



'THE ULTIMATE
JUSTICE OF THE PEOPLE'
**MADISON, PUBLIC
OPINION AND THE
INTERNET AGE**

GREG WEINER

A MADISONIAN CONSTITUTION FOR ALL
ESSAY SERIES



‘THE ULTIMATE JUSTICE OF THE PEOPLE’ MADISON, PUBLIC OPINION AND THE INTERNET AGE

BY GREG WEINER

FAST OPINION, SLOW RESULTS

On September 24, 1789, President Washington sent the names of the first six nominees to the Supreme Court to the U.S. Senate for its advice and consent. Two days later, the entire slate was confirmed on a voice vote, almost certainly without the public noticing or its opinion influencing senators. In 2018, when Justice Anthony Kennedy retired, the confirmation process for his successor, Brett M. Kavanaugh, took three months. Yet public opinion on the Kavanaugh nomination formed instantaneously. Both opponents and supporters of the nominee Tweeted, phone-banked and blasted emails within moments of the announcement. In one case, an advocacy group was so anxious to express itself that it issued a press release identifying the future justice as “[insert name here].” This curious reversal—from rapid confirmation with slow public opinion to instant opinion but gradual confirmation—is striking. It is not coincidental.

To be sure, the complicating factors in the Kavanaugh nomination are well known, from his replacement of a swing justice to the allegations of sexual assault leveled against him late in the confirmation process. Moreover, it is unlikely the public would have taken much interest in Washington’s nominees even had they known, for the judiciary was not then seen as an ultimate arbiter of ultimate issues. The point is that no technological mechanism existed to enable the rapid formation of public opinion even had Americans much cared who sat on the Supreme Court. Today, the constitutional distance both between public officials and their constituents and between the origination of ideas and the formation of public opinion on them has collapsed. This is partly a technological phenomenon—speed that was once impossible is now routine; partly a result of the democratization of a republican regime that once resolved issues at a step of remove; and partly, in turn, a function of a larger, more centralized regime that, for better or worse, has raised the stakes of national politics.

Whatever the cause or combination of causes, this collapse of distance presents a challenge to the Madisonian understanding of American politics. Madisonian politics relies on a series of assumptions about public opinion. The first is the use of time as a pacing mechanism: James Madison believed public opinion would be sovereign, but it would form gradually. Second, opinions rooted in passions would be naturally fleeting; only those rooted in what Madison regarded as the “cool” faculty of reason could be sustained. Similarly, Madison assumed a fluidity of political alignments such that those who were on the losing side of one issue could hope to win on the next, while those who prevailed would be chastened in victory by the knowledge that they would be in the minority on a future occasion. This was a rational calculation that assumed a capacity to put long-term interests over immediate appetites. Finally, Madison’s analysis of faction is rooted in moral objectivity. That is not to say everyone agrees on what is right, but Madison did appear to assume everyone operated in roughly the same universe of facts even if those facts yielded different conclusions.

All of these assumptions are in tension with a media and technological environment that has accelerated communication and the formation of public opinion, erased the constitutional distance between representatives



and constituents and between constituents and each other, and, finally, hardened factional and political alignments as consumers of media on all sides retreat into private and self-reinforcing realities. Here, as always, we should avoid romanticizing the Founding generation, whose disputes were bitter and whose media were partisan. What is different is the simultaneous immediacy and privacy of contemporary politics. We are less likely to deliberate before concluding, less likely to come into contact with ideas or neighbors with whom or views with which we disagree, and less likely to place long-term consequences ahead of immediate outcomes. This is inseparable from the media environment and irreconcilable with Madisonian politics.

MADISONIAN PREMISES

Madison's writings on public opinion present the following puzzle: First, Madison was concerned about the rule of impulsive majorities, which he alternately described as "impetuous," "hasty," "overheated" and contaminated by "contagious passions."¹ Second, one of the most consistent themes of his writings is that persistent majorities always prevail in the long run. As will presently be seen, this is most evident in *Federalist* 63's remark that "the cool and deliberate sense of the community" both "ought" and "actually will . . . ultimately prevail" in republican societies.² Yet, third, Madison was also confident that impassioned majorities would not prevail in the United States, as when he wrote to the Marquis de Lafayette in 1830 that the American regime "has so many safety-valves giving vent to overheated passions, that it carries within itself a relief agst. the infirmities from which the best of human institutions cannot be exempt."³ In sum, persistent majorities eventually get their way, but impassioned majorities do not. The assumption that resolves this puzzle is that impassioned majorities by their very nature are not persistent, a premise latent throughout Madison's writings. The solution, which I have elsewhere called "temporal republicanism,"⁴ was to separate the formation of public opinion from the decision to act upon it with sufficient time for passions to dissipate.

Temporal republicanism is rooted in Madison's distinction between reason and passion. Rather than reaching conclusions in advance, the reasoning faculty was capable of interpreting objective facts and accounting for different perspectives. By contrast, an impassioned public or public official would be impervious to either evidence or opposing ideas, stubbornly refusing to confront a question with the hallmark of reason: an open mind. In *Federalist* 49, for example, Madison rejected Jefferson's suggestion to turn to the public to remedy constitutional abuses because the resulting disputes would be decided with "the spirit of preexisting parties, or of parties springing out of the question itself." The same politicians who had committed the abuses would influence or make the decision about the remedy. Their interest in the question would distort their judgment. "The *passions*, therefore, not the *reason*, of the public, would sit in judgment. But it is the reason of the public alone, that ought to control and regulate the government. The passions ought to be controlled [*sic*] and regulated by the government."⁵

¹ See Gaillard Hunt, ed., *Writings of James Madison, Vol. 9*, 76 ("impetuous"); *The Federalist* No. 58 ("hasty"); *Writings of James Madison* 9:35-38 ("overheated"); *Writings of James Madison* 9:520 ("contagious passions").

² George W. Carey and James B. McClellan, *The Federalist: The Gideon Edition* (Indianapolis: Liberty Fund, 2001), 327. References to *The Federalist* are hereinafter cited by paper and page number to this edition, as in "Federalist 63:327."

³ *Writings of James Madison* 9:35-38.

⁴ Greg Weiner, *Madison's Metronome: The Constitution, Majority Rule and the Tempo of American Politics* (Lawrence, Kan.: University Press of Kansas, 2012).

⁵ *The Federalist* No. 49.



These passions, in turn, came on suddenly, spread rapidly and, equally important, flamed out quickly. Madison tended to describe factions, for example, as “sudden” or as acting on “impulse.” One of his complaints about the “multiplicity” and “mutability” of the laws of the states in his pre-convention memorandum “Vices of the Political System of the United States” was the rapidity with which these measures changed, often under the immediate influence of mobs.⁶ In “the ancient republics,” he wrote late in life, popular assemblies were “so quickly formed, so susceptible of contagious passions.”⁷ His circa 1817 “Detached Memoranda” worried about the “contagion & collision of the passions” in the smaller states, whereas he wrote to John Adams in the same year that the American experiment “is favored by the extent of our Country, which prevents the contagion of evil passions.”

The clearest instance in Madison’s writings of temporal republicanism and the fleeting nature of the passions, *Federalist* 10, pertains to the problem of faction, which the essay describes as “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”⁸ The problem, in other words, is citizens ganging up on other citizens, using government as an instrument for doing so. Critics of Madison, most notably Robert Dahl, have observed that this definition seems not to take account of differing views of the public good, which Dahl notes no one typically acknowledges opposing.⁹ But this proves no more than it would to say that few prisoners confess their guilt. As George W. Carey has shown, Dahl attempts to retrofit modern moral relativity onto a Madisonian system that seems rooted in a morally objective understanding of the public good. “[T]hose who do not believe in an objective moral order cannot ‘enter’ Madison’s system,” Carey writes.¹⁰ That Madison believes public questions are generally resolvable by reason is further evident in his admonition that “[n]o man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment,” with this latter faculty, judgment, generally able to reach right or at least impartial answers if unimpeded by interest or passion. This is not to say Madison was a technocrat or that he would have turned politics over to a class of experts. Far from it: He was a champion of prudence, the classical quality that, as Aristotle, says, pertains to things that could be otherwise. It is the existence of a common good, not agreement as to its content, that is important for understanding the Madisonian ethos.

Indeed, Madison cannot mean that the common good is easily perceived. He tells us that our interests and passions can corrupt one another, especially where property is involved. But other assumptions do seem to be present. The shared belief that the common good *exists*, even amid disagreement about its content, is central to Madisonian politics, as is the *possibility* of discovering it: *Federalist* 51’s prediction that majorities would seldom form on the basis of principles other “than those of justice and the general good” implies that majorities that were based on those foundations could cohere.¹¹ This public good is not simply the cumulative product of or lowest common denominator between each individual’s private views. Madison teaches, moreover, that reason applies itself to evidence with an open mind. For both reasons, facts cannot be a matter of personal perspective according to

⁶ Robert A. Rutland and William M.E. Rachal, eds., *The Papers of James Madison: Volume 9* (Chicago: The University of Chicago Press, (1975), 348-357.

⁷ *Writings of James Madison* 9:520.

⁸ *The Federalist* No. 10.

⁹ Robert Dahl, *A Preface to Democratic Theory: Expanded Edition* (Chicago: University of Chicago Press, 2006), 26.

¹⁰ George W. Carey, “Majority Rule and the Extended Republic Theory of James Madison,” in *In Defense of the Constitution* (Indianapolis: Liberty Fund, 1989).

¹¹ *The Federalist* No. 51:271..

which that with which we agree is true and that which unsettles us is fake news or right-wing propaganda. The media of Madison's day was unquestionably partisan, but the partisanship was checked by the existence of a public square in which citizens were reasonably likely to encounter competing views. If media drive people behind walls not just of viewpoint but of fact itself—in other words, if there is no consensus as to a common reality—then consensus as to even the existence of a common good, like the basis of evidence to which the reason would apply itself, seems elusive.

Federalist 10 also distinguishes between reason and passion. This is evident at several points in the essay, first in Madison's taxonomy of factions. Whereas David Hume had regarded factions based on property as excusable because they were rational and their demands were therefore negotiable, he felt those based on passion—such as attachment to political personalities or systems of religious belief—were inherently dangerous.¹² Madison reversed this understanding. For him, fanaticisms like cults of personality surrounding public figures could not endure because passion might be initially kindled but could not be sustained. The real danger was factions based on property, and Madison's reason is instructive: These factions are "durable."¹³ Because they are rooted in tangible interest, they last. Interest, like passion, operates to distort the reason.

The challenge, then, was how to defuse the passions while elevating the reasoning faculty. The answer, for Madison, was time. Public views would form so gradually in a large republic, in which communication would be naturally slow, that passions would have time to dissipate before factions could act upon them. It is well known that Madison believed majority factions were unlikely to form because of the diversity of interests in a large republic. But Madison also provided for a scenario in which they did form. His answer was that "it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other."¹⁴ Why should this be so? Communication was not impossible, as Madison's dozens of volumes of published letters attest. But *rapid* communication was. This is the missing link in Madison's argument. What holds it together is the assumption that in the time it would take a majority to discover its own strength, its passions would be diffused.

This is essentially a passive mechanism. It is generally compatible with observers who posit a more active means of shaping public opinion, such as Colleen Sheehan, who places Madison in the mold of a classical republican who seeks to enlighten and ennoble the public views, or Martin Diamond, who argues that Madison sought to proliferate commercial interests as an outlet for public energies.¹⁵ Jeremy Bailey, meanwhile, has argued that pacing may be a necessary but is also an insufficient condition for deliberation.¹⁶ Madison certainly believed in deliberation. But whatever time adds to this process in terms of dissipating the passions—a precondition for deliberation—it adds of its own volition: Time itself does the work. We can see this in a famous, and often misinterpreted, passage from *Federalist* 63. To see the silent operation of time, we must engage it at some length. Speaking of the calming function of the Senate's six-year terms, Madison wrote:

¹² See Hume, "Of Parties in General," in *Essays: Moral, Political, and Literary* (Indianapolis: Liberty Fund), 54-63.

¹³ *The Federalist* No. 10:44.

¹⁴ *The Federalist* No. 10:48.

¹⁵ See Colleen Sheehan, *James Madison and the Spirit of Republican Self-Government* (New York: Cambridge University Press, 2009) and *The Mind of James Madison: The Legacy of Classical Republicanism* (New York: Cambridge University Press, 2015), and Martin Diamond, "Democracy and *The Federalist*: A Reconsideration of the Framers' Intent," *American Political Science Review* 53:1 (March 1959), 52-68. For an instructive rejoinder to Sheehan, see Alan Gibson, "Madison on Democracy, Property, and Civic Education: A Reply to Matthews and Sheehan," *The Review of Politics* 67:1 (Winter 2005), 69-76.

¹⁶ Jeremy Bailey, *James Madison and Constitutional Imperfection* (New York: Cambridge University Press, 2015), 49.



As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers: so there are particular moments in public affairs, when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth, can regain their authority over the public mind?¹⁷

The passage in many ways encapsulates Madison’s democratic thought. As we have already seen, the public sense both should and—regardless of whether one wants it to—“actually will” prevail in a free society, but only “ultimately.” But there are also “particular,” which is to say apparently unusual, moments when the public is seized by passion. These passions are “irregular,” and they yield measures which the people themselves later lament. In such moments, the role of senators is to “suspend the blow” the people contemplate inflicting against themselves “until”—and this “until” is vital—“reason, justice, and truth, can regain their authority over the public mind.” While Madison unquestionably counts on the good character of senators, it merits observation that one of the foremost qualities they need, *Federalist* 62 had said, is “firmness.” That is, they must be able to withstand public passions but not necessarily to enlighten them. All a senator needs to be able to do is cause his or her constituents to pause long enough for their reason to take hold, which is almost always well within the six-year timeframe on which senators operate. That is because “reason, justice, and truth” eventually “regain”—notice the assumption in *regain* that they had it in the first place—their hold over the public mind.

One particular dimension of the seasoning function of time was that it helped individuals elevate their long-term interests over their immediate desires. *Federalist* 42 recognized the need: “[T]he 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 clamours of an impatient avidity for immediate and immoderate gain.”¹⁸ In 1786, writing to James Monroe about a proposed treaty that would have bargained away rights to the Mississippi River to Spain, Madison argued that it was wrong to equate the interest of the majority with political morality. But such a standard was obviously true, he continued, if interest meant “Ultimate happiness.” The problem was the “popular sense, as referring to immediate augmentation of property and wealth.” In this distorted sense, “it would be the interest of the majority in every community to despoil & enslave the minority of individuals.” Notice that it does *not* serve one’s “ultimate happiness” to oppress one’s neighbors, because in the fluid political situation of the United States—in which majorities and minorities would realign on different issues—someone who is in the majority today is apt to find him - or herself in the minority tomorrow.¹⁹

Madison’s 1791 *National Gazette* essay, “Public Opinion,” helps to fill out our understanding of his views on the topic by drawing attention to the question of when rather than whether majorities rule: “As there are cases where the public opinion must be obeyed by the government; so there are cases, where not being fixed, it may be influenced by the government. This distinction, if kept in view, would prevent or decide many debates on the respect due from

¹⁷ *The Federalist* No. 63:327.

¹⁸ *The Federalist* No. 42:219.

¹⁹ *Papers of James Madison* 9:140-42. We of course cannot avoid or excuse Madison’s blindness to the problem of chattel slavery in these passages, which very decided attached to a fixed minority.

the government to the sentiments of the people.”²⁰ In other words, only persistent majorities merited deference from government; transient majorities, far from commanding obedience, could be influenced by government. By this point, early in the operation of the constitutional regime, Madison was less concerned about the people being inflamed by passion than by public officials being so consumed. The party system would help to mobilize public opinion to counteract this phenomenon. Madison noted in the essay that in a large territory, the public’s “real opinion” was harder to “ascertain” or to “counterfeit.” When actually ascertained, it would be more respectable to individuals, which favored the authority of government. “For the same reason, the more extensive a country, the more insignificant is each individual in his own eyes. This may be unfavorable to liberty.” Consequently, “[w]hatever facilitates a general intercourse of sentiments” — such as better transportation and communication — was “equivalent to a contraction of territorial limits, and is favorable to liberty, where these may be too extensive.”

By the end of Madison’s life, steamboats, railroads and the like had begun this contraction in earnest. Today, fueled by instant communication and rapid transportation, the contraction has proceeded almost to a singularity. That leaves us with a difficulty from the perspective of Madisonian theory about public opinion. In Madisonian terms, a contraction of territorial limits is not an unvarnished good. After the Philadelphia Convention, he had written to Thomas Jefferson, previewing the theory of *Federalist* 10 but warning that it operated only “within a sphere of a mean extent.” If a territory was too small, factions would form. If it was too large, it would be too difficult to mobilize public opinion against the regime when necessary.²¹

Today, in the era of segmented news, immediate communication and fungible facts, the terms of the workable mean may have changed. Have we, instead of becoming too large, in effect become, once more, too small?

PRIVATE REALITIES

In October 2014, the conservative news site www.cnsnews.com published an article entitled, “Liberals More Likely to Unfriend Because of Opposing Views of Politics.”²² The topic was a Pew Research Center study entitled “Political Polarization & Media Habits,” and the headline was evidence of precisely what the study found: Increasingly fragmented media are driving political polarization.²³ The study had shown that while liberals were, in fact, likelier to “unfriend” people on social media because of opposing views, conservatives were also less likely to encounter opposing views in the first place. Yet the headline and the story beneath it had focused on only one side of the story, illustrating a fact of today’s segmented media landscape; especially for the most opinionated consumers, the purpose of media is not to learn what we do not know but rather to confirm what we believe we already do.

The Pew study painted a portrait of Americans retreating into private realities in which their views go largely unchallenged. Some 47 percent of consistent conservatives gleaned information mainly from Fox News. While consistent liberals’ news-consumption habits reflected more diversity of sources, that appears to be (or conservatives would certainly attribute it to) at least in part a result of the greater number of sources available to their point of

²⁰ *Papers of James Madison* 14:170.

²¹ *Writings of James Madison* 5:31.

²² Ali Meyer, “Liberals More Likely to Unfriend Because of Opposing Views on Politics,” *CNS News* (Oct. 21, 2014), <https://www.cnsnews.com/news/article/ali-meyer/liberals-more-likely-unfriend-because-opposing-views-politics>.

²³ Amy Mitchell, Jeffrey Gottfried, Jocelyn Kiley and Katerina Eva Matsa, “Political Polarization & Media Habits,” Pew Research Center, October 21, 2014, <http://www.journalism.org/2014/10/21/political-polarization-media-habits/>.



view. Social media appear to reinforce this ideological consistency even further. Nearly half of consistent conservatives said the political posts they encountered on Facebook mostly aligned with their views. On the other hand, 44 percent of consistent liberals, compared with 31 percent of consistent conservatives, had blocked a social media contact because of a political disagreement. The more consistent one was in one's political views, the less likely one was to encounter opposing perspectives, whether online or in conversation. About half of consistent liberals and two-third of consistent conservatives reported that most of their close friends agreed with them politically.

Here, too, we should beware nostalgia. But the era is not distant when "the news" meant most Americans watching one of three or four networks operating in largely the same format and at least purporting to present information objectively. This was the electronic equivalent of the public square, enabling conversations within the same broad universe of factual information. The reason to avoid nostalgia is that those networks were perennially accused of bias, the best cure for which is competition. But what has been gained in choice has been offset, at least in part, by the retreat from the public square into the privacy of media habits that can be arranged to exclude competing views or unwelcome information. As with the extended republic, there is a mean on both sides of which inconveniences lie.

Pew was not alone in finding that this mean was being strained. A 2017 study by John V. Duca and Jason L. Saving found that the fragmentation of media better predicted partisan polarization than income inequality.²⁴ Matthew Levendusky's research indicates that the effects of media segmentation are most intense at the partisan extremes: "Partisan media do not shift the center of the distribution of mass opinion; rather, they help elongate the tails of the distribution," making already heavily partisan consumers even more partisan.²⁵ This occurs in our personal lives as well: Bill Bishop's *The Big Sort: Why the Clustering of Like-Minded America Is Tearing Us Apart* showed that migration patterns reveal a preference for neighbors who share one another's political views.²⁶ These effects, again, are most pronounced at the edges. But the edges are also likeliest to vote, speak and donate, and as Levendusky has also noted, the fragmentation of media allows less partisan voters increasingly to tune out from politics altogether.²⁷

It is not too much to say that the effect of this segmentation is to allow media consumers to live in worlds of their own making, increasingly isolated from opposing views. The coverage of similar events on networks from opposite perspectives could easily lead voters to opposite conclusions or, more likely, reinforce preexisting views that led them to choose the fragmented media in the first place. The cycle turns in on itself: A partisan voter chooses partisan media, which reinforces partisan views and further isolates the voter in turn. It seems easier for a media consumer who never encounters opposing views to demonize, and resist compromise with, those who hold them. The result is a hardening of the factional lines that Madison assumed would be shifting and fluid: There is even less incentive to compromise if one does not see oneself belonging to a different political alignment in the future. Truth itself has become partisan, a trend of which President Trump has been accused of being a culmination but is hardly the cause.²⁸

²⁴ John V. Duca and Jason L. Saving, "Income Inequality, Media Fragmentation, and Increased Political Polarization," *Contemporary Economic Policy* 35:2 (April 2017), 392-413.

²⁵ Matthew Levendusky, *How Partisan Media Polarize America* (Chicago: University of Chicago Press, 2013), 141. See also Natalie Jomini Stroud, *Niche News: The Politics of News Choice* (New York: Oxford University Press, 2011).

²⁶ Bill Bishop with Robert G. Cushing, *The Big Sort: Why the Clustering of Like-Minded America Is Tearing Us Apart* (Boston: Mariner Books, 2009).

²⁷ Levendusky, "Are Fox and MSNBC polarizing America?" *The Washington Post*, Jan. 3, 2014, https://www.washingtonpost.com/news/monkey-cage/wp/2014/02/03/are-fox-and-msnbc-polarizing-america/?utm_term=.c52f9c4e78f1.

²⁸ See Greg Weiner, "Trump and Truth," *National Affairs*, Spring 2017 (in which I argue that Trump's fabulism is inseparable from the postmodern assault on objective truth).

Recall in this context that Madison’s particular concept of reason entailed the application of open minds to objective facts. If minds are never open, and facts are always fungible, Madisonian reason cannot operate. If all this is communicated at the speed of light, neither can Madison’s device for dissipating the passions.

POLITICS AT LIGHT SPEED

As a candidate for the Presidency, Donald Trump issued a “Contract with the American Voter” in which he promised a wide sweep of actions to “Make America Great Again” within his first 100 days in the White House.²⁹ They ranged from labeling China a currency manipulator to proposing a constitutional amendment imposing term limitations on Congress. He jumped the gun by 10 days when he claimed in Kenosha, Wisconsin, in April 2017 that “[n]o administration has accomplished more in the first 90 days.”³⁰ Critics mocked this assertion, comparing President Trump’s 100-day record to his predecessor Franklin Roosevelt’s. The question is why the standard applies in the first place. To be sure, President Trump, like virtually every President since Roosevelt, has both invited the measure and been assessed according to it. But this completely separates governance from circumstance. President Roosevelt confronted a genuine emergency; despite his inaugural portrait of “American carnage,” whatever challenges President Trump confronted are objectively difficult to liken to the Great Depression.

This is a function of both the media landscape and the public’s appetite for instant political gratification. The levers of Madison’s machinery of public opinion were made to operate gradually. Yet the media, obsessed with the “new” (“news,” after all, is the plural of that word) has no gauge for prudent governance according to the needs of the time. This combination of public and media appetites has resulted in a standard of presidential success that I have formulated as $s=c/t$: Success is change divided by time.³¹ The more a President causes to be different in a shorter amount of time, the more successful he or she is assumed to be. That sometimes might require conservation and others change does not matter: What is compelling is what is new.

The 100-day standard reflects expectations of rapid change that account neither for need nor for Madisonian institutions, which operate on the separate rhythms of all three branches of government. The result is a relentless disjunction between what the Madisonian system is able to deliver and our expectations of it. What appears to be gridlock tends to be the natural constitutional result of oscillating majorities who expect their views to be captured in an instant. On Madisonian assumptions, capturing their fluctuating views at any one moment would be arbitrary; a majority should prevail only after it has cohered for an interval appropriate to the gravity of the issue under consideration.

The irony is that the faster public opinions seem to form, the slower the gears of government seem to turn. The drawn-out saga of the Kavanaugh confirmation, in which opinions calcified nearly instantaneously, illustrates this point. The machinery may in part be paralyzed by the overwhelming inputs that result from the collapse of constitutional distance between constituents and representatives. The lack of legislative output, in other words, may result from excessive input. With an appropriate distance from it, there may be more room for reasoned debate and compromise. Under a constant assault of public opinion, though, positions are far likelier to harden before the faculty of reason, characterized by the open mind, can take hold. Moreover, the desire for instant results has altered the Madisonian regime by driving Americans away from Congress, which is deliberative by design, to the presidency and the courts, which are much abler to deliver quickly because they can do so by decree.

²⁹ “Donald Trump’s Contract with the American Voter,” <https://assets.donaldjtrump.com/landings/contract/0-TRU-102316-Contractv02.pdf>

³⁰ “Remarks by President Trump on Buy American, Hire American Executive Order,” The White House (April 18, 2017), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-buy-american-hire-american-executive-order/>.

³¹ See Weiner, *Madison’s Metronome*, op. cit., 139.

At the same time, the speed at which public opinions coalesce makes it difficult to believe they are formed on the basis of Madisonian reason rather than passion. On Madisonian assumptions, this should be impossible. Passions, we recall, are fleeting by nature, incapable of being sustained over long periods of time. In the analysis of *Federalist* 10, we should not be motivated by, for instance, attachments to political personalities because there is no means of feeding these passions. But now there is: Social media is both isolating—it allows us to avoid conflicting views—and incessantly nourishing. President Trump, whose use of Twitter costs nothing and connects him directly to his base without any mediating or skeptical intervention, has proved a master at it, never allowing passions wholly to subside without stoking them anew. Nor is this a partisan phenomenon. The bumper sticker popular among Hillary Clinton's 2016 supporters, "I'm With Her," likewise indicates an attachment to personality, as does the animus both she and Trump face, evident in the party-line calls for criminal investigations of each.

Public measures are increasingly evaluated in terms of their allegiance or opposition to such personalities. Republicans for whom free trade was a decades-long principle turned on it when President Trump claimed their party's mantle; longtime Democratic skeptics, detesting the President, became sudden defenders. A Pew poll showed a partisan chasm in attitudes toward free trade agreements opening in an astonishingly short period roughly, though not precisely, coinciding with President Trump's arrival on the political scene.³² A similar split was evident in attitudes toward Russia.³³ This bears all the markings of *Federalist* 49's concern about questions being decided "in the spirit of preexisting parties" rather than on the basis of reason.

This compression of time, combined with the nationalization of politics, has also shortened congressional time horizons. For example, Senators whose six-year terms once supplied leisurely breaks from the vicissitudes of public opinion are now locked in a parliamentary-style and permanent two-year battle for the majority in the chamber. This is in no small part the result of the fact that narrow majorities place the majority within relentless reach. It is also a media phenomenon: The segmentation of news has had the ironic effect also of nationalizing it. Even as national cable outlets have proliferated, local news sources have steadily eroded. While local news still outpaces cable news for viewers³⁴—though it is certainly not clear that local news is a primary source of information on national officeholders—growing numbers of American encounter their members of Congress as commentators on national platforms on national issues. They are not, that is, interpreting the local implications of these issues, but rather are remarking on national issues as national issues. Yuval Levin makes the persuasive case that part of Congress' institutional weakness results from the fact that its members on both sides see themselves as performers rather than legislators: "Simply put, many members of Congress have come to see themselves as players in a larger political ecosystem the point of which is not legislating or governing but rather engaging in a kind of performative outrage for a partisan audience."³⁵

³² Bradley Jones, "Support for free trade agreements rebounds modestly, but wide partisan differences remain," *Pew Research Center* (April 25, 2017), http://www.pewresearch.org/fact-tank/2017/04/25/support-for-free-trade-agreements-rebounds-modestly-but-wide-partisan-differences-remain/ft_17-04-24_freetrade_usviews_2/.

³³ Rob Suls, "Share of Democrats calling Russia 'greatest danger' to U.S. is at its highest since end of Cold War," *Pew Research Center* (April 20, 2017), <http://www.pewresearch.org/fact-tank/2017/04/20/share-of-democrats-calling-russia-greatest-danger-to-u-s-it-its-highest-since-end-of-cold-war/>.

³⁴ *Pew Research Center*, "State of the News Media" (July 25, 2018), <http://www.pewresearch.org/topics/state-of-the-news-media/>.

³⁵ Yuval Levin, "Congress is Weak Because Its Members Want It to Be Weak," *Commentary*, June 2018, <https://www.commentarymagazine.com/articles/congress-weak-members-want-weak/>.



Madisonian architecture was not designed for such performances. It was designed for political leaders ambitious not for celebrity but rather for power. In this sense, it tapped into natural political impulses and did not need to draw on restraints from outside the mechanics of the Constitution, such as the morality of statesmen, to inhibit abuses. Once members of Congress see themselves as celebrities rather than legislators, the architecture begins to crumble. The challenge is not so much to accede to the media environment as to ask whether those exterior restraints are now necessary.

MADISON AND VIRTUE

The velocity of political life was not a consideration in Madison's time because it was not an empirical possibility. The closest Madison came to predicting it was an 1833 letter expressing his satisfaction that the country could be territorially enlarged because "the improvements already made in internal navigation by canals & steamboats, and in turnpikes & railroads" had already made the country smaller than it was when the Constitution was enacted.³⁶ But "faster" is a far cry from "instantaneous." There is a reason retailers want shoppers to make impulse purchases on the spot: Even a moment away from the storeroom floor can often be sufficient to break the trance, what Madison would call the spell of "passion," which distorts the long-range judgment of "reason." In this sense, there is far more distance between even a moment's delay and the instantaneous than there was between the exceedingly slow pace of mail in 1787 and the comparatively fast circulation of communication by 1833.

The pace of communication has effectively made the formation and communication of public opinion simultaneous. As we have seen, the net result is that public opinion spreads more rapidly while politics works more slowly. Another is that public opinion is likelier to be inflamed by passion rather than rooted in reason, and these passions are sustainable in a way Madison assumed was impossible. At the same time, the fragmentation of media and the acceleration of social media have made it more difficult to exercise reason on the basis of widely recognized facts or to achieve consensus even as to the existence of the common good.

What, then, is to be done? Madisonian politics counsels us to take the world as we find it and adapt our politics to it, not to seek to break the former to the bridle of the latter. Instant technology is here, and what Madison said of conquering factions by curtailing freedom—that the cure would be worse than the disease, the equivalent of depriving the world of oxygen because it fueled fire³⁷—would certainly be true of attempts to tame technology. The question, rather, is how we use it and whether we are willing to accord our elected representatives the distance they need to do their jobs.

Yet this presents us with something of a Madisonian dilemma. Madison is famously unwilling to rely on virtuous statesmen who act on disinterested, patriotic motives rather than interest to maintain the regime. Men are not angels, he warns us in *Federalist* 51.³⁸ But neither is Madison a thoroughgoing pessimist. As he reminds us in *Federalist* 55, such would make republican government impossible: "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."³⁹

³⁶ *Writings of James Madison* 9:522.

³⁷ *The Federalist* No. 10.

³⁸ *The Federalist* No. 51:269.

³⁹ *The Federalist* No. 55:291.



The question is whether facts of life in Madison’s time—such as the gradual pace of communication or the checking power of the public square—can be recovered as virtues, which is to say moral commitments, in ours: patience on the one hand and a willingness to emerge from the confines of our ideological divides to confront, with genuinely receptive minds, ideas with which we are disposed to disagree. An equally important question is our capacity to place long-term interests ahead of short-term desires, including the desire for victory at all costs.

There are several possibilities for inculcating such virtues. At the level of citizens, civic education and modeling by public figures in these areas would be a start—no more, but no less either. Civic education is often mocked as a solution to political problems, but the fact is that it has proved remarkably effective at instilling, for example, an exaggerated emphasis on the Bill of Rights at the expense of the mechanics of the overall regime. If civic education can shape public opinion in this way, there is no reason it should be unable to shape it in other ways that the moment demands.

This civic education should emphasize the importance of deferred gratification in politics and discourage the reflex to blame corruption or supposed systemic flaws when the regime fails immediately to deliver the results we prefer. It, like all education, should also emphasize the vital need to expose oneself to opposing opinions rather than isolating with like-minded voices.

Institutionally, the challenge is to restore the motive of ambition, especially to Congress, the First Branch of the constitutional regime. I have raised the possibility of term limitation as one option not of punishing members of Congress but rather of attracting a different kind of legislator: one who knows he or she is operating on a shot clock and must therefore focus earnestly on the hard work of legislating.⁴⁰ Breaking the cycle of legislative careerism would make Congress less attractive to mere performers who seek office for motives other than the exercise of power. But term limitation is not a cure-all. Ultimately, the people must care not just whether but also how the constitutional system achieves their goals. They must punish members of Congress who seek to perform rather than legislate and reward those whose ambitions match what the Framers anticipated.

As the Union crumbled in 1861, Abraham Lincoln voiced “a patient confidence in the ultimate justice of the people.”⁴¹ These modifiers—“patience” and “ultimate”—are equally important. They require not just patient leaders like Lincoln who are willing to allow public opinion to ripen—recognizing that the public was just “ultimately” but not necessarily “immediately”—but also patient citizens who are willing to recognize that their preferences should not be instantly translated into results.

CONCLUSION

If we are unable to recover these virtues, we are consigned to forsaking the Madisonian regime. It is not enough to invoke its outward forms and say we still live under three branches of government, that the president must still be 35, or that Supreme Court justices still serve for life. It is the norms and the assumptions that operate in the interstices of the regime that bring it to life, and few of these are more important than Madison’s assumptions about time, reason, and passions. We might say of a people unwilling to practice the virtues of patience, intellectual openness and deferred gratification what Madison said in *Federalist* 55 of a people so consumed with ambition

⁴⁰ Greg Weiner, “A Madisonian Reform,” *National Affairs*, No. 38, Winter 2019.

⁴¹ Abraham Lincoln, “First Inaugural,” *Collected Works of Abraham Lincoln, Volume Four* (New Brunswick, N.J.: Rutgers University Press, 1953).

that they could not be trusted with power: “[T]he inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.”

It is difficult to imagine the chains of despotism being required to control contemporary America. But it is equally difficult to conjure a functioning Madisonian regime without the minimal virtue on which he relies.

