

America Is Living James Madison's Nightmare

The Founders designed a government that would resist mob rule. They didn't anticipate how strong the mob could become.



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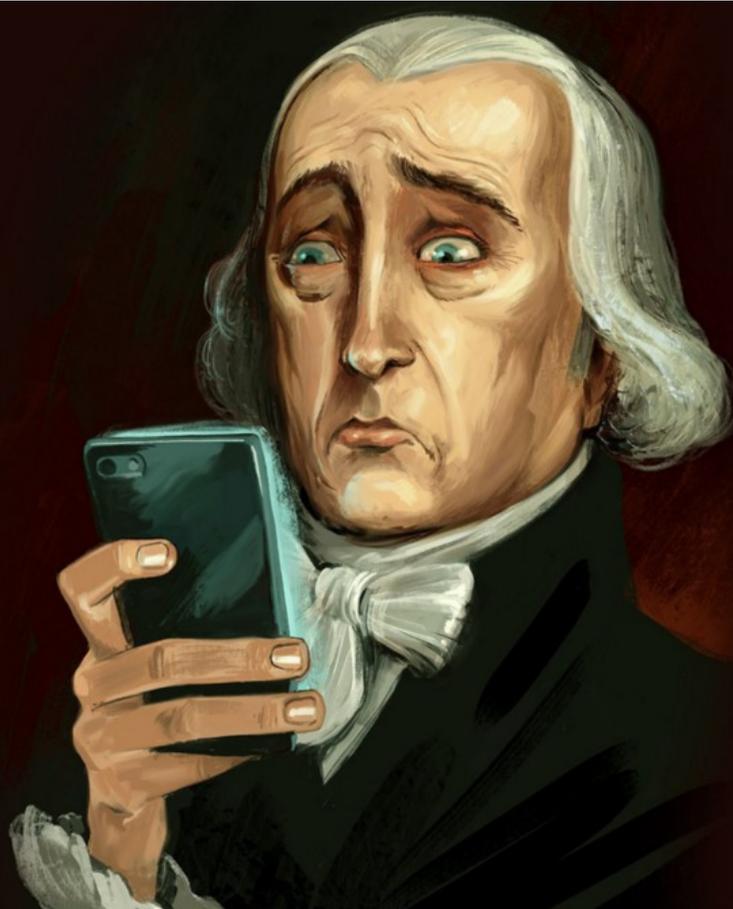


Illustration: Zohar Lazar

By Jeffrey Rosen

James Madison traveled to Philadelphia in 1787 with Athens on his mind. He had spent the year before the Constitutional Convention reading two trunkfuls of books on the history of failed democracies, sent to him from Paris by Thomas Jefferson. Madison was

determined, in drafting the Constitution, to avoid the fate of those “ancient and modern confederacies,” which he believed had succumbed to rule by demagogues and mobs.

Madison’s reading convinced him that direct democracies — such as the assembly in Athens, where 6,000 citizens were required for a quorum — unleashed populist passions that overcame the cool, deliberative reason prized above all by Enlightenment thinkers. “In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the sceptre from reason,” he argued in *The Federalist Papers*, the essays he wrote (along with Alexander Hamilton and John Jay) to build support for the ratification of the Constitution. “Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.”

Madison and Hamilton believed that Athenian citizens had been swayed by crude and ambitious politicians who had played on their emotions. The demagogue Cleon was said to have seduced the assembly into being more hawkish toward Athens’s opponents in the Peloponnesian War, and even the reformer Solon canceled debts and debased the currency. In Madison’s view, history seemed to be repeating itself in America. After the Revolutionary War, he had observed in Massachusetts “a rage for paper money, for abolition of debts, for an equal division of property.” That populist rage had led to Shays’s Rebellion, which pitted a band of debtors against their creditors.

Madison referred to impetuous mobs as factions, which he defined in “Federalist N^o10” as a group “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.” Factions arise, he believed, when public opinion forms and spreads quickly. But they can dissolve if the public is given time and space to consider long-term interests rather than short-term gratification.

To prevent factions from distorting public policy and threatening liberty, Madison resolved to exclude the people from a direct role in government. “A pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction,” Madison wrote in “Federalist N^o10.” The Framers designed the American constitutional system not as a direct democracy but as a representative republic, where enlightened delegates of the people would serve the public good. They also built into the Constitution a series of cooling mechanisms intended to inhibit the formulation of passionate factions, to ensure that reasonable majorities would prevail.

The people would directly elect the members of the House of Representatives, but the popular passions of the House would cool in the “Senatorial saucer,” as George Washington purportedly called it: The Senate would comprise natural aristocrats chosen by state legislators rather than elected by the people. And rather than directly electing the chief executive, the people would vote for wise electors — that is, propertied white men — who would ultimately choose a president of the highest character and most discerning judgment. The separation of powers, meanwhile, would prevent any one branch of government from acquiring too much authority. The further division of power between the federal and state governments would ensure that none of the three branches of government could claim that it alone represented the people.

According to classical theory, republics could exist only in relatively small territories, where citizens knew one another personally and could assemble face-to-face. Plato would have capped the number of citizens capable of self-government at 5,040. Madison, however, thought Plato’s small-republic thesis was wrong. He believed that the ease of communication in small republics was precisely what had allowed hastily formed majorities to oppress minorities. “Extend the sphere” of a territory, Madison wrote, “and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.” Madison predicted that America’s vast geography and large population would prevent passionate mobs from mobilizing. Their dangerous energy would burn out before it could inflame others.

Of course, at the time of the country’s founding, new media technologies, including what Madison called “a circulation of newspapers through the entire body of the people,” were already closing the communication gaps among the dispersed citizens of America. The popular press of the 18th and early 19th centuries was highly partisan — the *National Gazette*, where Madison himself published his thoughts on the media, was, since its founding in 1791, an organ of the Democratic-Republican Party and often viciously attacked the Federalists.

But newspapers of the time were also platforms for elites to make thoughtful arguments at length, and Madison believed that the enlightened journalists he called the “literati” would ultimately promote the “commerce of ideas.” He had faith that citizens would take the time to read complicated arguments (including the essays that became *The Federalist Papers*), allowing levelheaded reason to spread slowly across the new republic.

James Madison died at Montpelier, his Virginia estate, in 1836, one of the few Founding Fathers to survive into the democratic age of Andrew Jackson. Madison supported Jackson's efforts to preserve the Union against nullification efforts in the South but was alarmed by his populist appeal in the West. What would Madison make of American democracy today, an era in which Jacksonian populism looks restrained by comparison? Madison's worst fears of mob rule have been realized — and the cooling mechanisms he designed to slow down the formation of impetuous majorities have broken.

The polarization of Congress, reflecting an electorate that has not been this divided since about the time of the Civil War, has led to ideological warfare between parties that directly channels the passions of their most extreme constituents and donors — precisely the type of factionalism the Founders abhorred.

The executive branch, meanwhile, has been transformed by the spectacle of tweeting presidents, though the presidency had broken from its constitutional restraints long before the advent of social media. During the election of 1912, the progressive populists Theodore Roosevelt and Woodrow Wilson insisted that the president derived his authority directly from the people. Since then, the office has moved in precisely the direction the Founders had hoped to avoid: Presidents now make emotional appeals, communicate directly with voters, and pander to the mob.

Twitter, Facebook, and other platforms have accelerated public discourse to warp speed, creating virtual versions of the mob. Inflammatory posts based on passion travel farther and faster than arguments based on reason. Rather than encouraging deliberation, mass media undermine it by creating bubbles and echo chambers in which citizens see only those opinions they already embrace.

We are living, in short, in a Madisonian nightmare. How did we get here, and how can we escape?

From the very beginning, the devices that the Founders hoped would prevent the rapid mobilization of passionate majorities didn't work in all the ways they expected. After the election of 1800, the Electoral College, envisioned as a group of independent sages, became little more than a rubber stamp for the presidential nominees of the newly emergent political parties.

The Founders' greatest failure of imagination was in not anticipating the rise of mass political parties. The first parties played an unexpected cooling function, uniting diverse economic and regional interests through shared constitutional visions. After the

presidential election of 1824, Martin Van Buren reconceived the Democratic Party as a coalition that would defend strict construction of the Constitution and states' rights in the name of the people, in contrast to the Federalist Party, which had controlled the federal courts, represented the monied classes, and sought to consolidate national power. As the historian Sean Wilentz has noted, the great movements for constitutional and social change in the 19th century — from the abolition of slavery to the Progressive movement — were the product of strong and diverse political parties.

Whatever benefits the parties offered in the 19th and early 20th centuries, however, have long since disappeared. The moderating effects of parties were undermined by a series of populist reforms, including the direct election of senators, the popular-ballot initiative, and direct primaries in presidential elections, which became widespread in the 1970s.

More recently, geographical and political self-sorting has produced voters and representatives who are willing to support the party line at all costs. After the Republicans took both chambers of Congress in 1994, the House of Representatives, under Speaker Newt Gingrich, adjusted its rules to enforce party discipline, taking power away from committee chairs and making it easier for leadership to push bills into law with little debate or support from across the aisle. The defining congressional achievements of Barack Obama's presidency and, thus far, Donald Trump's presidency — the Affordable Care Act of 2010 and the Tax Cuts and Jobs Act of 2017, respectively — were passed with no votes from members of the minority party.

Madison feared that Congress would be the most dangerous branch of the federal government, sucking power into its "impetuous vortex." But today he would shudder at the power of the executive branch. The rise of what the presidential historian Arthur M. Schlesinger Jr. called the "imperial presidency" has unbalanced the equilibrium among the three branches. Modern presidents rule by executive order rather than consulting with Congress. They direct a massive administrative state, with jurisdiction over everything from environmental policy to the regulation of the airwaves. Trump's populist promise — "I alone can fix it" — is only the most dramatic in a long history of hyperbolic promises, made by presidents from Wilson to Obama, in order to mobilize their most ideologically extreme voters.

During the 20th century, the Supreme Court also became both more powerful and more divided. The Court struck down federal laws two times in the first 70 years of American history, just over 50 times in the next 75 years, and more than 125 times since 1934. Beginning with the appointment of Anthony Kennedy, in 1987, the Court became

increasingly polarized between justices appointed by Republican presidents and justices appointed by Democratic presidents. Kennedy's retirement raises the likelihood of more constitutional rulings split between five Republican appointees and four Democratic ones.

Exacerbating all this political antagonism is the development that might distress Madison the most: media polarization, which has allowed geographically dispersed citizens to isolate themselves into virtual factions, communicating only with like-minded individuals and reinforcing shared beliefs. Far from being a conduit for considered opinions by an educated elite, social-media platforms spread misinformation and inflame partisan differences. Indeed, people on Facebook and Twitter are *more* likely to share inflammatory posts that appeal to emotion than intricate arguments based on reason. The passions, hyper-partisanship, and split-second decision making that Madison feared from large, concentrated groups meeting face-to-face have proved to be even more dangerous from exponentially larger, dispersed groups that meet online.

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Is there any hope of resurrecting Madison's vision of majority rule based on reason rather than passion? Unless the Supreme Court reinterprets the First Amendment, allowing the government to require sites like Twitter and Facebook to suppress polarizing speech that falls short of intentional incitement to violence — an ill-advised and, at the moment, thankfully unlikely prospect — any efforts to encourage deliberation on those platforms will have to come from the platforms themselves. For the moment, they have adopted an unsatisfying mash-up of American and European approaches to free speech: Mark Zuckerberg provoked controversy recently when he said Facebook wouldn't remove posts denying the existence of the Holocaust, because determining the intent of the poster was impossible, but would continue to ban hate speech that the First Amendment protects.

Still, some promising, if modest, fixes are on the horizon. Nathaniel Persily, a professor at Stanford Law School who leads an independent commission that will examine the impact of Facebook on democracy, notes one step the company has taken to address the problem of "clickbait," which lures users with sensational headlines. Articles that persuade many users to click previously appeared high on Facebook's News Feed. The company now prioritizes those articles users have actually taken the time to read.

But these and other solutions could have First Amendment implications. “The democratic character of the internet is itself posing a threat to democracy, and there’s no clear solution to the problem,” Persily told me. “Censorship, delay, demotion of information online, deterrence, and dilution of bad content — all pose classic free-speech problems, and everyone should be concerned at every step of the government regulatory parade.”

Of course, the internet can empower democratic deliberation as well as threaten it, allowing dissenters to criticize the government in ways the Founders desired. The internet has also made American democracy more inclusive than it was in the Founders’ day, amplifying the voices of women, minorities, and other disadvantaged groups they excluded. And although our national politics is deadlocked by partisanship, compromise remains possible at the local level, where activism — often organized online — can lead to real change.

Federalism remains the most robust and vibrant Madisonian cooling mechanism, and continues to promote ideological diversity. At the moment, the combination of low voter turnout and ideological extremism has tended to favor very liberal or very conservative candidates in primaries. Thanks to safe districts created by geographic self-sorting and partisan gerrymandering, many of these extremists go on to win the general election. Today, all congressional Republicans fall to the right of the most conservative Democrat, and all congressional Democrats fall to the left of the most liberal Republican. In the 1960s, at times, 50 percent of the lawmakers overlapped ideologically.

Voters in several states are experimenting with alternative primary systems that might elect more moderate representatives. California and Washington State have adopted a “top two” system, in which candidates from both parties compete in a nonpartisan primary, and the two candidates who get the most votes run against each other in the general election — even if they’re from the same party. States, which Louis Brandeis called “laboratories of democracy,” are proving to be the most effective way to encourage deliberation at a time when Congress acts only along party lines.

The best way of promoting a return to Madisonian principles, however, may be one Madison himself identified: constitutional education. In recent years, calls for more civic education have become something of a national refrain. But the Framers themselves believed that the fate of the republic depended on an educated citizenry. Drawing again on his studies of ancient republics, which taught that broad education of citizens was the best security against “crafty and dangerous encroachments on the public liberty,” Madison insisted that the rich should subsidize the education of the poor.

These are dangerous times: The percentage of people who say it is “essential” to live in a liberal democracy is plummeting.

To combat the power of factions, the Founders believed the people had to be educated about the structures of government in particular. “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both,” Madison wrote in 1822, supporting the Kentucky legislature’s “Plan of Education embracing every class of Citizens.” In urging Congress to create a national university in 1796, George Washington said: “A primary object of such a national institution should be the education of our youth in the science of government.”

The civics half of the educational equation is crucial. Recent studies have suggested that higher education can polarize citizens rather than ensuring the rule of reason: Highly educated liberals become more liberal, and highly educated conservatives more conservative. At the same time, the National Assessment of Educational Progress has found that citizens, whether liberal or conservative, who are educated about constitutional checks on direct democracy, such as an independent judiciary, are more likely to express trust in the courts and less likely to call for judicial impeachment or for overturning unpopular Supreme Court decisions.

These are dangerous times: The percentage of people who say it is “essential” to live in a liberal democracy is plummeting, everywhere from the United States to the Netherlands. Support for autocratic alternatives to democracy is especially high among young people. In 1788, Madison wrote that the best argument for adopting a Bill of Rights would be its influence on public opinion. As “the political truths” declared in the Bill of Rights “become incorporated with the national sentiment,” he concluded, they would “counteract the impulses of interest and passion.” Today, passion has gotten the better of us. The preservation of the republic urgently requires imparting constitutional principles to a new generation and reviving Madisonian reason in an impetuous world.

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Editor’s Note: This article is part of a series that attempts to answer the question: Is democracy dying?