pears, then, that party government in America was designed, and to a large extent has functioned, to preserve the separation between public and private, or between the state and the society. This is why those who would destroy these distinctions must in the end destroy or reconstitute the party system.

University of Pennsylvania
and The John M. Olin Foundation, Inc.

Curing the Mischiefs of James Madison*

Political scientists are a variegated lot, but one experience that most of us share is that of being dragooned more or less regularly to teach the introductory course in American government. And while the glut of textbooks attests to the multiplicity of approaches that might be taken to such a course, not many of us fail to pay our respects to James Madison-usually by including the tenth Federalist on our syllabi. Nevertheless, Madison's thought remains elusive, especially as it pertains to the study of political parties.

There are among us those (the descendents of Charles Beard')

*The research project from which this essay is derived was supported by a grant from the Institute for Educational Affairs.

1. An Economic Interpretation of the Constitution of the United States (New York: Macmillan, 1913). By this reference I merely mean to summarize Martin Diamond's point in the following passage:

 Unlike modern "value-free" social scientists, the Founding Fathers believed that true knowledge of the good and bad in human conduct was possible, and that they themselves possessed sufficient knowledge to discern the really grave defects of popular government and their proper remedies. The modern relativistic or positivistic theories, implicitly employed by most commentators on the Founding Fathers, deny the possibility of such true knowledge and
who would reduce Madison's thought, and everyone else's, to the level of the subrational. Robert A. Dahl, for instance, says that the concept central to Madison's thought—the concept "faction"—has no "specific meaning," and that consequently Madison's is a "rather tortuous political theory." Madison's thought is then summarily dismissed with the comment that "as political science rather than as ideology the Madisonian system is clearly inadequate."  

There are also those who would portray Madison as a hopelessly archaic thinker. According to this line of thought, Madison might well have had some wisdom to share with his contemporaries, but, because of the vast changes wrought by "political development," he has little to offer us. Those who view Madison this way are inclined to stress the fact that in Madison's day the word "party" referred mainly to parliamentary cliques and cabals, or at least to groups having "little in common with modern parties." It is for this reason that Ranney and Kendall, for example, conclude that it is futile to speculate as to Madison's probable view of today's parties:

...[N]o one can say with any assurance what Madison would have thought of the nationwide parties we have today. Each of the latter is a coalition including most of the major interest groups in the whole population; each appeals for support by offering a moderate program that attempts to reconcile, via "compromise," the demands of the various groups, and thus neither completely satisfies nor completely dissatisfies any single major interest. Each of them, moreover, draws its support, more or less uniformly, from a republic spread over a territory vastly more extensive, and with a population enormously larger, than he envisaged. Thus we cannot, from his strictures on the narrow grouping with which he was familiar, infer any views whatever on the broad party groupings with which we are familiar.

I do not mean to be attributing motives to Ranney and Kendall, but their view might well have been formulated to defend Madison against a third group of detractors—those who would characterize

therefore deny that the Founding Fathers could have been actuated by knowledge of the good rather than by passion or interest. ("Democracy and The Federalist: A Reconsideration of the Framers' Intent," The American Political Science Review LIII (March 1959), pp. 52-68 at 56.)


3. Ibid., p. 31.


5. Ibid., p. 134.
him as an "anti-party thinker." This view may derive from a misreading of the seminal work of Douglass Adair, who demonstrated the degree to which Madison was in the debt of Hume. Hume thought that the founders of parties ought to be "detested and hated," because parties "subvert government, render laws impotent, and beget the fiercest animosities," but, unlike Bolingbroke, who considered party to be inherently seditious, Hume cautioned that it is not possible to pursue a policy of "extirpating these weeds" without sacrificing liberty. Echoing that sentiment, Madison wrote in the tenth Federalist that "Liberty is to faction, what air is to fire, an aliment without which it instantly expires." Faction is thus a necessary evil—but it is most emphatically an evil. If Madison was an "anti-party thinker," then so were most of his contemporaries. This, at least, is the conclusion of Richard Hofstadter:

So far as I have been able to determine, none [of the Founding Fathers] saw that parties might perform a wide variety of positive functions necessary to representative democracy and unlikely to be performed as well by any other institutions.

As "anti-party thinkers," these men were allegedly incapable of understanding that party can serve to limit the power of government, and to perform other functions that most of us would regard as vital to democracy." Because of this "blind spot" in their thought,

9. From this point on all references to *The Federalist* will be made parenthetically in the main body of the text. References are to the Jacob E. Cooke edition (Middletown, CT: Wesleyan University Press, 1961). This particular line is from Number 10, p. 58. Adair shows that the passage is rooted in Hume's thought (See *Fame and the Founding Fathers*, pp. 103-104).
11. Frank Sorauf, for example, has referred to "the assumption of party primacy,"

the Constitution is silent on the subject of party, and instead of relying on the party system to provide a check on power, the framers relied on certain well-known "parchment" protections:

The necessity of checks on power is a theme struck over and over. But it is important that for the Fathers these checks had to be built into the constitutional structure itself. They were not content—and still less were the people they had to persuade—to rest their hopes on those checks that might arise in the political process alone, and this is one reason why they put no faith in party competition... Such informal forces in politics as the temper of the public, the process of opposition, the institutionalization of party structures, which to us seem so vital in democracy, seemed to them too slender a reliance, too inadequate a substitute for explicit constitutional specifications. 12

This accounts, among other things, for the framers' affection for the classic doctrine of separation of powers:

which accounts for the fact that parties "have been variously said to
- simplify political issues and alternatives;
- produce automatic majorities;
- recruit political leadership and personnel;
- organize minorities and opposition;
- moderate and compromise political conflict;
- organize the machinery of government;
- promote political consensus and legitimacy; and
- bridge the separation of powers.


Hofstadter's thought, as the following passage reveals, is very much in the "party primacy" tradition:

I do believe that the full development of the liberal democratic state in the West required that political criticism and opposition be incarnated in one or more opposition parties, free not only to express themselves within parliamentary bodies but also to agitate and organize outside them among the electorate, and to form permanent, free, recognized oppositional structures. And I believe that the gradual acceptance of parties and of the system of a recognized partisan opposition which I record here marked a net gain in the sophistication of political thought and practice over the anti-party thought and unlegitimated or quasi-legitimated opposition that had prevailed in the Anglo-American tradition in the eighteenth century and earlier. The emergence of legitimate party opposition and of a theory of politics that accepted it was something new in the history of the world; it required a new bold act of understanding on the part of its contemporaries and it still requires study on our part (p. xii).

The point remains that in the thinking of the Founding Fathers, the truly useful and reliable antitheses of politics, the counterpoises upon which they were disposed to rely for liberty and stability, were still embodied not in the mutual checks of political parties but in the classic doctrine of the separation of powers, in the mutual checks of the houses of legislature, or in the checks exerted upon each other by the executive and the legislature, and in that exerted by the judiciary over the other two. Checks were to be built into planned constitutional forms instead of being left to the hurly-burly of politics.  

Having no faith in the efficacy of "formed oppositions" from without, they had to check the power of government with "two houses, not two parties." Hofstadter concludes that it was left to an inchoate party system (which, when it congealed, produced the "revolution of 1800") to breathe life into Madison's parchment republic. "We may say," Hofstadter asserts, "that it was the parties that rescued this Constitution-against-parties and made of it a working instrument of government.

I believe that the characterization of Madison (as an "anti-party thinker") on which Hofstadter's generalization rests does the great Virginian a disservice. I believe too that Madison's reputation is not much enhanced by those, such as Ranney and Kendall, who attempt to mount a defense for Madison by having him plead ignorance. In this essay I hope to show that speculation as to how Madison would view modern political parties is not at all futile. In the process, I also hope to show that Madison's thought is not, as his most unflattering critics maintain, unintelligible or "tortuous." Finally, I mean for this essay to support Professor Pieerson's contention (in this issue of The Political Science Reviewer) that Madison's detractors have a hidden agenda: they see party as "an instrument for expanding the state for egalitarian or democratic purposes."

II

In order to pursue the aims of this essay it is necessary first to review the argument of the tenth Federalist.

The paper opens with a succinct endorsement of the Constitution: "Among the numerous advantages promised by a well constructed..."
Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction” (Number 10, p. 56). What is meant by "faction"? "By a faction," Madison explains, "I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community" (Number 10, p. 57). It is this "pejorative" definition of faction that accounts, perhaps more than anything else, for Madison's "anti-party" reputation, and for the widespread idea that there is no American contemporary of Burke willing to embrace his forthright defense of party.

Madison tells us that "there are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects" (Number 10, p. 58). The causes of faction might be removed in one of two ways. First, by destroying liberty, and second, by "giving to every citizen the same opinions, the same passions, and the same interests" (Number 10, p. 58). The first method, however, is pronounced by Madison to be a cure worse than the disease, and the second is, among other things, "impracticable" (Number 10, p. 58). Removing the causes of faction turns out to be a hopeless enterprise, since it would require nothing less than changing human nature itself, as "the latent causes of faction are . . . sown in the nature of man" (Number 10, p. 58). Since the causes of faction cannot be removed, the cure for the mischiefs of faction must then be found "in the means of controlling its effects" (Number 10, p. 58).

How is this to be done? In the case where "a faction consists of less than a majority," the solution is to be found in "the republican principle, which enables the majority to defeat its sinister views by regular vote" (Number 10, p. 60). This, then, is no problem. Madison's burden is to show how it is possible to reconcile a system designed to frustrate a factious majority with the idea of popular government. In his words, the trick is "to secure the public good, and private rights, against the danger of such a faction, and at the

17. Ibid., p. 66.
18. Burke’s definition of party: "Party is a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed." Edmund Burke, "Thoughts on the Cause of the Present Discontents," Works (The World’s Classics edition, 1908), Vol. II, p. 82.
same time to preserve the spirit and the form of popular government" (Number 10, p. 61).

How is this to be done? From Madison's point of view there are again two ways of frustrating a factious majority. The first is to remove the majority's impulse "to concert and carry into effect schemes of oppression;" the second is to deny it the opportunity to do so (Number 10, p. 61). In any event, moral or religious restraints are not to be considered sufficient—they do not adequately restrain individuals, and they are less efficacious "in proportion as their efficacy becomes needful" (Number 10, p. 61).

Madison then notes that the mischiefs of faction can admit of no cure in a pure democracy ("by which I mean, a Society, consisting of a small number of citizens, who assemble and administer the Government in person") (Number 10, p. 61). It is for this reason that pure democracies, according to Madison, "have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general been as short in their lives, as they have been violent in their deaths" (Number 10, p. 61). But the mischiefs of faction might be cured in another species of government—in a republic ("by which I mean a Government in which the scheme of representation takes place") (Number 10, p. 62), and by that Madison means, as Martin Diamond has shown us, a democratic republic. In a republic there is at least the possibility that virtuous men will be selected to serve as the people's representatives, men "whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice" (Number 10, p. 64). If the people are fortunate enough to be represented by such men, then "it may well happen that the public voice pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves convened for the purpose" (Number 10, p. 62).

There is no guarantee that citizens of a republic will be so fortunate, though, and Madison goes on to consider the question of whether virtuous representatives will be more likely to be elected in a small or large republic. Surprisingly, it turns out that the question "is clearly decided in favor of the latter" (Number 10, p. 62).

Madison points out at this juncture that a large republic will have more fit men to choose from (the size of legislatures being more or less fixed), and that there are certain advantages to be accrued from having large, rather than small, constituencies (namely, it is "more difficult for unworthy candidates to practice with success the vicious arts, by which elections are too often carried") (Number 10, p. 63).

In a large republic, then, it is more likely that fit characters will be found to serve as representatives, and more likely that the public's views will be refined "by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of the country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations" (Number 10, p. 62). Still, though, Madison notes that federalism offers something for everybody: while the "great and aggregate interests" of the country are to be referred to the national legislature, "local and particular" interests will make themselves heard in the governments of the several states (Number 10, p. 63).

There is even more to be said for large, as opposed to small, republics, and this brings us to the most important part of the tenth Federalist. In short, factious combinations are "less to be dreaded in the former, than in the latter" (Number 10, p. 63). Why? Because heterogeneous, far-flung majorities will have less of an opportunity, and less motive, to "concert and execute their plans of oppression":

> Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. (Number 10, p. 64)

Federalism will be a bulwark against majority tyranny: "The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States" (Number 10, p. 64).

Republican governments are inevitably threatened by the "mischief of faction," but Publius proposes a republican remedy for the disease. Happily, an extensive republic with certain structural features—e.g., federalism and separation of powers—is the best defense against factious combinations, or more precisely, against factious _majorities_.

---

The text above is a summary of the political science content as described in the document image. The summary captures the essence of Madison's arguments regarding the benefits of a large republic, the importance of federalism, and the concern over factious combinations.
As I have said, the argument of this famous essay, and in particular Madison's characterization of factions as inherently evil-by definition-has earned for Madison his reputation as an "anti-party thinker." If Madison is in any respect an "anti-party thinker," it must be conceded that he is not so in the same way as, for example, Ostrogorski, or any of the other early twentieth century progressive reformers. At least it is hard to imagine Madison enlisting in the crusade for non-partisan elections, or the Missouri Plan, or the city manager form of government. For Madison may have been in certain respects an "anti-partisan," but he did not pretend to be "neutral." On the contrary, throughout his life he was an active party man—a fact that Hofstadter regards as a profound paradox. It is not.

In fact, Madison, despite his definition of faction, in no place asserts that all "connexions" of men must of necessity be evil. On the contrary, Madison does not rule out the possibility that some connexions might function in such a manner as to promote the general good; his political career is eloquent testimony in support of that proposition. Some parties might be ennobled by a concern for the common good. Other parties (that is, factions) are evil because they pursue their own interest at the expense of the public interest. What, then, distinguishes an evil party from, say, "a body of men united for promoting by their joint endeavors the national interest upon some particular principle in which they are all agreed" (Burke’s definition)?

The reader is reminded that the tenth essay of The Federalist is aimed at the problem of factious majorities. It is the tyranny of the majority that he fears. As Martin Diamond has explained:

Publius is not concerned with the problem of faction generally; he devotes only two sentences in the whole essay to the dangers of minority factions. The real problem in popular government is majority faction, or, more precisely, the majority faction, i.e., the great mass of the little propertied and the unpropertied.

20. See, for example, the chapters on Ostrogorski and Herbert Croly in Austin Ranney, The Doctrine of Responsible Party Government (Urbana, Ill.: University of Illinois Press, 1954).

It is the majority that needs to be tamed and tempered; it is its impulse to execute schemes of oppression that must be checked; it is its will that must be frustrated.

This is why Madison is sometimes dismissed as a closet aristocrat, as a cynical Beadarian operator intent on keeping hot polloi in its place; or, as Dahl would have it, an ideologue. But this is not very charitable, and it is entirely too glib.

For above all else Madison feared tyranny. It is not surprising that this should be so. Americans of Madison’s day were intimately familiar with the late tyranny of the English monarch, and they had risked everything in revolution against him. But a tyrannical king was not to be feared in the newly independent United States. Neither was there any reason to fear a tyrannical aristocracy in America; there was no ancien régime. Note, however, that Madison observes in the first paragraph of his essay that there is just cause for the frequently heard complaint among Americans that “measures are too often decided, . . . by the superior force of an interested and over-bearing majority” (Number 10, p. 57). This brand of tyranny, it seems, is something with which Americans must be concerned. He is, therefore, not writing about a problem that is merely theoretical; or at least he does not think that it is.

Madison has something quite definite in mind when he speaks of majority tyranny, and we are given some important clues in the following passage:

No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men, are unfit to be both judges and parties, at the same time; yet, what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens; and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are and must be themselves the judges; and the numerous party, or, in other words, the most powerful faction must be expected to prevail. (Number 10, pp. 59-60)

What are we to make of this passage? Several things need to be said. In the first place, Madison is obviously resigned (at the very least) to the operation of the principle of majority rule in the legislature. Second, the example he gives—private debts—is a par-
ticularly pointed one. Such an issue will always cause creditors and debtors to line up against each other, and-and this is crucial-when the votes are counted the debtors will be found to have won. There are more of them; they will always win. Third, the last sentence highlights a difference in the manner in which Madison uses the terms "party" and "faction." At the beginning of the passage, Madison uses the term "party" as a synonym for "advocate," as one might refer to the parties to a lawsuit-party in contradistinction to judge. There surely is no reason to believe that Madison is an "anti-party thinker" when the term is used in this sense, at least. If he believed that all advocacy was inherently evil he surely would not have undertaken the task of writing this essay, or any other. "The creditors are parties on one side," we are told, "and the debtors on the other." The party with the most adherents, then, carries the day, and that will always mean the debtors. Their mere numbers are decisive, whereas "justice ought to hold the balance" between the two parties. The last line of this particular passage ("...and the most numerous party, or, in other words, the most powerful faction might be expected to prevail") is precisely the line cited by Hofstadter in support of his contention that Madison "used the terms party and faction as synonyms." The fact is that this passage, when read in context, serves to show that Madison, at least in this place, used the terms to make a subtle distinction.

I am willing to concede that Madison for the most part does use the terms synonymously, but if that is so it is because parties-in Madison's day as in our own-are much inclined to confuse their own interest with the "permanent and aggregate interests of the community." For parties tend to derive their strength from the enduring divisions of society, especially from class. And in a republic the most dangerous faction is the one that springs from the most numerous class. Madison brings home this point with another example:

The apportionment of taxes on the various descriptions of property, is an act which seems to require the most exact impartiality; yet, there is perhaps no legislative act in which greater opportunity and temptation are given to an predominant party, to trample on the rules of justice. Every shilling with which they over-burden the inferior number, is a shilling saved to their own pockets. (Number 10, p. 60)

Put somewhat more baldly, a legislature which is especially respon-

22. Hofstadter, p. 64.
sive to the will of an interested majority can never be expected to "soak the poor".

Madison describes in no uncertain terms the kinds of policies that will be promoted by factious majorities when he refers to "a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project" (Number 10, p. 65). The lesson should now be clear: when Madison thinks of a factious majority he is thinking of something like Shays' Rebellion. "The most common and durable source of factions," Madison tells us, "has been the various and unequal distribution of property" (Number 10, p. 59). In America there is no reason to fear those who oppose such improper and wicked projects as the abolition of debts. Relief from them, as we have seen, is supplied by "the republican principle, which enables the majority to defeat its sinister views by regular vote." The real danger is to be found in that very majority, a majority that will become factious if it discovers that paper money, the abolition of debts, an equal division of property, etc., are policies which are emphatically in its own interest. Such a majority cannot be out-voted. Madison is not a closet aristocrat; he simply denies that might makes right.

And Daniel Shays is not to be feared merely because a factious majority will, if it is unfettered, adopt policies which are contrary to the interests of others (including, we will invariably be reminded by the followers of Beard, the "withered little apple-john" who wrote the tenth Federalist). No, the policies that might be expected to be pursued by such men as Shays will also be contrary to the public interest. Why? Because such policies will mean an end to liberty. The problem is that a factious majority will be inclined to opt for equality over liberty. And because it is not especially difficult to put the case for equality in America, its advocates will not always be as impolitic as Shays, nor will they always be treated so rudely by the authorities. The proponents of equality, according to Madison, believe that "by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions" (Number 10, p. 62). In other words, the equalitarians aim to give to every citizen the same opinions, the same passions, and the same interests." But this (besides being "impracticable") defies nature, according to Madison, because men have different characters and talents, and "the diversity in the faculties of men" (Number 10, p. 58) results in a natural inequality of condition. And
"the protection of these faculties is the first object of Government" (Number 10, p. 58, emphasis supplied). Since it is in the diversity of these faculties that "the rights of property originate," (Number 10, p. 58) and since government must respect these differences, it follows that government should not attempt the redistribution of property.

But here we have come full circle. Government is duty-bound to respect property rights, and to refrain from interfering with an inequality of condition that is rooted in nature. And "from the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results" (Number 10, p. 58). And, unfortunately, the influence that property exerts "on the sentiments and views of the respective proprietors" results in "a division of the society into different interests and parties" (Number 10, p. 58). This is to be expected so long as "the connection subsists between his [man's] reason and his self-love" (Number 10, p. 58). Because of the various and unequal distribution of property, which is protected by government, many interests are created - "a landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests" (Number 10, p. 59) - and these will naturally vie and contend with one another. Government will be very much involved in this contention, since "the regulation of these various and interfering interests forms the principle task of modern Legislation" (Number 10, p. 59).

This, in its turn, "involves the spirit of party and faction in the necessary and ordinary operations of Government" (Number 10, p. 59). What this all means is that by respecting the unequal distribution of property (in the interest of liberty), the government must stand idly by while an element of society is created in whose interest it is to violate the first object of government (i.e., to sacrifice liberty to the demand for an equal division of property). This particular interest group, which will naturally claim to speak for "the people," will violate the first object of government as soon as it gets the chance.

For obvious reasons, such a faction will be very dangerous in a polity run according to strictly majoritarian rules. Madison believes in popular government, but he knows that because of the mischiefs of faction, the public good often requires the taking into account of "indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole" (Number 10, p. 60). The
difficult task that Madison sets for himself, then, is the establishment of a popular government that is immunized against strict majoritarian rule. As Herbert Storing has put it, "the problem was how to inform some parts of a government that was basically popular with a spirit that would not be simply popular."

IV

One of the devices resorted to by the framers, in their effort to impose fetters on a factious majority, was the separation of powers. As indicated earlier, Madison's detractors consider him to be naive for relying on mere "parchment" protections as barriers against tyranny. Thus, according to Hofstadter, the Constitution had to be "rescued" by the parties.

But the curious thing about this indictment is that it is usually juxtaposed with much hand-wringing over the mischiefs wrought by these selfsame parchment contrivances. (Evidently the parchment has some efficacy after all.) Thus Hofstadter, like Woodrow Wilson, and so many other distinguished political scientists before him, concludes that separation of powers, if not rescued by party, will virtually incapacitate the government:

The balance of social interests, the separation and balance of powers, were meant to secure liberty, but it was still uncertain, after the instrument had been framed and ratified, whether the balance would not be too precarious to come


24. The "responsible parties" literature is usually traced back to Woodrow Wilson, Congressional Government (Boston: Houghton Mifflin Co., 1885); see Austin Ranney, The Doctrine of Responsible Party Government. The case has been put frequently by contemporary political scientists. Landmark treatises on the subject include E. E. Schattschneider, Party Government (New York: Rinehart, 1942); Toward a More Responsible Two-Party System: A Report of the Committee on Political Parties, American Political Science Association. The American Political Science Review (Supplement: Vol. 44, September 1950, Number 3, Part 2); Stephen K. Bailey, The Condition of our National Political Parties (New York: The Fund for the Republic, 1959); and James McGregor Burns, The Deadlock of Democracy (Englewood Cliffs, NJ: Prentice-Hall, 1963). This literature appears to be politically neutral, i.e., nonpartisan, but what Professor Persson concludes about Schattschneider can be said of the genre: A strong president, administrative centralization, national parties, loose construction of the Constitution, class politics-this is Schattschneider's program of party government, but it sounds suspiciously like the institutional program of the Democratic party as it was reconstituted by Franklin Delano Roosevelt."
to rest anywhere; and whether the arms of government, separated in the parch-
ment, could come together in reality to cooperate in the formation and execu-
tion of policy. 25

According to Hofstadter, "a mechanism had to be found...by
which men could put together what God [1], in the shape of the
Constitution, had sundered—to make it possible for the President
and Congress to work in harness. 26 That mechanism was party.
The arms of government were separated because the framers
thought that "the accumulation of all powers legislative, executive
and judiciary in the same hands, whether of one, a few or many,
and whether hereditary, self appointed, or elective, may justly be
pronounced the very definition of tyranny" (Number 47, p. 324).
Their understanding of separation of powers was derived from their
reading of Montesquieu—"the oracle who is always consulted and
cited on this subject" (Number 47, p. 324). And central to Montes-

quieu's thought is the incorporation within the government of each
of the various orders, or estates, that have a share in the sovereignty.
This—the "mixed regime"—is the classic eighteenth-century method
of guarding against tyranny—a method of which Hofstadter is not
unaware:

What had come down as the authoritative prescription for just and stable
government from the times of Polybius and Aristotle was the idea of mixed
government—that is, a government that would incorporate representation of
the three basic orders in society. The three indispensable arms of government
would act for the sovereign, the nobility, and the people.

Thus Madison quotes Montesquieu as asserting that "there can be no
liberty where the legislative and executive powers are united in the
same person, or body of magistrates," or "if the power of judging be
not separated from the legislative and executive powers" (Number
47, p. 325).

Drawing from the wisdom of the celebrated Montesquieu, the
framers proposed to structure the various departments of govern-
ment in such a way as to provide them with "different principles of
action" (Number 51, p. 350). The special powers delegated to the ex-
ecutive branch, for example, and the special manner of presidential
selection, would presumably supply the presidency with an indepen

25. Hofstadter, p. 70.
26. Ibid.
27. Ibid., p. 51.
dent "will of its own" (Number 51, p. 348). And, as Hamilton explains, providing the President with the veto power furnishes an additional security against the enactment of improper laws. It establishes a salutary check upon the legislative body calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body. (Number 73, p. 495)

Still, the presidency would be a distinctly republican institution. The failure of Hamilton's own eloquent appeal for an elective life monarch to sway the framers at Philadelphia attests to the firmness of their commitment to republicanism.

Likewise Senators, because of their indirect election, six-year term, and large constituencies, would invest the smaller chamber with a special "genius" (Number 62, p. 418). Madison, in the sixty-third Federalist, writes:

There are particular moments in public affairs, when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. (Number 63, p. 425)

Senators can be counted on, in such circumstances, to comport themselves with more dignity than their counterparts in the lower house:

In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice and truth, can regain their authority over the public mind. (Number 63, p. 425)

Just as the presidency is to be a republican version of the Crown, so the Senate finds its analogue in the House of Lords. Madison confesses as much, although he regards as groundless the charge that the Senate could gradually transform government "into a tyrannical aristocracy" (Number 63, p. 428). For although the Senate gives off an unmistakable aristocratic aura, it nevertheless will not owe its special genius to "a will in the community independent of the majority, that is, of the society itself" (Number 51, p. 351). The will of the Senate, therefore, like that of the Presidency, will prove not to be repugnant to "the spirit and the form of popular government."
But is Madison naive to rely on a parchment separation of powers to provide a bulwark against tyranny? Will each department be able to resist the encroachments and usurpations of the others? Hofstadter, of course, would have us believe that the framers relied solely on these parchment protections to provide a check against the abuse of power. But this is simply not the case. On the contrary, Madison quite explicitly, and emphatically, does not rely on the parchment. He knows that much more is required:

Will it be sufficient to mark with precision the boundaries of these departments in the Constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American Constitutions. But experience assures us, that the efficacy of the provision has been greatly over-rated; and that some more adequate defence is indispensably necessary for the more feeble, against the more powerful members of the government. (Number 48, pp. 332-333)

Madison knows that in order to be efficacious, separation of powers must be rooted more in human nature than in parchment. He thus proposes that each department be truly imbued with a will of its own:

[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. (Number 51, p. 349)

More precisely, private ambition must be harnessed to counteract the inevitable encroachments of the legislative branch. For ours is a republican government, and "in republican government the legislative authority, necessarily, predominates" (Number 51, p. 350). Madison explains in the tenth Federalist that this fact has not been properly appreciated by the framers of the state constitutions, who, misled by the colonial experience, had failed to guard against legislative usurpations. The result, according to Madison, is that "the legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex" (Number 48, p. 333). Thus, "it is against the enterprising ambition of this department, that the people ought to indulge all their jealousy and exhaust all their precautions." (Number 48, p. 334, emphasis sup-
plied).

But the real question here is whether the ambitious men in the other departments of government would ever be able to resist the encroachments of an ambitious legislature composed of men im- pasioned by a zeal for, say, the equal division of property, men who comprised the vanguard of an interested and over-bearing majority. Would ambition in the other branches suffice to counteract that kind of legislative ambition? Would the "temperate and respectable" Senate be able to resist such a juggernaut? Could the President be counted upon to do the unpopular thing when the public good required it—even if he were sure to be excoriated by the leaders of the mob?

The truth is that in America the other departments cannot be given independent wills potent enough to withstand a sustained assault by the popular branch. On the contrary, it is more likely that the branches will tend toward fusion, inasmuch as all of them are ultimately dependent on "public opinion," Formal separation of powers will only work if the political community is composed of several constituent parts, each sharing in the sovereignty. In that case each organ derives its "will" from the estate to which it is associated; the government becomes, in effect, the society writ small. But in America, where there is only one estate, there is no will that is not ultimately dependent upon the people. As Tocqueville observed, "there is in America but one sole authority, one single element of strength and of success, with nothing beyond it." 28

In the United States the unbounded power of the majority, which is favourable to the legal despotism of the legislature, is likewise favourable to the arbitrary authority of the magistrate. The majority has an entire control over the law when it is made and when it is executed; and . . possesses an equal authority over those who are in power and the community at large.2

If all the diverse peoples who in America constitute "the many" were

---

29. Ibid., I, p. 279. My argument here depends on there being no important distinction, in Madison's work, between “government tyranny” and “majority tyranny.” In not recognizing such a distinction I believe I am following Tocqueville's treatment of the subject. I am aware, however, that a persuasive case can be put to the contrary (see George W. Carey, "Separation of Powers and the Madisonian Model: A Reply to the Critics," The American Political Science Review LXII (March 1978), pp. 151-164).
to recognize that they have a common motive to invade the rights of other citizens, if they were to discover their own strength, and to act in unison with one another, then they would be truly invincible. Under such conditions the formal separation of powers, even when the parchment barriers are buttressed with private ambition, is rendered absurd. It is to have only one branch in fact, if not in the parchment.30

In other words, fortifying the other branches of government against legislative incursions will not be a very effective check on excess power. In America the only real check against tyranny lies in the domestication of the legislature. The best way to do this is to implant in the legislature many distinct motors, each tending to carry the body in a different direction, and thus only for a short distance. The legislature must be broken up into many small parts; that is to say, it must be sown with the seeds of party.

And the best way to do this is to encourage the "schismatization" of the majority. The diverse parties and interests that comprise the

30. Diamond puts it this way:

If the majority comes to have the same passion or interest and holds to it intensely for a period of only four to six years, it seems certain that it would triumph over the "extent of territory," over the barriers of federalism, and separation of powers, and all the checks and balances of the Constitution. I do not wish to depreciate the importance of those barriers, I believe they have enormous efficacy in stemming the tide Madison feared. But I would argue that their efficacy depends upon a prior weakening of the force applied against them, upon the majority having been fragmented or deflected from its "schemes of oppression." An inflamed Marxian proletariat would not indefinitely be deterred by institutional checks or extent of territory. The crucial point then, as I see it, is the means by which a majority bent upon oppression is prevented from ever forming or becoming firm. ("Democracy and The Federalist: A Reconsideration of the 'Framers' Intent," pp. 65-66.)

By citing Diamond approvingly I do not mean to deny Paul Eidelberg's thesis that the framers aimed to establish a "mixed regime," not a democracy (see Paul Eidelberg, The Philosophy of the American Constitution, New York: The Free Press, 1968). On the contrary, I am making exactly the same point as Eidelberg when I refer to the framers' attempt to give the various departments of government distinctive "wills," or "geniuses." "The question," Herbert Storing writes in the Foreword to Eidelberg's book, "is whether the democratic principle, when applied in different forms ... remains the democratic principle or whether it is not thereby transformed into aristocratic, oligarchic, or monarchic principles" (p. xii).

I would also want to endorse emphatically Eidelberg's interpretation of Madison's view of faction. I especially agree that the tenth Federalist might be profitably read substituting the term "leveling spirit" for the term "majority faction." See Chapter 8 of The Philosophy of the American Constitution.
many, if encouraged to promote their own particular interests, will not be inclined to raise the most fundamental political issues. They will not realize that they share some common interests, but rather, will tend to compete with one another for a limited share of the "spoils." Politics becomes a Great Game; it is "who gets what, when and how." Instead of concerting to execute schemes of oppression, the parties will be occupied by more mundane things. Madison brings the point home in the fifty-first Federalist, where he indicates that he is quite well aware of the role that "hereditary or self appointed authority" can play in other regimes, and where he proposes a substitute for that authority in America:

If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: The one by creating a will in the community independent of the majority, that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole, very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self appointed authority. . . . The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals or of the minority, will be in little danger from interested combinations of the majority (Number 51, p. 351).

Of course this has certain consequences, consequences that are generally regarded as mischievous by contemporary students of American politics. Mainly, the expedients to which Madison resorted for curing the mischiefs of faction have frustrated "effective," energetic government. The question, then, is whether this is inconsistent with the overall aims of the framers. That is, do the formulas of the tenth Federalist undermine the framers' attempt to construct a "more perfect union"? Hofstadter is explicit on this subject—he believes the tenth Federalist to be incompatible with "the 'energetic' government he [Madison] and Hamilton sought." It is of course true that the framers sought to establish a government that was more energetic than that which had operated under the Articles of Confederation, but that was not too difficult, since under the Articles the United States were joined only in a "league of friendship." It is also true that Hamilton in particular longed for a

32. Hofstadter, p. 68.
"strong, well-mounted government," and that he clearly was a national supremacist. But that is not to say that even he advocated an energetic government that was constantly legislating on the important issues of the moment. On the contrary, Hamilton only wanted the executive branch to be invested with this kind of energy, and he explains why. "In the legislature," he wrote in The Federalist, Number 70, "promptitude of decision is oftener an evil than a benefit" (Number 70, p. 475). There are certain advantages associated with the "jarrings of parties in that department of the government" (Number 70, p. 475), but not so in the executive. "[N]o favourable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here they are pure and unmixed" (Number 70, p. 475). Why? Because they "constantly counteract those qualities in the executive, which are the most necessary ingredients in its composition, vigour and expedition, and this without any counterbalancing good" (Number 70, pp. 475-476) .

Mainly, vigor and expedition are necessary because "the energy of the executive is the bulwark of the national security" (Number 70, p. 476). Thus it is that even Hamilton, who is characterized by Hofstadter as being "among those who agreed that the elimination of parties was a possible goal in a well-designed and well-run state," 33 endorses the Madisonian view that the "jarrings of parties" may be desirable in the legislature. He concedes that while party combat "may sometimes obstruct salutary plans" (Number 70, p. 475), yet often it will "promote deliberation and circumspection; and serve to check excesses in the majority" (Number 70, p. 475). The reader is reminded that the chief object of government, according to the tenth Federalist, does not require an energetic government. Government needs merely to preserve, or to protect, certain conditions accruing from nature (the diverse faculties among men that are reflected in their owning differing kinds and amounts of property). This function requires preservation, not innovation, and therefore energy may actually be dangerous in that it may lead to a tendency to, as Edward C. Banfield has put it, "meddle" 34 -a tendency, in other words, to adopt policies aimed at defying the imperatives of nature (e.g., policies aimed at the egalitarian redistribution of property).

33 Ibid., p. 17.
It can be seen that the interpretation of Madison's thought advanced here is precisely the opposite of that advanced by Hofstadter. Hofstadter characterizes the American Constitution as a "Constitution-against-parties," and contends that the development of a party system profoundly transfigured ("rescued") the government created by the bumbling framers. But Madison did not attempt to root party out of the Constitution. He was not an "anti-party thinker." And he did not rely on mere parchment protections against tyranny. On the contrary, because of his fear that only one party would flourish in America—an interested and overbearing party of the majority—he tried, not without some success, to build other parties into the Constitution. He especially tried to build them into the legislature, so as to remove from that potentially voracious branch the factious impulse.

V

It has been my intention to show that Madison should not be characterized as an "anti-party thinker;" that he was, in a certain sense, a pro-party thinker; that he was not at all deluded by "the old dream of national unity;" and that he was not in the least naive about the limits of formal Constitutional barriers against tyranny. But while I believe Madison to have been very realistic about the inevitability of party, and resigned to—even willing to encourage—a certain amount of natural tumult and contention in politics, it can properly be said of Madison that he would not approve of certain aspects of modern parties as they have developed in the West.

For one thing, Madison certainly would not approve of what is often referred to as "responsible party government." Madison believed that parties reflect the natural and enduring division of society into various classes. Consequently, a system designed to produce "strong" governing parties will, in America, necessarily mean government by the most numerous class. According to Madison, then, "responsible party government" would be a system where measures are decided, "not according to the rules of justice, and rights of the minor party; but by the superior force of an interested and over-bearing majority."

This, to borrow the language of Walter Bagehot, means that "parliamentary government" will devolve into "sectarian govern-

35. Hofstadter, p. 166.
ment," which is characterized by the substitution of partisan zeal for rational discourse and deliberation. The virtue of the English House of Commons, as he knew it, was that it was not composed of warm partisans. The body is eager, but the atoms are cool. If it were otherwise, parliamentary government would become the worst of governments—a sectarian government. The party in power would go all the lengths their orators proposed—all that their formulae enjoined, as far as they had ever said they would go."

Thus moderation prevailed in the English House of Commons during the mid-nineteenth century, before the full development of the party system.

This brings us to consideration of that development of the past hundred years that has, more than any other, transformed the nature of parties in the West—the tendency for them to develop their centers of power outside the government. Modern parties emerged with the development of the modern legislature: Burke's Whigs, after all, were an exclusively parliamentary party (an "interior" party, Duverger would call them). But modern parties have bureaucracies and headquarters located outside the legislature, inasmuch as universal suffrage has removed the insulation between parliament and constituency, and put the former at the mercy of the latter. Some modern parties ("exterior" parties, such as the British Labour Party) even began on the outside, and forced their way in. This has meant that governments, ultimately, are often run from the outside. Duverger, for example, has written:

Officially Great Britain has a parliamentary system, that is a system with modified separation of powers. . . . In practice the existence of a majority governing party transforms this constitutional pattern from top to bottom. The party holds in its own hands the essential prerogatives of the Legislature and the Executive... Parliament and Government are like two machines driven by the same motor, the party. Executive and Legislative, Government and Parliament, are constitutional facades: in reality the party alone exercises power."

This particular type of sectarian government, favored by the advocates of "responsible party government," is best characterized by

38. Ibid., p. 394.
another of Bagehot’s felicitous epithets: “constituency government.”

Bagehot predicted that the development of modern parties in Britain (made inevitable by passage of the Reform Act of 1867, which also, according to some, rendered Bagehot’s book obsolete) would mean that the House of Commons would be stripped of its independence, and also of its moderation:

The constituencies may not let it [the House of Commons] alone. But if they do not, all the checks which have been enumerated upon the evils of party organization would be futile. The feeling of a constituency is the feeling of a dominant party, and that feeling is elicited, stimulated, sometimes even manufactured by the local political agent. Such an opinion could not be moderate; could not be subject to effectual discussion; could not be in close contact with pressing facts; could not be framed under a chastening sense of near responsibility; could not be formed as those form opinions who have to act upon them. Constituency government is the precise opposite of parliamentary government. It is the government of immoderate persons far from the scene of action, instead of the government of moderate persons close to the scene of action.”

Madison would not think much of those nineteenth- and twentieth-century developments that have tended to produce, in so many Western democracies, sectarian, and constituency government. But that is no reason for concluding that Madison is an "anti-party thinker." For, as Epstein explains below, any pluralist in the Madisonian tradition can admire a party system that takes the fangs out of majority rule:

The pluralist’s acceptance of the workability of parties with limited functional roles, really the acceptance of weak parties, is some distance from the theory that parties should be abolished. It may not be unthinkable or even entirely undesirable for a pluralist’s political system to be without parties, but it is not necessary to be without them. As long as they do not have the majoritarian pretensions so often assigned them, political parties can be clearly compatible with the pluralist democratic theory.”

And, according to some students of the subject, the American party

system is the very key to American pluralism.
Furthermore, there is no reason for believing, as Hofstadter does, that Madison preferred multi-party systems to two-party systems. Hofstadter writes:

Madison’s pluralism... was a pluralism among the parties, whereas the course of our national history has produced a pluralism within the parties. ... What Madison did not see in advance was that the Constitution... would become a major force, perhaps the major force, in creating two great parties, and thus ironically making more probable the very majority coalition he so much feared.”

But where is the irony here? The tenth Federalist states no preference for multipartism over bipartism (thinking now of parties as we have come to know them), and, as Epstein knows, “a multi-party system would be compatible with the pluralist position, but so is a two-party system in which each of the two parties represents an aggregate of certain minorities.”

Since this is precisely how the American parties have developed, there is every reason to believe that Madison would give the American party system his hearty endorsement, and he might even claim it as his most important legacy. For the American party system, “a compound, a hodgepodge, of various and conflicting interests” works the way it does not in spite of the formulæ of the tenth Federalist, but because of them. This is so because Madison wished to encourage majority coalitions. He was not afraid of that kind of majority. He was afraid (without reason?) of a majoritarian monolith animated by a single impulse of passion or interest.

VI

“Schattschneider,” Professor Piereson writes, “says we have never had a debate on the value of parties, and that Madison was a great anti-party theorist, but there was once such a debate, Madison participated in it, and there he endorsed in theory and practice the formation of the first modern political party in America.” As they have

44. Hofstadter, pp. 71, 72.
45. Epstein, p. 17.
46. Hofstadter, p. 72.
developed the American parties have become, to borrow a term from Theodore J. Lowi, "constitutional," or "constituent," parties. That is, they "have something regular and essential to do... with the structure, the composition, and the operation of the regime or system." Mainly, party operates in such a way as to promote the rule of the concurrent majority. This is why Lowi is quite right in asserting that "it is no paradox that the very men who were above party, the very men who were on principle opposed to party, were the men who created political parties and led them."

In other words, the American party system is "extra-constitutional" only in the most trivial sense. Party is the very mortar that holds the bricks of the Constitution in place—a mortar that was neither wholly unanticipated nor condemned by the framers. It must be conceded that they regarded party as a humble thing; they certainly made no effort to glorify it. It may gall some that the framers refrained from the exaltation of party, but that truly is one task better left to those whose view of human nature is less dour, and whose conception of the ends of government more overweening, than theirs. For the truth is that party is not very easily glamorized, even by the most skilful of propagandists—Woodrow Wilson, for example. This is because America has long since lost what Tocqueville referred to as its "great" parties. Because of the ubiquity of the American democrat, he has been rendered "a Hercules with the brain of a Hamlet." As Professor Piereson has put it, the American parties "no longer represent contending regimes."

In some places majority tyranny may bite with the fangs of the Jacobins, but in America it is more likely that liberty will be suffocated insidiously by an immanent majority that confuses the claims of equality with the ends of justice. Lacking great parties, we are left with only "minor" parties. These, unlike the former, "are not sustained or dignified by a lofty purpose," but rather:

...glow with a factitious zeal; their language is vehement, but their conduct is timid and irresolute. The means they employ are as wretched as the end at

48. Ibid., p. 239.
49. Ibid., p. 242.
which they aim. Society is convulsed by great parties, by minor ones it is agitated; it is torn by the former, by the latter it is degraded; and if these sometimes save it by a salutary perturbation, those invariably disturb it to no good end.

It is not easy to glorify such institutions. Moreover, those who would try to elevate the status of the paltry American parties ought to be reminded of Tocqueville's warning that certain disadvantages also inher in the great parties. Specifically, such parties "cling to principles more than to their consequences," and:

"In them private interest, which always plays the chief part in political passions, is more studiously veiled under the pretext of the public good; and it may even be sometimes concealed from the eyes of the very persons whom it excites and impels."

As Professor Piereson observes, our parties, if useless, at least have not been very dangerous.

Hiram College

KENNETH KOLSON

52. Ibid., I, pp. 178-179.
53. Ibid., I, p. 178.

Is The Federalist Anti-Party?

In his well-known work Party Government, E. E. Schattschneider stated: "Nearly the whole of the constitutional theory on the subject of political parties can be studied in capsule form in Number 10 of the Federalist Papers, written by James Madison." But it was not Schattschneider's intention to lavish praise on Madison, for he insisted that "the authors of the Constitution did not understand parties and certainly did not admire them. ..." Schattschneider's own general conclusion—one in which he strikingly contrasted his own position with that of the founders—reads as follows: