Chapter 3

Liberalism and the Dilemmas of Democratic Equality in the United States

Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.
—James Madison

INTRODUCTION

In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself.”

These words from James Madison (1751–1836) sum up two central dilemmas of the individualistic liberal tradition: (1) how to govern over individuals who, given their selfish nature, must be controlled; and (2) how to do so without either monarchy or meltdown, because the government is, after all, comprised of such individuals.

If one were to read “men” as “the people” and see the people as inclusive of all citizens—as grew to be the case in the United States only well after Madison—then the difficulty he describes becomes even more pronounced. That is, once one accepts the more democratic notion that all people ought to have a voice in their governance, the task becomes one of devising a process of decision making that will translate only the legitimate, ideologically liberal wishes of the people into public

policy. Regarding the potential for breakdown within government, the American founders were aware of the historical fact that many governments, all the way back to the Greek *polis*, seemed inherently unstable, easily prone to degenerating into either mob rule or dictatorship. The task for Madison as the chief architect of the governing principles and framework of the United States, therefore, was to develop a stable political system that fulfilled three functions: (1) protect the inherent rights of individuals and minorities; (2) respond to the expressed, legitimate wishes of majorities of its citizens; and (3) kept itself from meltdown or monarchy. Examination of these questions as they were debated and resolved in the American context will occupy a large portion of this chapter. Before addressing these issues, however, we must briefly examine the political and social context of America in the late 1700s, largely as a means of discussing some of the presuppositions of a liberal democratic society.

**THE AMERICAN CONTEXT: “BORN EQUAL”**

The relatively egalitarian view of naturally free individuals in British individualist liberalism was very much part of the intellectual tradition in the American colonies. The removal of overt distinctions between classes (titles and so forth) and the influence of British libertarian rhetoric had produced a situation where the principle of equality among the citizens was taken to be the basic presupposition of all government. Of course, one need not delve too deeply into America’s past to recall that this idea of political equality historically was quite restrictive in practice. All were created equal except Native Americans, slaves, and other non-property holding women and men. Nevertheless, the acceptance of the concept of equality among the citizens as an ideal, if nothing else, is an important presupposition for any regime that deems itself democratic.

America’s egalitarian genesis in this sense has been an often-noted feature of its unique history. Unlike the conditions in Europe, America did not have to suffer through the kind of economic and cultural revolutionary ferment needed to overthrow an old feudal order. As long ago as the 1835 publication of the classic *Democracy in America*, Alexis de Tocqueville (1805–1859) emphasized this point: “The great advantage of the Americans is that they have arrived at a state of democracy without having to endure a democratic revolution; and that they are born equal, instead of becoming so.”² Indeed, Tocqueville went so far as to maintain that in

the United States “the equality of conditions is the fundamental fact from which all others seem to be derived, and the central point at which all my observations constantly terminated.” The American colonialists had fought a lengthy war against the British Empire over the right of self-determination, but they did not suffer the throes of a social revolution. One group of property elites overthrew another group of propertied elites. They did not spend decades battering down the legal and psychological barriers to egalitarian thought. In short, the American experience seemed to be the fulfillment of Lockean liberalism where all citizens were born in the same equal and free condition. The United States was founded by individuals who fled from the feudal ethos of Europe and brought with them the liberal ethos of John Locke.

The Lockean character of America was also to be found in its religiosity, something Tocqueville insightfully described as well: “It must never be forgotten that religion gave birth to Anglo-American society. In the United States, religion is therefore mingled with all the habits of the nation and all the feelings of patriotism, whence it derives a peculiar force.” Denominations and church affiliations differed in the American colonies, and as with Locke’s limited notion of toleration, highly Protestant America did not look favorably upon other denominations, especially Catholics, until well into the twentieth-century. We discuss the varied ways that religion and politics may be related or separated in a later chapter. For now, we note how America’s early religiosity has implications for understanding what many observers have described as the “rebirth” of religion in the United States in the last quarter century. Contrary to many popular beliefs, the country and its political thought have been religious from Day One, while the state—the realm of political affairs—was designed to be secular, a term the complicated meanings of which we will discuss throughout this book. In these ways, American political thought begins under conditions that resemble those found in Locke’s state of nature, with those individuals who were citizens viewing themselves as free and equal creatures of God. In America, as in Locke’s understanding of humanity and the fundamental role of government, to quote the contemporary theorists, Isaac Kramnick and Theodore Lowi, “religion came first.”

Regarding the “secular” state, recall that Lockean liberalism’s ideological goal of establishing a government to protect rights is a partly “religious” goal—one made possible by God’s having endowed humanity with the moral knowledge not

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3Ibid., Vol. 1, p. lxviii.
to violate each other’s natural rights. This was to be achieved by, among other measures, separating politics and religion. The separation that would create a secular state, was, importantly, not justified on “secular” grounds. It was viewed as religiously correct: For Locke, persons in power could be religious, but God did not justify an established religion (or toleration of atheists and Catholics). Such a separation would, for Locke, benefit religion as well as foster social harmony. The founders in the United States had similar views. They separated church and state partly to enable religious belief to continue to flourish in society, outside of politics. The separation would prevent religiously based political factionalism from overwhelming government.

It is significant that this outlook developed in the relative political isolation of the colonies, far removed from the organized, counter-ideological pressures of the right and left in Europe. There, liberalism continued to contend with other political worldviews: feudalism, the role of established churches, and eventually socialism, to name but three. And, if we can use England as an example, the early British liberals (Bentham, Mill, and others) had to battle constantly against a conservative monarchical establishment. Consequently, liberalism in Europe underwent important changes as it adjusted to the political environment there. The American situation was far different. There was no need for fundamental compromise with competitors, for there were no major competing ideologies among the settlers. During the Revolutionary War, conservative Tories who lived in (British) colonial America had few choices: they could flee to Canada, return home to England, convert to the revolutionary cause, or stay and suffer the consequences (which sometimes meant, at a minimum, having their property confiscated). Whatever option they chose, Tory thought eventually vanished from American consciousness. As a result, any thought that did not fit into the broadly defined Lockean liberal perspective was considered un-American and had no political impact.

At least one additional factor helped produce the peculiar American experience with liberalism. America, to the colonialists, was blessed with vast expanses of “free” land. Given this economic base, an individual could pursue economic fortune and become a property owner with relative ease. And for a considerable period of time, no severe economic class division among the settlers developed in America as it had in Europe. Rather, the distinction existed between large property owners and small property owners, not between propertied and propertyless. All of these factors helped produce a cultural environment in which the ideological individualism of Lockean liberalism flourished to the point of myopia: the “American Way” being considered, by the American colonists, to be the only way.
Participation: A Basic Value

The Lockean liberal goal of participation in government was also present in the environment of the founding of the United States. Locke argued that “the people” were ultimately sovereign and that government should be founded on the will of the majority of its citizens. In America, citizens had indeed participated in local colonial government and felt as well that they ought to participate in making decisions that affected their lives. Although many people jealously claimed their rights and viewed government with a good deal of suspicion, it was not thought of as the exclusive prerogative of some ruling class, elected or hereditary. It is too easy to generalize from the active political participation that characterized the propertied classes in places like Virginia and assume mass participation throughout the states. We simply do not know the extent to which a common laborer, for example, participated in political decision making. However, in the minds of those who had the greatest influence on the making of the American political system, the concept of participation in public affairs was a basic value.

As citizens, the notion that the ideas of another person ought to be tolerated even though they were deemed wrong was a major value, at least among the elites in intellectual circles. Again, much of what was practiced in the colonies did not always live up to this ideal, as evidenced in a good deal of religious persecution. Still, the principle of toleration eventually became incorporated into the Constitution of 1787 with the adoption of the Bill of Rights. One might go on to speak of other factors that made the climate conducive to some sort of ideologically liberal regime—a relatively homogeneous English tradition, a country removed from the immediate threat of major military powers—all of these things combined to produce an environment that made experimentation with liberal government possible.

We could continue to speculate on the conditions under which liberalism emerged as the dominant outlook in the United States, but what is important from an ideological perspective is that in general the values held by the founders of the American political system conformed to those of the liberal tradition. There is no doubt that the imperfect application of the more democratic aspects of those values had important, even horrifying, consequences for persons and peoples within the United States who were excluded from political power. Still, an examination of the ideological outlook and values embodied in the various American political documents proves useful. These ideals have been adapted by generations since. They define the American political tradition, a tradition that includes efforts to actualize its ideals for all individuals in the United States; and, with the ongoing growth of American liberal-imperial power, peoples all over the world.
With its profound statement of what Thomas Jefferson (1743–1826) called “self-evident truths” that “all men are created equal” and “are endowed by their Creator with certain inalienable rights,” the Declaration of Independence of 1776 provided an eloquent statement of the ideals and aspirations of a liberal democratic society. The now-familiar themes of equality, freedom, government by consent, and the right of resistance to arbitrary authority formed the ideological framework for the American Revolution. But this statement of ideals, however lofty, neither provided a solution to the type of problems in democratic theory of which we have been speaking, nor attempted to establish a workable framework of government for the new nation. Having operated under the mainly ad hoc rules of the Articles of Confederation for almost a decade, the country had reached a point where few of the political elite were satisfied with its ability to control the state governments, and many committed liberals began to despair of the possibility of having a stable, enduring republic in America. This concern became crystallized when news of a taxpayers’ revolt in Massachusetts spread throughout the eastern United States.

The significance of the 1786–1787 Massachusetts taxpayers’ revolt, which historians have dubbed Shays’ Rebellion, can scarcely be overrated. What Daniel Shays (1747–1825) and some Massachusetts debtors actually did remains unimportant; what matters is what George Washington (1732–1799), James Madison, Alexander Hamilton (1755/7–1804), and others believed were the intentions of the rebels. For this information, they relied on Henry Knox’s imaginative report. Acting as Superintendent of War under the Articles of Confederation, Knox constructed a fabricated but frightening account of the rebellion. He claimed that between twelve and fifteen thousand men were part of Shays’ forces, and that they endorsed the following, radical leveling position: Since the property of the United States had been protected from British confiscation by the joint exertions of all Americans, it therefore ought to be the common property of all Americans! Knox believed that the Shaysites hoped to capture Boston, loot the Bank of Massachusetts, gain additional supporters, and march southward, making property common by redistributing it along the way. (In fact, Shays’ force of approximately twelve hundred men was soundly defeated by early 1787.) Nevertheless, the significance of Shays’ uprising and its impact on the constitutional cause was recalled by James Madison as late as 1821: “the recent & alarming insurrection headed by Shays, in Massachusetts… [produced a] very sensible effect on the public mind.”

Thus, the Constitutional Convention of 1787 provided an opportunity to reconstruct a new

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government along what the leading colonialists believed were more viable lines. A group of bold men made sure that the opportunity did not pass.

The Convention has become many things to many people. To the patriot, it is the birthplace of American democracy; to the student of political coalitions, it is a fascinating study in political bargaining; to those interested in political ideas, it provides a forum for the discussion and resolution of enduring problems in democratic theory. We cannot delve into all of the personalities attending the Convention nor discuss the ideas they presented; one must tread lightly in the preserve of historians. But if we are forced to find a figure who approximated an authoritative interpreter of the principles embodied in the Constitution, there is little doubt that James Madison must be the choice. The Madisonian conception of the nature of the American system as articulated at the Constitutional Convention and later formalized in The Federalist papers provides the closest thing to an authoritative interpretation that we possess. Following other writers on American political thought, our presentation will largely be confined to Madison’s viewpoint, particularly though not exclusively as it is developed in Federalist 10. Before moving to that presentation, however, let us note some additional effects on popular thinking wrought by the Articles of Confederation.

The American Revolution was fought in the name of resistance to arbitrary authority and in defense of the traditional rights of Englishmen. The colonialists, after all, were British Americans. Naturally, the symbol of capricious authority became the English monarchy. Whether that was a correct assessment of the situation is unimportant in this context, but it did produce widespread distrust of a powerful head of state. This fear of monarchy was, of course, reflected in the Articles of Confederation, which provided for little effective centralized national leadership, much less a powerful head of state. In the language of democratic theory, the primary fear was tyranny by one individual or by a minority, and the resulting political arrangements reflected that apprehension.

Experience with the Articles of Confederation, however, convinced many of those who gathered at Philadelphia that the prime threat to the American experiment no longer existed in the form of a tyrannical individual or minority; rather, it resided in the capricious moods of democratic majorities that increasingly controlled the thirteen state governments. This distrust of formally uneducated, mob-like majorities fit in nicely with the elitist attitudes of many of the founders. Although Tocqueville described the egalitarian base of the early United States, there still existed—especially in the eyes of the elite—a great horizontal divide between extraordinary and ordinary people, between gentlemen and commoners. This attitude provided some balance to controlling unwarranted authority. The central question of American liberalism became, then, how to establish a popularly
based government that would avoid the excess of tyranny whether imposed by a minority or a majority. This problem Madison addressed in Federalist 10, one of the most famous theoretical writings to emerge from the constitutional period.

The brainchild of Alexander Hamilton, *The Federalist* papers were written by Hamilton, John Jay (1745–1829), and James Madison. They originally appeared as individual newspaper pieces designed to convince the people of the state of New York to support the recently completed Constitution. Although their major purpose was persuasion, the papers also provided a defense of the philosophical presuppositions and institutional framework provided for in that document. In particular, Madison’s tenth paper addressed itself directly to the classic political problem of tyranny, and it claimed to have found a “Republican remedy for the diseases most incident to Republican Government.”

**Madison’s View of Humanity**

Madison began his discussion by presupposing the desirability of some form of popular government. There is little in the way of systematic analysis of other possible governmental types; this, of course, had to be expected, given the recent war for independence. Madison simply asserted that a government that denied a significant, albeit largely indirect, degree of popular sovereignty would be incompatible with the character of the American people. Indeed, there seemed to be almost universal agreement that some sort of popular government was what was needed, but the problem lay in devising one that would avoid the difficulties of all prior democratic regimes. Madison’s analysis of all past experiments with democratic governments indicated that they were constantly subject to instability. The most common cause of this instability was a majority of the citizens who, for whatever reason, attempted to impose their will through the government upon the rest of the society, and in the process deprived them of their rights. Simply stated, prior democratic forms had a marked tendency to degenerate into mob rule. Sensing its own inability to govern well, the mob would then elevate a single person to assume dictatorial powers in the name of the people, and once that happened, that particular democratic experiment was finished.

The cycle of tyranny of the majority leading to dictatorial rule and the consequent loss of freedom was all too familiar to students of history. The tendency of a group of citizens, whether a majority or a minority of the whole, to seize power and deprive other citizens of their rights was the cardinal difficulty with democracies. A solution to the problem would have to be found before the system could work. One must take note of a distinctly Hobbesian attitude in Madison’s analysis
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of human nature. Human passions are such that, in the absence of constraints, people will naturally seek to make others the object of their urge to dominate. Thus, “ambition must be made to counteract ambition,” Madison boldly stated. “But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary.”

People are not angels. They must be held in check, or they will tyrannize each other. And yet Madison notes an interesting characteristic of humanity that Hobbes apparently missed. As individuals, genuinely isolated from other individuals, people are reasonable, timid, and cautious. However, a person inevitably comes into contact with other individuals, forms into groups Madison called factions, and at that point human behavior begins to change. “The reason of man, like man himself is timid and cautious, when left alone; and acquires firmness and confidence, in proportion to the number with which it is associated,” observed Madison. When this occurs, as it must, passion—not reason—rules. In one of the most uncharitable observations ever penned about human nature, Madison, in the quotation cited on the opening page of this chapter, eloquently captures the essence of the situation. It bears repeating: “Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.” Madison expressed the belief that even someone like Socrates, the historical symbol of the most wise and most just individual who was put to death by the will of a majority, will turn into a member of a tyrannical mob when he becomes associated with like-minded individuals. However good an individual’s character may be, people are capable of tremendous harm if not constrained by political institutions.

The Problem of Factions

Political philosophers and constitution makers must, Madison averred, take this concept of humanity into account or their efforts will be for naught. This made the American framers’ task even more difficult, in that popular governments seemed most susceptible to this disease of factions.

Democracies, to a greater extent than any other governmental form, permitted the individual liberty that led to the development of factions. Liberty was the air that spread the fire of faction, but to remove that air, Madison argued, would be to deny the basic premise of liberal government. Popular sovereignty would mean little if there were no liberty to form and articulate opinions. One cannot, then,

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7 Madison, The Federalist 10, p. 349.
8 Ibid., p. 349.
solve the problem of factions by removing the liberty that permits them to exist, for, as Madison observed, the cure would be worse than the disease.

Madison also advanced and rejected one other possible cure for the causes of faction. He observed that factions would not exist if it were not for the diversity of human interests that forces people into competition for dominance. In theory, then, one might be able to remove the cause of faction by ensuring that all the citizens have similar opinions, passions, and interests. If everyone agreed on everything, there would be no need for any group to attempt to dominate another. Madison, however, quickly dismissed this cure by declaring that diverse interests are a necessary part of human nature and that it would be impossible to give everyone the same opinions. Again, we must stop and note that Madison raised an important point. Although his answer is consistent with his own liberal philosophical premises, John Stuart Mill worried about the “tyranny of the (social) majority” and more contemporary political actors frequently engage in the practice of “giving everyone the same opinions.” In an age like ours, where the control of information and the use of propaganda through the mass media and theatrical campaigning—for democratic as well as anti-democratic ends—are everyday realities, the possibility of controlling, or heavily influencing, the opinions of an entire society, cannot be so easily dismissed. Indeed, as we have seen in our first chapter, ideologies attempt at times to do precisely that. Consistent with the premises of his individualistic liberal heritage, however, Madison specifically rejected that possibility, even as he despaired of finding a cure for the causes of faction.

Factions are ubiquitous, contentious, and dangerous. Adapting Scottish philosopher David Hume’s (1711–1776) prescriptions primarily from his writings on “Parties” and “Idea of a Perfect Commonwealth,” Madison established his own basic dichotomy between factions. Some factions are based on “passion,” like those established on religious or political beliefs; others are based on “interest,” that is, largely economic factors. The latter are not only more reasonable, their multiplicity becomes the “grand elixir” to social instability. The former, less predictable and more volatile, require a particularly cunning scheme to control them, and we will return to them momentarily. But Madison, like Karl Marx less than a century later, found a crucial correlation between factions and economic interests.

From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of society into different interests and parties.\(^9\)

\(^9\)Ibid., p. 58.
To Madison, then, the “most common and durable source of faction has been the various and unequal distributions of property.” Since the unequal distribution of property resulted from the differences among individuals in their capacities to labor—what Madison calls their “unequal faculties”—he followed Locke and accepted the inevitable socioeconomic, class divided consequences.

Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views.  

It becomes “the principal task of modern legislation” to regulate “these various and interfering interests.” Why does Madison think modern legislation can regulate these competing interests? To begin with, economic factions have a specific and measurable interest, a tangible thing that governments can, using a variety of means from taxation to confiscation, take from the owner. Furthermore, economic activity is based on a standard calculation, that of utility maximization (an economic actor seeks to maximize his or her utility or preferences without concern for how this compares with the utility or preferences of others). This means that economic actors can logically, even mathematically, understand and predict the behavior of others.

At first glance, the antagonisms resulting from property differences seem to be the sole cause of domestic unrest. But on closer examination, it can be seen that the root of human antisocial behavior runs far deeper and wider. Beyond property divisions are other causes of animosity where predictability is much more difficult. How can, for example, a society address the problems of factions formed on the basis of an intangible religious or political belief? Since those beliefs do not appear to have a consistent rational or logical foundation, predicting their behavior to avoid their factional consequences can be extremely problematic, especially when individuals believe they are divinely authorized in their actions. After all, how can a secular power reasonably punish an individual or group motivated by divine sanction? The destructive behavior of passionate factions based on religion or politics is clarified in one of Madison’s bolder statements:

A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders

\^Ibid., p. 59.
ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have turned mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their violent conflicts.¹¹

In this connection, Madison was particularly concerned over the possible blending of politics and religion. His solution, consequently, was to draw a wall of separation around the religious sects, keep them out of the political arena, and play them off against each other in civil society.

This ingenious strategy, however, cannot be employed quite so directly on all groups motivated by other non-economic, political agendas. For obvious reasons, Madison cannot a priori ban factions from politics; he can, however, permit them free reign to pursue any public policy they want to, provided that government remains a republic. He reasoned that he could also utilize the advantages of geographic space in combination with multiple political hurdles—like separation of powers, federalism, and representative government—to impede the progress of impetuous factions. That is, given that the causes of faction are latent in human nature, the only possible solution to the problems that factions generate is to attempt to control their negative effects through structuring the geographical and institutional contexts in which they appear. Although human nature cannot be changed, it might be possible to devise a set of social and political institutions that would work to counter these tyrannical tendencies. It is in his proposed system of control of factions that the genius of the Madisonian solution is to be found.

**MADISONIAN POLITICS: AMBITION COUNTERACTING AMBITION**

Initially, and in a rather cavalier manner, Madison dismissed the dangers of minority factions. These present no difficulty because their evil designs can be controlled by the basic principle of majority rule. If a minority of citizens band together to seek to deprive others of their rights, the vast majority of citizens will realize the threat and deny the minority access to power. One can call this a summary treatment of the problem, for it presupposes initially that the majority of citizens will recognize a threat when presented. American history suggests otherwise. It further assumes

¹¹Ibid., p. 59.
that access to political decision-making organs is the only means by which one group can oppress another.

In the discussion of modern theories of democratic elitism presented later in this chapter, we shall encounter the question of minority faction presented in a much more graphic manner. However, for Madison, the ability of the majority to control the minority through the ballot box was a sufficient control over a factional minority. Disposing of that issue perhaps all too quickly, he went on to address the classical problem of majority tyranny. It is obvious that the control of the vote that blocked minorities will have no effect here, for majorities can elect their leaders to positions of power. This being the case, Madison had to depend on other devices. His solutions fall into three general categories: first, there is a reliance on a particular type of political and economic environment; second, there is the introduction of a specific concept of representation; and third, there is the development of a series of institutions—a divided but powerful central state, a federal system of governance, and a written constitution—that will make it exceptionally difficult for a tyrannical majority to assume political power. Let us examine each of these aspects of the Madisonian solution.

Restraints on Majority Tyranny

Prior to Madison, it had been a commonplace assumption that the democratic form of government was best suited to small city-states, like the Athenian polis. Since democracy aims to translate popular preferences into public policy, it was understandably thought that its most accurate form would occur if citizens gave voice to their own thoughts. This type of direct democracy, while guaranteeing that the people’s views were accurately portrayed, necessarily limited the size of the state. Although notions of including some scheme whereby certain people were elected to represent the views of other citizens had been advanced, the conventional wisdom held that democracies or republics must be small. Republics are states built on popular, though not necessarily democratic bases that enable the liberty of citizens to participate widely in public affairs. They emerged historically against monarchies, wherein the public power was that simply of the sovereign monarch and its functionaries. Republics, by contrast, stress the ultimate authority of the citizenry—popular sovereignty, or the popular rule of the citizenry—and while they may have democratic features, their emphasis is more on enabling free citizens to share in public governance than requiring fully democratic participation. Republics vary in form; historically they divided power along class lines. By Madison’s time, they were associated with states that disperse the powers of government into several
branches, such as the executive, legislative, and judicial branches. These branches blend and balance power between them, wherein some citizens—presidents, representatives, judges—represent and act on behalf of the views of other citizens. Direct and frequent citizen participation is not required in republics. As we shall discuss shortly, Madison’s idea of a republic involved representation as one of its essential elements. His real departure from the tradition came with his advocacy of creating a political system for governing a very large territory and population.

Turning the classical position around, Madison argued that one of the major causes of instability in prior republics was that their small size made it easy for a tyrannical majority to form and gain control of the government. In the close quarters of a polis or small state, human passions could easily become embroiled at a moment’s notice and the wrath of the majority unleashed upon innocent citizens. If the physical area of the state was much larger and its population more numerous, given the technological limits of human communication at that time, the formation of a majority faction would be a far more difficult enterprise. While the majority in one area of the state might be engulfed by a factional impulse, the spread of such views might well be contained by the sheer size of the country. Furthermore, given what he assumed about the diversity of human passions, Madison argued that a large number of citizens would tend to produce a whole series of small interest groups, thereby making it very difficult to form a majority that was bent on depriving others of their rights. The diversity of human interests would, at worst, lead to the formation of numerous minority factions that could then be controlled through majority voting rules. In Federalist 10 Madison wrote:

"Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other."¹²

Rather than attempt to prevent the formation of these self-interested and factional groups, governments ought to tolerate them, for the effect of many interests would be to ensure that no one group could gain sufficient power to be tyrannical. “Society itself will be broken into so many parts… that the rights of individuals… will be in little danger from interested combinations of the majority,” Madison observed.¹³ The existence of a multiplicity of factions would have the effect of achieving a balance or equilibrium, thereby mitigating against the possibility of

¹²Ibid., p. 64.
¹³Ibid., p. 351.
a majority faction. Of course, it remains crucial to remember that Madison’s real fear is not some abstract, unspecified majority faction, but in Martin Diamond’s words: “the majority faction, i.e., the great mass of the little propertied and the unpropertied.” In fact, to operate successfully, Madison’s political theory assumes, according to Diamond, a “modern commercial republic” where “the commercial life must be made honorable and universally practiced.”14 This point is well taken. When Madison described the virtues of an extended political space, he had in mind a particular type of economy, a commercial republic where acquisitive individuals could pursue their own economic self-interest and, as John Locke and Adam Smith promised, the entire society would benefit economically. More important, if individuals could find meaning pursuing economic matters—as farmers, traders, artisans, craftspersons, lawyers, doctors, bankers—they would have less interest in interfering in political matters. Or, put another way, political matters, the “public good,” and the republican virtues of the citizenry would be centrally concerned with enabling stable economic pursuits.

Here, then, is the Madisonian notion of an extended republic. We must pause and note both how well the argument flows from his premises and the ingenuity of the solution. People are selfish and power seeking by nature, and those drives have historically led to the downfall of regimes based upon popular sovereignty. Instead of attempting to change people so that they behave in a more benign fashion (an improbable task at best), government should take these selfish motives and use them to produce a situation where they cancel each other out; the private, selfish vices will unintentionally produce a public, seemingly selfless virtue. This is a clear statement of the idea that twentieth-century political theorists call pluralism. Individuals and groups are viewed as the best judges of their own interests and should be allowed to form at will. Because of the inability of any one group to dominate the others, there will be plural centers of power within the society, and they will tend to check and balance each other to produce a society that is both stable and enduring. Madison accomplished this feat without removing the freedom that permits factions to form, thus ensuring that individuals will at least have the opportunity to pursue their own selfish interests.

One consequence of the logic of the extended republic in the United States was manifest destiny. As the population increased, so too did the territory where liberal self-acquisitive individuals and the factions they formed created, through colonial perseverance, room to establish private property. This meant that indigenous peoples were driven out, killed, or assimilated into the new system—practices that were part of liberalism’s colonial expansion in other places as well.

It should be remembered that Madison thought the major source of faction was the human desire for economic goods. Recognizing the economic bases of most factions, this first part of Madison’s design proposed to control their detrimental effects by allowing the formation of a great number of factions and putting them in competition with one another. We have, then, in this aspect of his vision, the equivalent in the political realm of some form of economic *laissez faire* (literally, “allow them to do”), whereby Madison assumed that multiplicity and competition usually lead to equilibrium and ensure that no one group gains political ascendancy. Indeed, the entire system is designed to avoid the political equivalent of monopoly in much the same way as the liberal economic theory of the free market sought to accomplish the same end in the economic arena. As a preliminary observation, then, we should note that the Madisonian political system—like both the Hobbesian and Lockean systems—seems to be politically compatible with some form of free market, capitalist economy where the state plays the minimalist role of umpire to competing factions. We shall explore the relationship between political systems and economic systems at a later point in the book; for the moment let us move on to Madison’s concept of representation, the second device that he proposed for controlling factions.

**Control Through Representation**

It should be noted that Madison carefully distinguished between the terms *democratic* and *republican*, specifically calling his proposed regime a *republic*. To his mind republics differed from democracies, not only in that the former preserved liberty and were larger, both physically and numerically; republics also included schemes of representation. This last distinction has largely been lost in modern times, where we tend to think of all democracies as possessing some scheme of representation. The term *representative government* is very close to the Madisonian republic. Whether or not it is appropriate to consider Madison’s system democratic is an important question that we will confront shortly. For the present, let us examine further the Madisonian notion of republican government.

In *Federalist 39* Madison defines a republic to be “a government which derives all of its powers directly or indirectly from the great body of the people.” A few things should be said about this definition. First, although power must ultimately come from “the people,” it may be authorized by indirect methods through representation. As will become clear, Madison tried to keep the relationship between the people and the government as indirect as possible. Indeed, in his concluding contribution to *The

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Madison boasted that “the true distinction” between the ancient republics and his proposed experiment “lies in the total exclusion of the people in their collective capacity.” To be specific, this means that “the people” never act as a single whole, as “Americans” per se. Rather, they act as members of a state or a local political unit. This structure, as Madison designed it, has enormous implications for any meaningful concept of majority rule. Even during a presidential election, when one-third of the Senate and the entire House is up for election, citizens vote as members of a congressional district, a state, and as part of the electoral college. And this, as we have witnessed in the 2000 presidential election, can lead to a situation where the candidate with the most votes is not elected president. Second, just who comprises the category of “the people” is not readily apparent. What at first appears to be a rather open, popular basis of government eventually turns out to be rather restrictive. Perhaps more important, it is also evident that Madison tried to keep suffrage as limited as political reality would permit. Overall, then, Madison's system of representation was designed to serve functions other than the mere reflection of popular opinion: he viewed it as an additional curb on potentially tyrannical factions.

In many respects the term representative contains built-in ambiguity. Common language as well as philosophical tradition employs it with two rather different meanings. On the one hand, a representative can be viewed as a person whose task is to discover the preferences of those whom he or she represents on a particular matter and to cast votes in accordance with the wishes of a majority of those constituents. In this meaning, the representative is seen as the accurate reflector of the constituency, simply a delegate to collect, synthesize, and report opinions. Modern technology has the capability of replacing this type of representative with a computer programmed to record and transmit majority preferences.

The other meaning of the word has the representative standing, as it were, in the place of the constituents and making decisions deemed to be in their, the constituent's best interest, whether or not that corresponds with the constituents' expressed interest. Here the representative acts as the trustee of the constituents, exercising judgment to the best of his or her ability, as each of them presumably would do in a situation of direct democracy. In this meaning of the word, it is possible that the representative will act contrary to the opinions of a majority of the constituents, feeling that he or she, in a Burkean manner, has more information, possesses a broader vantage point, or simply knows better what is best for both the represented and the entire nation.

These are two rather different notions of what it means to be a representative, and presumably any conception of representative democracy will vary depending on

16Ibid., p. 428; Madison's emphasis.
the meaning given to the term. The most common resolution of this difficulty is to use the word with both meanings; in effect, to assign simultaneously two separate, and perhaps contradictory, roles to the legislator. Where the representative is normally the transmitter of majority opinion (the reflector), at times we expect that person to assume the role of statesperson and to ignore constituent wishes (the trustee) if those wishes are believed to be wrong. It is in the performance of this role that one can write about “profiles in courage,” where a representative suffers electoral defeat as the result of a principled stand taken against the wishes of his or her constituents. In the Madisonian scheme, the legislative role occasionally is seen in this dual fashion, but the Madisonian representative is usually perceived in the trustee role, providing a check against majority tyranny by discerning “the true interest” and “public good” “of their country.” Madison is rather explicit about the matter:

The effect of the first difference [representation] is, on the one hand to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves.17

The implications for popular sovereignty are important. There will be times, more than a few, when the Madisonian legislator will be expected to ignore the temporary or partial considerations of the people represented, thereby denying the supremacy of the popular will—all for “the public good.” One of the reasons for the complexity of the process of elections described in the Constitution, as well as the staggered terms of office and varying length of terms—six years for Senators!—is to provide for some distance between the representative and the constituency. Perhaps, given sufficient time to think the matter over, cooler heads among the constituents will realize that their representative’s act of frustrating the immediate popular will was the best course of action after all. Still, representatives must eventually submit themselves for reelection and too many such acts of courage will surely lessen their chances of reelection.

Control Through Institutions

The Madisonian concept of representation is sometimes described as an antidemocratic device, and, if by democracy we mean rule by the majority, in a sense that

17Ibid., p. 62.
is correct. There is little doubt that this legislative role is designed on occasion to frustrate majority will. Still, Madison could argue that it is but a temporary check on majorities and ultimately consistent with the principles of popular sovereignty, for the constituents have the last word at election time. It is rather difficult to speak of the Madisonian conception of the legislator in a vacuum, for it is part and parcel of the elaborate framework of institutions devised to provide additional safeguards against tyranny. Insofar as this third general category of mechanical or legal checks involves the entire structure of the United States Constitution, our discussion must, of necessity, be limited. Still, we can hardly ignore the political framework that was to make the whole system function correctly.

We have seen that the effect of Madison’s first defense against tyranny (the size principle of enlarging the space of governance) was to produce a society in which varied interest groups were free to pursue their designs while ensuring that no one group could achieve sufficient dominance to become tyrannical. The framework of legal rules and governmental institutions advanced in the Constitution was designed to implement the size principle politically by providing access to major interests, while ensuring that there were appropriate checks on all the groups concerned. In this sense, the entire Constitution, with its elaborate federal system, separation of powers, and checks and balances, is the political reflection of the size principle discussed earlier. Presupposing a multiplicity of interests, government must give these interests access to political power so that they may press their claims effectively and, correspondingly, have sufficient defensive power so that they may block potentially tyrannical actions by other groups. “Ambition must be made to counteract ambition.”

The initial device designed to accomplish this was the written constitutional document itself. It granted to the government certain enumerated powers, restricting governmental involvement to only those activities explicitly or implicitly granted to it. Equally important, the Constitution expressly prohibited the government from taking certain actions. As the supreme law of the land, the Constitution would prescribe the powers and limitations of the government. Over the course of time, the Supreme Court embraced the concept of judicial review and thereby became the ultimate arbiter of claims regarding the powers and limitations set forth in the document. This firmly established the principle of limited government and ensured a legalistic framework of operation. Tocqueville, as early as 1835, observed that every matter in the United States eventually becomes a legal issue. Even if this was not the intention of the framers, firmly established legal remedies for the resolution of conflicts have slowly become the norm.

The other two major institutions of the federal government—the executive presidency and the legislative Congress, with the latter comprising the House of
Representatives and the Senate—were specifically designed to give representation to large interests within the country. The president, although supposedly “above faction,” was viewed as particularly responsive to the propertied classes, and the veto power provided a means to check the excesses of the legislative branch. This is readily apparent if we recall that the method of presidential election as detailed in the Constitution is the electoral college system, wherein the president is chosen by a group of electors who act as representatives of their respective states.

Given the closer proximity of the legislative branch to the people and remembering Madison’s concept of humanity, it seems natural that Madison should fear this branch the most. To control this popular branch with its power to create laws, Madison divided the legislature into two houses: an upper and a lower chamber, each with similar but not identical powers, thus giving access to interests of different groups. Representation in the Senate was by states, thereby ensuring that the interests of the large populous states would not overshadow those of the smaller ones. Granted, the existence of relatively independent states would have dictated some sort of federal arrangement in any case, but if we assume with Madison that certain types of interests can be geographically defined (that is, by state boundaries), the Senate affords them an important voice. The House of Representatives served as the voice of the people, and through the requirement of frequent elections (every two years) it would presumably remain closest to the everyday wishes of the population. At that time, the House of Representatives, designed to provide representation for the more populous states and urban centers, was the only directly elected institution in the entire Madisonian scheme. But with a minimum of 30,000 constituents per district, even this body would be composed of representatives rather removed from the potential excesses of the people.

Thus, these three major institutions—the executive, judicial, and legislative, the latter being further divided into two—are separate, each with unique powers; they are, however, also interconnected through the necessity of gaining the acquiescence of the other branches before public policy can be formed. In certain exceptional instances, of course, it is possible for the will of one branch to dominate over another—as in the case of overriding a presidential veto—but the general principle is nicely summed up by the old phrase of “checks and balances.” In many ways, while cooperation and acquiescence in policy making were of course possible, each branch served as an institutional impediment to the potentially dominating force of faction.

To the national institutional schema, Madison added one more by promoting a federal system of government, where some powers were divided between the national government and the governments of each separate state. This meant that not one, but fourteen governmental systems—each with its own system of com-
peting branches of power, checking and balancing each other—had to be circum-
navigated if any fundamental issues were to become law.

Other Devices of Control

In a similar fashion, the practice of staggering elections and terms of office acted as another restraint against potentially factional majorities. While members of the House of Representatives are elected every two years and presumably reflect rapid changes in public opinion, control of the Senate and the presidency requires a minimum of four years. It would take that long for a majority bent on tyranny to assume control of sufficient magnitude to put its design into effect. But we must not overlook the Supreme Court’s role in all of this. The justices are not elected; rather they are appointed to serve (assuming good behavior) for life. This immunity from the electoral process serves as yet another check on tyranny. Presumably, a majority could be frustrated for as long as it took a certain number of older justices to die or retire. It must be emphasized, however, that these are only structural limitations on majority power; in the real world a Supreme Court that did not somewhat follow the election returns would undoubtedly endanger the legitimacy of the institution.

Similarly, in a system that is to a significant extent based on the self-interest of representatives in being reelected, even a senator not up for immediate reelection would be foolish to ignore a powerful shift in popular will among constituents. And it is probably impossible to sustain a presidential veto over legislation strongly desired by a clear majority over a long period of time without sacrificing the idea of popular sovereignty. Minimally, what Madison hoped to achieve with the combination of institutional checks and balances and other mechanical devices was delay—a period of time in which members of a majority faction might rethink their actions and change their behavior. In this context, we should note the emergence of a slightly more optimistic side to the Madisonian view of human nature and the possibility of securing what he called a “public good” that is somewhat consistent with the wishes of the people.

Earlier it was stated that Madison’s assumptions concerning the essential selfishness of human beings were in line with Hobbes’s view. Although true, Madison was sophisticated enough to see that there were different types of selfish interests, some more disruptive of political systems than others. He was particularly impressed with how rapidly some popular passions—most notably those based in religion—could infect a majority and result in some precipitous action that, upon further reflection, would have led even selfish people to avoid. We already noted
that Madison was influenced by the political writings of David Hume (much of Federalist 10 is borrowed from Hume's work), and that a major focus of Hume's thought was a distinction between calm and violent passion. Although both types of passion were based upon individual self-interest, the latter was more volatile and temporary, while the former looked to long-range selfish concerns. The violent passions of people might tell them to try to take away the natural rights of members of the community for some offense against popular opinion, but their calm passion would warn them that on some future occasion they too might be subject to the wrath of some new irate majority. Note that both of these passions are based upon selfish interest, but they would lead to quite different kinds of behavior. If institutional checks and balances could produce a delay in which tempers were allowed to cool, long-range self-interest, or as Tocqueville called it, "enlightened self-interest," might prevail.

One of the reasons why many of the founders were preoccupied with processes of education involved an attempt to ensure that citizens would adopt this long-range view of their interests. While Madison paid too little attention to such matters of habit and education in The Federalist, one of the later concerns of the leadership of the country was the production of a well-educated citizenry. Some commentators argue that if Madison had been more concerned with developing democratic habits in the populace and with ensuring the existence of a liberal value structure, he need not have been so concerned with institutional checks on majority tyranny. Whatever the case, the institutional checks were intended at least, in part, to encourage the ascendancy of enlightened self-interest.

MADISON'S REMEDY: LIBERAL OR LIBERAL DEMOCRATIC?

"In the extent and proper structure of the Union, therefore, we behold a Republican remedy for the diseases most incident to Republican Government." These words, from the concluding paragraph of Federalist 10, are Madisonian shorthand for summarizing the entire endeavor of the framers as well as their claim to fame. We have attempted to describe the "extent and proper structure" remedies of the Madisonian republic using the threefold distinction of size, representation, and institutional checks. Madison's system is brilliant republican political theory. Through the structure or design of the system itself, all but the most intense factions will automatically be thwarted. A quasi-mechanical system of government, employing nonhuman factors wherever possible, was "the remedy" to factions. Indeed, even Hobbes's Leviathan—that gathered, one recalls, the powers of free individu-

10Ibid., p. 65.
als—relied too heavily on humans. Less subject to individual human frailty, Madison’s system attempted to utilize nonhuman factors like sheer geographic expanse and institutions with separate powers that would regulate the activities of citizens who, in turn, would find those institutions nearly impossible to change. Through an extended commercial republic, itself divided into a federal system of governments, with each component having a degree of power, Madison hoped to create equilibrium. The division of the central government into three branches, each one step further removed from the people, provided an additional safeguard. Limited suffrage and a trustee model of representation created more checks. Lastly, a written constitution that delegated limited and enumerated powers while it prohibited others, comprised the final bulwark. Thus, Madison strove to build a machine-like structure of government that would automatically divert and diffuse factions. The system would check itself by not allowing its human operators to become too powerful. Madison created an ideal, self-perpetuating Leviathan that would provide the prerequisite social stability for the attainment of commodious living.

It should be reemphasized that the Madisonian system is specifically designed to impede political change. If any single federal political institution says “no” to new legislation, that policy is defeated. Its advocates must go back to the drawing board and devise a new strategy, which itself takes time. Put differently, when there is governmental gridlock, the system is functioning exactly as designed. When it seems as if “nothing is happening” in Washington, that conclusion is wrong, for the government is functioning well whenever it refuses to change public policy. It is designed partly to reinforce the status quo. When “nothing is getting done,” government is working just fine, especially for those who favor the status quo. The Madisonian design itself is conservative in nature; it privileges the past over the future.

**Criticisms of Madison’s System: Republic and/or Democracy?**

Several important questions thus arise: (1) To what extent does a political system meant to reinforce the status quo meet Madison’s own standard of a “republican remedy”? (2) Moreover, how, if at all, can this system be considered democratic?

Concerning its “republican” features, Madison succeeded to a great extent. He desired a government based upon the principle of popular sovereignty, mixed and balanced institutional forces, and guaranteed access for citizens seeking to engage in political life. All of these would avoid the tyrannical excesses and instabilities of past forms of popular government. He achieved these goals, but it must also be remembered that, for him, popular sovereignty could be exercised either “directly or indirectly” by the “great body of the people.” This opened up space for the
politically involved citizens to act more according to their own interests than the interests of the people. That is, while Madison's reliance primarily on indirect controls is consistent with his definition of republican government, it does not necessarily ensure that popular wishes will always be translated into public policy by the politicians who represent them. This may be a feature of all such republican solutions. The line between ensuring popular sovereignty and restricting it may be thin.

It is this facet of Madisonian government that makes thinking of it as democratic more difficult. It permitted individuals the liberty to acquire property, form interest groups, and press demands on government, and it provided systems through which the constantly changing desires of people may be accommodated politically. Yet in seeking to prevent majority factions from abusing and violating the rights of others, Madison set up institutional arrangements to frustrate the will of the majority. So the two questions are somewhat related. Were the constraints Madison instituted sufficient to prevent tyranny and thus ensure a republic? Or were they too heavy, such that the will of the majority would be frustrated and democracy undercut? Did Madison ensure popular sovereignty by rejecting democracy?

Many individuals, particularly after the constitutional system had been in operation for a period of time, believed that Madison's efforts to check majority faction had not been completely successful. He had, it was argued, made no provision whatsoever for the development of the political party system that emerged early in the history of the republic; that is, even if one granted that his system controlled the development of natural majority factions, it did not stop the formation of artificial and enduring majority factions produced by political parties. Indeed, Madison was one of the initial founders of the Republican (now Democratic) Party. Parties were capable of forging temporary alliances among disparate minority factions for the purpose of securing control of the political structure, whereupon they might try to achieve minority goals at the expense of the rights of others. If they were to capture several parts of the structure, one of those parts might acquiesce to or conspire with the other's ambitions instead of countering them. Although this party type of faction was not the natural majority type that Madison so feared, it was equally capable of tyrannical action.

This general position was most forcefully advanced by John C. Calhoun (1782–1850), the major spokesman for southern interests in pre-Civil War days. In the name of further defense of individual and states’ rights, Calhoun argued for an extension of the control mechanisms on majorities, largely by giving any major interest group (states, sections) veto power over any legislation affected by it. Such a position would have further diminished the power of the national government and greatly expanded the sphere of state action. Whatever the controversial details of Calhoun's proposals (his endorsement of slavery the most well-known), he dis-
cerned that Madison correctly identified the major problem of majority faction, but that his control devices were only partially effective and would have to be supplemented.

On the other side of the coin, many individuals, some of whom we shall meet in the next section, asserted that Madison had been so preoccupied with the potential of majority tyranny that he produced a system that so constrained majorities that it made, as we suggested above, a mockery of the principle of popular sovereignty. From this perspective, the sociological and political checks against majorities made it easy for a small group of people to frustrate legitimate majority interests and desires, thereby producing a government by minority. Minimally, the minority in control of the political system at any particular time could deny legitimate popular claims, but it also could produce the opposite of Madison’s great fear—that is, tyranny by the minority. These days, it is not uncommon for democratic critics to call the American system an oligarchy.

Finally, in an extension of the foregoing argument, there are those who contend that Madison achieved precisely what he intended. From this vantage point, Madison was a liberal, Virginia aristocrat, terrified of the possibility of majority power over the propertied interests of his class, yet sufficiently sophisticated to realize that some form of popular government was inevitable in America. As such, he devised an ingenious system that gave some power to popular majorities, sufficient to permit them to “blow off steam” and to believe they were actually governing, while making it virtually impossible for them to achieve enough control to initiate basic change in the emerging capitalist economic system. As Madison explained it, “A government like ours has so many safety-valves, giving vent to over heated passions, that it carries within itself a relief against the infirmities from which the best of human institutions cannot be exempt.”

Lasting controversy thus surrounds the character of Madison’s “republican remedy” to the untoward effects and unrest of factions. Questions concerning the political character of the United States continue through today. To the extent that Madison ensured popular sovereignty, his system was more or less democratic in terms of allowing the will of the people to govern. The greater the role for the people’s wishes, the more republicanism and the more democracy; the lesser, the less republicanism and the less democracy. Of course, we mean “democracy” as a principle. Connected to this, we must ask who, according to Madison, comprised “the people”? What were his views on who should participate and who should not? Was his thinking consistent with the liberal democratizing tendencies of the day,

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19Madison, quoted in Matthews, p. 173.
wherein securing liberty and expanding the franchise were both significant goals? What were Madison’s thoughts when it came to thinking about suffrage?

Madison’s View of Suffrage

As we have noted, Madison carefully separated himself from democratic movements of the past. He found them unstable and preferred his republican system, which required only “indirect” control from “the great body of the people.” Just who, then, comprised “the great body of the people”? We can get some idea by examining Madison’s view of suffrage.

Like many liberals favoring republican governance of his day, Madison recognized the importance of the franchise question and was concerned with the impact non-property holders might have if given the vote. At the Constitutional Convention of 1787, he argued for a property qualification for electors to the House of Representatives: “the freeholders of the Country would be the safest depositories of Republican liberty.” When the issue of voting for the Senate arose, he again advocated that “Landholders ought to have a share in the government, to support” their “invaluable interests.” The voting pattern must be drawn up, he stated, “to protect the minority of the opulent against the majority.”

Although no property qualification for voters or officeholders appears in the body of the Constitution, a motion was carried at the Convention instructing a committee to fix property qualifications for voting. Failing to agree upon the nature of the qualifications to be imposed, delegates to the Convention dropped the issue and returned the decision to the individual states. Madison knew that by giving the states the power to establish voting standards, the immediate result would probably be that not even all white males would have the vote, since many states would impose property qualifications. Although scholars disagree on the limits of voting in 1787, more precise information for the election of 1800 exists. In that election, out of the entire population of the United States, only 550,000—approximately 10 percent of the population—could vote. At the time of the Constitutional Convention, then, Madison was no democrat: He did not accept the equal right of every human to participate in the governing of society. Some years later, however, he changed his mind.

In 1821, while correcting and expanding his own Convention notes from other recently printed accounts of the Constitutional Convention, Madison recorded a modest, but highly significant, change in his views on suffrage. Commenting on his

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prior Convention speech of August 7, 1787, he noted: “These observations... (of 1787)... do not convey the speaker’s more full and matured view of the subject, which is subjoined. He felt too much at the time the example of Virginia.” Now, more than three decades after arguing his freeholder’s position, Madison explicitly rejected any voting conditions that would, either then or in the future, exclude the mass of society from some degree of political participation.

In this 1821 revision of his Convention position, Madison warned: “Allow the right [of suffrage] exclusively to property, and the rights of persons may be oppressed.... Extend it equally to all, and the rights of property or the claims of justice may be overruled by a majority without property, or interested in measures of injustice.” Madison reviewed several qualification schemes on which suffrage could be based, but he rejected a categorical property qualification because “It violates the vital principle of free Government that those who are to be bound by laws, ought to have a voice in making them. And the violation would be more strikingly unjust as the lawmakers become the minority.” Still, Madison ended up endorsing a system very similar to his original 1787 position: “Confining the right of electing one Branch of the Legislature to freeholders, and admitting all others to a common right with the holders of property, in electing the other Branch.” This system of allowing “universal” suffrage for one legislative house will suffice, he argued, until “the non-freeholders should be the majority.”

Recognizing the inevitability of the majority eventually becoming non freeholders, Madison accepted the inevitable. In tones, and logic similar to that of James Mill, whom we discussed in the prior chapter, Madison endorsed white male suffrage:

Under every view of the subject, it seems indispensable that the Mass of Citizens should not be without a voice, in making the laws which they are to obey, & in chusing the Magistrates, who are to administer them, and if the only alternative be between an equal & universal right of suffrage for each branch of the Government and a confinement of the entire right to a part of the Citizens, it is better that those having the greater interest at stake namely that of property & persons both, should be deprived of half their share in the Government; than that those having the lesser interest, that of personal rights only, should be deprived of the whole.

Hardly a ringing exaltation in support of democratic principle, the preceding passage does, nevertheless, show that Madison recognized the necessity of individualistic liberalism becoming liberal democracy. The answer to our question, then,

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22Ibid., pp. 508-9.
is twofold. At the time of the Constitutional Convention, Madison cannot be considered a liberal democrat. An individualistic liberal to be sure, but not a democrat. Some time in the first quarter of the nineteenth century, however, Madison backed into liberal democracy as he recognized the political impossibility of denying the vote to the ever-growing propertyless class.

We have attempted to present James Madison as the primary spokesman for the individualistic liberal tradition of Hobbes and Locke in the early years of the United States. It should now be clear that his enterprise involved much more than merely “fitting” that tradition to the unique conditions that prevailed in America. His “republican solutions to the evils inherent in republican government” constituted a real and lasting contribution to the ongoing dialogue concerning the appropriate nature of a liberal democratic society. Finally, Madison’s scheme, because of its embodiment in the Constitution, in many ways set the context for the aforementioned debate over republicanism and democracy, at least in its American context. In effect, Madisonian politics became, in the words of George Beam, “usual politics”: triumphs and failures, critiques and proposals for reform in the American system have been generally advanced within the intellectual context formulated by Madison. This leads us to a discussion of perhaps the greatest challenge to the Madisonian system from within: majoritarianism and its consequences.

**MAJORITARIANISM AND DILEMMAS OF DEMOCRACY IN THE UNITED STATES**

Many students of American history view the Constitution of 1787 and the Madisonian political philosophy it embodied as a conservative reaction to the more majoritarian ideals expressed in the Declaration of Independence. Where the Declaration recognized equality, freedom, and the supremacy of popular will as the ultimate goals of government, Madison’s system pursued republican stability by compromising on equality, attempting to restrict unrestrained freedom through competition, and placing severe checks on the power of popular majorities. One need not agree with this depiction of Madison’s work to recognize that the overall pattern of development of, and challenge to, the American political system since 1787 has been toward increasing majoritarianism, and that this has constituted a challenge to the founding institutions of the country. Majoritarianism here indicates the growing power of majorities to make not simply demands on government but effective ones, such that government responds with new powers beyond its original functions. The growth of majoritarianism thus raises classical questions of liberalism in the context of the United States: What effect will demands made
by the majority have on the principle of liberty upon which Madison so carefully constructed the governing institutions of the country? This can be viewed as an, perhaps the, inherent tension between liberalism and democracy. Let us discuss this in a combination of thematic and historical terms, using many examples to illustrate the importance of the rise of majoritarianism.

Recall that the entire American experiment with liberal democracy was initiated in a period of profound fear of the power of the individual states to infringe on the private sphere of personal liberty. Drawing on the ideas of classical British liberalism, the framers produced a system intended to ensure that the individual possessed a large sphere of action that was not subject to governmental involvement. To use the standard terminology, speech, religion, assembly, movement, and economic activity were areas largely removed from political interference. It was this emphasis that made the American republican experiment consistent with the highly individualistic ideals of the mainstream liberal tradition. However, the system was also predicated upon the assumption that individuals and groups would also press their demands upon the government in an attempt to produce policies that maximized their private interests. This being the case, governmental powers might grow consistent with those demands. These twin goals and expectations—that of protecting liberty through limited government and that of ensuring that groups can make policy demands upon government—produced, over time, a serious tension of principled objectives within the system. On one hand, the goal of ensuring a wide range of freedom required that governmental powers be very limited; on the other hand, the goal of ensuring that groups may demand government to act on their behalf required that the powers of government be allowed to grow beyond the protection of liberty.

The development of a two-party political system and the expansion of the franchise led the way in producing tension between these principled objectives. Although the U.S. party system produces parties that are, as broad coalitions, weak relative to the highly disciplined parties of parliamentary systems, the two-party system provided a focal point for groups interested in attaining power to seek to form majority coalitions. These majorities also slowly included segments of the populace—white non-property-owners, and persons of color—who were eventually granted the vote, so that universal suffrage became the hallmark of late twentieth-century American democracy. However imperfect the American political system of today might be in democratic terms, it functions in a far more majoritarian fashion than its eighteenth-century ancestor.

Of course, the issue of majoritarianism transcends these practical developments in important ways. As democracy became the governing principle of U.S. politics, pressures to make the government more responsive to the will of the majority,
whatever its composition, grew. To be sure, a majority could, at times, pressure a liberal government to act in ways that ensure or widen the realm of liberty for all citizens, but there have been efforts to create majorities that would reduce that realm as well. What happens, for example, if the majority requires constraints be placed on individuals acting in realms that were previously enshrined as realms of individual liberty? This has happened in debates over oil pipelines and eminent domain, for example, and in advertising, where legal restrictions have been placed on where and how certain goods may be advertised or promoted in private and public spaces alike. The freedom of the tobacco industry to advertise its product in a glamorous manner on television is reduced to the extent that it not only is prohibited from using that medium, but it must also include health warnings on its packages. The old notion of *caveat emptor* (let the buyer beware) is replaced by the legal responsibility of the producer to warn consumers of potential health risks. Responsiveness to majoritarian preferences has in this way loosened, if not broken, the traditional tie between individualistic liberalism and capitalist economics. To put the point more starkly, what happens if the majority will is to nationalize major areas of industry in the direction of socialism? This is not so-far fetched a scenario: as we write, critiques of American “oligarchy” and calls for a “political revolution by millions of Americans” from the self-identified democratic socialist Senator of the American state of Vermont, Bernie Sanders, are mobilizing tremendous support in the presidential primary elections of the United States Democratic Party, a coalition that historically supports politically liberal, but not socialist, policies. Whether Sanders emerges victorious is less important here than the fact that, in principle, socialism could happen in the United States through liberal democratic means. Indeed, some Marxists, including Karl Marx himself, viewed the extension of the franchise in places like England and Germany as providing the *democratic socialist* possibility of peacefully legislating a socialist economic system, rendering the violent revolution that more “scientific” Marxists foresaw, the rationale of which we shall discuss ahead, unnecessary. Were democratic socialism to come to power by election in the U.S., there is little doubt that the first concerns voiced will be ideologically liberal concerns about threats to private property rights.

Madison’s liberal system anticipated the problem of growing majoritarianism to a certain extent. The extended commercial republic with built-in checks and balances was especially important in this regard. It was intended in part to assure that there would be no governmental action, no expansion of governmental power, unless a broad consensus existed on a particular matter. The system was designed to reinforce the liberal ideal of limited government by delaying and making it difficult for majorities to form on any issue, something that has had the effect of frustrating a good many active citizens and groups over time. The system of represen-
tation, checks and balances, and mixed and different powers provides numerous challenges in the process of translating interests into policy. When the multiplicity of interest groups and the checks and balances perform their function of balancing competing interests, a mandate for increased powers on the part of the political system is very difficult to achieve. That being the case, the scope of government was intended to be limited not only by law, but also by the dispersion of widespread demands within the system. It was in this way that the Madisonian system reinforced the inherent individualism of liberalism as an ideology.

However, along with the democratizing changes mentioned earlier, structural changes—such as the popular election of senators and the evolution, starting with President Andrew Jackson as a self-styled “man of the people,” of the popular role of the presidency—gave greater power to the people at the expense of states and propertied interests. The extent of that evolution toward majoritarianism and some reactions to that process comprise much of the subject matter of contemporary liberal thinking.

The Popular and Imperial Role of the Presidency

Let us take the example of how the presidency, in combination with the two-party system, has increasingly become a site of more majoritarian demands, especially in times of social, international, and environmental crises. The presidency was in part designed to ensure that the person who occupied the office was “above politics.” The election of a president was left to an Electoral College, a collection of presumably distinguished people appointed by the states, who would gather and choose the best person for the office. But do not forget that even these electors, governed by the rules of the Electoral College, can select a president who does not win the popular vote of the citizens. George Washington, the first to hold the office, succeeded somewhat in retaining the image of nonpartisanship, but the advent of the party system in direct reaction to his regime ultimately made this an impossible task. Further, despite rhetoric advocating a nonpartisan leader, the method of presidential election ensured that, to a certain extent, the president would be the representative of minority interests. Insofar as the members of the Electoral College were appointed by the legislatures of the varying states, and those legislatures were dominated by property owners, it is appropriate to view this office as a further check against propertyless majorities. The next two hundred plus years in the history of the presidency were, however, marked by a sporadic but continual movement toward greater majority control of that office.
Chapter 3

The first major change in the presidency is commonly seen as occurring with the election of Andrew Jackson (1767–1845) in 1828. Although the nature and extent of Jacksonian democracy remains a matter of significant controversy, there is little doubt that the symbolic representation of the office as responsive to popular, not elite, wishes marked a significant change from the intention of most of the framers. Once begun, the pattern of greater and greater influence of popular majorities on the presidency became a dominant theme in the development of American democracy. Importantly, the popular demands on the presidency coincided with poignant crises where the people looked to this single office, and the person in it, for leadership. Examples are familiar even to those with only a superficial knowledge of American history: Abraham Lincoln’s assumption of near-dictatorial power as commander-in-chief during the Civil War; Woodrow Wilson’s role as an international force in World War I; Franklin D. Roosevelt’s aggressive behavior on the economic and military fronts; George Herbert Walker Bush’s prosecution of the first U.S.-led war against Iraq; George W. Bush and Barack Obama’s prosecution of a global “war on terrorism;” and the latter’s efforts to confront issues of climate change.

These examples make clear that the American presidency in the twentieth and twenty-first centuries, largely as a result of both domestic and foreign crises, has become the prime focus of popular opinion, and as such increasingly responsive to the wishes of popular majorities. Changes in this one institution reflect, in a stark manner, an alteration in the concept of the entire governmental enterprise in the United States and parallel a changing view of the nature of liberal democratic government itself. While protecting the safety of society was part of the powers that, say, Locke and Madison envisioned for a liberal government, the range of influence exercised to that end, overt as well as covert and both inside and outside the borders of the United States, has expanded considerably beyond anything they could have imagined. Through the expanded scope of presidential action, the traditional individualistic liberal ideal of limited government gradually eroded under the rise of popular demands in the form of majoritarian liberalism.

Although there is currently a good deal of disagreement as to the extent of majoritarianism in America, let us at this point in our analysis accept the statement that changes in institutions (like the expansion of the right to vote) as well as advances in communications (like television and the Internet, especially in the YouTube and Twitter age) made it easier for cohesive majorities to form expeditiously and ensured that government would be more responsive to them. But what are the consequences of these developments for the traditional liberal democratic conception of government? Two of the immediate and far-ranging consequences are that the sphere of private action dear to individualist liberalism has been inevitably
diminished, and that the entire question of the legitimate extent of democratic majority action in a republic arose once again. There are two ways the sphere of private liberty has been diminished: first, as a consequence of ideological domination exercised over the minds of individual citizens within the everyday political processes of political participation; second, as a consequence of the growth of governmental jurisdictional powers into areas previously regarded as the sphere of individual personal liberty.

**Diminishing Liberty in the Political Process Through Ideological Domination**

We mentioned this kind of domination, and the particular meaning of ideology, different from our usage, that is implied by it, in the first chapter. Here, ideology means “illusions” that are propagated by the modern politician to mobilize support either on his or her behalf or for a particular course of policy. The contemporary theorist of ideological domination, Jürgen Habermas, analyzes the way that contemporary, majoritarian democracies actually stabilize themselves precisely through the ideological domination of the majority. Although democracies are said to function on the basis of citizen preferences, rarely do all citizens meet and deliberate together to produce a consensus on public policy. What happens more often is that, in the absence of such ideal democratic forums, the modern politician uses his or her power, and the power of various media systems, to produce the opinions in the minds of the electorate that will be favorable to the politician’s own policy preferences. Through both persuasion and manipulation, Habermas suggests, politicians seek to make the content of their will the content of the will of the individuals whose support they seek and need.23

When successful, ideological domination can produce majoritarian preferences that clearly infringe upon the liberties and fundamental autonomy of the citizenry to form their own opinions on matters of public concern—in this case of the majorities themselves! This is because the majority may believe that they are forming views free from any constraint when the situation may be otherwise; their views have been shaped by the skillful ideological efforts of powerful political actors. From the perspective of Habermas’s critique of ideology, those views have been created and, in a sense, fed to the populations who take them on as if they were their own. Ideological domination is an immensely widespread and successful form of majoritarian pressure that results from the modern politician’s dependence upon

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the will of the majority. The politician plays a primary role in producing that will—the will of the majority—to carry out the political goals of the majority. This form of domination might look like a kind of minority tyranny of the politician over the people, but it is required by a kind of majoritarian politics in which the powerful politicians in the two-party system, along with the majorities they create, act in ways at odds with the liberty of individual citizens to think and possess their own opinions. Again, those who are dominated are the members of the majority: their views have been shaped by an ambitious minority class of politicians seeking electoral advantage and power.

The modern election campaign is replete with examples of how politicians use repetitive slogans, laboratory-tested commercials and sound bites, and teams of surrogate strategists whose sole purpose is to shape, or spin, the understanding of the citizenry by “getting the message out.” The illusion (or counter-illusion) is frequently in “the message,” one that politicians and their supporters may nonetheless genuinely believe. Examples include such blanket and over-generalized statements as, “no new taxes,” “they hate us,” “bring the troops home,” “socialized medicine,” or “make America great again.” The relationship between such claims and political reality are usually much more complicated than the modern politician wants any individual to believe. To a certain extent, Madison’s republican system allows for this kind of domination as part of the usual politics of representation, but this does not diminish the extent to which contemporary majoritarian electoral politics significantly means a shrinking amount of liberty for the citizens to think and participate in politics with ideas that may be truly said to be their own, ideas that are reached as a result of their autonomous judgment as politically free individuals and citizens.

Such domination takes place not only in the context of political campaigns, but also on policy issues in the everyday media campaigns for or against particular policy initiatives. It takes place in domestic and international affairs alike. On the latter, where direct experience among the citizenry is either limited or extremely lacking, this form of domination is particularly widespread. The political campaign that the administration of George W. Bush launched to gain prior support for the war in Iraq in 2003 offers a dramatic illustration in this category and demonstrates the imperial powers of the presidency as well. In the run-up to the war, the Bush administration created the very strong impression of the imminent danger of the Iraqi regime to world and to U.S. security. Controversy still surrounds this issue, including disagreements among historians of the events. Many accuse the administration of “lying” to the public by “manufacturing” false evidence of weapons of mass destruction and connections between the Baath regime of Saddam Hussein and Al Qaeda. There are important questions here to explore. For our purposes
we need only note that, prior to the war, officials of the Bush administration stra-
tegically used the powers and prestige of the presidency, as well as their immediate
access to the major U.S. media, to create a worst-case scenario on both points of
concern at the time. The regime of Saddam Hussein, they confidently asserted,
both “possessed some of the most lethal weapons ever devised” and had convinc-
ing connections to “terror.” With great conviction and an unflinchingly serious
commitment to act on behalf of the American people in the aftermath of the
September 11th attacks, the Bush administration pressed these two points and suc-
cessfully created enough concern among the public to gain, before the war, vast
public support for war.

Some analysts of the presidency describe this effort as “presidential leadership”
in times of crisis. In fact, the Bush administration hoped to emulate the example
of the first President Bush, George Herbert Walker Bush, who had successfully
won popular support in 1991 to use force to end Iraq’s then short-lived occupation
of Kuwait, described at the time as a grave threat to the post-Cold War “new world
order.” Looking at these examples from the perspective of presidential leadership,
the two presidents may be said to have galvanized already existing majority support
to defend the country from threats against it or its interests. The presidents gained
the people’s support to act on their behalf; without a doubt, effective presidents
must mediate majoritarian desires in precisely this way.

On the other hand, if both campaigns for war against Iraq are examples of presi-
dential leadership, they are, from the perspective of the critique of ideology, excel-
ient examples of ideological domination as well. The major difference between the
ideological domination of the first and second wars against Iraq was only that the
second Bush administration got caught propagating a set of purposeful illusions
in its effort to persuade and manipulate the public opinion. The first Bush admin-
istration also engaged in its share of ideological domination to win support for
war, but that domination went, as such domination is intended, largely unnoticed.
Briefly, before launching Operation Desert Storm in 1990, the first President Bush
repeated over and over again that the United States would enforce “the will of the
United Nations” to require an unconditional withdrawal from Iraq, without nego-
tiations or concessions to the Iraqi regime. “No conditions, no compromise, no
concession,” he repeatedly emphasized in January 1991. “There’s nothing to nego-
tiate, other than the acceptance of the United Nations-mandated resolutions,”
he told the public on October 27, 1990. Significantly, however, in addition to a
demand for an Iraqi withdrawal, those resolutions included a call as well for Iraq
and Kuwait to negotiate their differences. UN Resolution 660, passed immediately
after Iraq’s violation of Kuwait’s sovereignty on August 2, 1990, “call[ed] upon Iraq
and Kuwait to begin immediately intensive negotiations for the resolution of their
differences and supports all efforts in this regard…” (UN 660). The Bush administration had, however, resolved early on that U.S. policy would be one of coercion; first through economic sanctions, then through war. It proceeded to persuade and manipulate the U.S. population into believing that these policies were equivalent to the will of the UN. In fact, acting according to the will of the UN was part of the lore of that war, helping to earn the first President Bush great respect in the United States as a world leader and the Gulf War of 1990 as a respectable victory.

The second Bush administration had hoped for a similar place in history. It seemed certain that it would find evidence to support its prewar claims of weapons of mass destruction once the invasion took place. But one did not need to await the launching of a single missile to spot the ideological domination that had already taken place in the administration’s pre-war rhetoric. At that time, no one—not even the inspectors who had spent years investigating Iraq’s weapons programs—knew for sure whether the Iraqi regime possessed weapons of mass destruction. From the perspective of the critique of ideology, this is the important point. In their argument for a necessary, so-called “preemptive” war, the Bush administration and its supporters resolved all open questions and ambiguities by proclaiming with certainty that the Iraqi regime possessed weapons of mass destruction. This certainty was a conclusion that they had reached and that they wanted the public to reach as well. The majority seemed to accept this case before the war. In the earliest days and months of the war, the Bush administration acted with significant popular support. Most of the public also accepted the Bush administration’s claim that the United States would be welcomed as “liberators of the Iraqi people.” These claims were designed to mobilize the country for war on terms that the Bush administration dictated.

The administration’s propagation of those claims thus constituted a classic example of ideological domination, where politicians seek through persuasion or manipulation to determine the content of the beliefs of the citizenry to get them to support their policies. This is no sly trick; all politicians especially understand that they must shape the will of the citizenry so that the citizenry supports them. Listen carefully, and you will often hear politicians say something like: “what the people need to understand is….” Again, this phenomenon frequently does not look like a direct infringement of the liberties of the citizens. Nevertheless, insofar as it is undertaken to influence—and, as Habermas puts it, to exercise a “psychic constraint” over the thinking of individuals citizens—it exemplifies one of the ways that liberty of thought and action has shrunk with the growth of majoritarianism in contemporary politics, aided of course by the mass organizational and strategic capacities of the contemporary two-party system and the modern mass
media that now has the technological capacity to provide 24/7 coverage of world events as they unfold.

Shrinking Area of Private Action

To understand the shrinking area of actual private action in a system with growing majoritarian tendencies, we must recall several points made earlier. It was stated that all governments, irrespective of their ideological goals, had to satisfy certain minimal demands that arose from the citizenry if they were to avoid instability and revolution. No series of demands sought by large numbers of citizens could be ignored by any political system for a long period of election cycles without risking social upheaval. Thus, the growth of majoritarian rule has meant a desire for more rapid translation of popular wishes into public policy and the inevitable expansion of the scope of government as it responds to those demands. Indeed, if it did not respond to them, it would be constantly risking instability. Faced with such a situation, one would naturally expect legislation to satisfy the demands of significant portions of the population whenever these demands arose. Thus, whenever the informal and customary control mechanisms of the private sector seemed insufficient to solve problems or to contain conflict, a demand was inevitably pressed on the political system to solve the problem through political rules; that is, to pass laws. As soon as this occurred, government had, in effect, turned a matter formerly considered part of the private realm of liberty into a subject of public policy. To clarify this process, let us refer, in an admittedly superficial way, to the Depression crisis in the United States in 1929 and the global economic crisis of 2008, which illustrate how governmental powers grow in tension with liberty, but as a response to demands made upon the government by the majority.

Although the American government had been involved in the economic sector to a considerable extent prior to the onset of the Great Depression, the myth that the free-enterprise system contained a self-control mechanism through supply and demand was still very much part of the conventional wisdom. The dominant idea was the liberal dogma that property was inherent in the individual and hence subject to only minimal regulation by government. Faced with the crisis of the Depression and the apparent inability of informal market mechanisms to solve that crisis, the political system was immediately bombarded with demands that it step in and legislate the Depression out of existence. It could not help but respond to those demands if it valued the continued existence of not only a particular regime, but also the entire form of government. Note that we are not discussing whether governmental actions during the Depression solved that particular eco-
nomic crisis. We are only saying that the political system had little choice but to take some sort of public action that would expand the powers of the government into the realm of liberty to alleviate private, and widely shared, suffering.

In the latter part of 2008, we observed a repeat of this example, as the Bush administration and congressional leaders of both parties hurried to come up with a “bailout” or “rescue” package to head off a financial crisis of enormous proportions. In 2009, the administration of Barack Obama rescued a bankrupt automobile industry. Some eighty years after the first Great Depression, the ideological myth of a self-regulating free market exploded domestically, while the international appeal of neoliberalism momentarily lost its near-hegemonic status, as the crisis swept around the globe. On all fronts, it suddenly seemed clear that politics—the actions of states and citizens—would need to come to the rescue of economics. Governments around the world started to buy public interest in banks, insurance companies, and major industries as “privatization” had to be saved by degrees of nationalization.

One can duplicate these examples in other areas. The most dramatic example may be the powers the government assumed with the passage of the USA Patriot Act shortly after the attacks on New York and Washington in September 2001. (“USA PATRIOT” is also an acronym for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” This act was modified and renewed as the USA FREEDOM Act in 2015. “USA FREEDOM” is the acronym for Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet Collection, and On-Line Monitoring Act.) Like the government response to the Depression, the Patriot Act was also a response to a national crisis with strong majoritarian support. Significantly, it granted the government many powers to act in areas traditionally enshrined as spaces of individual liberty: to search financial, library, medical, telephone and Internet communications records without authority granted by a court, and even to search homes and businesses without an individual’s notification. This development in American politics led one prominent analyst to suggest that the American Republic had become, over time, neither liberal nor democratic.24

The Patriot Act is one among other dramatic examples we can cite. A decline in the cohesiveness of the family structure has led to demands that the government act on behalf of children of unstable or broken families, thus assuming controls traditionally reserved for parents or guardians. The lack of medical insurance for citizens and immigrants has led to demands for increased government involve-

ment in the healthcare system, thus taking an active role in overseeing the health of the entire population. A decline in the status of religious institutions as keepers of public morals has led to demands that laws be passed restricting behavior that differs from traditional norms, defining and defending traditional institutions like heterosexual marriage, or controlling the types of art people are allowed to enjoy; thus intervening in the promotion of some “values” over others. Crime, school violence, and the threat of terrorism have led to demands that government intervene with greater and greater security measures in private zones of shopping, entertainment, and transportation, thus creating a militarized police presence and pressures in areas of life that were once more casually inhabited without random inspections and systematic coercion.

Again, we must insert a caveat to the effect that the transference of a particular subject matter from the private to the public sphere does not necessarily mean that the freedom of the individual is greatly lessened. The old spheres of “privacy” had their own restrictions. Informal control mechanisms by religious institutions or families, for example, can be just as restrictive of individual action as any formal law. What is important here is that we are chronicling a distinct change in the conception of the appropriate role and function of political institutions. The highly limited government of the liberal tradition of Locke and Madison, the negative state, is a thing of the past in America. The emergence of majoritarian liberalism, and alongside it the positive state where the state is now expected to take positive action to help individuals, lends a different character to, and creates new challenges for, modern American liberal democratic thought.

To understand the significance of this shift, it is helpful to consider a contrast with majoritarian pressures in another liberal democratic system outside of the American context. England’s parliamentary system provides a good example because, as noted earlier in this chapter, it did not possess the type of antimajoritarian political structures instituted by Madisonianism.

**Majoritarianism in the British Tradition**

We have previously mentioned that in England, James Mill and other early individualistic liberals had, however grudgingly, accepted the extension of voting rights to all males, and women were soon to follow. The implications of the extension of the franchise were, however, considerably different in England (as well as in some Continental democracies) than in the United States. The absence of Madisonian checks designed to mute the potential power of majorities made non-Madisonian liberal systems much more responsive to the wishes of majorities in the twentieth
century. In England the rise of the mass-based Labour party provided a vehicle for the transference of majoritarian preferences into public policy.

Moreover, the English tradition of responsible parties (highly centralized and disciplined, in contrast to their American counterparts) ensured that upon election, the preferences expressed in the parties’ programs were transferred into public policy. The checking and balancing of competing interests engendered by the Madisonian system provided no barrier in England, or in many other countries with similar systems. For this reason, many critics of the American system, who believe that it is insufficiently responsive to majoritarian preferences, cite England as an alternative model of a stable liberal democratic regime. John Dewey, whom we will meet in the next chapter, exemplified this position when he argued that Madisonianism had produced a condition whereby competing interest groups precluded both the possibility of achieving, and the possibility of conceiving, a truly public interest in America.

This is a significant insight. The idea that government ought to play a more positive role in the lives of its citizens developed gradually in the United States. Early liberalism conceived of the state’s function as being essentially minimal and negative. It would use the least amount of power to protect individuals and their property from each other and from foreign powers. If one wanted to attach a time period to the emergence of the positive state, one could point to the early twentieth century, when the political system became actively involved not only in the protection of individuals and property, but also in the control of the economy and the expansion of functions that occurred from World War I to the aforementioned Great Depression. The date one might choose is somewhat immaterial. From the point of view of Madisonian liberalism, the significant fact is that the one hundred years between 1850 and 1950 marked a profound change in the processes of American government; it now had to take positive action to improve the general welfare of its citizens.

Although the core values of the liberal tradition remained relatively intact, several of them were given greater emphasis while others moved to a lower position in the value hierarchy. Instead of viewing the political system as an umpire, balancing the competing claims of private interest groups, the majoritarian liberalism of the twentieth century envisioned government as an active, positive force in producing a better life for its citizens. This could take the form of interventions in the private sphere to ensure the rights of individuals—as in smoke-free zones to ensure the right to life—or it could take the form of governmental policies associated with the modern “welfare state,” wherein the powers of government are to be used to ensure liberty and equality of opportunity to those suffering economic or other kinds of disadvantages. The term “welfare state” comes and goes, because to many
classical ideological liberals and modern ideological conservatives, it expressed a will on the part of the government to become too involved in areas best left to the private sphere. But the concept of government intervention to support equality of opportunity for all citizens is still quite prevalent.

**The Tension Between Liberty and Equality**

Paralleling the reduction in the importance of the unconstrained individual in majoritarian liberalism is the rise in importance of the much older democratic value of equality. Equality was the most ill-defined and limited of the values of individualistic liberalism. Recall that Thomas Hobbes saw people as equal only in the radically negative sense that they all possessed the ability to kill one another. In contemporary politics, the major question involving the interrelationship between the values of liberty and equality arose first in the economic area.

Beginning around the turn of the twentieth century, people began asking how one could be free without the means to exercise that freedom. To use an obvious example, a person residing in the United States possesses a theoretical freedom or right to leave the country for other places in the world. That theoretical right does not, however, put the money or passport in his or her pocket that will permit the exercise of this right. Is not the person who possesses the means to exercise the abstract right of free movement actually more free—at greater liberty—than one who does not? It has since become common to see that economic and legal institutional advantages or disadvantages can affect one’s degree of freedom, and that the abstract values of liberty and equality mean little without the financial ability or legal standing to fulfill them. Early liberals argued on behalf of those market freedoms necessary to allow individuals to pursue their own self-interest, even if this meant, as it usually did, that one person’s gain was another person’s loss. However, when one takes into account other factors, majoritarian liberal democratic theorists argued that the freedom that was necessary to human fulfillment was not market freedom, but the *equal effective right* of individuals to develop their own capacities.

A similar premise was applied to issues of discrimination in education and employment opportunities, particularly around issues of race, ethnicity, national origin, religion, gender, sexual orientation, age, and ability. In a society where discrimination takes place, theoretical equality between, for example, whites and persons of color or other non-European ethnic backgrounds, citizens and immigrants, is little more than meaningless rhetoric if people viewed as disadvantaged are systematically treated unfairly, denied and excluded from educational and employment opportunities, or affected by other aspects of structural rac-
ism even if they have such opportunities—and thus denied an equal and free life in society. Of course, government intervention to rectify structural racism and promote equal opportunities by, for example, restricting the ability of admissions officials and potential employers to make discriminatory decisions (affirmative action) returns us to our initial point: such government efforts undoubtedly require imposing some constraints on the freedom of such individuals to do as they please. Similarly, to promote greater equal opportunities by, for example, increasing taxes to overhaul decrepit school conditions in poor city neighborhoods would be seen as restricting the liberty of individuals to gather and spend their wealth as they please.

These examples demonstrate what is meant by the tension between freedom and equality. Policies designed to end discriminatory practices and help promote equality of opportunity are in tension with the liberty of some people to decide as they please who studies at the best schools, who gets the best jobs, and who therefore gets the various material and non-material privileges associated with those jobs (for example, full healthcare benefits and societal respect). Some liberty is indeed limited in the pursuit of greater equality. People favoring greater equality might applaud such government involvement on the grounds that systematic discrimination deprives some people of their rights, but from the uncompromising individualistic liberal point of view, it nevertheless reduces freedom to some extent. Supporters of majoritarian liberal democracy respond by saying that the classical value of freedom is meaningless without relative equality. The hallmark of the American majoritarian liberal democracy of the twentieth and early twenty-first centuries may be precisely this attempt to use the political system to ensure greater degrees of equality or, at least, equality of opportunity. To use a popular sports metaphor, the government must create a relatively “level playing field” so all citizens—even those disadvantaged at birth—have an equal chance to develop their individuality.

The Meaning of Democracy

At the bottom of this tension between liberty and equality is a fundamental debate over the meaning of democracy in the liberal state. Is democracy essentially just a political mechanism for electing a government that would ensure free markets and liberty? Or does democracy require a more substantive commitment to ensure that every citizen has an equal opportunity to experience the advantages of freedom and enjoy a fully human life? Is democracy, as some have suggested, to be viewed not only as an electoral mechanism, but also as a way of life and a type of society toward which a free people should strive? Is society satisfactorily understood as
a collection of free individuals, the inherited view of individualistic liberalism, or should it require an additional element, such that those free individuals see their own well-being as fundamentally connected to, and dependent upon, the well-being of all others? The latter view of democratic life may take several forms: a consistently available deliberative democratic orientation to the policy issues of the day, or more active grassroots forms of everyday association and community building. Either form places greater weight on the principle of equality, believing that participating in politics is not simply an activity to be engaged in out of self-protection, but rather an endeavor that enables one to realize other potentials and live a different, if not more fully human, life. Because democracy as a way of life founded upon the principle of equality requires that every person have an equal effective right to develop his or her own individual powers and capacities, some of the so-called “market freedoms” will need to be restricted in the interest of social well-being. This form of democracy in the United States spawned a North American version of British utilitarianism united by the desire to provide individuals with an equal effective right to develop their own individual capacities. Another way of describing it is to say that the increasing majoritarianism of liberal democracy, buttressed by Utilitarianism, was primarily concerned with the general welfare of the country. The rights of individuals—so dear to the early liberals—were still considered important, no doubt, but the overall concern of politics was to be the achievement of the general welfare. The old, impartial third-party view of government in Lockean theory is replaced by serious attempts on the part of the government to meet demands for greater equality.

Therefore, perhaps the most important value change that occurred in the evolution from individualistic majoritarian liberalism was in the status of individual liberty. We began our discussion of the tradition initiated by Hobbes and Locke by emphasizing that the idea of the free, relatively isolated individual was the one concept shared by the first liberal theorists. While that value is retained by American majoritarian liberalism, its force is considerably altered. Inevitably, as government began to expand its sphere of activity on behalf of demands for greater equality of opportunity, it generated rules that necessarily constrained the freedom of some individual action. Note that there is no need to attach any sort of moral judgment to these changes in values; we are attempting to describe an evolution in the meaning and conception of the individual in relation to the role of the state. The realm of movement for any given free individual is increasingly affected by this evolution. One may heartily approve of governmental legislation to prohibit shoddy or discriminatory business practices, or one may feel such action interferes with individual rights; the fact remains that the scope of an individual's freedom to act is now seen as a space subject to governmental activity.
In this connection, we should note that some of the increased roles of the positive state may be more consistent with early liberal thought than first appears to be the case. Recall that free individuals who entered Hobbes’s social contract agreed, at the entrance to civil society, to limit their natural freedom and obligate themselves to a system that would ensure the liberty of all. This goal was enshrined as well in the very definition of natural law upon which Locke founded government, such that when a government failed to ensure the liberty of its citizens, the majority—because they had knowledge of their natural rights—had the right to revolt. The tension between liberty and majority demands on government was perhaps built into liberal theory as much as it was built into James Madison’s republic.

Characteristic of perhaps all developments in the realm of ideas, the creation of majoritarian liberal democracy produced a reaction to it in the form of a revival of “rights-based” liberal theory during the second half of the twentieth century. We shall examine that revival and the effect that it has had on contemporary liberal thinking shortly. Prior to that, however, we must note the existence of a line of thinking that contends that majoritarian liberalism—desirable though it may be—is extraordinarily difficult to achieve in complex modern societies.

ELITE THEORY IN MODERN LIBERAL THOUGHT

While an elite analysis of modern liberal democratic society has been directed primarily toward the United States, it has implications for all regimes as well as for democratic theory as a whole. Elitist analysis begins by attempting to assess realistically what the basic value of “rule by the people” really means in a complex modern society. Relying on the arguments presented by past thinkers such as Gaetano Mosca (1858–1941), Vilfredo Pareto (1848–1923), and Robert Michels (1876–1936), as well as modern organizational theorists, these theorists assert that popular rule means very little indeed. It can be demonstrated conclusively that any large-scale organization, including government, is, of necessity, organized in a hierarchical fashion. That is, there are certain people, who, by the nature of the tasks they perform, possess far more power than others. Any organization can thus be divided into two groups of people: the elite, who make all of the basic decisions, and the mass that follows them. The reasons for such a division are many and varied. Obviously, every member of a group, be it a government or any other type of organization, cannot be expected to know all of the details involved in running the organization. One would not, after all, expect the chairman of the board of General Motors to submit a questionnaire to all of the stockholders of the company asking them how many cars they should build that year, and then proceed to
act on their recommendation. The average stockholder simply could not make an informed judgment on such a matter without spending a considerable amount of time studying the market for automobiles; that is, unless the person were willing to become an expert. Robert Michels, author of the iron law of oligarchy, discussed this phenomenon and argued that organization gives birth to the domination of the elected over the electors, of the mandataries over the mandators, of the delegates over the delegators. With organization inevitably comes oligarchy, Michels declared. This, then, is the cornerstone of the elitist position.

In the case of political systems, people who are nominally citizens of a state are primarily concerned with earning a living for themselves and pursuing their individual interests. To expect the average person to be a full-time participant in the political process at the same time seems simply absurd. The complexity of modern society thus demands that we adopt a specialization of labor whereby some people become experts in running organizations and fulfill that task on a full-time basis. Democratic forms of representation confirm this basic tendency of modern life. A representative is, by the very nature of the position, cut off from those represented, elitists contend. The representative possesses far more information than the average constituent, pursues tasks as a professional politician, and in all probability has a broader perspective than those represented. The complexity and need for expertise in modern societies ensures that popular representatives are divorced from their constituents and are capable of making, and to a certain extent must make, decisions independent of popular wishes. The choice, then, seems to be between organization (which appears indispensable) and democracy (which may or may not be desirable). But, the elitist argues, you cannot have both! They do not necessarily make a moral judgment in this regard. The theorist of elitism simply asserts that, like it or not, this is a fact of modern society.

Confronted with such an argument, the defender of liberal democratic theory might admit that it is necessary to have this situation when the process of running a government is such a complicated business. Such a defender would, however, probably go on to assert that it really does not matter, for the representative’s constituents can remove that person if they so desire when the next election occurs. If a person acting in the name of the people fails in their eyes to perform his or her tasks correctly, they can simply vote the person out of office. This is, in effect, the old Madisonian argument for the appropriate means of controlling minority tyranny. But the vote does not necessarily overcome the problem of ideological domination that we discussed above, wherein the minority, using the powers of the majority, creates, in effect, its own power by shaping the views of the majority on

whose behalf it claims to act. Thus, elections may or may not hold a representative accountable, if that representative is able to ideologically dominate the electors using, as we said above, the institutional power of the majoritarian political parties.

Similarly, an elite theorist may point out that, even without ideological domination, periodic elections provide no real popular control, because the choices to replace a bad representative are greatly limited. The existing elite controls access to the political system, thereby ensuring that only candidates who possess elite values and characteristics are offered as choices to the electorate. Before any citizen can become a candidate, he or she must establish elite qualifications in terms of educational background, social and professional experience, appearance, and mode of presentation, and, of course, wealth—or at least a capacity to acquire money necessary to compete with other elites in the prohibitively expensive modern political campaigns in the United States. Further, even if a “common person” surmounted all of these obstacles and were elected to office, that person would have little power, for within the governmental institutions themselves there are additional control devices, as exemplified by the seniority and committee systems in Congress. These are dominated and governed by elite norms as well. Under such circumstances, the only choice available to a voter at election time is between competing elite groups who possess the same or very similar values. It’s the iron law of oligarchy, so entrenched that any real changes in policy at the top are almost entirely precluded.

If elitism is political reality, what does the phrase “government by the people” mean? Before attempting to respond to that question, we must record a further extension of the elitist argument, which may make the phrase “popular government” even more inapplicable to modern America.

Power-Elite Analysis

Up to now we have avoided mention of any particular individual advancing the elitist position, preferring to refer to a vaguely defined group of democratic elitists. The major reason for this is that it is a most diverse tradition and sufficiently current to make it difficult to single out leading representatives. However, one person, C. Wright Mills (1916–1962), is most closely associated with this position, and his analysis of modern American democracy provides a further extension of the basic elitist position.

Accepting as fact the notion that complex organizations are of necessity hierarchical in structure and that a clear distinction must be made between elite and mass, Mills went on to argue that economic factors in the United States had produced a
two-class society wherein even the government was powerless to effect any basic changes in policy. Let us ignore for the moment the prior argument that elected representatives are by virtue of their position divorced from the people, and assume that they actually do reflect popular desires. What real power does even the average representative or senator possess? Very little if any, Mills contended, particularly regarding fundamental matters such as war and peace or significant changes in the economic structure. The elected representative is at best in a middle-range power position, for the great decision-making capability lies in the hands of an economically based power elite, which is largely outside the control of the political system. Membership in this group is defined by birth and wealth, although it is possible for a member of the non-elite to become part of it by acquiring wealth and adopting the values of that group. Elite members go to the same schools, belong to the same social clubs, intermarry, and in general share similar values. Although there may be minor disagreements among members of the elite over everyday matters of public policy, they share a firm commitment to preserving the existing values and class structure.

The presidency of Franklin D. Roosevelt is frequently cited by scholars ascribing to this position as illustrative of the overall cohesiveness of the power elite. Elected to the presidency in a period of severe economic crisis and equipped with an apparent mandate for massive social and economic change, Roosevelt succeeded with a series of patchwork measures (and a war) in avoiding any fundamental change in the role of the power elite in American society. By contrast, President Eisenhower drew rather unexpected applause from power-elite theorists when he cautioned against the government becoming a captive of a “military-industrial complex,” which sought to use the political system for its own selfish ends. He was criticizing the way politics in the United States is shaped by powerful military and monetary interests. Wars turn out to be unwelcome by the people, but extraordinarily profitable for big businesses that exercise various forms of direct and indirect power over politicians.

The sum of the power-elite argument is that the government is largely controlled by a small group of people who owe their power to their economic and social position in the society. Government and, consequently, the representatives of the people are reduced to making relatively unimportant decisions, which in the end can serve only to perpetuate the existence of the status quo. Looking ahead toward the discussion in another chapter, we should point out there are distinctly Marxian overtones to this type of analysis, in that it sees economic factors as crucial in determining people’s actions, and it relies heavily on a class analysis. Further, it might also be termed Marxian in that it views government, in effect, as the tool of a capitalist economic class that seeks to use the political system to perpetuate and
extend its class’s power. Whatever one chooses to term the Millsian type of analysis, from the theoretical perspective its import lies in the fact that it makes explicit the necessity for a reevaluation of the concept of power in liberal democratic systems.

The Power of Money

Traditional democratic theory presupposed that by providing people with equal voting power, one could keep the limited functions of government consistent with popular desires. In attempting to divorce political matters from the economic realm and by viewing the political system as an umpire between competing factions already in possession of property, individualistic liberalism and the Madisonian implementation of it paid insufficient attention to the power that money confers. From the power-elite perspective, the American political system has always involved tyranny by a minority, which derives its power from its economic position. Attempts to implement greater economic equality through the institution of majoritarian liberalism have provided, elitists assert, nothing more than sops to the people and perpetuated a class-based capitalist market society. Viewing the American political system as a device for perpetuating minority economic interests, the elitist critic thus calls for revolution in the system (e.g., reducing property qualifications for running for office and changing campaign finance rules) in the name of producing a true democracy. The only way minority control of the system can be checked is through giving greater decision-making power to the people. These are the central themes of the presidential campaign of Bernie Sanders, whom we mentioned above. They are also central to the Occupy Wall Street Movement that formed in 2011. Asserting that, “We are the 99%,” the movement occupied a park near the New York Stock Exchange to protest economic and political inequalities identified in the power-elite analysis. In solidarity with similar movements around the world, it also engaged in and promoted non-hierarchical and fully democratic, decision-making practices, underscoring the belief among critics in the rule of the power elite that “another world is possible.”

Indeed, the only way the norm of equality, which majoritarian liberalism purported to be trying to achieve, can actually be fulfilled is through increasing democratization of both political and economic decision making. Mills’s form of democratic elitism, then, ends up supporting critical analyses of the existing model of American politics. There is in his theory an implicit faith in the basic common sense of the average person, and in the ability of the American democratic experiment to solve all problems through increasing democratization. We shall see in the next chapter that many of these themes are central to the tradition of what we call alternative liberalism.
Shortcomings of Elitist Analysis

Before moving to a brief discussion of the other form of the elitist responses to majoritarian liberal democracy—a position that accepts the elitist analysis of American politics but sees it as a positive virtue—we must point out some of the possible difficulties in the power-elitist position discussed thus far.

Initially, critics contended that the elitists have been by no means able to demonstrate the existence of a distinct class of people who constitute the power elite. Indeed, even if one is able to show great similarity in background among major political and economic decision makers, does this mean that they automatically share similar values? Further, the elitist must be able to prove that there is no fundamental difference between competing elite groups—say, between Democrats and Republicans in the United States and this, so critics contend, has yet to be accomplished. If varying elite groups change their policies in an attempt to win popular support, then the elitist charge that the voter has no real choice during elections is greatly weakened.

Other critics have contended that it can be demonstrated that numerous individuals of non-elite origins have risen to elite status with their values essentially intact, and have been able to effect serious change in public policy, perhaps less often at the national than at the local level of governance. Finally, critics contend there is a lack of precision in the elitist argument. We are told that some ill-defined elite groups constantly use government for their own purposes at the expense of popular wishes, and that they agree on fundamental matters. But what is meant by fundamental? If it is nothing more than retention of the essentials of the existing economic system, then the elite probably reflects public opinion accurately; there seems to be, after all, little call from the masses, other than on the far left of the political spectrum, for an economic revolution to overthrow Wall Street.

These and similar matters are the material of current controversy and dialogue among students of American liberalism. Thus, it would be both presumptuous and foolhardy to attempt to resolve them here. Let us instead follow a safer path and move to a discussion of the second form of elitist reaction to the prevalent majoritarian liberal democracy of the twentieth century.

Normative Democratic Elitism

Another even more loosely defined group of individuals who merit the term elitist deserve brief mention, if only because they form somewhat of a modern equivalent of the old Madisonian position. Impressed (perhaps depressed is the better word) by the apparent potential of the modern democratic citizen for irrational
action, and distrustful of the masses’ ability to support traditional liberal democratic values in the face of crisis, these thinkers advocate elitist control of society in the name of preserving liberal democracy. If that seems a bit paradoxical, it serves only to show again the many uses of the words liberal and democratic.

This position, sometimes called normative democratic elitism, can, for our purposes, be represented by the thinking of Joseph Schumpeter. In his influential book *Capitalism, Socialism and Democracy* (1947), Schumpeter sketched the outline of his theory. His position has three main points. First, democracy is not a kind of society but simply a mechanism for selecting governments. Democracy is a political method; it is a certain type of institutional arrangement for arriving at political, legislative, and administrative decisions. Second, the mechanism consists of competition between at least two sets of self-chosen politicians (elites). And third, the voter’s role is not to engage closely and decide political questions, but simply to elect the individuals who will determine both the questions and the answers. Thus, for Schumpeter, political participation has no intrinsic value to the person; indeed, he did not think universal suffrage was a requisite of democratic politics. As he put it, “The electoral mass is incapable of action other than a stampede.”

As an economist, it was perhaps easier for Schumpeter to view the political system as an approximation of the market, with voters acting as the consumers and politicians as the entrepreneurs. Schumpeter was clear, however, that this was no free market: “Party and machine politicians… attempt to regulate political competition exactly similar to the corresponding practices of a trade association.”

Concerning the will of the people (what, in the market metaphor, would be consumer demand), Schumpeter described the reality of an artificially created demand: “The ways in which issues and the popular will on any issue are being manufactured is exactly analogous to the ways of commercial advertising.” Arguing in a manner reminiscent of Madison, Schumpeter summarized his position: “democracy does not mean and cannot mean that the people actually rule in any obvious sense of the terms ‘people’ and ‘rule.’ Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them.”

Normative democratic elitism believes, in effect, that ideological domination is a beneficial thing because the mass of citizens must be protected from itself. It notes that research into the values held by members of modern democratic states shows that it is the well-educated and generally affluent minority that has the highest respect for traditional liberal democratic values. The average person seems far

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27 Ibid., p. 263.
more prone to adopt authoritarian solutions to problems, is quick to attempt to use force or silence dissent, and in general finds it difficult to live with individual deviation from accepted behavior. There is, in normative elitism, this concern about a tendency in majoritarian democracies to attempt to standardize all forms of conduct and to punish any deviation from those norms. As the sphere of governmental activity expands, we have found that majoritarianism establishes rules of behavior in areas formerly part of the private sphere of activity. What this means is that the wishes of a majority of the people gradually become the accepted standards of conduct for the entire society. What bothers the elitist is that these mass tastes seem inevitably to reflect the wishes of what they believe to be the lowest common denominator of individuals in the society. What develops is a mass culture designed to appeal to the greatest possible number of people, media that entertain and simplify complex events, architectural styles designed for broad appeal, and faddish clothing styles that reflect the fickle desires of the masses.

Although the phenomenon of mass culture is not in and of itself a bad thing for democracies, the liberal elitist sees it as inevitably discouraging individual deviation from and resistance to, the established norms. The individual who does not conform is far less successful than one who does, and the society loses the type of creative energy that seems to be generated most often by nonconformists. Put in terms of political values, mass democracy seems bent on destroying the individuality that is the core idea in liberal democratic theory. The elites are best capable of preserving that value. In a way, as you will recall, we are back to the points made earlier about the tensions between liberty and equality. In pursuit of egalitarian goals, majoritarian liberal democracies, John Stuart Mill warned, tend to standardize everything, creating a society with a homogenized culture that stamps out individual liberty.

The “Irony of Democracy”

It should be apparent now why one can call this elitist position somewhat equivalent to the old Madisonian stance. Both accept as given the presence of a capitalist economic system as well as a plural society; that is, society is composed of individuals who belong to various, often conflicting, interest groups. Although the basic value of popular sovereignty is not denied, the elitist recognizes that the masses under the banner of majority rule will tend toward excessive use of their power, thereby depriving others of their liberty to act as they choose. Here, then, is a modern equivalent of the Madisonian tyranny of the majority, where advances in communication technologies make it possible to give everyone the same opinions. This can be seen as a real danger with the spread and popularity of the Internet and
its various social media technologies. Far from being unhappy with the fact that modern society necessitates some type of distinction between elite leadership and mass following, the normative elitist sees the leadership group as a prime bulwark against the excesses of majorities. If the people did indeed rule as the majoritarian liberal tells us they ought, the liberal individualistic values of the tradition would soon be lost. This sober conclusion has been referred to as “the irony of democracy.”

It is the irony of American democracy that the elites, and not the masses, are most committed to liberal democratic values; and, if the masses ever did actually rule, they would wipe out all vestiges of these democratic norms in favor of more authoritarian values. Voter apathy, consequently, is seen as a positive benefit since it is primarily the masses who fail to participate. There is some question whether this view can legitimately be called liberal democratic, in that it explicitly relies on elite control of the masses. If one insists on a more majoritarian definition of liberal democracy, it obviously cannot be. If, however, one defines liberal democracy in more individualistic terms while retaining an overall commitment to popular sovereignty, normative elitism is probably as “liberal” as the Madisonian republican variety. The elitist, while recognizing the desirability of ultimate control by the people, is very happy that complex modern organizations ensure that educated liberal elites control much of the day-to-day activity of the state.

How they ought to do so remains, however, a matter of great debate in the United States, and is the subject of two significant theoretical contributions to liberal ideology in the last several decades. Before leaving the mainstream individualist tradition, we must attempt to describe briefly the contemporary revival of “rights-based liberalism” initiated by the 1971 publication of John Rawls’s *A Theory of Justice* and its spirited libertarian critique in Robert Nozick’s *Anarchy, State, Utopia* (1974). Rawls (1921–2002) and Nozick (1938–2002) are two philosophers who sought to define and clarify the terms of liberal governance in an era in which the positive state had become increasingly entrusted to pursue both the general welfare and individual liberty. Rawls elaborated on the contemporary criteria that would make the welfare efforts of the positive state legitimate in liberal terms; Nozick radically opposed such efforts by reiterating Lockean liberalism’s concept of a minimal state.

**Contesting Liberty and Justice: John Rawls and Robert Nozick**

John Rawls serves as an example of a contemporary social contract theorist in the broad tradition of Hobbes and Locke. In his enormously influential *A Theory of*
Justice, Rawls’s primary goal is not, however, to justify a particular view of politics and political authority. Nor are the actors in his scheme Hobbesian, essentially competitive, power-acquisitive individuals who must enter into a contractual relationship with others as a means of escaping the state of nature, and thereby protecting their lives and property from their fellow beings. Rather, Rawls’s project establishes principles of justice grounded in liberal and majoritarian democratic values by people he assumes are rational and moral beings.

Rawls imaginatively constructs a state of nature setting called “the original position” wherein the contracting individuals are placed behind a “veil of ignorance.” The original position is a kind of pre-societal state wherein rational actors, deprived of particular knowledge about their own individual lives in society, must devise principles of justice that will govern their lives upon the lifting of the veil of ignorance and their return to society. Behind the veil, they are lacking all sorts of knowledge: about their place in history and society; their race, sex, nationality, class, or age; their wealth; their conceptions of the good; and “their distribution of natural talents and abilities”:

The principles of justice to which all are forever bound are chosen in the absence of this sort of specific information. A veil of ignorance prevents anyone from being advantaged or disadvantaged by the contingencies of social class and fortune; and hence the bargaining problems which arise in everyday life from the possession of this knowledge do not affect the choice of principles.29

Rawls grants that these individuals will possess general knowledge about political affairs, economic theory, the basis of social organization, and human psychology. He also believes they will prefer more, rather than less, of what he calls “primary goods”: certain rights, liberties, opportunities, income, wealth, and self-respect. The veil of ignorance thus serves as Rawls’s fictional device to prevent those in the original position from making political decisions based on a narrowly conceived self-interest that would protect their personal property and abilities. Before the veil is lifted, the actors are typical self-interested, rational human beings; and yet, because they do not know their place in society, Rawls assumes that these individuals will recognize that they may be without talents or social status: that is, in essence, among the “worst-off” members of society. This will lead them, Rawls believes, to construct principles for the contract so that the least privileged people of the society will be as well-off as possible. The scenario, then, differs significantly from Hobbes’ or Locke’s states of nature insofar as individuals behind the

veil of ignorance consider questions of relative equality in addition to questions of liberty. Rawls reasons that because the contract will not be devised by an abstract group of elite men who are working to ensure that their property and status are protected, the final product will be fundamentally fairer to the entire society.

Rawls argues that two principles of justice will emerge from behind the veil of ignorance. The first principle is that members are guaranteed the greatest possible civil liberties without infringing on others’ rights in the society. This principle underscores Rawls’s commitment to the central ideal of liberalism. In his words, “Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.” Rawls’s second principle concerns economic opportunities and social position and holds that these “are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”

Rawls claims that the first principle, on liberty, takes priority: liberty must be established before the second principle, the distribution principle, becomes effective. Part (a) of the second principle—the difference principle—is especially significant. It requires that any inequalities in society should be arranged to secure the greatest benefit of the least advantaged. Part (b) stipulates equality of opportunity. The two parts function together to suggest that any inequalities should not be severe, and that they are only justified if the least advantaged may benefit from them. If the least advantaged do not benefit, then some form of governmental intervention, some effort at distributing opportunity and resources, is appropriate. Inequalities may be justified only if they produce a benefit for an entire society within which every individual is free and enjoys equality of opportunity. Justice, for Rawls, does not mean “no inequality.” It means “fairness”: that any inequalities do not unfairly disadvantage those at the bottom of the hierarchy. Because people in the original position could find themselves in that place when returning to society, Rawls believes the contractors would want no one to be permanently disadvantaged and no one to be made worse-off by the actions of others.

In essence, Rawls gives abstract, political theoretical backing to a modern political and majoritarian liberalism that seeks to use the state to produce greater equality of opportunity. Liberty is not incompatible with greater equality, he asserts, and extreme forms of inequality under which any member of society suffers are unjust.

Since its publication in 1971, this theory of justice has commanded wide attention in contemporary Anglo-American political theory, wherein Rawls has been criticized from all directions. Democratic theorists have questioned whether Rawls adequately considers the relation between economic inequality, which he sanctions

as long as it serves the poor, and political inequality. (Those with more social and economic power often possess more political power.) Theorists of citizenship have criticized Rawls’s emphasis on the economic rationality (the “more, rather than less” assumption) and inadequate attention to the more deliberative demands of citizenship.

Perhaps the most well-known critique of Rawls is the libertarian one made by Robert Nozick in *Anarchy, State, and Utopia*. Nozick revived the Lockean concept of a “minimal state” whose role and function is limited to protecting the natural rights of life, liberty, and property of free individuals. Nozick considered any attempt by the state to intervene in the free market and redistribute resources—say, through adjusted levels of taxation—to be a coercive and fundamental violation of the right to liberty. In a society where liberty is the norm, inequalities may result from the free activity of individuals. The state’s role is not to try to repair these; it exists to protect individuals and society from threats and to ensure that contracts undertaken between individuals are done so voluntarily. In direct response to Rawls, Nozick offered the following principles of justice:

Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons’ rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right. Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.

Nozick’s critique of Rawls coincided with the rise, in the 1970s, of American conservatism and neoconservatism that we described in the previous chapter, which may partly account for the ongoing appeal of his views. Recall that both forms of American conservatism share the philosophical commitments of ideological liberalism. Nozick departed from the conservatives by underscoring the ideologically liberal commitment to individual liberty more generally, such that, for example, he supported the rights of individuals to live in ways that are at odds with “traditional,” socially conservative values. Nonetheless, both he and the American conservatives saw the Lockean state, in Nozick’s terms, as an “inspiring” basis for criticizing Rawls and supporters of the positive welfare state.

A final, important criticism of Rawls comes from what resembles, in the context of our discussion thus far, the more classically conservative position. Many theorists criticized Rawls for producing principles of justice that were based on

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the premise of neutrality. Recall how Rawls sees his principles as resulting from abstractly conceived individuals who know little about their social make-up or position; they conceptualize justice from behind “the veil of ignorance.” Rawls suggests that people can think about justice without any particular identity, that the “self” may be conceived of as independent of society. Critics have responded that preferences for justice often stem precisely from people’s experience and conceptions of life that are rooted in their cultural, gender, racial, ethnic, and class identities. This view is held by many theorists, among them feminists and Marxists whose views on “human nature” we will elaborate ahead, who do not necessarily identify with the politics of classical conservatism but share its critique of liberalism’s abstractly conceived individual. Recall Edmund Burke’s view that the preferences and values people have about their world are shaped in and through their participation in communities, traditions, and sociocultural practices more broadly. Rawls prefers a neutral uniformity as the grounds for conceptualizing justice, rather than the more richly textured and diverse context of human social relations.

In favor of his project, however, Rawls’s theory can be seen as a creative attempt to establish norms for justice derived exclusively from human reason: the capacity that modern democratic theorists like Rawls maintain is shared by all human beings independent of their various differences. This enables them to think beyond their own situation, and consider what is good both for themselves and for others. In this light, Rawls departs from the mainstream liberalism of Hobbes-cum-Madison by seeking justice beyond the class-divided society within which the early liberals theorized. Given the latter aspects of his theory, Rawls may be seen as moving closer to the kind of societal democratic ends envisioned by the alternative liberalism of Rousseau, Jefferson, and Dewey that we examine in the next chapter. Indeed, Rawls can serve as yet another example of a modern liberal trying to tame a class-divided market society; and it is interesting to note that either socialism or communism would fulfill all of his criteria for A Theory of Justice. But this is a topic for a later moment in the book.

By now the reader will no doubt realize that we have come almost full circle in our discussion of individualistic liberal democracy. The normative elitist’s fear of excessive majority control leading to conformity and authoritarianism is quite similar to the Madisonian concern with majority tyranny. In describing the spectrum of liberal democratic thought as it became embodied in the American political tradition, we have tried to show the full range of possibilities, given the uniqueness of the American experience. But this dialogue has been conducted largely within the confines of the individualist liberal tradition of Hobbes, Locke, and Madison. Another form of liberalism, an alternative vision—whose roots may be traced to the French thinker Jean Jacques Rousseau and which received its American expres-
sion in Thomas Jefferson and John Dewey—will advance a rather different picture of an ideal liberal democratic society. That is the subject matter of the next chapter.

**CONVERSATION QUESTIONS**

1. What are Madison’s objections to democracy, and what does he mean by “republican” government?
2. Why does Madison think of factions as a disease, and what do you think about his cure?
3. Given your experience, do the power-elite criticisms of contemporary democracy ring true?
4. Are there areas in your life in which you experience the tensions between the radical individualism of liberalism and the egalitarian imperatives of democracy? Are these tensions inevitable in market-based societies, and do you think everyone, regardless of their economic status, experiences them?

**SUGGESTED READINGS**


