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James Madison

Michael P. Zuckert

We may define a republic to be ... a government which derives all its powers directly or indirectly from the great body of the people; and it is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is essential to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it. ... It is sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified. (Federalist #39)

Among the difficulties encountered by the convention, a very important one must have lain, in combining the requisite stability and energy in government, with the inviolable attention due to liberty and to the republican form. ... On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once, the difficulty of mingling them together in their due proportions. (Federalist #37)¹

James Madison (1751–1836), often described as the ‘father of the American Constitution’, made important contributions to the development of liberalism as a political orientation. Most significantly, he pondered deeply the problem of how to reconcile what we would call liberal politics, that is, politics aiming to secure rights and liberty, with republican or (as we would now call it) democratic government. Madison’s chief contributions to the analysis and solution of this problem occurred in *The Federalist*, a series of newspaper essays later collected into a book aimed at explaining and defending the constitution he helped draft during the summer of 1787. After a disappointing decade or so under the previous constitution, called the Articles of Confederation, some of

the leading politicians of the American states concluded that a major reform of the Articles was needed and they prevailed on Congress under the Articles and the various state legislatures to back the idea of a new convention. A convention was called to meet in Philadelphia in May of 1787 and was attended by many of the leading lights of the age, including Hamilton and Madison. The new constitution produced by the convention was deeply controversial, especially in New York, the home state of Hamilton and John Jay. These two, together with Madison, agreed to write a series of articles for the newspapers explaining and defending the new constitution, which became *The Federalist* when the articles were collected as a book. Alexander Hamilton, Madison's collaborator in *The Federalist*, put the problem Madison was addressing very pointedly when he asserted that the 'enlightened friends of liberty'; that is, what we would call the partisans of liberalism, would have to abandon the republican form of government if better models of republicanism were not discovered.² Madison's chief contribution to liberal political thought consists of the development of those 'better models'.

Scattered through *The Federalist* is the recognition of a large number of flaws and failings revealed in the historical record of republics that seemed to make that form of governance ill-suited to establishing and maintaining a free or liberal society. One flaw had been well recognized long before Madison embarked on his efforts. The great French political philosopher Montesquieu had argued in his *The Spirit of the Laws* (1748) that whatever virtues republics had, they were at a disadvantage in the international arena because it was in the nature of republics to be small and thus to be vulnerable to larger monarchic or despotic neighbours. Montesquieu's suggested solution to this difficulty was that republics confederate and, in union, acquire the strength to resist larger neighbours. The American colonies followed Montesquieu's advice immediately upon declaring independence in 1776 when they drafted the Articles of Confederation. Unfortunately for the Americans, the nation did not thrive under the Articles; the failures of the Articles prompted the calling of the Constitutional Convention in 1787. Madison's first great contribution to liberal theory was to develop an analysis of why the Articles and other similar confederacies did not succeed in producing the effective and harmonious union Montesquieu had projected. In place of the Articles, Madison proposed a new kind of federal system with a much greater promise of achieving the goals Montesquieu had set out. But, important as was Madison's development of a new kind of federalism, this was not his most important contribution to liberal theory and practice.

His more important contributions are captured in his analysis of three other potential failings of republicanism or democracy as a mode of liberal governance. First, and probably most famously, he diagnosed the problem of majority tyranny and devised a solution to that problem. Second, he laid out the qualities any liberty-respecting and fostering government must have and revealed the difficulties republics can have in meeting these needs. Third, in response, he laid out a plan by which a republic may meet these needs. Perhaps the best way to summarize Madison's contributions to liberalism is that he showed how a liberal regime can be established in a wholly republican manner. Before Madison, the best minds who had turned to that question – Locke and Montesquieu in particular – had maintained that this was not possible: according to them, a liberal regime is possible only on the basis of governmental structures Madison and the Americans deemed non-republican.

Despite seeing himself to be among 'the enlightened friends of liberty' and sharing doubts about the compatibility of liberty and republicanism, Madison, like most of the Americans of his day, was committed to 'that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government' (*The Federalist*, #39). Despite the possible incompatibility between liberalism and republicanism, there was also a deep convergence between them, for, says Madison, 'no other form [than a republic] would be reconcilable ... with the fundamental principles of the revolution'. As Madison understood it, those principles were expressed in the Declaration of Independence, issued in July of 1776. According to those principles, the American Revolution was a thoroughly liberal affair for it was based on 'the unalienable rights' of all human beings and posited the end of government as the security of rights, prominent among which was liberty. So, Madison saw the Americans (and the friends of liberty more generally) to face a dilemma: liberal principles imply republicanism, but republicanism may be incompatible in practice with liberal regimes. A great difficulty indeed.

Madison's definition of a republic in the first extract is central to his efforts to resolve that dilemma. The definition is important for two main reasons: it brings out the principled elements in liberal theory that establish the sole legitimacy of republican government, and at the same time points towards forms of republicanism that can resolve the dilemma Madison faced.

We should note that, in his definition, Madison identifies two sets of criteria: what is 'essential' for a republic to be a republic and what is 'sufficient' for a regime to be a republic. *Essential* is that the government draw all its power directly or

indirectly from the great body of the people, and that office holders serve under terms of tenure that makes them, in principle, removable. Being derived from the great body of the people means that no particular class of persons has a claim on power merely by virtue of being who they are. This aspect of the definition rules out many regimes that had called themselves republics and had been called such by political thinkers of the past. So, Rome, to take an important example, had a body, the senate, as part of its constitution that drew its members exclusively from the patrician class. Likewise, the British constitution, considered by Montesquieu to be a republic, had a king who came exclusively from the royal family and a House of Lords drawn from the hereditary aristocracy. No regime with a hereditary element or an official-class-assigned governmental body can meet Madison's definition of a republic. This criterion rules out most of the regimes called republican throughout known history. Only a wholly popular or democratic regime can count as a republic.

Madison believes that this kind of popular republic is mandated by the liberal principles of the American Revolution. He, along with most of his fellow Americans of the age, considered the Declaration of Independence to be *the* authoritative statement of the principles of the revolution. The declaration presents a theory of the origin and purposes of legitimate government, and that theory points towards a republic as defined by Madison to be legitimate. The beginning point of thinking about government, according to the declaration, is human equality. 'All men are created equal' in the sense that nobody has a right, by virtue of what they are or of any qualities they possess, to rule any other person. Thus, nobody has a 'divine right' or a hereditary right to rule. Nor does a right to rule result to any person by virtue of some outstanding quality, such as intelligence, beauty or wealth. Government, that is to say, legitimate rule by some over others, derives from 'the consent of the governed', as the people in principle consent to the existence of ruling authorities for the sake of remedying the ill situation that arises when there is no rule. Under conditions of pure equality, rights are greatly insecure due to the use of illegitimate force by some against others. Government, that is, organized and legitimate coercive authority, is constituted by the people to protect their rights.

Since all legitimate authority arises as described above, it follows that legitimate government is government that recognizes and reflects that origin in rejecting all hereditary and self-selecting power holders. The republic, as defined in its essential character by Madison, is the governmental form that corresponds to the underlying principle of a liberal regime. That essential criterion of

legitimate government can be met by a variety of forms of popular government. One might meet the requirement that political power be drawn from 'the great body of the people' by instituting a direct democracy, where the people rule in an unmediated fashion. Madison's good friend Thomas Jefferson, who also was the drafter of the declaration, proposed, for example, a rather different definition of republic from Madison's: 'Were I to assign this term [republicanism] a precise and definite idea, I would say; purely and simply, it means a government by its citizens in mass, acting directly and personally.'³ The standard of republicanism for Jefferson is what we would now call direct democracy. Madison would agree that the government thus defined by Jefferson would count as a republic, but he would not accept the idea that this was the *only* kind of republic.

If we turn to the conditions Madison identified as 'sufficient' to define a republic, we will see that he is contemplating a form of government much less directly democratic than Jefferson's. It suffices that all office holders be drawn from the great body of the people, directly or indirectly. Madison differs from Jefferson in two important respects. First, he accepts representative democracy as quite sufficient to qualify a government as a republic. Second, he accepts indirect appointment as well. He does not require that all authorities be appointed by the people themselves, but only that they be appointed indirectly by the people. To give a concrete example of what he means: he thinks it perfectly fine that the justices of the Supreme Court be appointed by the indirectly elected president, with the advice and consent of the indirectly elected senate. The judges are thus quite removed from the people in their appointments, in that both senate and president in the original constitution are two steps removed from the people, making the judges three steps removed. By contrast, Jefferson would have judges be elected by the people and thus only one step removed.⁴ A more distant relation between people and government is, in Madison's view, acceptably republican. His definition satisfies the principled reason requiring a republic, and his 'sufficient' condition allows the construction of a republic that can work in practice to reconcile republicanism and liberty.

In the second extract, Madison calls attention to a serious difficulty those drafting the American Constitution faced. Since governments exist to achieve certain concrete and objective goals, they need to have certain qualities that enable them to meet those goals. In this context, Madison mentions three qualities in particular: energy, stability and liberty, all within the republican form. His thought here is very complex. As opposed to many of the anti-federalists, who opposed the constitution, and to many contemporary democratic theorists,

who believe that the ability to effectuate popular preferences is the one thing necessary to properly constructed government, Madison emphasizes that the needful governmental qualities are multiple. Among these requirements is 'energy', a trait 'essential to' the securing of rights against internal and external threats that is the main business of government (*The Federalist*, #37). Madison understands 'energy' to be the ability to act forcefully and quickly.

Governments must also provide stability, a quality that conduces to one of 'the chief blessings of civil society' (*The Federalist*, #37). By stability, he means a regime marked by regular and infrequently changing laws. Stability in government complements energy by giving the people an environment in which they can act with 'repose and confidence', based on their confidence that the legal environment will be much the same tomorrow as it is today. Where energy activates government, stability activates the people in the sphere of life we have come to call 'civil society', that is, the sub-political sphere of individual and associational activity. Liberty, the ability of the people to act on their own without fear or insecurity, partly results from energy and stability but is a separate requirement as well, because liberty also includes what one may call safety, the guarantee of the non-oppressiveness of government, a quality not automatically supplied by energy and stability.

The plurality of requisite governmental qualities demonstrates that the task of constitutional construction is complex: it is not enough to maximize one desired quality. But the problem of constitutional design is even more complex for there is a great 'difficulty [in] mingling [the desired qualities] together in their due proportions' (ibid.). The difficulty derives from two facts. The first is that the kinds of political structures that tend to produce one quality are antithetical to those that produce the others. As Madison briefly puts it, 'Energy ... requires not only a certain duration of power, but the execution of it by a single hand', while stability 'requires, that the hands in which power is lodged, should continue for a length of time the same', since 'frequent change of men will result from a frequent return of elections, and frequent change of measures, from a frequent change of men' (*The Federalist*, #37 [181–2]). Deeply at odds with both are the apparent structural requirements of 'republican liberty', which 'seems to demand on one side, ... that those entrusted with [power] should be kept in dependence on the people, by a short duration of their appointments; and that, even during this short period, the trust should be placed not in a few, but in a number of hands' (*The Federalist*, #37).

Combining the different qualities seems very difficult indeed, but the task is rendered even more difficult in the American context, for the Americans are

committed to doing this strictly within the bounds of 'the republican form'. The definition of republic discussed previously complicates the achievement of the mixture of governmental qualities Madison is calling for. The typical solution to achieving that mixture in past theory and practice was the mixed regime. That regime, as described, for example, by Montesquieu, involved the mixing of different estates or classes in government, with only one part satisfying the Madisonian definition of republicanism. As Madison says of England, which had been Montesquieu's model for such a mixed regime, it 'has one republican branch only, combined with [an unacceptable] hereditary aristocracy and monarchy'. It is therefore not a genuine republic (*The Federalist*, #39, 194). In a proper republic, all parts of the government must be drawn from the people and thus it is even more difficult to achieve the various qualities needed for good governance since the qualities a monarch and a House of Lords might bring, energy and stability, respectively, are unavailable.

Madison's great discovery, which he and Hamilton draw out at length in the pages of *The Federalist*, is that intelligently structured, wholly republican institutions can mimic the operation of the mixed regime and supply the different qualities needed by all good governments. Thus, to simplify considerably, they demonstrate how the unitary presidency can supply energy, the senate stability and the House of Representatives republican liberty. The separated powers, it turns out, are only partly for the sake of the checks and balances with which they are normally identified. More fundamentally, the separated powers, that is, the separate institutions, are for the sake of providing the mixture of necessary governmental qualities.

The point of Madison's less popular, less stringent definition of the republic compared with Jefferson's becomes clear in the context of the discussion of the way cleverly constructed institutions can mimic the non-republican institutions of the mixed regime. Constructing the kind of institutions Madison sought requires a major shift in the way institutional design was conceived prior to him. The older idea, encapsulated in the mixed regime analysis of Montesquieu and others, was that office holders would be recruited from specific parts of society and would bring the needed qualities with them when they entered government. This is especially true of the monarch and the aristocrats, whose family connections, wealth and hereditary status would arm them with personal and psychic qualities that would allow them to bring to government what was needed from them.

Things were very different for Madison. Here, it was not the persons who would make the institutions but the institutions that would make the persons.

The institutions had to be designed in such a way that they would elicit certain qualities in their holders and allow these qualities to be expressed. In all cases, this depended on representation rather than direct democratic governance, and, in many cases, it required the sort of indirect selection, responsibility and dependence that Madison insisted were sufficient to make a republic. The details of Madison's approach to institutional design are impossible to present in the brief space available here, but a careful reading of *The Federalist* will repay the student with myriad insights into how institutions can shape behaviour.

In this short statement, I have omitted Madison's best-known contribution to liberal theory – his notion of the tyranny of the majority and the large (as opposed to the small) republic as the solution to this problem. A close reading of Madison's *The Federalist* (#10) will satisfy the curious about Madison's ideas on this topic. Likewise, I have failed to discuss two other of Madison's major contributions – his doctrine of religious liberty, as expressed in 'Memorial and Remonstrance', and his authorship of the Bill of Rights. These are perhaps Madison's better-known contributions but they are, for all that, not more important than his contribution to the solution of the problem of reconciling liberalism and republicanism or democracy.