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MADISON'S THEORY OF REPRESENTATION

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ABSTRACT

There is renewed interest among political scientists in institutional design issues. Madison was a careful student of political institutions, and his ideas on electoral issues are of interest to contemporary scholars. We consider first the contrast between Madisonian and Public Choice approaches, and then some of Madison's theories about specific problems of electoral institutional design. Finally, we relate Madisonian concepts to some of the present controversies about the terms of office for elected officials, the Voting Rights Act and apportionment.

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Many, if not most, changes in institutional design can hardly be characterized as "designed"--they usually occur as the reactions of short-sighted people to what they perceive as more or less short-range needs. This is one reason why the Constitutional Convention was a remarkable event. The founding fathers set out deliberately to design a form of government that would be most likely to bring about the long-range goals that they envisaged for the Republic. What is most unusual about Madison, in contrast to the other delegates, is the degree to which he thought about the principles behind the institutions he preferred. He not only practiced the art of what nowadays is called institutional design; he developed as well the outlines or a theory of institutional design.

Thus it is not surprising that Madison's ideas about representation have profoundly influenced several generations of American political scientists. In the fifties and sixties, for instance, the Yale pluralists borrowed heavily and self-consciously from Madison's arguments in the Federalist Papers (Dahl, 1956, 1961; Polsby, 1963). Presently, although it happens that the new institutionalism in political science has focused most heavily on Congress and on economic regulation, there is no reason why rational choice, incentive-based approaches could be not also used to analyze and design electoral reforms in a Madisonian spirit. Thus, the revived interest in institutional issues among political scientists gives us reason to reexamine Madison's thought in a contemporary context. As we shall see, there are important similarities between this approach and Madison's. But even more significantly, there are crucial differences. Above all, it is important to remember that Madison did not think that a representative democracy could succeed in an environment of unbridled self-interest. Moreover, Madison's approach to institutional design was experimental, empirical and circumstantial, not deductive and theoretical.

We will explore Madison's approach to representation by considering two questions. First, what are the similarities and differences between the Madisonian and contemporary incentive-based approaches to institutional design? Second, how did Madison's positions on particular issues of electoral reform fit into the larger Madisonian scheme which we will sketch in the course of answering our first question? In this connection what are the Madisonian issues in contemporary American electoral politics?

I. MADISON AND RATIONAL-CHOICE THEORY

1. Madison on the Nature and the Possibility of Political Science

Madison believed in the possibility of a science of politics--not an exact science modeled on the Newtonian paradigm (which of course few people in his day yet thought of as applying to human affairs) but all the same a good deal more "scientific" than the largely descriptive and classificatory studies that, say, botany, geography and geology still were in the last quarter of the eighteenth century. Politics, in Madison's view, was--or rather could become--a science capable of formulating, from careful observation of the past, generalizations about political behavior from which predictions about future political behavior are possible. Hence he believed, as well, in the possibility of an applied science of political design, and he had a well-developed version of such a science, one which underlay his detailed recommendations for the new constitution.

So far, stated in such general terms, Madison's position has much in common with Public Choice institutionalism, as Professor Schwartz points out in his essay in this volume (Schwartz, 1987, 9). However, Schwartz vastly understates the differences between Madisonian and Public Choice institutionalism when he says that contemporary institutionalists "are more prone than the Federalist authors to construct deductive models that admittedly simplify the reality they are used to explain." (p. 10) Schwartz maintains that the "Federalist's 'axioms' were offered as laws rather than models or hypotheses," and that modern deductive approaches demonstrate the "shortsightedness of casual inference, hence the value of deductive rigor."

Madison's approach, however, was <u>explicitly and self-consciously not axiomatic or deductive</u>; it was strictly empirical, and he did not believe that the generalizations political scientists could formulate, even after the most careful observation, would ever be more than rule-of-thumb guidelines, holding only "for the most," or "usually," or "often." Political generalizations, that is to say, always had to be qualified by a "ceteris paribus" clause which did not represent merely conditions unknown to the present generation of political scientists, but which might become known to later generations, but represented complexities which could not be eliminated because they were a part of human nature and so of human institutions.

As he himself put it, there are "causes which the foresight of man cannot guard against . choices always have to be made under conditions of imperfect and incomplete information. "Experience has instructed us," he says at one point, "that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces--the legislative, executive and judiciary . . ." (no. 37, p. 227-8). Another limitation on the would-be constitutional engineer is the imprecision of language because "all new laws, though penned with the greatest technical skill and passed on the fullest and most mature deliberations, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications." And this is not merely a limitation that can, over time, be removed by the application of improved methods. It is due to an *intrinsic* feature of language: "No language is so copious

as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas" (no. 37, p. 229). In a word, the ambiguities of language inevitably obscure the meaning of written constitutions, no matter how they may be carefully crafted.

In the third place, according to Madison, the practice of institutional design is necessarily imperfect because institutional designers are themselves imperfect. Madison was keenly aware of human fallibility. Hence, even the wisest of constitution makers and reformers, those who try to stand apart and give their best judgment as to what is best for society must "keep in mind that they themselves are but men and ought not to assume an infallibility in rejudging the fallible opinions of others" (no. 37, p. 226).

These are the reasons why, in Madison's view, politics is, and will remain, an inexact science. Given this fact about politics it was important for the delegates to the convention always to remember "that a faultless plan was not to be expected" (no. 37, p. 225). Mistakes and bad predictions being inevitable, it was best always to take an experimental, incremental approach: because no one could know whether a proposal was good or bad until it had actually been implemented: "is it an unreasonable conjecture," he asked critics, "that the errors which may be contained in the plan of the convention are . . . such as will not be ascertained until an actual trial shall have pointed them out?" (no. 38, p. 233). Since "experience is the oracle of truth" (no. 20, p. 138), Madison was deeply suspicious of abstract theory, which he thought of as being the product of shut-in, "closet" speculation "upon paper," in contrast with the active products of an intelligent observation of the real world. At various points in his writings he alludes to the prevalent discrepancy between theory and practice: over and over Madison compares theory and practice, to the disadvantage of the former. Thus, whereas, some "apparatus of powers" may have seemed "in theory and upon paper . . . amply sufficient for all general purposes. . . . Very different nonetheless, was the experiment from the theory" (no. 18, p. 123). And again he contrasts "that artificial structure and symmetry which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination" (no. 37, p. 230) with the more complex product which issued from the hands of delegates exposed to the "pressure" of political demands. There is indeed a note in Madison's writings that anticipates what was to come to fruition much later in James' pragmatism. Practicality and real-life problem-solving rather than symmetry, elegance, and deductive simplicity, were for him the only appropriate criterias for evaluating theories.

It would also be wrong to characterize Madison's approach as "casual inference," to use Professor Schwartz's phrase. Madison's generalizations were based on a close study of historical cases. And the best historical examples, at least those which chiefly influenced him, were drawn from the experience of classical Greece, especially the problems that excessive factionalism caused the Greek city states. "I have thought it not superfluous," he explained at one point, "to give the outlines of this important portion of history, both because it teaches more than one lesson and because, as a supplement to the outlines of the Achaean constitution, it emphatically illustrates the tendency of federal bodies rather to anarchy among the members than to tyranny in the head" (no. 18, p. 128). But inductive generalizations from historical experience, so far from being universally valid rules, are no

more than tentative working hypotheses that must be updated and modified after they were tested. Since perfection is a Utopian dream, reform of faulty institutions should not be postponed in the vain hope that complete solution of political problems will be found.

It follows that any institutional proposal ought to be accepted if it improves the status quo and is the best of various imperfect alternatives. "No man would refuse to quit a shattered and tottering habitation for a firm and commodious building because the latter had not a porch to it . . ." (no. 38, p. 237). This position was, of course, quite compatible with Madison's overall skepticism about the possibility of having complete knowledge and precision.

Madison's advice for would-be institutional designers can thus be summarized, in the following three rules of thumb:

1. Accept the fact that knowledge about political organizations and human behavior is imprecise, incomplete and often circumstantial.

2. Rely on induction from past experience to develop working hypotheses about institutional proposals.

3. Observe how institutions are actually operating and aim to improve them incrementally.

Madison's preference for an experimental, and so tentative, approach to political science and his hostility to a deductive, theoretical approach makes him closer to Aristotle than to Plato--he would have resonated with Aristotle's remark that an educated man is one who does not seek precision where precision is impossible, and he would have agreed with Aristotle that precision is impossible in this sublunar sphere; closer to Locke than to Descartes, closer to Burke than to Hegel--more inclined to see the limits of human knowledge than to trust human rationality. Also, like Burke, and contemporary limited-rationality, incrementalist theorists, Madison preferred cautious experiments with new institutions to attempts at wholesale renovation.

2. Madison on Human Nature

Like contemporary theorists, Madison, believed that any well-designed representative system had to assume that self-interested motives often prevailed over other-regarding ones. "If the impulse and the opportunity be suffered to coincide," he reminds us, "we well know that neither moral nor religious motives can be relied on as an adequate control" (no. 10, p. 81). So too, the "mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gains" (no. 42, p. 268). The purpose of government, according to Madison, was to regulate "these various and interfering interests" (no. 10, p. 79).

But Madison did not believe that man, or government, lived, or could live, by self-interest alone. "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form" (no. 55 p. 346).

What were these qualities? A capacity to care for others was certainly one. Madison acknowledged that emotional bonds often exacerbated political conflicts, but he also believed that passions could be constructive forces if ruled by reason. Consider patriotism. Americans, Madison observed, were "knit together . . . by so many cords of affection," but especially by "the mingled blood which they have shed in defense of their sacred rights" (no. 14, p. 103-4). Affection for one's country and for one's fellow citizens, just as much as formal institutional devices and laws, could serve as a check against the destructive forces of factionalism.

Another motive which, as he thought, affects people's behavior is a desire to keep their relations with others in a kind of balance--for instance, to cite an almost trivial case, a desire not to be socially indebted to those who had done one kindnesses. Thus, as a young student in Williamsburg, he was insistent in letters home to his father that he be sent gifts for those who had done him favors: he wanted, as it were, to bring the exchange of gifts into equilibrium. At a deeper level, of course, this can be, and in his case was, a commitment to moderation, to "nothing in excess"; at a still deeper level it is a passion for equity and justice.

The desire for moderation was not only a powerful motive in Madison's personal life. He was not alone, he believed, in liking moderation and the mean, and in his program of constitution-design he took this motive into consideration, both as a good--something that political institutions should be designed to cultivate and also as a psychological factor on which the framers could to some extent count. Hence his writings frequently allude to the importance of finding a compromise between opposite positions: "in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie" (no. 10, p. 83). If people always acted moderately, there would be little reason to worry about the dangers of tyranny. The problem, as he saw it, was that "public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good" (no. 37, p. 224-5). However, Madison thought that it was possible to design institutions that encouraged moderation, good sense and compromise.

He certainly recognized that individuals and groups are capable of irrational and immoderate behavior, but he believed that in a statistical sense (though of course he would not have put it this way) people are more likely to be sensible. For instance, he recognized that the most important check on tyranny in a representative democracy is the power of citizens to vote officials in and out of office. If citizens are incapable of making sensible decisions, then a government run on democratic principles will be vulnerable to instability. Madison believed that, in the aggregate, voters make sensible decisions: though individually they are capable of bad decisions, in large numbers and over a series of many choices, their irrationalities tended to cancel out, swamped by a moderate modal tendency: "I am unable to conceive, that the people of America, in their present temper, or under any circumstances

which can speedily happen, will choose, and every year repeat the choice of, sixty-five or a hundred men who would be disposed to form and pursue a scheme of tyranny or treachery" (no. 55, p. 344).

FIGURE 1

HUMAN NATURE PRESUPPOSITIONS SET

	Presuppositions	Range of the Continuum	
	HN_1 Malleability of Human Nature	Intractable (a)	Malleable (b)
Structural Presuppositions	HN_2 Laws Governing Human Nature	Secular (a)	Transcendental (b)
	HN_3 Self-Interestedness of Preferences	Self-Regarding (a)	Other-Regarding (b)
Conditions of Human Knowledge and Preference	HN_4 Attitudes Toward Risk	Risk-Averse (a)	Risk-Acceptant (b)
	HN_5 Capacity to Know Real Interests	Incapable (a)	Capable (b)

We will now summarize our comparison of Madisonian and contemporary rational choice approaches by using a scheme we have developed elsewhere (Cain and Jones, 1987) and now reproduce in Figure 1. In this framework, it will be seen, theories can differ both in their assumptions about human nature and in the goals they aim at achieving by their proposals. We will first compare Madison with contemporary theorists in terms of five important assumptions about human nature:

a. Malleability of Human Nature

Madison believed that human nature is neither completely malleable nor completely intractable. His strongly marked Aristotelianism disposed him not only to believe that people ought to avoid extremes in their conduct (a moral judgment), but also to believe that human nature itself is a mean between extremes (a factual judgment). Contemporary incentive-based approaches, as one might expect, show few signs, if any,

of implicit Aristotelianism, reflecting instead the influence of advances in the natural sciences during the last two centuries. Thus, they tend to take human nature as given and do not assume that institutions can or should try to alter the ratio of self-regarding to other-regarding behavior. Our view that Madison regarded human nature as partly malleable very much accords with Chappell and Keech's point in their essay in this volume that "the authors of the Federalist did not believe that popular preferences were exogenous and fixed." (Chappell and Keech, 1987, 12) As they point out, this crucial assumption makes possible "constructive deliberation" that "enhances the prospects that public decisions would approximate justice and the common good."

b. Laws Governing Human Nature

Like contemporary political scientists Madison did not regard the laws governing human behavior as having a transcendental origin.

c. Self-Interestedness of Human Nature

While Madison acknowledged that self-regarding motives are stronger and more prevalent than other-regarding motives--and so his views had much in common with contemporary rational incentive approaches--he also believed that other-regarding motives play a role in successful societies. By comparison, the role of other-regarding behavior is often overlooked completely in contemporary incentive approaches, although as Professor Schwartz correctly points out, this is not inherent in a rational choice approach (Schwartz, 1987, 9).

d. Attitudes Towards Risk

Madison believed that people are typically risk averse in their political orientation. This explains, he thought, why habit is such an important determinant of human behavior--so much so, indeed, that it sometimes inhibits necessary adaptations to new circumstances. Contemporary theories also acknowledge the strength of risk averse attitudes in political life, particularly when critical interests are at stake, but they tend to assume that self-interest is a sufficiently powerful incentive to overcome habit when an agent believes he can gain thereby.

e. Capacity to Know Real Interests

Madison thought that on the whole, the human capacity for calculation is severely limited and very short range: "indirect and remote considerations . . . will rarely prevail over the immediate interest . . ." (no. 10, p. 81). On this dimension contemporary rational incentive approaches are divided, some assuming short-sightedness and others imputing considerable rational sophistication to political actors.

3. Madison and the Goals of Representation

A political theorist's assumptions about human nature obviously influence the means by which he proposes to accomplish certain ends, but it is important to see that the ends themselves are not completely determined by those assumptions; rather, they are distinctive components of a particular theory of representation. What does a theorist wish to accomplish by proposing one particular institutional form rather than another? Just as with the set of dimensions that provide a framework for comparing theorists' beliefs about human nature, we can define a set of dimensions which schematically represent some of the principal goals that political theorists have discussed.

FIGURE 2

DISPOSITIONS SET

	Dispositions	Range of the Continuum	
	D_1 Time Perspective	Short (a)	Long (b)
What is Represented	D_2 Scope	Parochial (a)	Common (b)
	D_3 Degree of Cooperation	Independence (a)	Coordinated (b)
How to Represent	D_4 Consistency Over Time	Changing Action (a)	Consistency (b)
	D_5 Reliability of Promises	Adaptability (a)	Reliability (b)

One frequent concern of many theorists is which of many diverse interests in a policy should be represented. Their differing positions on this issue can be specified in terms of two dimensions, with Madison's position on these issues being specified as follows:

a. Time Perspective of Representatives

Madison sought a system that reflected a balance between short- and long-range policymaking perspectives. It was important that representatives be familiar with the electorate's preferences, however parochial and whimsical they might be. But at the same time, he felt that they should resist temporary public whims in favor of long term interests.

b. Scope of Representation

Similarly, Madison wanted a compromise between faithful representation of the many different concerns of the various regions and localities and of the common concerns of the nation as a whole.

The other sorts of goals that political theorists frequently discuss concern how representatives should act--i.e., the desired degree of independence, adaptability, etc. For specifying how goals can vary, two other dimensions are relevant.

c. Degree of Coordination Between Representatives

Madison recognized that representatives would form factions with one another and that any idea of totally independent legislators--liberal formalism--was unrealistic. Characteristically, he favored the mean between these extremes. He feared stable divisions of political conflict and saw enormous benefits to fluid, diverse coalitions. At the same time, his observations of history indicated that republics more frequently succumbed to the former than the latter.

d. Consistency and Reliability of Representatives

Madison was very much inclined to compromise and adaptability. He understood that a society that made too many changes undermined its own legitimacy, but he was equally fearful of people who were inflexibly wedded to a particular viewpoint.

In short, Madison's positions on many of the key dimensions of representation were predictably at the mean. The challenge for Madison was to design institutions that encouraged mean values when the natural tendencies in politics pulled societies towards the extremes. A strong assumption in Madison's thinking was that in large societies, there would inevitably be a wide distribution of opinion and behavior, and that the best that one could do was a moderate consensus. The mean is a compromise that denies large numbers of people their ideal points. Hence, we would take issue with Chappell and Keech when they say that the concept of Pareto improvement is "one that may help define the common good for *The Federalist* as well." (Chappell and Keech, 1987, 3) In the large, diverse, factionalized society Madison was thinking about, representatives could not hope to get unanimity or make no one worse off. Rather, they could, if they were good representatives, serve as a

moderating force, but in order for that to happen, many constituents would have to compromise their interests and those at the extreme of the distribution would have to sacrifice more than those in the middle.

II. MADISON'S PROPOSALS FOR ELECTORAL REFORM EXAMINED IN A CONTEMPORARY CONTEXT

The best way to illustrate how Madison's overall goals and his assumptions about human nature combined to generate the specific positions he took on various constitutional proposals is to examine a few institutional examples closely. We will discuss three problems about which Madison worried and which are still of concern--indeed of increased concern--today.

1. Terms of Office for Elected Officials

· Madison understood the importance of the "electoral connection" to the success or failure of representative democracy. "It is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectively secured" (no. 52, p. 327). Assuming, then, that frequent elections are the key to the people's ability to control representative behavior, the next question for Madison was how frequent should House elections be?

His discussion of this issue focused almost exclusively on whether two-year terms, as opposed to one-year terms, would be too long to maintain "the requisite dependence of the House of Representatives on their constituents" (no. 52, p. 328). After considering the experience in Great Britain and various state governments, Madison concluded that "the liberties of the people can be in no danger from biennial elections" (no. 52, p. 329). The worry that elections every two years might make representatives too independent of the electorate seems almost fantastic from today's perspective. The research of Mayhew, Fenno, Fiorina and others has convincingly shown that the electoral connection has become an obsession for many Congressmen, and that many aspects of Congressional behavior can be traced to electoral motivations. (Mayhew, 1974; Fenno, 1978; Fiorina, 1977) Indeed, had Madison been aware of the future role that reelection fears would play in American political life it is likely that he too would have been concerned since he was instinctively suspicious of extreme and imbalanced behavior of any sort.

Even without the benefit of knowing about the problems that two-year terms have created for contemporary Congressmen, Madison worried about a legislature being too closely tied to public opinion. Indeed, his arguments for bicameralism and for an indirectly elected Senate clearly indicated that he wanted to strike a balance between the likely ephemeral perspective of the House and the more deliberative judgment of the Senate. Madison thought that because Senators would be appointed by state legislatures for six-year terms, the Senate could check any intemperate decision by the lower house and offset the inexperience caused by the high turnover that he expected to result from frequent direct elections.

Implicit in Madison's discussion is a behavioral model linking the likely actions of legislators to the method by which they are elected to office and the length of terms they serve in such a way that (1) legislators who are directly elected are more sensitive to public opinion than those indirectly elected, and (2) those who have to run for office more frequently are more responsive to the popular will than those who serve longer terms. Clearly, the underlying assumption is that, at least in the situation described, legislators will be at least partly influenced by the self-interested motive of reelection. A legislator exclusively motivated by other-regarding interests (e.g., what the legislator thought was the best policy for the country) would disregard the incentives of the electoral system, and Madison knew this did not happen. Electoral arrangements mattered to him precisely because he saw that different rules provide differential incentives to actors with self-regarding motives.

Just as Madison worried about the proper length of office terms, it is also a much discussed contemporary question. Two-year electoral cycles, some argue, are not consistent with, still less conducive to, long range planning. Granted that the problem has become more acute in recent years, even had Madison had foreseen it, as Hamilton did--at least in connection with his discussion of the presidential term[1]--we suspect

that Madison would not have argued for longer terms of office in the House. He believed that public whims, however ephemeral, should be represented, but that they should also be balanced by other perspectives in the government. If the time horizons of modern governments are too short, as many contemporary critics claim, it is possible that Madison would have held that the abandonment of an indirectly elected Senate and the growing tendency to select Presidential candidates by directly elected primaries, rather than the parochial nature of the House, are responsible for the failure. Thus, a solution more attuned to Madisonian themes would attempt to remedy any perceived imbalance in the perspective of representatives by giving other parts of the system a longer time horizon rather than changing the time horizon of the House of Representatives per se. Madison did not want all representatives to have the same viewpoints. Rather, he wanted to balance various contending viewpoints.

2. The Qualifications of Voters and the Represented

Because Madison believed that the "definition of the right of suffrage is very justly regarded as a fundamental article of republican government" (no. 52, p. 326), he argued that the qualifications for voters in House elections should be the same as "those of the most numerous branch of the state legislatures." What was his reasoning here? On the one hand, it would be improper to pass over silently such a fundamental right as that of voting; on the other hand it was important to respect the different customs of the various states. To "have reduced the different qualifications in the different states to one uniform rule" would doubtlessly have satisfied the desires of closet philosophers for symmetry, but it was not in the realm of practical politics. It "would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention" (no. 52, p. 326). Hence, Madison

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1. Hamilton felt it essential that the President have a broad time horizon and the capacity to resist public

   opinion when "the interests of the people are at variance with their inclinations" (no. 71, p. 432).

concludes, the Convention was right to adopt the compromise that the qualifications to vote in federal House elections would be the same as those specified in the state constitutions.

This is a characteristically Madisonian solution. Pegging the federal standard to that of the existing state constitutions avoided controversy among the various views at the Convention of who was and was not qualified to vote, and it was a neat compromise between allowing states the freedom to conduct elections as they saw fit and putting federal limits on suffrage qualifications. Here again we see how compromise, moderation and adaptability affect every aspect of the Madisonian scheme.

Implicit in the position of the framers of the Constitution was the notion that it was legitimate to exclude some individuals in the electorate, but not others; the only question for them being who was to be included and who excluded. Age, property rights, sex and race were some of the most common qualifications applied by the states in the determination of voting rights. Madison himself gives no hint of which qualifications he himself thought most important, this presumably being a matter which he held should be determined by local circumstances and tastes.

Once the decision had been made to exclude some people from voting, the next question that had to be faced was whether all people or only some (and if only some, which) should be counted in the apportionment of representatives. Madison believed that all people, including those who were ineligible to vote, should be counted when allocating shares to the states. This proposal was highly controversial because if it were adopted slaves would be counted, to the advantage of the southern states, which would thereby gain representation in the national legislature. Today the notion that representation be apportioned by population rather than by the electorate is once again controversial. Because the number of House seats allocated to a state depends on the most recent census figures and because these figures include noncitizens and age-ineligible groups, this method of apportionment has significant political consequences, especially in the southwestern states with large noncitizen populations. These states obviously benefit from allocation of seats by a population-based formula, whereas many midwestern and eastern states would have greater representation if registered voters, eligible voters or even citizens were used instead.

Apportionment by population also differentially affects the political power of various ethnic groups in the United States. For instance, the Latinos, with young populations and numerous noncitizens, get more representation under the current, population-based rule than groups like the Irish or Japanese-Americans with a higher proportion of native born and older members (Cain and Kiewiet, 1987). Population-based apportionment even has partisan consequences. Since the Republican party tends to draw from a more upscale electorate, Republican areas usually have a higher ratio of voters to population than do Democratic areas. In California, for instance, it is not uncommon for Republican seats to have two or more times the number of voters as Democratic seats. Republicans would benefit greatly if they could persuade the courts to allow apportionment on some other basis than population.

There was no way, of course, that Madison could have foreseen all of this, but it is useful, in thinking about the problem in its current form, to understand the logic behind his view that all people, including slaves, should be counted in the apportionment process. First and foremost, Madison's position reflected a pragmatic compromise between the position that

slaves were property and therefore should count for taxation purposes only, and the opposing view that slaves were people and should be counted for apportionment purposes only. Slaves, he pointed out, were considered by the law at that time to be "in some respects . . . persons, and in other respects . . . property" (no. 54, p. 337). A slave was property in the sense that he/she was compelled to work for another, could be bought and sold, and was restrained in his/her liberty. At the same time, a slave was "protected . . . in his life and in his limbs, against the violence of all others." In this sense, a slave was "no less evidently regarded by the law as member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property" (no. 54, p. 337). Given the mixed status of slaves, it would not have been "impartial or consistent" to have included slaves in apportionment but not in taxation, or vice versa. Even more importantly, it was unreasonable to expect that "the southern states would concur in a system which considered their slaves in some degree as men when burdens were to be imposed, but refused to consider them in the same light when advantages were to be conferred" (no. 54, p. 338).

Though slavery has long since been abolished and the issue in the form that agitated the delegates at the Convention and led to so much debate in the discussions that followed is moot, the question of rights remains all too alive and well. For instance, does a person who enters the United States illegally forfeit some basic human rights, for instance, constitutional rights of free speech and association? What other basic services (e.g., health care, schooling, fire and police) is this person entitled to? And, most importantly from the perspective of this paper, does this person have a right to representation?

A consequence of the compromise on slavery is that the Supreme Court currently holds that because the right to representation is a fundamental one connected to the protection of life and property, all people should be therefore represented and population not voters should be the basis for allocating representatives to the states. The Court in other instances, however, has moved away from Madison's position. For instance, while Madison gave states total freedom to determine the voting franchise, the Court has greatly restricted the rights of states to exclude certain classes of people from electing public officials by the widespread application of the 14th Amendment and the Voting Rights Act, which we will discuss shortly.

Before leaving the subject of electoral qualifications, we shall note one more issue on which contemporary opinion is at odds with Madison's views. A prevalent contemporary view is that people and not property are the sole legitimate basis of representation. The opinions of the Supreme Court in *Baker v. Carr* and *Reynolds v. Sims* gave strong weight to the doctrine of one man, one vote. Geographic, wealth and occupational interests are secondary, and representation schemes that diminish the one man, one vote principle are potentially unconstitutional. Thus, a second house in a legislature that assigns extra seats to rural areas can be ruled illegal by the courts.

Madison, in contrast, held that "Government is instituted no less for the protection of property than of the persons of individuals." He pointed out, with approval, that in New York "one branch of the government is intended more especially to be the guardian of property and is accordingly elected by that part of the society which is most interested in this object of government," and observed that since in the federal constitution, "the rights of

property are committed into the same hands with the personal rights . . . some attention ought . . . to be paid to property in the choice of those hands" (no. 54, p. 339).

Such a position would today be viewed as elitist and extremely anti-egalitarian. The evolution of law on this subject has been towards giving each vote the same weight as far as possible. In redistricting, this has been interpreted to mean achieving as near arithmetical equality in district size. In campaign finance law, it has meant limiting the amount of money that individuals contribute so that some voters do not have more influence over the system than others. Would Madison agree? Would he move with the times? Perhaps. But his views on the representation of groups, to which we next turn, would cause him to see virtue in the distribution of power unequally among individuals within the system. He believed that even if people of wealth and property did not have especially valued personal qualities they at least had perspectives that contributed to the quality of law-making. And the current doctrine that voters should be treated as formally equal, whatever their differences in attributes and endowments may be, would not, it is likely, have impressed Madison in view of the difficulty of implementing it, as well as the unfortunate side effects which follow its implementation.

We will conclude this section by turning from speculation about his approach to this or that specific right in circumstances very different from any he knew, to the question of his approach to rights in general. As we have already said, Madison took the matter of justice and equity seriously, but he was not interested in them as abstract ideals. (He would, we suspect, have written off Rawls' original position as typical of the speculation of "closet" thinkers.) Rather, he aimed at achieving a balance of competing claims--a balance, as it were, of dissatisfactions. The point of balance would obviously change across time as the competing claims changed, old claims disappearing and new claims emerging. But the balance achieved at any particular time (say, 1787, or 1987) is "just" at that time and defines, provisionally of course, what people's rights, whether the right to vote or the right to be represented, are. Madison, we think, would have focused on the procedures--on "due process"--by which a balance is achieved, not on getting the result which he (or any one else) had decided in advance was "right."

3. The Representation of Groups

Madison's thoughts on factionalism are well known. As we observed earlier, he assumed that conflicts of interests are inherent in human nature, and he recognized that as a consequence people fall into various groups. He wanted to avoid a situation in which any one group, with one bundle, as it were, of interests, controlled the decisions of a society. Free elections and the majority principle protected the country from dictatorship--i.e., tyranny of a minority. However, he was equally concerned about the danger that he thought was more likely in a democracy--i.e., tyranny of the majority. A central institutional issue for him was how to minimize this risk.

Madison's solution characteristically relied not only on formal institutions, which could be designed, but also on the particular sociological structure of American society, which he took as a fortunate starting point for the framers of the new constitution. The institutional

component in his solution was checks and balances so that there were multiple entry points into the government and multiple ways to offset the power that any one branch of the government might otherwise acquire over another. In this system, "the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other . . ." (no. 51, p. 322).

These institutional arrangements were reinforced by the sociological fact that the Republic contained a multiplicity of interests that could, and did, offset one another: "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" (no. 51, p. 324). This line of argument was further developed by pluralist thinkers such as Dahl, who maintained that the tyranny of a minority is best prevented by fluid coalitions of interests. It is good that there are many group interests, that they be numerous is less important than that they be impermanent and shifting alliances whose components vary with the specific policy issue.

From the standpoint of representation theory, this leads to several important problems in institutional design. Assuming that American society is not at the mercy of sociological forces outside law makers' powers--and that is indeed an unproven assumption--how can electoral law be designed to help result in there being fluid coalitions? And how far should group identity be deliberately supported in American society? Obviously, these two questions are especially salient in race relations problems.

In the sixties the problems of civil rights and racial tensions were uppermost on the political agenda. The Vietnam War and the economic troubles of the mid-seventies temporarily displaced race relations, but the changing demographic composition of the U.S. and the growing concerns about immigration policy have brought racial politics to the foreground once again. When the problem of race relations is reinterpreted in Madisonian terms the relevant questions are: To what extent should racial/ethnic groups be acknowledged in law and policy? What implications do the various programs that are intended to help minorities (e.g., the Voting Rights Act, Affirmative Action policies, etc.) have for factionalism in America?

These questions are best illustrated by exploring one example in some detail. The Voting Rights Act is an important contemporary attempt at institutional design. Initially passed in 1965 and then amended in 1982, the Voting Rights Act has caused many states and municipalities to re-examine their electoral institutions. As amended, Section 2 of the Voting Rights Act prohibits any voting procedure that results "in a denial or abridgment of the rights of any citizen of the U.S. to vote on account of race or color." The tests and criteria of when such an abridgment or denial have occurred have evolved out of the Senate Report in 1982 and subsequent case law. For the present discussion these details are unimportant. The crucial point is that the kind of ballot procedure, redistricting plan or electoral arrangement a community uses (e.g., at large election, single member simple plurality, multimember districts) may not now have the effect of systematically denying representation to a racial/ethnic minority.

The assumptions of the Voting Rights Act are that voters and candidates can be classified by racial and and ethnic group lines (i.e., factions), that systematic exclusion of a particular group from representation is undesirable, that certain institutional arrangements systematically contribute to the effect of excluding groups, and that these arrangements can be redesigned so as to assist the excluded group. If these conditions hold, then the Voting Rights Act can be construed as an attempt to protect minorities against the tyranny of the majority when the type of electoral institutions employed by a community combined with prevailing voting patterns have the effect of excluding minorities from fair and effective representation. At the same time, opponents of the Voting Rights Act often raise questions that also derive from Madisonian and pluralist interests. If district lines are drawn along racial and ethnic criteria, will excessive factionalism be encouraged? Does the provision of bilingual ballots to Latino and Asian-American voters tend to destroy assimilationist forces that create social unity? What about the institutional arrangements that make it possible for minority candidates to get elected by the votes of a single minority without depending on the votes of other minority groups or of the Anglo majority? Does this not undermine the pluralist ideal of fluid coalitions on specific issues--do institutional arrangements designed to assist groups have the incentive effect of strengthening group identity, and so harden factional divisions rather than promoting fluid coalitions?

Clearly therefore, there are Madisonian concerns on both sides of this issue. On the one hand, a Madisonian/Pluralist acknowledges that factions (including racial and ethnic groups) are inevitable, because the extreme individualism of liberal formalism is impossible, and because the goal is to achieve an extended Republic with a large number of groups to offset one another, not government dominated by one or just a few groups, it was necessary to form a stable government through the joint product of formal institutions and informal sociology and to recognize that what was created at the formal level could affect the informal arena, and vice versa. Modern Madisonian thinkers cannot be oblivious to biases in the informal sociological sector.

On the other hand, a Madisonian/Pluralist must also be concerned about any evidence that the incentive effects of minority districts harden coalitional positions or that Voting Rights Act interventions increases racial polarization. What would the outlines of a "reasonable" compromise of these concerns look like? It would involve, perhaps, the introduction of institutional devices that would encourage coalitional behavior at the constituent level or a highly circumstantial application of the VRA that avoids transforming its remedies into permanent rights.

III. CONCLUSION

We conclude this discussion of Madison's theory of institutional design by asking how contemporary political scientists will evaluate it and its relevance to late twentieth century America. We think it safe to predict that they will not be unanimous, and we believe the deepest division of opinion will turn out to reflect differing attitudes toward Madison's implicit presuppositions (his underlying metaphysical and epistemological orientations, especially his preference for an empirical, experiential approach, his readiness to accept

tentative, provisional results and his admiration for balance and moderation). Those whose orientations are different--who regard moderation as a sign of weakness of will, preferring policies of "thorough" and "root and branch," or who prefer a deductive approach because it approximates to the natural science model will be inclined to write Madison off as a poor sort of political scientist, no more than a politician.

There is no doubt that the trend among political scientists and lawyers in recent years has been in the direction of rational-choice theory and liberal formalism--the assumption that voting mechanisms can be adequately accounted for from the standpoint of anonymous, formally equal individuals. The one-man, one-vote doctrine, which follows from this assumption, epitomizes this point of view. When we enter a caveat, as we do here, we recognize that our own Madisonian orientations are showing. But we think it worth pointing out that many minorities believe liberal formalism to have unspoken biases that favor better educated, better to do and more highly assimilated individuals. And though we agree that liberal formalism avoids the incentive effects of giving legal recognition to groups, we also believe that such recognition is a legitimate concern. Faced with such a dilemma, which is not exceptional but typical of the kind of problem with which political science must deal, provisional moderating and circumstantial remedies--Madisonian remedies, indeed--may well be the best answer.

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