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Today's United States to the Test of “the Violence of Faction”



In *Democracy in America*, while commenting on the Federal Constitution, Tocqueville points out that elections, no matter how frequent and usual, are still a pivotal and delicate moment in the political life of the United States:

Americans are habituated to carrying out all kinds of elections. Experience has taught them what degree of agitation they can reach and ought to stop at. The vast extent of their territory and the dispersal of inhabitants make a collision between the different parties less probable and less perilous there than anywhere else. The political circumstances in which the nation finds itself during elections have, up to now, presented no real danger. Nevertheless, one can still consider the moment of the election of the president of the United States as a period of national crisis.¹

After almost two centuries, as the incidental “up to now” seems to foresee, this sober judgment needs perhaps to be updated. Granted, the 1789 Federal Constitution, thanks also to the introduction of twenty-seven Amendments (fifteen since Tocqueville’s time, including those abolishing slavery and enfranchising racial minorities and women), has remained in force, which proves its ability to pass the test of time and, therewith, its ultimate effectiveness. Even Tocqueville’s remark about the lesser likelihood and dangerousness of collisions between different parties can still, to some extent, be subscribed: where else, other than in the US, have

we ever seen heavily armed protesters demonstrating right outside polling stations without deadly riots eventually erupting, leaving several dead or seriously wounded people on the ground? Nonetheless, the fact itself that such extreme protests have erupted, not to mention the unprecedented assault of the Capitol on January 6, 2021, while the new President's election was being certified, clearly shows that the limit to agitation Tocqueville underscores has ceased to apply – and, I am afraid, not because of the dramatically increased population in the meantime.

For the first time, we have witnessed, in astonishment and bewilderment, the sorry spectacle of a democratically ousted US President voicing unsubstantiated remarks of voter fraud and not conceding even after unfavorable recounts in disputed States. More importantly still – although consequently, to a large extent – we have seen, as we have already mentioned, a mob incited by the same ousted President storming the Capitol in the attempt to prevent the certification of the new President's election and, according to some reports, to “hang” the outgoing Vice-president – “guilty” of not having betrayed his Country and its Constitution in presiding over the certification proceedings. In light of these events, we can understand both the extent to which “the political circumstances in which the nation finds itself” have changed in recent times and the wisdom of Tocqueville's final remark that “the moment of the election of the president of the United States” is “a period of national crisis.” Never before has the latter remark been so true. And the reason thereof seems to lie in the fact that never before has the US been so divided and “polarized” as in recent years.

Such unprecedented division and polarization are represented, in a snapshot, by the electoral outcome of the 2020 Presidential elections. The turnover was higher than ever before, with nearly 160 million votes cast. The defeated candidate, the then incumbent President Donald Trump, received even more popular votes than in the 2016 winning election (about 74 million against the previous almost 63 million) despite his arguably poor performance during his tenure (notably in handling the COVID-19 pandemic), the several scandals tarnishing his presidency (including an alleged collusion with Russia), and his apparent demagogic posture. Arguably, his defeat was largely due to his ability to prompt not only strong support for his campaign, but also a perhaps stronger aversion for his figure and record by a large part of the floating voters, who supported *en masse* his rival Joe Biden joining this latter's traditional electorate and thereby allowing him to win more than 81 million popular votes.

Since the attack on the Capitol and the ensuing second impeachment of Trump (who was eventually acquitted) as its inciter, the situation in the US

may seem to have normalized. As we write, apart from sporadic coverage of additional attempts by Congress to hold him accountable regardless of his acquittal at the impeachment trial, as well as of the ongoing FBI investigations on the storming of the Capitol, we no longer find – with relief – reports of riots or mass protests in the international news. The new administration has meanwhile taken over, strengthening its grip on legitimate power, and the democratic antibodies of the country appear to have been fully released.²

Nonetheless, besides the problem of a possible overreaction on the part of institutions or society (which should especially be a concern of those who cherish *liberal* democracy), the issue remains that the riots and violent protests which have rightfully been stigmatized – and are rightfully being prosecuted – stem from a political movement that was able to rally over 70 million electors. It is true that the violent and subversive outcome of this movement will have alienated some, if not many, of them. But the latent causes that triggered such a mobilization and the polarization we have described above largely remain unaddressed. Therefore, the risk of such a polarization and of factions holding sway of American society, however lying dormant at present, is still high.

Admittedly, a society divided into or threatened by factions is by no means an unforeseen scenario for the American political and legal thought. At the end of the 18th century, James Madison already addressed the theme in *Federalist* No. 10 with a penetration and clarity of mind that still remain hard to match. Moving from a realistic assessment of the grip of abstract morality on human behavior, as well as of the presence of “sectarian” divisions within society, Madison argues that the Federal Constitution he had contributed to frame and whose approval he was advocating is an unparalleled tool to “brake and control the violence of faction” that threatens, notably, “popular governments.”³

“By a faction” Madison understands “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.”⁴ In order to hinder the insurgence of factions so understood – which, in light of the realism we have underlined above, are to be seen as the norm rather than the exception within society, if not properly counteracted – two ways could in principle be followed in his account: removing their causes or controlling their effects.

The first way, removing the causes of factions, is however either unwise or impossible. Clearly, it would be unwise – even more so in a republican

government – to destroy the liberty that, allowing a differentiation of interests and passions within society, also enables the existence of factions since, as we have observed, these rest on shared interests and passions that are played against the rights of others. For, as Madison forcefully explains, this would amount to suppressing the air we breathe because it also allows a fire to blaze. On the other hand, it would be impossible to give the same interests, passions and opinions to every citizen and society as a whole. For these are the result not only of freedom, but also of the fallible and diverse human faculties, which therefore will always produce different outcomes if left free to express themselves. This feature, as we will soon see in greater detail, is of particular importance to Madison, in that these unequal faculties produce an asymmetric allocation of properties within society. In turn, this “unequal distribution of property” proves to be, as he puts it, the “most common and durable source of factions.”⁵

According to Madison, the only viable solution to solve the problem of factions and their potential violence is, thus, trying to control their effects. In his own words: “The inference to which we are brought, is, that the *causes* of faction cannot be removed; and that relief is only to be sought in the means of controlling its *effects*.”⁶

How can such a goal be achieved? The solution Madison suggests is, as is well known, the establishment of an extensive republic like the one envisaged by the Federal Constitution he, along with John Jay and Alexander Hamilton under the evocative pen-name of “Publius,” was defending in the *Federalist Papers*. Unlike the “pure” (direct) democracies of the past he criticizes, republics rest on the “scheme of representation,” namely, on the “delegation of the government ... to a small number of citizens elected by the rest.”⁷ Moreover, and as a result of that, unlike those democracies republics can extend over large and populous countries, where the whole citizenry would be unable to assemble in person.

The first feature, representation, is key because, as Madison observes, its major effect is “to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations.”⁸ In other words, the “scheme of representation” should help create a sort of electoral “aristocracy” within the democratic body of the country,⁹ thereby hindering the latter’s natural tendency to sectarian divisions, vulgar appetites, and the oppression of minorities.

Republics’ ability to spread over large and populous territories, on the other hand, proves paramount for two main reasons in Madison’s account:

first, it makes the election of unfit representatives less likely, thanks to a (in theory) comparatively greater abundance of worthy candidates and a higher difficulty for the unworthy ones to be elected by resorting to ignoble means (which usually require a personal relationship with the electors to be undertaken). Second, in view of the fact that the variety of the parties and interests represented tends to increase in proportion to the size of the population represented, that ability decreases the likelihood that a uniform majority will form and oppress minorities. Such a plurality of interests, which a federal republic evidently allows at the highest degree possible, should therefore constitute a powerful antidote to the creation of uniform, sectarian majorities prone to infringing upon minority and individual rights:

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states: a religious sect may degenerate into a political faction in part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal distribution of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the union, than a particular member of it; in the same proportion as such malady is more likely to taint a particular country or district, than an entire state.¹⁰

For this reason, Madison concludes his essay by observing that in the “extent and proper structure of the union ... we behold a republican remedy for the diseases most incident to republican government,” among which he had previously singled out the risk of a sectarian majority enabled to “sacrifice to its ruling passion or interest, both the public good and the rights of other citizens.”¹¹

Now, the reference to “factious leaders” in the previous quote cannot help but ring an alarm bell to today’s ears. Is it still true that their influence may kindle a flame in their states only, leaving the other states, and the Union as a whole, immune from a “general conflagration”? The current situation of the US, which we have briefly outlined above, seems to prove this assumption wrong.

Needless to say, since Madison’s time society, as well as institutions, has undergone such a change that it would be futile to single out what was unforeseen or underestimated back then. Far be it from me to want to criticize Madison’s views, which, as I pointed out, I regard as still astonishingly penetrating and clear-minded as regards the nature and function

of federal republics. What I wish to do by drawing such a parallel is to underscore certain features of today's society, notably in the US, that may have contributed to making the original provisions of the US Constitution, as well as those of similar constitutions, less effective than before.

By saying so, I do not mean to refer to the by now vexed question of the principle of representation, notably, whether or not it truly allows the most worthy and ablest candidates to emerge. Madison himself, after all, seems to be quite prudent in that respect: while treating this question in *Federalist* 10, for example, he uses the modal verb "may" to convey the idea of a mere possibility more often than anywhere else in the same essay.¹² Hence, his point could be best summarized by saying that, in his view, a large, federal republic is only the best possible solution among the actually available ones.¹³

Here, I am rather referring to two different questions which relate to the theme of factions we are presently focusing on: first, the relationship between the nature and quality of communication and the size of the state; second, the magnitude of inequalities, notably socio-economic inequalities, which the state ought to allow or even foster.

With regard to the first question, it is interesting to notice that in *Federalist* 10 Madison makes a point which, at the stage of technological development reached by communications at his time, was perfectly reasonable, but which may no longer be so today. I mean his idea that, in large republics, factions will arise less easily since the parties potentially interested in coalescing to infringe upon others' rights and interests are less capable of (ultimately prevented from) effectively communicating and coordinating than in smaller republics, let alone "pure" democracies. As Madison points out concerning the latter,

... 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. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual.¹⁴

Now, it can be argued that today's means of communication, social media in particular, make the situation Madison describes referring to pure democracies less different from that of an even large federal republic than we might think. It is no accident, in this respect, that the idea of applying direct democracy on a large scale, no matter how naïve and impracticable,¹⁵

has been put forth these days. Through social media or other real time means of mass communication, today it is possible, as both autocrats and populist demagogues know too well (although in different circumstances and with different aims in view), to reproduce in larger contexts (in theory, even at a global level) that “communication and concert” that Madison relegates to the pure, small democracies of the past.

Similar considerations apply to another point Madison makes on communication in *Federalist* 10. While praising the virtues of large republics – which allow a plurality of interests to be represented – in comparison to the dangerous tendency to faction characterizing pure democracies, he observes that by extending the sphere of the state one makes 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.” “Besides other impediments,” Madison continues, “it may be remarked, that where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.”¹⁶ Now, it would suffice to mention such phenomena related to digital or social networks as “echo chambers” and fake news to show this is no longer the case.¹⁷ In this regard, we would perhaps not err too much if we maintained that the (mis)communication – or better stated, misinformation and disinformation – these phenomena have brought about is behind the fact that “unjust or dishonourable purposes,” not to mention “men of factious tempers, of local prejudices, or of sinister designs,” nowadays gain the trust of increasingly large portions of the population. In order not to be greatly mistaken, we should just not forget that behind the popularity of such purposes or men often lie causes that can hardly be reduced to a matter of mere rhetoric or sheer demagoguery.

The last comment leads us to address the second question I have raised above: the magnitude of inequalities which the state ought to allow. Concerning this point, it is worth observing that Madison, while ruling out the possibility of preventing factions by removing their causes to focus on the control of their effects, points out that the ultimate function of government is to protect those human faculties that lead to an unequal allocation of property within society:

The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties, is the first object of

government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.¹⁸

When reading this quotation, I cannot but wonder what Madison would say about the fact that, in his own country, the “different degrees and kinds of property” have meanwhile reached a point where, due not only to their skills, but also, largely, to technological development and globalization, there are individuals worth around two hundred *billion* dollars while many others still make their ends meet with a few tens of thousands of dollars a year. I cannot but wonder what he – who describes the worthy representatives of the people as characterized by “patriotism and love of justice” and, as such, as able to “discern the true interest of their country” so as not to “sacrifice it to temporary or partial considerations” – would suggest those representatives do when faced with this unexpected and unprecedented inequality. Would he still refrain from trying to tackle the *causes* of factions, when it comes to such a “various and unequal distribution of property,”¹⁹ after being provided with evidence that the current recrudescence of nationalism and populism, in the US as well as in other wealthy western countries, is largely due to the resentment of a comparatively impoverished middle class who feel “left behind” or “forgotten”?²⁰

It would be pointless to try to answer these questions as far as Madison is concerned. Still, US citizens and representatives alike, as well as those of the other western countries mentioned above, must ask themselves such questions if they truly want to deal with the unprecedented polarization and resulting division into factions their societies display. One need not belong to the “theoretic politicians” Madison reproaches for their radical egalitarianism to acknowledge the possibility that focusing on the effects only, by resorting to representative government and multiplying the interests represented, may no longer suffice to tame the “natural” tendency of citizens to split into rival factions.²¹ The same Madison, after all, limits himself to stigmatize “an *equal* division of property,” along with “a rage for paper money” or “for an abolition of debts,” as an “improper or wicked project” the establishment of a large federal republic would make “less apt.”²² And in a previous instance of the same *Federalist* 10, after explaining, as we have underscored, that “the most common and durable source of factions, has been the various and unequal distribution of property,” he soberly concludes that “the regulation of these various and

interfering interests, forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government.”²³

Ultimately, the question boils down to what “regulation” means in that context. Does it only mean, as Madison appears to have thought, that those “various and interfering interests” should be played one against the other, lest they become overwhelming and, as a result, oppress minority or individual rights? Or should they, rather, be somehow steered in order to become more compatible and sustainable for society as a whole to begin with? No matter what Madison may have thought, and no matter how challenging such an attempt may be, the time seems ripe for the latter interpretation to be carefully contemplated, and even for the friends of the republican government as distinct from the pure democratic one to regard such an approach as in principle admissible if some sort of “popular” government is to be retained.²⁴

In a multiethnic and multiracial society like that of the US, any meaningful attempt to think of the ways whereby conflicts among factions can be prevented cannot but address the question of ethnic or racial divides. In the US, due to its past link with slavery and segregation, this is even truer and more urgently felt. Evidently, this question exceeds the limits of our current argument. In conclusion, let me therefore limit myself, in this regard, to a reference to Abraham Lincoln, who is still a symbol capable of uniting the different groups of American society.

In his 1863 Gettysburg address, as is well known, Lincoln celebrated the fallen of the then raging Civil War – a war in which the role of slavery can hardly be downplayed. After recalling, in the wake of the Declaration of Independence, that the Founding Fathers had established “a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal,” he points out that the civil war then plaguing his country was “testing whether that nation, or any nation so conceived and so dedicated, can long endure.”²⁵ This said, and having understated the role of those who, like him delivering his speech, just celebrate in retrospect compared to those who fought and died for such a noble cause, he famously concludes:

It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us – that from these honored dead we take increased devotion to the cause for which they gave the last full measure of devotion – that we here highly resolve that these dead shall not have died in vain – that this

nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth.²⁶

If US citizens still wish to be inspired by noble examples and not be burdened by the shortcomings of the current political landscape, they should allow Lincoln's words to resonate with them as much as possible, so as to be guided by them while facing the grave issues currently looming over them. And as far as we, citizens of other western democracies, are concerned, we had better follow suit, given that some of their problems, no less than in Tocqueville's time, are or will soon be ours.

NOTES

¹ Alexis de Tocqueville, *Democracy in America*, Harvey C. Mansfield and Delba Winthrop eds. (Chicago: The University of Chicago Press, 2002), 126-127.

² Such an "immune response" may even seem to have sometimes trespassed what a liberal state would have to regard as fully legitimate, as in the case of the ban on Trump's social media accounts, which arguably amounts to an infringement on the rights of expression of one of the most prominent figures (whether we like him or not) of the opposition.

³ James Madison, "Federalist No. 10," in Alexander Hamilton, John Jay, James Madison, *The Federalist*, The Gideon Edition, George W. Carey and James McClellan eds. (Indianapolis: Liberty Fund, 2001), 42. Cf. James Madison, "Federalist No. 55," in Hamilton, Jay, Madison, *The Federalist*, 291.

⁴ Madison, "Federalist No. 10," 43.

⁵ Madison, "Federalist No. 10," 44.

⁶ Madison, "Federalist No. 10," 45.

⁷ Madison, "Federalist No. 10," 46.

⁸ Ibid. Cf. James Madison, "Federalist No. 57," in Hamilton, Jay, Madison, *The Federalist*, 295-296.

⁹ Cf. Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

¹⁰ Madison, "Federalist No. 10," 48. See also James Madison, "Federalist No. 51," in Hamilton, Jay, Madison, *The Federalist*, 267-272.

¹¹ Madison, "Federalist No. 10," 48, 45.

¹² See Madison, "Federalist No. 10," 46-47.

¹³ For Madison's "realistic" stance on representation, see also James Madison, "Federalist No. 57," in Hamilton, Jay, Madison, *The Federalist*, 295-300.

¹⁴ Madison, "Federalist No. 10," 46.

¹⁵ Giovanni Sartori, *Democrazia: cosa è* (Milano: BUR, 2000), 82-88.

¹⁶ Madison, "Federalist No. 10," 48.

¹⁷ Cass R. Sunstein, *Republic.com 2.0* (Princeton: Princeton University Press, 2007). See also André Gualtieri, “The Brazilian Case: The Effect of Social Media on a Democratic Regime of Today,” in Charlotte Sieber-Gasser, Alberto Ghibellini (eds.), *Democracy and Globalization. Legal and Political Analysis on the Eve of the 4th Industrial Revolution* (Cham: Springer, 2021), 149-169.

¹⁸ Madison, “Federalist No. 10,” 43.

¹⁹ Madison, “Federalist No. 10,” 44.

²⁰ Colin Crouch, *The Globalization Backlash* (Cambridge: Polity Press, 2019); cf. Alberto Ghibellini, “An Untenable Compromise? Liberal Democracy Between Populism and Globalization,” in Sieber-Gasser and Ghibellini (eds.), *Democracy and Globalization*, 13-35.

²¹ Madison, “Federalist No. 10,” 46, 43-44; cf. “Federalist No. 51,” 271.

²² Madison, “Federalist No. 10,” 48 (my emphasis).

²³ Madison, “Federalist No. 10,” 44.

²⁴ Cf. Madison, “Federalist No. 51,” 271.

²⁵ Abraham Lincoln, “Address at Gettysburg, Pennsylvania,” in Steven B. Smith (ed.), *The Writings of Abraham Lincoln* (New Haven: Yale University Press, 2012), 417.

²⁶ *Ibid.*