only a brilliant thinker but also a skilled debater, a shrewd tactician, and a loyal son of Virginia, commentators have long disagreed about what he *really* thought. Michael Klarman, in his recent comprehensive study of the writing and ratification of the Constitution, *The Framers’ Coup* (Oxford, 2016), rejects all of Madison’s statements of principled commitment to popular government as smokescreens masking his deeper commitment to preventing poor Americans from exercising power and threatening the wealth of the rich. Although this way of reading Madison has a long lineage and many contemporary adherents, I find it unpersuasive for all the reasons offered in this article and in chapters 6–9 of my book *Toward Democracy*. For another recent study of the Constitution-writing process more congenial to my own, see Ganesh Sitaraman, *The Crisis of the Middle-Class Constitution: Why Economic Inequality Threatens Our Republic* (Knopf, 2017). As Sitaraman shows, almost all Americans active in writing and ratifying the Constitution were convinced that popular government could survive in the United States only by preventing precisely the outcome that Klarman claims they had in mind, namely, a polity dominated by the wealthy rather than

But gradually Madison reconciled himself to the compromises necessary to placate the small states and the slave states. When the Constitution was sent to the states for ratification, Madison pocketed his disappointments. He decided to defend it, not as perfect, but as the best the delegates could do. One of the pivotal states, along with his own Virginia, would be New York, which was the seat of the national government in 1787 and contained many Antifederalists who opposed the Constitution. So Madison borrowed money and traveled directly from Philadelphia to New York, where the Congress was meeting, and agreed to cooperate with Hamilton to write the essays we know now as *The Federalist*.

Madison and Hamilton already knew how much they disagreed with each other. Hamilton spoke little in the opening days of the Convention, in part because he was outnumbered on the New York delegation by two opponents of a new national government. His own views were idiosyncratic, which became apparent when he finally did speak. Miranda is right to observe that, in Philadelphia, Hamilton spoke for six hours and proposed his own form of government. He proclaimed himself an outspoken opponent of democracy. He disagreed with Madison and Wilson about popular elections. He wanted a Senate and a president who would serve for life. If Congress had to be elected by the people, he wanted it balanced by a powerful, lifelong executive and a supreme judicial court whose appointed judges would also serve for life. Hamilton's plan, which many delegates thought smacked of monarchy, attracted no support. So when Madison agreed to join forces with Hamilton and John Jay in defense of the Constitution, he already knew that they disagreed about basic issues, including both the mechanics of government and its purpose.²⁴

Of the *Federalist* essays, Madison's first contribution to the series, *Federalist* 10, has been enshrined as the classic statement of American political thinking. That is inaccurate for many reasons. First, Hamilton, Madison, and John Jay were writing as Publius. Nobody at the time knew who wrote which essay. Second, their disagreements were real, but in *The Federalist* they were masked. Knowing how *Federalist* 10 came into existence complicates the meaning we attribute to it. In the

those who belonged to what Adams, Madison, Wilson, and others of their generation called "the middling sort."

²⁴ For Hamilton's plan, see James Madison, *Notes of Debates in the Federal Convention of 1787 Reported by James Madison* 129–39 (Ohio, 1966) (Adrienne Koch, ed).

essay Madison developed arguments first sketched in “Vices.” He challenged Montesquieu and argued that self-government would work better in a large, heterogeneous nation than in a small city-state precisely *because* of the diversity of people and preferences. As everyone who has studied law or political science in an American university knows, in the final paragraph of *Federalist* 10 Madison described the Constitution as “a republican remedy for the diseases most incident to republican government.”²⁵

But wait. Just a few months before, in his first speech at the Constitutional Convention, Madison had used different terminology. In that speech, on June 6, he had recommended framing a new Constitution that would be, in his words, “the only defence against the inconveniences of democracy consistent with the democratic form of government.”²⁶ Note those uses of “democracy” and “democratic.”

Throughout the Convention, Madison and Wilson had taken the more democratic side on most controversial issues. Wilson argued for direct rather than indirect elections, and for proportional representation in the Senate, because those provisions were, as Madison put it, “consistent with the democratic form of government.” Wilson played a much more important role in the Convention than most people realize. In his speech on June 6, 1787, in particular, 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. Wilson pointed out, accurately, that the only source of power anywhere in the Constitution 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 officeholders, 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.”²⁷

Wilson also delivered the most widely reproduced and circulated speech in favor of ratifying the Constitution on October 6, 1787, in

²⁵ *Federalist* 10 (Madison) in Jacob E. Cooke, ed, *The Federalist* 65 (Wesleyan, 1977).

²⁶ Madison, Speech in the Federal Convention on Factions (June 6, 1787), in *Writings* 92 (cited in note 16).

²⁷ James Wilson, Speech in the Federal Convention (June 6, 1787), in *Notes of Debates* 74 (cited in note 24); and on Wilson’s role in the debates more generally, see *Toward Democracy* at 398–403 (cited in note 2).

Philadelphia. It 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. It was imperfect, but the people could make it right because it could be amended. In this crucial speech, Wilson echoed central arguments of Rousseau's *Social Contract*. Under the Constitution, the American people would not alienate their sovereignty. They would retain it and be able to 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.²⁸

In a lengthy address Wilson delivered six weeks later, at the Pennsylvania Ratifying Convention, the parallels between Wilson and Rousseau were even more apparent. Wilson asked, why do people leave the state of nature? Although in that condition each individual can act according to the “pleasure of his interest,” their “animosities” eventually drive them to form “the social compact.” In joining together, each individual surrenders the liberty previously enjoyed, but, in Wilson’s words, “it is evident that he gains more by the limitations of the liberty of others, than he loses by the limitation of his own.” 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, in a properly constituted society individuals are governed by the laws they have made for themselves.²⁹

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, would 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

²⁸ James Wilson, Speech at a Public Meeting (October 6, 1787), in Bernard Bailyn, ed, *1 Debates on the Constitution: Federalist and Antifederalist Speeches, Articles, and Letters during the Struggle over Ratification* 63–69 (New York, 1993) (“DOTC”).

²⁹ James Wilson, Opening Address at the Pennsylvania Ratifying Convention (November 24, 1787), in *1 DOTC* 791–803 (cited in note 28).

pursued and not [merely] a part [of it].” It was for that reason, Wilson concluded, that what he called “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. Those at the Constitutional Convention weighed the advantages and disadvantages of various forms of government. In the end they adopted a plan that Wilson characterized as “purely democratical.” All the streams of power in the plan can be traced, he concluded accurately, “to one great and noble source, THE PEOPLE.” Wilson made clear that the purpose of the framework was exactly the purpose of Rousseau’s general will. The processes of representative government, in Wilson’s words, by “bringing forward the talents and abilities of the citizens, without regard to birth or fortune,” made possible the discovery of the laws that would allow for the maximum enjoyment of individual liberty consistent with the equal enjoyment of liberty by all. Achieving that goal, “the welfare of the whole,” was the explicit purpose of the Constitution. That was what made it “purely democratical.”³⁰

So Madison and Wilson agreed that the Constitution was a “democratic solution,” to use Madison’s language at the Convention, or “purely democratical,” to use Wilson’s words. Its purpose was to enable Americans to find the common good, or “the welfare of the whole.” The question, then, is why, in *Federalist* 10, did Madison abandon the term “democracy” that he had used in the Convention, the word that Wilson continued to use? I ask readers to consider two possible explanations.

The first explanation, which is the one I offer in *Toward Democracy*, is that Madison was ensnared in an old debater’s trick. In *Federalist* 9, the essay published on November 21, 1787, Hamilton as Publius characterized the Constitution, with its reliance on representative government and the indirect election of both senators and the president, as something categorically different from democracy. Adapting the

³⁰ Id; and see Wilson’s elaborate closing speeches at the Convention, December 1, 1787, and December 3, 1787, in 1 *DOTC* 820–28, 829–30, 832–68 (cited in note 28). His final speech went on for four and a half hours.

formulation that Madison had used in his “Vices” essay and in his speeches at the Convention about the need for “a defence against the inconveniences of democracy consistent with a democratic form of Government,” Hamilton changed Madison’s terminology. The institutional architecture of the Constitution, he wrote, provides the “means by which the excellencies of republican government may be retained and its imperfections lessened or avoided.”³¹

With that rhetorical sleight of hand, Hamilton distanced Publius—and Federalists more generally—from what Madison had called “the democratic form of government” and instead aligned the Constitution with what he called “the excellencies of republican government.” Hamilton’s move was so shrewd that he convinced later commentators that the Constitution had somehow been transformed from Wilson’s “purely democratical” framework into something else, namely, a “republic” that was distinct from a democracy. Although the Constitution itself had not changed at all, critics ever since have treated it as though it had somehow metamorphosed into a different creature. Federalists like Madison and Wilson became elitists. Antifederalists became democrats, which was even stranger. As Saul Cornell showed in *The Other Founders*, the best book on the Antifederalists, many Antifederalists defended existing arrangements in the states simply to preserve their own positions of authority, arrangements no more democratic than those to be established by the new Constitution, in which all power flowed, as Wilson correctly observed, from the votes of the people, and no wealth or property requirements were stipulated for voters or officeholders.³²

So when Madison contributed his first essay to *The Federalist*, the celebrated number 10, he inherited Hamilton’s rhetorical strategy. Publius had now designated the Constitution “republican” and distinguished it from the popular regimes of direct rule in antiquity, regimes that had proved themselves susceptible to home-grown demagogues

³¹ Federalist 9 (Hamilton) in Jacob E. Cooke, ed, *The Federalist* 50–56 (Wesleyan, 1977). The authorship of the individual essays has remained a vexed question since the essays’ original publication. Even though recent scholarship has resolved most of these disputes, the persistence of disagreements about who wrote which essay suggests how conscious the authors were of making a consistent argument that masked their deep differences. See the introduction to the most comprehensive edition of *The Federalist*, ed Jacob Cooke, xi–xxx (Wesleyan, 1977).

³² Saul Cornell, *The Other Founders: Antifederalism and the Dissenting Tradition in America, 1788–1828* (North Carolina, 1999); and the discussion of Antifederalists’ arguments in *Toward Democracy* at 409–53 (cited in note 2).

and foreign conquerors. Madison was boxed in. Differentiating a “democracy” from a “republic,” as John Adams later wrote, made no sense. The “distinction between a republic and a democracy cannot be justified,” Adams wrote in a letter to J. H. Tiffany in 1819. “A democracy is as really a republic as an oak is a tree, or a temple a building. There are, in strictness of speech and in the soundest technical language, democratical and aristocratical republics, as well as an infinite variety of admixtures of both.” Adams knew, as most later commentators have not, that the two terms were used interchangeably throughout the 1770s and 1780s to designate forms of popular government in contradistinction to monarchy, with different shadings depending on the circumstances in which, and the purposes for which, the terms were used. Adams pointed out, sensibly enough, that the apparently hard and fast categorical distinction in *Federalist* 9 and 10 was inconsistent with common practice in 1787. The widely circulated speeches during the ratification debates by Madison’s closest ally at the Convention, James Wilson, with their crescendo of references to the Constitution as “purely democratical,” illustrate Adams’s point.³³

How can we explain Hamilton’s highjacking of Madison’s and Wilson’s terminology, which has caused commentators Left and Right to misunderstand Madison? Hamilton’s New York City home was on Wall Street, on the block between Pearl Street and William Street. Madison’s lodgings, with the Virginia delegation to the Continental Congress, were located at 19 Maiden Lane. The distance between them was about a quarter of a mile, a distance it takes about five minutes to walk. So Madison and Hamilton were in very close proximity to each other. They were able to confer on the essays as they were churning them out—“nonstop,” as Miranda has it in *Hamilton*. One can only wonder what Madison said to Hamilton when he read *Federalist* 9, which established Publius as a critic of the democratic principles that Madison and Wilson had defended vigorously, albeit not always successfully, against Hamilton, Robert Morris, and Gouverneur Morris throughout the Convention. We’ll never know. To cite Miranda one last time, we’ll never be “in the room where it happened.”

³³ John Adams to J. H. Tiffany (March 31, 1819), in Charles Francis Adams, ed, 10 *The Works of John Adams* 377–78 (Boston, 1850–56).

But now Madison had no choice but to adopt Hamilton's distinction. In *Federalist* 10, published only one day after *Federalist* 9, Madison designated as "pure" democracies the regimes that Hamilton had described as unstable, those with, as Madison put it, "a small number of citizens, who assemble and administer the Government in person." Although it might seem obvious, it is worth emphasizing that no English colony, and no state under the Articles of Confederation, had ever operated in that way. All of them, even the smallest, had relied on representative assemblies since the early seventeenth century. No one in America from the 1760s through the 1780s—not Tom Paine, not any agrarian or urban radical, and certainly not any Antifederalist—ever proposed such a "pure Democracy" as a viable alternative. Hamilton was using one of the oldest rhetorical strategies in the book by creating two straw men and then locating Publius in the sensible, moderate center. Madison was hardly in agreement with Hamilton about the Constitution. All of his writings and speeches before the fall of 1787 showed that Madison, like Wilson, conceived of the Constitution as a democratic solution to the problems of democracy. But in *Federalist* 10 he had no choice but to adopt Hamilton's framework.

Another common interpretation of *Federalist* 10 reflects a different but, I think, related misunderstanding. In perhaps the most familiar sentence in American political thought, Madison wrote "the latent causes of faction are sown in the nature of man; and we see them brought into different degrees of activity, according to the different circumstances of civil society." Only by extinguishing liberty could the causes of faction be removed, and that cure would be worse than the ill. As in "Vices," Madison observed that faction originates in what he called "the diversity of faculties of men, from which the rights of property originate." Because Madison contended that "the protection of these *faculties* is the first object of Government," readers at both ends of the political spectrum have taken him to mean that defending property rights, *not* protecting the faculties from which those rights originate, is the principal purpose of government. But that claim is made plausible only by selective quotation from the essay—and by limited familiarity with Madison. As he did in "Vices" and elsewhere, he noted that there are multiple causes of faction, including not only property but differences of religion, disagreements over politics, local or regional traditions, and one cause that has special salience in 2020,

the perennial and sometimes irrational attachments of people to their leaders.³⁴

Since these multiple *causes* of faction cannot be removed, Madison continued, we must work against the undesirable *effects* of faction. Governments must find a way, in Madison's words, to prevent legislators from serving as "advocates and parties to the causes they determine." Whatever the issue—indebtedness, domestic manufactures, taxes—responsible government needs what Madison called "the most exact impartiality." Yet there are always powerful temptations for legislators to choose their own or their constituents' "immediate interest," to use Madison's terminology, over what they should be seeking, namely, "justice and the public good."³⁵

For Madison, as for Adams and Wilson, faction did not represent a healthy sign of a vibrant culture, as some later pluralists and defenders of limited government have claimed. 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. Madison has long been identified as the epitome of American liberal pluralism, but I think we should reconsider that judgment.

Madison was self-consciously engaged in a strategic project. As the first essays of *The Federalist* were appearing in print, he emphasized in a letter that he was not engaged in writing political philosophy. As was true in Philadelphia, the Federalists had to keep their eyes on the target. "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."³⁶ Much as he

³⁴ For more detailed analysis of *Federalist* 10 and Madison's other defenses of the Constitution, in *The Federalist* and in the Virginia Ratifying Convention, and on the reasons why his and Wilson's expectations for how American democracy would work were unfulfilled in the decades to follow, see *Toward Democracy* at 427–53 (cited in note 2); and the still unsurpassed analysis in Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* 198–219 (Cornell, 1995).

³⁵ *Federalist* 10 (Madison) in Jacob E. Cooke, ed, *The Federalist* 56–65 (cited in note 25).

³⁶ Madison to Archibald Stuart (October 30, 1787), in William T. Hutcheson et al, 10 *Papers of James Madison* 232 (Chicago, 1962–91).

might have enjoyed writing a *Republic*, a *Utopia*, or an *Oceana*, he had a different objective, and in his next essay, *Federalist* 14, he threw himself into it.

Just two days after Madison's *Federalist* 10 was published, Wilson delivered his great Rousseauian oration at the Pennsylvania Ratifying Convention. Given Wilson's explicit endorsement of Rousseau, and the close parallels between his arguments and Madison's that I have already noted, only the stubborn insistence that Madison must have meant something different from Rousseau has blinded commentators to the similarities between his idea of a public good emerging from the deliberation of representatives and Rousseau's conception of the general will. Given the distinction that he and Hamilton had sketched in *Federalist* 9 and 10, Madison now had to establish the point that Wilson had made so powerfully in Pennsylvania.

In *Federalist* 14, his first essay after Wilson's decisive opening intervention in Philadelphia, Madison replied to Antifederalists anxious that those elected to the United States Congress would be too remote from the people. Their objections foundered on two crucial considerations, the principle of popular sovereignty and the practice of representation. Madison insisted, clearly echoing Wilson's arguments at the Pennsylvania Ratifying Convention, that the entire American political system, from towns through states to the federal government, was founded on the principle of popular government. The old anxiety about a state within a state, *imperium in imperio*, was baseless. All levels of government in the United States stood on a common, but unprecedented, foundation, the will of the people as a whole. Expressing themselves through elections, the American citizenry authorized the power exercised by those they had chosen. The power remained with the people. They could use it whenever they saw fit, simply by replacing one set of elected representatives with another. That was the principle of popular sovereignty.

The practice that Wilson and Madison were pointing to had been going on already for more than thirteen years. Against claims that representatives would be too aloof, or too distant from the concerns of local politics, Madison invoked Americans' experience during the war for independence and under the Articles of Confederation, with the Continental and then with the national Congress. Under the Constitution government would continue as before, with representatives elected to local, state, and national offices to do the work appropriate to their positions, the work they were authorized and selected by the

voters to do. Although Madison and Hamilton had now adopted the term “republic” for this system of representative government and confined the use of “democracy” to small polities in which all citizens could gather and vote together, the Constitution they were defending in those terms was of course identical to the one Wilson had defended so eloquently and convincingly in Pennsylvania as “purely democratical.” Just as Wilson had insisted that the goal of the representatives deliberating in their assemblies was to broaden the sensibilities of the representatives so that they might come to understand the “welfare of the whole” rather than the narrow interests of a part, and had offered Madison’s principle of enlarging the sphere, so precisely had Madison reasoned in *Federalist* 10 concerning the means to the end of justice. Wilson had described “a chain of connection with the people”; Madison in *Federalist* 14 claimed for “America the merit of making the discovery” of popular representation “the basis of unmixed”—that is, nonmonarchical and nonaristocratic—“and extensive republics.” Their terminologies now might have differed. Their arguments did not.³⁷

Madison’s later contributions to *The Federalist* continued to develop these ideas, and they demonstrate his continuing commitment to the ideas of popular sovereignty, republican virtue, and representative democracy, even though Publius’s strategic maneuvering required him to locate his arguments between two extremes, both straw men. He turned the open-endedness of the Constitution into a virtue, an illustration of the flexibility that democratic decision making not only made possible but required. He mused on the difficulty of fixing the meaning of words, although he did not use his own shift from democracy to republic to illustrate the point. 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.

“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

³⁷ *Federalist* 10 (Madison) in Jacob E. Cooke, ed, *The Federalist* 83–89 (cited in note 25), and see my discussion of Wilson at the Pennsylvania Ratifying Convention above.

exercise the right in every State of electing the correspondent branch of the Legislature of the State.” And who are they to elect? Who will be the candidates for the House of Representatives? “Every citizen whose merit may recommend him to the esteem and confidence of his country.” Then Madison got to the heart of it: “No qualification of wealth, of birth, or religious faith, or of civil profession, is permitted to fetter the judgment or disappoint the inclination of the people.” If Americans could not trust ordinary people to choose the best qualified of their peers to serve in government, then government by the people is impossible. Madison and Wilson realized that the Constitution contained weaknesses; they had struggled against some of those weaknesses in the Convention. But they were puzzled that the advantages of representative democracy itself, advantages they judged self-evident, could be resisted. For more than two centuries, however, critics of the Constitution have contended that a system that provided, as Madison correctly observed, “no qualification of wealth, of birth, or religious faith, or of civil profession” somehow constrained or frustrated “the inclination of the people.”³⁸

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,” and variations on that phrase recur several times in Madison’s later essays and speeches.

Wilson put it well. When a convention was called in Pennsylvania to debate the 1776 Constitution and consider replacing its unicameral legislature with a bicameral legislature that would bring it into conformity with the rest of the states and the national government, Wilson stated his case for a second legislative body by stressing the creative quality of debate in terms that reminded one of his colleagues of Rousseau. The comparison made sense in light of the close attention

³⁸ Federalist 57 (Madison) in Jacob E. Cooke, ed, *The Federalist* 384–90 (Wesleyan, 1977).

Wilson paid to Rousseau's writings and the similarities between their ideas. Like Rousseau, Wilson had no interest in perpetuating social orders or creating a new hereditary aristocracy. He preferred bicameralism only because he wanted more opportunities for deliberation, which he judged the best way to discern the common good.³⁹ Just as clearly as Madison, Wilson embraced a vision of popular government—call it republican, as Madison did in *Federalist* 10, or democratic, as Wilson did—committed not to a static ideal of unchanging perfection but to development through time. Wilson described that ideal in the Lectures on Law he delivered in Philadelphia in 1790–91: “This revolution principle,” Wilson wrote, that “the sovereign power residing in the people, they may change their constitution and government whenever they please,” is “not a principle of discord, rancor, or war; it is a principle of melioration, contentment, and peace.”⁴⁰

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, that judgment may seem peculiar. But Wilson saw clearly that when no-holds-barred contests occur within the framework of an underlying cultural commitment to individual autonomy and an ethic of 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—must, but can—enable them to reach shared understandings unavailable through any other mechanism. Much as Rousseau had envisioned citizens voluntarily renouncing narrow self-interest and internalizing the general will, as Emile did, so Wilson and Madison both quite self-consciously envisioned the American people embracing the fundamental law they had authorized and that their representatives had brought to life. Government, Wilson contended, “is only the creature

³⁹ In response to Wilson's proposal that both the Senate and the Assembly in Pennsylvania should be elected by the people, Alexander Graydon later wrote that Wilson's conception of popular sovereignty reminded him of Rousseau: “Ces Pauvres Savoyards sont de bonne gens [sic]. As Jean-Jacques says. And who could say less of the good souls of Pennsylvania.” See Alexander Graydon, *Memoirs of a Life, Chiefly Passed in Pennsylvania, Within the Last Sixty Years* 198–219 (William Blackwood and T. Cadell, Strand, 1822); quoted in Philip Mead, *Beyond the Federal Constitution: The Creation of the Pennsylvania Constitution of 1790* 40 (unpublished Harvard University seminar paper, Spring 2004).

⁴⁰ James Wilson, Lectures on Law, Introductory Lecture: Of the Study of Law in the United States, in Robert Green McCloskey, ed, 1 *The Works of James Wilson* 79 (Harvard, 1967).

of a constitution,” and the United States Constitution was the creature of the American people: “in their hands it is clay in the hands of the potter; they have the right to mould, to preserve, to improve, to refine, and to finish it as they please.”⁴¹ The structure, with its foundation in the people’s will, had the stability of a pyramid, but it would forever remain unfinished, always subject to revision.

Madison did not aim merely at stasis, or moderation, or stability. He did not want just to pit interest against interest, faction against faction, so that they might cancel each other out. He aimed a lot higher, at autonomy, equality, and justice, goals to be achieved through democratic government. The aim, in his words, was “to secure the public good, and private rights, against the danger” of factions, even a majority faction intent on pursuing its own interest against the common interest. Preserving what he called “the spirit and the form of popular government” was “the great object to which our enquiries are directed.” Madison’s goal remained “the public good,” an ideal that lay beyond the interests of any particular group of individuals. How could it be discerned? How could it be achieved?

For Madison, the key to responsible self-government, whether called a republic or a democracy, was deliberation. 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.” The result, Madison concluded, will be “that the public voice pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves convened for the purpose.” 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.⁴²

⁴¹ Id at 304.

⁴² Federalist 10 (Madison) in Jacob E. Cooke, ed, *The Federalist* 56–65 (cited in note 25). The commentary on this essay is enormous and continues to grow. An influential early critique of the 1950s liberal pluralist interpretation is Paul Bourke, *The Pluralist Reading of James Madison’s Tenth Federalist*, 9 *Perspectives in American History* 271–95 (1975). Other readings of Federalist 10 that I have found particularly helpful include—to cite only a few of many—Marvin Meyers, whose introduction to *The Mind of the Founder* first sparked my interest in Madison as a theorist of justice (see Marvin Myers, introduction to *The Mind of the Founder: Sources of the Political Thought of James Madison* xi–xvii (New England, 1982)), and with whom I had the good fortune to discuss Madison for many years; Gordon S. Wood’s *Is*

That of course was 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 that is 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.⁴³

There a "James Madison Problem"? in Wood, ed, *Revolutionary Characters: What Made the Founders Different* 141–72 (Penguin, 2006), represents a rethinking of his influential argument about what he called "the Federalist persuasion" in *The Creation of the American Republic: 1776–1787* (North Carolina, 1969); David F. Epstein, *The Political Theory of The Federalist* 68–72 (Chicago, 1984); Colleen Sheehan, *The Politics of Public Opinion*, 49 *Wm & Mary Q* 609–29 (1989); and the still unsurpassed analysis in Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* 198–219 (Cornell, 1995). Banning emphasizes, as he does throughout this superb book, Madison's dual focus on popular participation and the preservation of liberty. In his discussion of *The Federalist*, Banning offers not only an incisive analysis of Madison's own developing, dynamic ideas but also a clear and fair-minded guide to the voluminous critical debates from Charles Beard through Robert Dahl to Martin Diamond, Irving Brant, and Gordon Wood. Madison's distinction between democracy and republic, although it originates only in *Federalist* 10, rapidly became common among Americans who had not previously differentiated between the two—as indeed Madison himself did not prior to November of 1787. On this broader transformation, see Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* 110–14 (North Carolina, 1980) (Rita and Robert Kimber, trans); and see J. G. A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* 16 (Cambridge, 1985). Ever since Douglas Adair, "That Politics May be Reduced to a Science": David Hume, James Madison, and the Tenth Federalist, 20 *Huntington Lib Q* 343–60 (1957), commentators have debated Madison's debt to Hume's essays, notably "Of the Independency of Parliament," "Of Parties in General," and "On the Idea of a Commonwealth." Hume did indeed discuss the advantages of an extended republic, but so did other writers from Aristotle to James Harrington. More recent scholars have tended to minimize the extent of Madison's debt to Hume. See Drew McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* 42–51 (Harvard, 1989). Given Madison's resistance to Hume's moral psychology and his greater affinity with the ideas of Scottish commonsense philosophy, it makes more sense to align him with Hutcheson, Thomas Reid, or Adam Smith than with Hume. On that issue, see Henry F. May, *Enlightenment in America* 119–20 (Oxford, 1976); Peter Winch, *Adam Smith's Politics: An Essay in Historiographic Revision* 146–63, 178–80 (Cambridge, 1978); and Emma Rothschild, *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment* 232 (Harvard, 2001).

⁴³ *Federalist* 55 (Madison) in Jacob E. Cooke, ed, *The Federalist* 372–78 (Wesleyan, 1977). The point about representation and democracy is crucial. Hamilton and Madison both doubted that a very large body could engage in deliberation, and both of them, for different reasons, considered deliberation crucial. See the discussion in Jack Rakove, *Original Meanings:*

Threats to the common good came from multiple sources. Madison followed his mentor Witherspoon in believing that the dangers of passion and self-interest are ubiquitous, in politics and in the moral decisions that face every individual. Eighteenth-century Scottish philosophers emphasized the capacity of individuals to harness their unruly selves through the disciplined cultivation of conscience to accord with the dictates of benevolence. Madison too believed that the institutions of representative democracy might enable Americans, through their chosen representatives, to identify and defeat schemes running contrary to the common good. Achieving that goal, for individuals and for political institutions, requires that reason constrain impulse.

Decades ago the German historian Willi-Paul Adams showed that in the state constitutional conventions, the words democracy and republic were used interchangeably. But in the 1960s the academic mania for classical republican theory led to its being found everywhere, and then the false binary of republican versus liberal fed into prevailing characterizations of *The Federalist* as a sacred text, even *the* founding text, of American liberalism. That dynamic has caused us to misunderstand what happened in Philadelphia and in the debates that followed. In the Constitution, Madison now proclaimed in *Federalist* 10, “we behold a republican remedy for the diseases most incident to republican government.” With a stroke of his quill, Madison reproduced Hamilton’s magic trick. Beneath the smoke and mirrors, though, and despite his torching of the straw man of “pure democracy” that no one in America preferred to representative democracy, Madison’s commitments to individual liberty, popular sovereignty, and the common good remained intact. He was still defending exactly the same framework that his chief ally Wilson had accurately described as “purely democratical,” because there was no source of authority, anywhere in the system, other than the will of the people.

That, then, is the first explanation of the discrepancy between the use of “democracy” in Madison’s June 6 speech in Philadelphia and his use of “republic,” echoing Hamilton’s in *Federalist* 9, in the celebrated *Federalist* 10. Before concluding, however, I want readers to consider an alternative explanation, which comes from Mary Sarah

Politics and Ideas in the Making of the Constitution 236–43 (Knopf, 1996): gathering into large assemblies, as ancient Athenians did, meant that passion would rule and rational deliberation would be impossible.

Bilder's provocative book *Madison's Hand: Revising the Constitutional Convention*. Bilder's book was published in 2015, just as the manuscript for my book *Toward Democracy* went into production at Oxford University Press. Bilder's book challenges the conventional understanding of how we should read Madison's *Notes on the Federal Convention*, which has long been considered the most authoritative source for the debates in Philadelphia in the spring and summer of 1787. Even though the *Notes* were published after Madison's death in 1836, most scholars have relied on it as a more or less accurate account. That is how I treat it in *Toward Democracy*. Bilder argues, however, that Madison *altered* the record in significant respects when he revised the *Notes*, first in the late 1780s and then when he returned to the project decades later.

She argues in particular that Madison revised the speech he dated June 6 in the *Notes* and that he inserted into that speech parts of an earlier speech that he gave on June 4. This claim is intriguing because the June 6 speech contains the words "the inconveniences of democracy consistent with the democratic form of government." Bilder found that Madison used different paper for that June 6 speech in the manuscript that eventually became the *Notes*. She contends that he wrote the speech of June 6 later, possibly as much as two years later, between the fall of 1789 and the spring of 1790. That would mean he wrote the speech *after* he had written *Federalist* 10, all the rest of his essays in *The Federalist*, and the speeches he delivered at the Virginia Ratifying Convention.

Now, if that is true, it means that we cannot know exactly what Madison said, if anything, about a democracy or a republic in his opening speech on the Virginia Plan at the Convention itself. If Bilder is right, we can know only that whenever he rewrote his speech, if indeed he did rewrite it for the *Notes*, he was no longer satisfied with the formulation used in *Federalist* 9 and 10, which did not accord with the way he thought the Constitution should be understood. If he did rewrite the speech at a later date, he evidently rewrote it to highlight his commitment to what he chose to call a "democratic form of government" and to distance himself further from Hamilton. If Bilder is right about the timing, Madison would have rewritten the June 6 speech when he was working on two projects. He was drafting the first amendments to the Constitution and mobilizing opposition to Treasury Secretary Hamilton's plan to fund state debts. The tensions between Madison and Hamilton, apparent in the Constitutional

Convention but muted in *The Federalist*, were already coming into the open.⁴⁴

Readers will have to ask themselves which of those two explanations makes more sense. Did Madison abandon his use of the phrase “a democratic form of government” and adopt Hamilton’s framework because he had no choice in light of *Federalist* 9, as I argued in *Toward Democracy* and in the first part of this essay? Or, as Bilder contends, did he *later* see the importance of identifying the aim of the delegates at the Convention as a “democratic form of government” after realizing that Hamilton and his cronies in New York had in mind something very different from what Madison, Wilson, Jefferson, and the more democratically oriented champions of the Constitution wanted?

From my perspective, the question remains open. The jury is still out. In either case, however, I believe this brief look at the writings of Adams, Wilson, and Madison shows that they agreed on a fundamental proposition that deserves more attention. The forms of government established in the United States from 1776 through 1787 were, in Wilson’s words, “purely democratical” because there was no source of power anywhere, in any of the institutions, other than the will of the people. There was no monarch. There was no aristocracy. There were no inherited privileges. There was nothing but the citizenry. The distinction Hamilton drew between a republic and a democracy was nothing more than a debater’s trick, and we should stop seeing it as an important categorical distinction.

In his new book *The Second Creation*, Jonathan Gienapp shows that treating the Constitution as a text with a fixed meaning is a mistake. He makes clear that its meaning was indeterminate, deliberately indeterminate, as both Madison and Wilson insisted during the debates over ratification. Its meanings had to be established in practice, over time, through trial and error. The meanings that developed from those practices were not inherent in the text, nor were they necessary or inevitable. They were contingent products of particular historical controversies and choices made by individuals. An even clearer sense of how that happened will be available when Alison LaCroix completes her masterful book *The Interbellum Constitution*.⁴⁵

⁴⁴ See Bilder, *Madison’s Hand* (cited in note 1).

⁴⁵ See Alison LaCroix, *The Interbellum Constitution*, 67 *Stan L Rev* 397–445 (2015). Madison was well aware, LaCroix shows, that the window in which he could speak to the

Even so, Gienapp concludes, none of us can avoid treating the Constitution as a foundational text, just as judges, attorneys, and legislators have had to do ever since ratification. Even historians certain that it has no singular “original meaning,” and that includes me, have to make arguments about why we consider it open-ended, why we think it is “living” rather than fixed or determinate. Our arguments *also* turn on how we interpret the texts left by those who created the Constitution. I think Gienapp is right. That is what I have done in this essay, in which I have tried to show how we should understand Rousseau and Adams and why that understanding should change the way we see Wilson and Madison. The meaning of the Constitution was deliberately, self-consciously, left open for interpretation and debate because only through such open-ended deliberation can “We, the People” govern ourselves rather than allowing a small elite to rule.⁴⁶

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. Of course their refusal to include women in the ranks of citizens, and the willingness of Madison and other southerners to countenance slavery, mean that they were hardly democrats by our twenty-first-century standards. They detested the idea of parties, for reasons that have become all too clear in our own day: partisanship too often obstructs commitments to the public interest. But in the context of the eighteenth century, Adams, Madison, and Wilson stood on the side of popular government rather

public was closing as he approached the final years of his life. Madison in the 1820s was intent on denying what some of his contemporaries and some of our contemporaries claim, that *his* meaning, or the meaning of his generation, must determine the meaning of the Constitution for later generations. Referring to his 1817 veto of an internal improvements bill, the Bonus Bill intended for the construction of roads and canals, he wrote to Martin Van Buren, “I am aware that the document must speak for itself, and that that intention can not be substituted for the established rules of interpretation. . . . Whether the language employed duly conveyed the meaning of which J.M. retains the consciousness, is a question on which he does not presume to judge for others.” As LaCroix puts the point, Madison was writing “to prepare the next generation of Americans to think for themselves in a proper constitutional mode.” The contention of certain members of today’s Supreme Court, who argue that there is a continuous line from “the Framers” to the present, is clearly erroneous: “the point is that the Constitution of the early nineteenth century was not the Constitution of the twenty-first century, even with respect to provisions of the text that remained the same throughout that time.” LaCroix, 67 *Stan L. Rev* at 444 (cite in note 45).

⁴⁶ Readers interested in a more detailed presentation of the evidence should read chapters 5–9 of *Toward Democracy* 191–453 (cited in note 2), and the extended notes to the book, available at <https://scholar.harvard.edu/kloppenberghome>.

than rule by elites. Their goal was Rousseau's goal, to find a way to advance the public interest over the self-interest of the few.

In conclusion, if you have been thinking of the Constitution as a charter securing individual rights or protecting particular interests against the government, or as a bulwark against efforts to advance the welfare of the public as a whole, I urge you to think again. The Constitution is, above all, concerned with the search for the common good. It establishes a government "to promote the general Welfare." And that is why Madison matters.