

achieve a "modification of the Sovereignty."⁶⁴ Public opinion is the sovereign authority in a genuine republic whose mild voice of reason is capable of transforming the will of a nation. It is no surprise, then, how often Madison put pen to paper in the public press, or that he urged his fellow citizens, despite all artificial and circumstantial distinctions, to come together as one people under the mantle of the "Empire of reason."

⁶⁴ "Vices of the Political System of the United States," *PJM* 9:357.

The Politics of Public Opinion

Throughout the 1790s, Madison worked to prevent measures that he believed were contrary to the sovereign authority of the people as expressed in the Constitution. He also sought to establish and secure a political system dependent on the ongoing sovereignty of public opinion. These modes of authority informed Madison's stances on policy questions during the 1790s. To show as clearly as possible how Madison's republican theory informed his political practice in this period, the issues of the Washington administration will be treated thematically rather than chronologically in this chapter. We begin with those measures that raised the issue of the relationship between public opinion and constitutional meaning, that is, the adoption of a bill of rights, the establishment of a national bank, and governmental support of manufactures, and then proceed to the policy issues that impacted the ongoing politics of public opinion, viz., the national debt, foreign policy, and commercial discrimination.¹ In the next chapter the Alien and Sedition Acts and the Kentucky and Virginia Resolutions will be examined, as well as the main philosophic points of agreement and disagreement between the two leading Republicans, Madison and Jefferson.

¹ Early in the first Washington administration Madison took an active role on issues concerning the Revolutionary War debt, including an attempt to distinguish between original and present holders of the debt certificates and the effort to stymie Hamilton's plan for the national assumption of states debts as they presently stood, i.e., after some states had complied with the old Congress's request for payment and others had not.

Debt discrimination and assumption were clearly important issues for Madison; they involved the application of equal justice to individuals and citizens of states. As important as they were, however, he also understood that they were issues that were not clear-cut or of enduring significance to the republican character of the nation.

When Madison introduced the Bill of Rights in the first Congress in 1789, he did so with some reluctance. His concern was that the specification of certain rights in the Constitution might be erroneously construed to disparage other rights not listed in the document. He insisted many times over that the United States Constitution was one in which the people gave to government certain enumerated powers, not one in which government gave to the people certain rights. Still, the opponents of the new Constitution had expressed serious reservations about whether the proposed plan would effectually limit the powers of government. In 1788, Madison pledged his support for a bill of rights. His support was a tactical move to win ratification of the Constitution without calling a second convention. But he also had another reason: A bill of rights, like maxims that preceded the constitutions of old, could have the effect of educating public opinion on the fundamental principles of the polity.² As respect for these rights becomes incorporated into public opinion, public opinion defines and limits the demands of the majority. Over time, a bill of rights acts as a kind of republican schoolmaster, serving as a civic lexicon by which the people teach themselves the grammar and meaning of freedom. The more ancient the lineage of the constitutional declaration, the more influence it exerts on the views and sentiments of the people. As an expression of the political principles and moral sentiments of the society, a bill of rights is a manifestation of how ethical motives can and do influence the formation of majority opinion.

Thus, even before the formation of the new government (and before Hamilton unveiled any part of his program and prior to Jefferson's return to the United States), Madison applied his theory of public opinion to political practice. He grounded his ultimate support for a bill of rights on the benefit of incorporating "political truths" into the fabric of "national sentiment" and worked to establish the practice of making "an appeal to the sense of the community" on certain critical constitutional questions.³ Shortly after taking his seat in the First Congress he repeated his reasons for advocating a declaration of rights, adding that the act would help to consolidate the opinion of the community in support of the new Constitution.⁴ It would

² For an in-depth discussion of Madison's position on a bill of rights, see Edward J. Erler, "James Madison and the Framing of the Bill of Rights: Reality and Rhetoric in the New Constitutionalism," *Political Communications* 9 (1992), 213-29.

³ Madison to Jefferson, October 17, 1788, *PJM* 11:298-99.

⁴ Ibid.; "Amendments to the Constitution," June 8, 1789, *PJM* 12:204-9. See also Madison to Jefferson, December 8, 1788, *PJM* 11:382-83; "Notes on Government," *PJM* 14:162-63.

contribute to establishing the principles of free government not merely on paper, but in the minds and hearts of the American citizens. "In proportion as government is influenced by opinion," Madison wrote, "it must be so, by whatever influences opinion. This decides the question concerning a Constitutional Declaration of Rights, which requires an influence on government, by becoming part of the public opinion."⁵

In the debate over the bank bill in early 1791 Madison again appealed to public opinion, claiming that the establishment of a national bank was contrary to the sense in which the Constitution had been understood and adopted.⁶ "[T]he enlightened opinion and affection of the people," he argued, "[are] the only solid basis for the support of this government."⁷ If those congressmen who have suggested an "appeal to the public opinion" are sincere, then "we ought to let our constituents have an opportunity to form an opinion on the subject."⁸ In the months following this controversy, he and Jefferson began working actively to foster the agency of public opinion and establish its authoritative role in the politics of the new nation.

Madison's central argument against the institution of a national bank was that it violated the Constitution, as understood by the people who ratified and adopted it.⁹ He viewed Hamilton's proposal to establish the bank as an attempt to use unconstitutional means to accomplish legitimate ends. Hamilton's "Report on Manufactures" went even further: it proposed the national exercise of power to achieve *ends* not mandated by

⁵ "Public Opinion," *PJM* 14:170. See also "Notes on Government," *PJM* 14:162-63; Marvin Meyers, *The Mind of the Founder: Sources of Political Thought of James Madison* (Hanover, N.H.: Brandeis University Press, 1981), 169.

⁶ "The Bank Bill," February 2, 1791, *PJM* 13:381.

⁷ Ibid., February 8, 1791, *PJM* 13:386-87.

⁸ Ibid., *PJM* 13:387. See also "The Bank Bill," February 2, 1791, *PJM* 13:381. Madison later defended his change of position on the constitutionality of the national bank on the grounds that the issue had been determined by established precedents and settled public opinion. He denied the charge of inconsistency by demonstrating that in both cases he had appealed to the same standard of public opinion. By 1816, not only had the national bank been sanctioned by successive legislatures and by local authorities, it had received the "acquiescence . . . of the nation at large" and there was little if any prospect for "any change in the public opinion." Under such circumstances, Madison concluded, an executive veto "would have been a defiance of all obligations derived from a course of precedents amounting to the requisite evidence of the national judgment and intention" (Meyers, *Mind of the Founder*, 393, emphasis added).

⁹ "The Bank Bill," February 2, 1791, *PJM* 13:372-382; "The Bank Bill," February 8, 1791, *PJM* 13:383-387; "Draft Veto of the Bank Bill," *PJM* 13:395-96; Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed., 4 vols. (New Haven, Conn.: Yale University Press, 1937), 3:533-34.

the Constitution.¹⁰ Madison viewed the Constitution of the United States as the embodiment of the highest expression of the opinion of the public. No expression of the public, however widespread and popular, is superior to the voice of the people expressed in its most sovereign capacity in this document. Only the extraconstitutional invocation of the right of revolution can claim moral superiority. The American idea of constitutionalism is derivative of the principle of popular sovereignty, which forms the democratic basis for the doctrine of originalism. No one took this doctrine more seriously than Madison. Indeed, as Jack Rakove argues, Madison was the founding father of originalism, or the original originalist.¹¹ Madison viewed Hamilton's construction of the Constitution as more than a point of legal debate. It struck at the central philosophical tenets of republican government. The idea of consent of the governed means that something was consented to – understood and agreed to – by the people in their most sovereign capacity. The people are “the only earthly source of authority,” Madison wrote. The charters authenticated by their seal in the solemn act of founding constitute the most sacred trusts. Constitutions are, in essence, the holy writs of this world, the “political scriptures” of faithful citizens. “They are bound on the conscience by the religious sanction of an oath . . . , [transcending] all other land-marks, because every public usurpation is an encroachment on the private right, not of one, but of all.”¹² Hamilton's loose interpretation of the Constitution effectively removed the limitations on the power of government placed there by the authority of the people, undermining the very principle of popular sovereignty.

It has been argued that Madison's altered position on the national bank during his presidency represents an abandonment of the doctrine of constitutional supremacy since, in this instance, he trumped the authority of the Constitution with the power of ordinary public opinion and legislative precedent.¹³ I believe this is an erroneous reading of the explanation Madison provided for his change of view. Madison was not arguing that ordinary public opinion – even when settled over a course of many years and informing established precedents – is ever superior to the Constitution. His argument

¹⁰ Madison to Henry Lee, January 1, 1792, *PJM* 14:180; Madison to Henry Lee, January 21, 1792, *PJM* 14:193.

¹¹ See Jack N. Rakove's Pulitzer Prize-winning book *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: First Vintage Books, 1996), ch. XI. I would disagree with Rakove, however, that Madison's originalism was the result of a conversion to the doctrine in the mid-1790s.

¹² “Charters,” *PJM* 14:191.

¹³ Meyers, *Mind of the Founder*, 389–90; Gary Rosen, *America Compact: James Madison and the Problem of Founding* (Lawrence: University Press of Kansas, 1999), 140.

was that for over twenty years public opinion had acquiesced in the decision to establish a national bank, demonstrating that *the generation that ratified the Constitution* was in fact *not* adverse to it and did not understand it to be contrary to the Constitution – even if Madison himself, in “his solitary opinion,” had.¹⁴ Accordingly, the bank was not *nor ever had been* unconstitutional. Madison is not here confessing to any weakening of his dedication to the Constitution as the supreme authority in all cases, nor is he admitting to any inconsistency of principle. Rather, he is conceding that he had misread public opinion on the issue in the early 1790s. The establishment of a national bank was not, as he had earlier thought, contrary to the Constitution, as understood by the public who ratified it. Thus, as president, he could respect legislative precedent because the institution of the bank was not an unconstitutional exercise of power, but only an ordinary, legitimate legislative act. His action as president did not represent an exception to the idea of the fundamental authority of the Constitution, and indeed he was, without fail, committed to the doctrine of constitutionalism throughout his life. “A Constitution being derived from a superior authority,” he said in 1831, “is to be expounded and obeyed, *not controlled or varied*, by the subordinate authority of a Legislature.”¹⁵ Accordingly, Madison did change his mind on the issue of the constitutionality of a national bank – as he openly conceded – but he did so in order to remain consistent with his fundamental principles.

Whereas Madison's original position on the national bank and the “Report on Manufactures” stemmed from his perception that such exercises of power were contrary to the constitutional voice of the public, his opposition to the perpetuation of the public debt resulted from the effect it would have on the ongoing sovereignty of public opinion. Hamilton was correct to think that he had Madison's general support for funding the public debt, and indeed Madison argued on the floor of the House of Representatives in early 1790 that the debt incurred in the war for independence must be funded. However, Madison's general view was that although funding was at times necessary in the life of a nation, it was nonetheless an evil.¹⁶ While he assented to those measures necessary to reestablish public credit and retire the debt, he was adamantly opposed to a perpetuation of it and, in fact, had been so for many years.¹⁷ The extension of the debt would only increase the

¹⁴ Meyers, *Mind of the Founder*, 390–93.

¹⁵ *Ibid.*, 391, emphasis added.

¹⁶ “Assumption of State Debts,” *PJM* 13:75.

¹⁷ Madison to Edmund Randolph, March 14, 1790, *PJM* 13:106, “Address of the House of Representatives to the President,” *PJM* 13:317; cf. “Discrimination between Present and

distance between the national government and the interests of the people. Public debt generally results from the costs of running a war and outfitting an army, all of which tend to increase executive discretionary power, corruption in government, and governmental independence of the popular will, he argued in the Party Press Essay "Universal Peace."¹⁸ Such has been the ploy used by governments to extend and perpetuate arbitrary power throughout human history. The cure for this, Madison declared, is to make the will of the government "subordinate to, or rather the same with, the will of the community."¹⁹ Furthermore, to the extent possible, each generation should bear the financial burden of debts it has taken on, thereby prompting "avarice . . . to calculate the expences of ambition" and "in the equipoise of these passions, [leaving] reason . . . free to decide for the public good."²⁰ By "permanent and constitutional maxims of conduct" the executive temptation to go to war must be moderated by the legislative representatives' willingness for war, contingent on the opinion of their constituents. The people's temptation to wage war is controlled by "subjecting the will of the society to the reason of the society."²¹

A few years later, in the exchange with Hamilton writing as Pacificus, Madison as Helvidius insisted on the legislative nature of the power to declare war and make treaties, as delineated in the Constitution. "Under colour of vindicating an important public act," Helvidius wrote in his first installment, Pacificus "advanced [principles] which strike at the vitals of [the nation's] constitution, as well as at its honor and true interest."²² The violation of the principle of separation of powers manifested in the president's Proclamation of Neutrality in 1793 was a travesty in respect to "the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war[,] including the power of judging of the causes of war[,] is *fully* and *exclusively* vested in the legislature."²³ The arguments of the Helvidius essays encompass both a question of constitutional meaning and the issue of governmental dependence on the will of the people. In respect to the former, Madison declared the proclamation unconstitutional based

Original Holders of the Public Debt," *PJM* 13:37; "Notes on Debates," February 21, 1783, *PJM* 6:272; "Notes on Debates," February 27, 1783, *PJM* 6:298.

¹⁸ "Universal Peace," *PJM* 14:206–9, "The Union: Who Are Its Real Friends?" *PJM* 14:274–75; Madison to Jefferson, February 15, 1795, *PJM* 15:474; "Political Observations," *PJM* 15:518.

¹⁹ "Universal Peace," *PJM* 14:207.

²⁰ *Ibid.*, *PJM* 14:208.

²¹ *Ibid.*, *PJM* 14:207.

²² "Helvidius Number 1," *PJM* 15:66.

²³ "Helvidius Number 4," *PJM* 15:108.

on original intent, that is, on the "simple" meaning of the Constitution and the manner in which it was "received" or understood by the Framers and the ratifying public. In his second claim, we see how he combined the "doctrine" of American constitutionalism with the principle of the ongoing sovereignty of public opinion. In essence, Madison argued that Pacificus's defense of the Neutrality Proclamation is contrary to the republican principles that inform the Constitution. Specifically, it is grounded in an interpretation of the prerogative power that is inconsistent with the doctrine of popular sovereignty. Madison would later employ a similar twofold argument in his case against the Sedition Act. In the present case, however, he did not have a constitutional provision to demonstrate decisively the "simple" and "received" meaning of the Constitution, nor, given the increasingly imprudent antics of the French minister Genet, was it at all clear that public opinion endorsed his viewpoint. He was thus compelled to focus on the much more theoretical and complex argument regarding the republican doctrine at the foundation of the United States Constitution and, when his efforts proved ineffective, to adopt a more quarrelsome approach and tone. When all was said and done, Madison was disappointed in his own performance as Helvidius. His frustration stemmed from the resulting "polemical" character of the essays and his failure to do justice to the complex constitutional and practical issues involved in the controversy over the war and treaty powers.²⁴

Helvidius's case for governmental dependence on the will of the people continued the argument Madison presented in "Universal Peace." "War is in fact the true nurse of executive aggrandizement," Helvidius wrote.²⁵ Quoting one of Hamilton's contributions to *The Federalist*, Helvidius argued that a "hereditary monarch . . . [is] often the oppressor of his people," though generally he has too much personally at stake in his government to be corrupted by a foreign power.²⁶ An elective magistrate, on the other hand, may

²⁴ See "Detached Memoranda" in Jack N. Rakove, ed., *James Madison: Writings* (New York: Library of America, 1999), 770. Later in his life (ca. 1819?), Madison wrote about his Helvidius essays: "I ought not perhaps to acknowle[d]ge my having written this polemic tract, without acknowle[d]ging at the same time my consciousness & regret, that it breathes a spirit which was of no advantage either to the subject, or to the Author. If an apology for this, & for other faults can be made it must be furnished by the circumstances, of the pamphlet being written in much haste, during an intense heat of the weather, and under an excitement stimulated by friends, agst a publication breathing not only the intemperance of party, but giving as was believed a perverted view of President Washington's proclamation of neutrality, and calculated to put a dangerous gloss on the Constitution of the U.S." Cf. Curtis A. Bradley and Martin S. Flaherty, "Executive Power Essentialism and Foreign Affairs," *Michigan Law Review* 102 (2004), 684–88.

²⁵ "Helvidius Number 4," *PJM* 15:108.

²⁶ *Ibid.*, *PJM* 15:109.

be tempted by avarice to sacrifice the interests of his fellow citizens and by ambition to betray his country. Madison feared that Pacificus's construction of the American Constitution would destroy the rudimentary constitutional conditions necessary to the achievement of an impartial umpire in republican government. The advantage of absolute monarchy, he argued, is that the king is sufficiently neutral toward the different interests and parties of his country, whereas in a republic the will of the majority may sacrifice the interests of the minority.²⁷ Conversely, the advantage of republics is that the sovereign will is sufficiently restrained from making decisions contrary to the interests of the society; in monarchy it is not, and the king may sacrifice the interests and happiness of his subjects to his own personal ambition and gain. The arbitrariness of republican government is remedied by enlarging the sphere, thwarting the formation of a majority faction, and providing adequate conditions for the refinement of public views. This remedy, however, is contingent on maintaining the beneficial effects of republican government: the will of the government must be dependent on the will of the whole society and prevented from setting up an interest adverse to it. The United States Constitution lodges the question of war and peace with the legislature, not with the president, Helvidius asserted, and gives the latter only a partial and not the sole power to make treaties, precisely to weaken the executive temptation to betray the interest of the nation and to ensure that the will of the government is dependent on and responsible to the people.

Madison understood that political neutrality and commercial nondiscrimination toward the British were critical to the success of Hamilton's domestic economic program. He viewed Hamilton's willingness to allow the continuance of American economic subordination to the British as a sacrifice of national honor and interest in order to advance short-term economic gains. In the long run, Madison believed, the economic, political, and moral strength of the United States were tied to achieving a nonsubservient economic position. (Hamilton had claimed just the opposite result from his policies, that is, some short-term disadvantages but long-term economic and political benefits.) Prior to and at the very outset of the First Congress, and time and time again throughout the 1790s and in subsequent years, Madison argued that the establishment of a beneficial or at least more equitable commercial policy with the British would take fully into account American preeminence in agriculture and Great Britain's dependence on American produce. While England depended on the United States for the

²⁷ "Vices of the Political System of the United States," *PJM* 9:357; Madison to Washington, April 16, 1787, *PJM* 9:384.

raw materials used in its manufacturing industry, its West Indian colonies – from which it drew an immense income – depended on the United States for the necessities of life. In Madison's judgment, there was no good reason to adopt Hamilton's servile response to British commercial dominance and allow it to treat the United States as if it were still a British colony. Commercial retaliation against the British would force a change in trade policy; other markets, particularly France, could substitute for losses in Anglo-American commerce.

Throughout Madison's political career the British commercial monopoly was a stinging thorn in his side, which perhaps explains his unrealistic assessment that America could bring the world's most advanced economic nation to its knees.²⁸ Nevertheless, he pursued a policy based on this train of thought for decades. In the Washington administration he viewed the Hamilton-inspired Neutrality Proclamation of 1793 and the Jay Treaty of 1795 as continuing demonstrations of shameful deference to the empire that America had fought and defeated in order to end political oppression and economic subjugation. During his tenure as secretary of state under President Jefferson, the United States finally demanded a fairer trade policy from the British and, in the effort to force Great Britain to comply, passed the Embargo Act of 1807. The retaliatory policy had little effect on Great Britain but was economically disastrous for the United States, the very result Hamilton had predicted during the Washington administration. By 1812 America was embroiled in war with the British, which was derisively tagged by some "Mr. Madison's War." Hamilton was no longer around to say, "I told you so," but many of his Federalist cohorts were.

During the war between England and France in the 1790s, Madison attempted to counteract the "Anglican Party" and the false appearance that public opinion endorsed its prejudices for England and against France. He and James Monroe produced a model resolution to be distributed at country meetings, the object of which was to provide a means to mobilize, collect, and manifest "the genuine sense" and "real sentiments of the people" – that is, "the agricultural" and "commanding part of the society" – and to negate the counterfeiting of public opinion coming from the nation's commercial centers.²⁹ He believed that the Federalists' domestic political and economic policies, like their foreign commercial policy, catered to the wealthy few

²⁸ See Stanley Elkins and Eric McKittrick, *The Age of Federalism: The Early Republic, 1788–1800* (New York: Oxford University Press, 1984), 130–31, 376–77.

²⁹ Madison to Jefferson, September 2, 1793, *PJM* 15:92–93; cf. Lance Banning, *The Sacred Fire of Liberty: James Madison & the Founding of the Federal Republic* (Ithaca, N.Y.: Cornell University Press, 1995), 377–78.

and ignored the opinion of the majority of the people who resided outside the capital and the urban financial centers of New York and Philadelphia. Hamilton's plan to perpetuate the national debt undercut the republican principle of governmental responsibility to the will of the people. The establishment of a national bank and governmental support of manufacturers exacerbated this, further creating a two-tiered class system with wealthy urban financial speculators favored at the expense of the opinions and interests of the majority of rural farmers who worked for a living and produced the real wealth of the nation.

In both the international and national arenas, Madison advocated a system of free trade grounded in the property rights of individuals (versus the artificial notion of the wealth of nations, which served as the excuse for commercial discrimination policies). In the first month of the first session of the First Congress, before Jefferson's return from France and before Hamilton had been offered the position of secretary of the treasury, Madison declared on the floor of the House:

I own myself the friend to a very free system of commerce, and hold it as a truth, that commercial shackles are generally unjust, oppressive and impolitic – it is also a truth, that if industry and labour are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened legislature could point out.³⁰

If the general principle that "commerce ought to be free, and labour and industry left at large to find its proper object" is a good one, Madison said, the only question remaining is to discover the exceptions to this rule that must be considered because of particular circumstances.

Speaking directly to the representatives of the northern states, whose interest it was to promote the manufacturing industry, he said: "The states that are most advanced in population and ripe for manufactures, ought to have their particular interest attended to *in some degree*."³¹ Though manufactures may arise without any encouragement from government, as has happened in some of the states, in other states import duties and regulations have advanced the industry, and these manufactures ought not to go out of business because of the establishment of a new general government. To neglect those industries already established and turn their labor into other channels would be cruel, for the shift from one employment to another is neither easy for men nor without injury to them. It is therefore prudent for

³⁰ "Import and Tonnage Duties," *PJM* 12:71.

³¹ *Ibid.*, *PJM* 12:70 (emphasis added).

government to offer a fostering hand to some of those existing manufactures that would otherwise fail.³²

However, Madison contended, it was also proper for the members of the legislature to consider the means to encourage agriculture, which is justly considered "the great staple of America." The agricultural industry cultivates the spontaneous productions of nature and has "manifest preference . . . over every other object of emolument in this country." Furthermore, America is unrivaled in the world in agricultural resources and potential productivity, and this is not the case with manufactures. The establishment of a beneficial or at least more equitable commercial policy with other countries, particularly Great Britain, would take fully into account American preeminence in agriculture and other nations' dependence on its produce. In Madison's view, agriculture was the most beneficial object of human employment for the United States and the industry most productive of real wealth in a nation. Governmental encouragement of manufactures artificially diverts human industry from a more to a less beneficial course and therefore ought to be limited to prudential considerations regarding existing establishments that would otherwise perish.³³

A nation whose citizens depend for their livelihood on the manufactured production of superfluities and the whims of fashion and fancy, Madison claimed, is one in which one class of citizens lives in servile dependence on another. "In proportion as a nation consists of that description of citizens, and depends on external commerce, it is dependent on the consumption and caprice of other nations."³⁴ Madison did not share Hamilton's dream that America become an industrial prodigy. The way of life of the husbandman, he argued in 1792, is "the most truly independent and happy."³⁵ A nation predominant in agriculture is most favorable to the health, virtue, intelligence, competency, liberty, and safety of the greatest number of individuals. A manufacturing nation, by contrast, courts the dangers of wantonness and waste, inviting into its environs the wretchedness of the Bridewells and Bedlams.³⁶ As population increases, a proportion of the inhabitants of a

³² *Ibid.*, *PJM* 12:72.

³³ *Ibid.*, *PJM* 12:70–72.

³⁴ "Fashion," *PJM* 14:258; cf. "Notes on Government," *PJM* 14:164–65; "Dependent Territories," *PJM* 17:559–60.

³⁵ "Republican Distribution of Citizens," *PJM* 14:246. For an extensive and excellent treatment of Madison's ideas on political economy see Drew R. McCoy, *The Elusive Republic: Political Economy and the American Revolution* (Chapel Hill: University of North Carolina Press, 1992).

³⁶ "Republican Distribution of Citizens," *PJM* 14:244–46; "Fashion," *PJM* 14:257–59.

nation will gradually and naturally shift their employment from agriculture to the manufacturing, mechanical, and commercial industries, but this diversion ought not to be artificially encouraged. Rather, "it ought to be seen with regret as long as occupations more friendly to human happiness lie vacant." Domestic manufactures would develop naturally, he said, at the stage when "hands [are] not called for by agriculture."³⁷

The idea of jump-starting the manufacturing and mechanical industry in order to encompass within the extended republic a greater number and variety of interests and enhanced rivalry of parties was not part of Madison's vision in the 10th or any other *Federalist* essay.³⁸ It is in fact contrary to his anticipations in that work. There was no reason for him to believe that, when writing essays for *The Federalist*, anything but the natural course of economic development would affect the choice of occupations of American citizens or the commercial character of the republic. Domestic manufactures would develop naturally, he contended, at the stage when agricultural labor reaches a surplus.³⁹

In the Party Press Essay "Parties" Madison argued against governmental measures that encourage further divisiveness in society, claiming that such a policy is not consistent with republicanism. In "Property" he added to this discussion the claim that such measures violate both the rights of property and the rights of persons. Property is not secure, he asserted, when unequal taxes burden one kind of property and reward another; nor is it protected when part of the citizenry is denied the free exercise of their faculties and the free choice of their occupations. Building on *Federalist* 10's claim that the rights of property originate in men's free exercise of their diverse faculties, he argued that the individual's free use of his faculties and choice of occupation not only constitute his property in the common meaning of the word, but are the "means of acquiring property strictly so called."⁴⁰ When understood in this context, it is not difficult to comprehend Madison's alarm when Hamilton unveiled his "Report on Manufactures." The protection of these different faculties, Madison had written in *The Federalist*, "is the first object of government."⁴¹

³⁷ *Federalist* 41:230.

³⁸ See Alan Gibson, "The Commercial Republic & the Pluralist Critique of Marxism: An Analysis of Martin Diamond's Interpretation of *Federalist* 10," *Polity* 25:4 (Summer 1993), 497-528, especially 506-9, 513.

³⁹ *Federalist* 41.

⁴⁰ "Property," *PJM* 14:267.

⁴¹ *Federalist* 10:46.

Stemming from the free exercise of his faculties, man has a property "in his opinions and in the free communication of them."⁴² When the power of government is excessive and unjustly interventionist, no man is secure in his opinions or in the effective communication of them. This is a particular danger in a large republic, since the size of a nation has the effect of making communication and the discovery of a united purpose more difficult. If public opinion is to exert adequate and proper control on the government, it must have sufficient channels through which it can be expressed, formed, and enlightened. The work of collecting, coalescing, and shaping public opinion is accomplished by a variety of conditions and processes, including state and local governmental bodies, educational institutions and the learned professions, the circulation of newspapers throughout the nation, the exchange of views between representatives and their constituents, and deliberation among the representatives at the seat of government.

From Madison's perspective, the sum total of the *Federalist* initiatives of the 1790s constituted an agenda clearly intended to undermine republican principles and practices. Inspired by Hamilton's vision of economic and political greatness for America, the Federalists supported a slavish dependence on the British commercial empire and the creation of a system that promoted inequality of property by governmental fiat and tied the interests of the favored opulent class to the national government. Madison believed that this clever scheme would have the effect of strengthening and consolidating the powers of the national government and undermining the constitutional and practical limitations placed on its authority. The concentration of power at the national level would diminish the power of the state governments. Since a single national legislature is not competent to regulate all the objects of government over so large a territory, the power of the national executive would unduly grow; this would open the way for legislative corruption and render less effectual the voice of the people and their control on the legislature.⁴³ This would have the eventual effect of transforming the executive office into one of "unlimited discretion," in opposition "to the will and subversive of the authority of the people."⁴⁴ By the close of the 1790s, with the passage of the Alien and Sedition Acts, Republicans saw only too vividly what they had vaguely feared earlier in the decade: if successful, *Federalist* measures would produce a "universal silence," leaving the national

⁴² "Notes on Government," *PJM* 14:166.

⁴³ "Consolidation," *PJM* 14:138.

⁴⁴ "The Union: Who Are Its Real Friends?" *PJM* 14:274.

government to act independently of the will of the society and free to pursue a "self directed course."⁴⁵

Madison's opposition to the Hamiltonian-led Federalist agenda was not the result of inconsistency, nor was Jefferson responsible for the political estrangement between the two leading Publii. As noted earlier, in the case of the influence of a bill of rights on the formation of public opinion as well as Madison's advocacy of commercial discrimination against the British, he had formulated and publicly expressed his views on these matters before Jefferson's return from France and prior to Hamilton's stint as secretary of the treasury. Madison did not, as some scholars contend, seek to insulate national politics from public opinion in the 1780s and then develop "a new feeling for the legitimacy of majorities" and embark on a "new course of theorizing" in the 1790s.⁴⁶ Rather, in his writings subsequent to *The Federalist* period he continued to work through the problem of majority faction and to build upon, further formulate, and hone his conception of the politics of public opinion, ultimately placing it at center stage.

Madison had as little confidence that enlightened statesmen would always be at the helm as he had that a simple or aggregate majority of the community would always and only demand those things consistent with natural and political right.⁴⁷ Majority faction is the greatest threat and requires the most intense theoretical scrutiny in all polities in which majority opinion actually does reign supreme. In the 1780s, Madison focused his mental energies more on solving the problem of majority faction than minority faction because he was committed to the principle of majority rule and he envisioned the majority as ultimately determining the law in America. He did not change his mind about this in the 1790s. In the battle with Hamilton and the Federalists, he fought against minority schemes that he believed would undermine the formation and force of the public voice and substitute an independent

⁴⁵ "Consolidation," *PJM* 14:138.

⁴⁶ Jack N. Rakove, *James Madison and the Creation of the American Republic* (Glenview, Ill.: Scott Foresman/Little, Brown Higher Education, 1990), 100; Elkins and McKittrick, *The Age of Federalism*, 266; Alan Gibson, "Veneration and Vigilance: James Madison and Public Opinion," *Review of Politics* 67:1 (2005), 5-35.

⁴⁷ For the view that Madison relied on enlightened leadership, or the "better sort" of men, see Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), 1-33; James Roger Sharp, *American Politics in the Early Republic: The New Nation in Crisis* (New Haven, Conn.: Yale University Press, 1993), 2; Garry Wills, *Explaining America: The Federalist* (Garden City, N.Y.: Doubleday, 1981), 179-264; Gordon Wood, "Interests and Disinterestedness in the Making of the Constitution," in Richard Beeman, Stephen Botein, and Edward C. Carter, eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: University of North Carolina Press, 1987), 91-93.

governmental will. And he fought to establish in practice what he had conceived at his writing desk. I doubt that he was as surprised about the political realities of the new administration with men such as Hamilton and Adams in power as is often thought. He knew a fair amount about their views, though he did not know for certain how their ideas would play out vis-à-vis the decisions that had been made at Philadelphia and endorsed by the people. Once he saw that the Federalists were bent on ignoring the understanding of those who adopted the Constitution and intent on severing the government from the will of the people, he reacted to their agenda. At the same time, he remained committed to achieving and vindicating majority rule, the architectonic challenge that marked his vocation as the leading philosophic mind of the American Founding.

The philosophic divergence between Madison and Hamilton did not originate in the 1790s, though their prior differences were clearly exacerbated by political events in the formative years under the new Constitution.⁴⁸ Certainly, the decisions made in Philadelphia in 1787 and ratified by the people influenced Madison's understanding of the American political system, but this is fully in accord with his unerring commitment to the idea of the Constitution as the encapsulation of the sovereign voice of the people.⁴⁹ The accusation of inconsistency would in fact be warranted if he had taken the reverse tack, that is, if he had *not* heeded the authoritative intent of the people, who he believed alone infused the Constitution with life and validity. From Madison's perspective, Hamilton's lack of respect for the authoritative opinion that informed the Constitution and his determination to substitute his own economic and political vision despite the decree of the sovereign public constituted the crux of their political division.

The disagreement between Madison and the Federalists, and in particular with Hamilton, was a battle over the very character of republican

⁴⁸ See Madison to Jefferson, August 11, 1788, *PJM* 11:227. Regarding the joint authorship of *The Federalist*, Madison told Jefferson that "Though carried in concert the writers are not mutually answerable for all the ideas of each other there being seldom time for even a perusal of the pieces by any but the writer before they were wanted at the press and sometimes hardly by the writer himself." In the "Detached Memoranda," Madison wrote that although at the outset he and Hamilton had sent their essays to each other before they went to press, they soon abandoned this because of the "shortness of time" and also because "it was found most agreeable to each, not to give a positive sanction to all the doctrines and sentiments of the other, there being a known difference in the general complexion of their political theories" (Rakove, *James Madison: Writings*, 769). Cf. Lance Banning, "The Hamiltonian Madison: A Reconsideration," *Virginia Magazine of History and Biography* 92 (1984), 3-28.

⁴⁹ See Banning, *Sacred Fire of Liberty*, 171, 191.

government and the extent to which the people are capable of governing themselves. Hamilton did not think Madison's solution of the extended republic and representation went far enough to prevent the problem of majority tyranny. Madison thought Hamilton's measures substituted private interest for public good and undermined the sovereign authority of public opinion. Interestingly, scholars have generally attributed the vision of a modern commercial republic composed of diverse and rival economic interests actuated by the untutored passion of acquisitiveness to James Madison. But this was not, nor ever had been, Madison's vision of republicanism. It is closer to Hamilton's.⁵⁰ In fact, Hamilton fits better the description that has traditionally been reserved for Madison, while Madison was a more unhesitating democrat than is generally believed. Hamilton is the chief American theorist of the modern commercial republic, Madison the philosophic architect of the politics of public participation and republican self-government in America.

⁵⁰ For example, Martin Diamond attributes to Madison the theory that a large republic supplies the remedy for faction only if it is also a *commercial* republic ("Ethics and Politics: The American Way" in Robert H. Horwitz, ed., *The Moral Foundations of the American Republic*, 3rd ed. [Charlottesville: University Press of Virginia, 1986], 54-55; "The Federalist," in Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy* [Chicago: Rand McNally, 1972], 648). However, I would argue that Diamond's presentation of the commercial republic theory is actually a much more apt interpretation of Hamilton's political and economic thought. According to Diamond's interpretation, Madison's scheme replaces the historical battle between the haves and have-nots with a new factional struggle based on the diversity of economic interests. This required magnifying the operation of interest (and taming or devitalizing passion and opinion) so that citizens would divide themselves on the basis of narrow and particularized economic interests, thereby allowing the society to evade the fatal kind of factionalism caused by opinion and class interest in the past. Rejecting any attempt to refine and improve the citizens' opinions of the advantageous and just, Madison instead accepted as "irredeemably dominant" the self-interested passions sown in human nature. In light of this, he sought to channel the powerful passions and interests of the society by way of shrewd institutional arrangements rather than engage in the futile attempt to form the character of the citizenry. While the theory of the commercial republic presented by Diamond and attributed to Madison actually describes much of Hamilton's thought, it does not aptly characterize Hamilton's vision in one important respect. Hamilton's theory of the commercial republic did not merely rest on a multiplicity of rival interests to produce the common good, nor did it advance the notion of a multiplicity of factions. At the New York Ratifying Convention, Hamilton proclaimed that the objective was "to abolish factions, and to unite all parties for the general welfare" ("New York Ratifying Convention: First Speech of June 25 [Francis Child's version]," *PAH* V:85). Like Necker, Hamilton sought to achieve public confidence and unity of national sentiment via the effects of a good administration. Cf. Gibson, "The Commercial Republic & the Pluralist Critique of Marxism"; Banning, *Sacred Fire of Liberty*, 261, 62-63, 368, 471, n. 66; Charles R. Kesler, "Federalist 10 and American Republicanism," in *Saving the Revolution: The Federalist Papers and the American Founding* (New York: Free Press, 1987), 14-18.

Madison did not differ with Hamilton, Adams, Ames, Sedgwick, or any of the other Federalists about the need to filter the interests, passions, and opinions of the citizens or about the need to achieve a reasonable, impartial, and durable will in government, but he very much disagreed with them about who or what legitimately gives voice to this will and whether the process involves modifying the actual views of the citizens. Hamilton and Adams attempted to solve the problems of the predominance of partial interests, the contagion of passion, and the danger of demagoguery in the legislature by establishing a system of institutional counterbalances within government. Hamilton added to this the beneficial effects of a diversified, commercial, and industrial nation. The Federalists sought to achieve a reasonable and permanent will via an independent and energetic executive whose administration would advance the interest of the nation and inspire in the people an opinion of confidence and a habit of obedience. By contrast, Madison's solution was to call the representatives to stand before the bar of public opinion. He sought to establish an equilibrium of passions and interests in the society in order to reduce the likelihood of majority faction, as well as to shape an environment conducive to the formation of a public will tempered and modified by the commerce of ideas.

Hamilton relied on the people to pursue their own material advantage and to support a government that benefits them economically. Neither he nor Adams saw wisdom in encouraging political hyperactivity among the citizenry, which only invites demagoguery and civil unrest, as the French example too perfectly illustrated. For Madison, the citizens' political duties were substantial and ongoing. They did not end at choosing the better sorts of men to represent them; their guardianship over public affairs was not an intermittent responsibility. Both the Federalists and Madison relied significantly on an educated elite to accomplish their ends. However, in the one case, it was a type of statesmanship that sought to inspire in the citizenry respect for and confidence in the government more than it sought to teach them their rights and responsibilities. In the other case, it was a kind of civic leadership that aspired to cultivate civic understanding, refine mores and manners, and educate the people for their indispensable role in a free and self-governing republic.