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## Madison, Rawls, and the Pursuit of Political Stability

#### ABSTRACT

**I**n this article I intend, primarily, to outline some thoughts regarding the views on stability by two of the most important American political thinkers: James Madison, drafter of the Constitution, and John Rawls, undoubtedly one of the most influential egalitarian political philosophers in recent decades. I will first single out and comment on some of the main ideas in *Federalist 10*, in order to see, in a second moment, how a contemporary philosopher like Rawls fits into the broad tradition of American political thought, combining liberal, republican, egalitarian, and utopian elements. In a nutshell, I will emphasize that Madison's text is an interrogation about the nature of instability and the means to avoid or overcome it through institutional procedures and that Rawls's theory takes up this tradition and pushes it into new grounds, connecting freedom and equality as the basis of a society that can be stable

*when a wide consensus is built upon fair principles of justice.*

*Keywords: constitutional history; political theory; consensus; liberalism; republicanism*

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**E**n este artículo me propongo, primordialmente, delinear algunas ideas sobre las visiones en torno a la estabilidad por parte de dos de los más importantes pensadores políticos estadounidenses: James Madison, redactor de la Constitución; y John Rawls, sin duda uno de los filósofos políticos igualitaristas más influyentes en las últimas décadas. En primer término, identificaré y comentaré algunas de las ideas centrales de *El Federalista Nro. 10* con el fin de observar, en un segundo momento, de qué modo un filósofo contemporáneo como Rawls se inserta en la amplia tradición del pensamiento político norteamericano, combinando elementos republicanos, igualitarios y utópicos. En suma, enfatizaré que el texto de Madison es una interrogación sobre la naturaleza de la inestabilidad y sobre los medios para superarla a través de procedimientos institucionales, y que la teoría de Rawls asume esta tradición y la lleva hacia nuevos territorios, articulando la libertad y la igualdad como fundamentos de una sociedad que puede ser estable en tanto pueda construirse un

**amplio consenso basado en principios de justicia equitativos.**

**Palabras clave: historia constitucional; teoría política; consenso; liberalismo; republicanism.**

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It is a widely known fact that designing perfect societies on the drawing board can be much easier than building them in real life. And even if it were possible to materialize the ideas sketched on a Utopian blueprint, the remaining problem would certainly be that of stability. In the very early stages of political thought, Plato came up with a foresight of a harmonious Republic, standing on wise legislation and ruled by prudent philosopher-kings, statesmen, and fierce guardians. But stability proved to be the trickiest issue; therefore, in a gesture that anticipated what later came to be known as political realism, Plato recommended telling lies and spreading a foundational myth to gain the allegiance of the common folk to the institutions designed by the enlightened few. So, stability was not only to be achieved by the presence of mighty and ruthless guardians but by the existence of a common belief in the goodness of the social order and the inherent justice of its institutions. The foundational myth, as a noble lie, would ensure the loyalty of the people to their institutions, their social arrangements, and their rulers.<sup>1</sup> So, Plato's preferred solution to the problem of stability ends up in this sort of unified opinion on

crucial constitutional matters, which can be regarded as constitutional essentials. But this Platonic deceitful consensus also entails a widespread agreement on many other things, such as the social structure, religion, political regimes, conceptions of the good life, and so on. Thus, this Platonic myth becomes a tool to put together a perfectionist society, as was the case with every *polis* in Ancient Greece.

If we take a great leap forward into Modern times, we can see that the concern about stability appears in almost every important work of Political Theory. Machiavelli's writings, although profoundly influenced by the notion of anacyclosis –i.e., the unavoidable decline of all social forms only to rise again in an eternal cycle–, show that civil strife and pervasive conflict between the powerful and the common people are, in the end, the basis of legislation that brings liberty and some kind of stability to public affairs. A good combination of fortune, virtue, wise lawgivers, material resources, and a not-so-lavish natural environment can provide for the foundations of some social and political stability over time. Conceived from a different tradition than that of Machiavelli's, the sword of the Leviathan –to take up Thomas Hobbes's brilliant metaphor– appears as the only instrument capable of ensuring peace and the right conditions for the thriving of business, industries, and life. On the other hand, civil war and popular turmoil are, in Hobbes's account, the worst possible situations because they mean the demise of sovereignty.

We could go on and on to bring up examples of the importance of stability in political

<sup>1</sup> Plato. *Republic*. London, Penguin Books, 1987, 414b-c.

thought. But let us just add, to stress the centrality of this aspect, that not only in scientific and philosophical endeavors has stability been a key element, but also, and most prominently, in the utopian genre. When we consider one of the finest utopian works ever written, Edward Bellamy's *Looking Backward*<sup>2</sup> and *Equality*<sup>3</sup>, we find a breathtaking portrayal that depicts the sharp contrasts between, on the one hand, the social and economic upheaval in the capitalist world of the late 19<sup>th</sup> century and, on the other, the stable, calm, and predictable world of the year 2000, organized upon egalitarian and socialist principles. If anything, Bellamy's narrative conveys the sense that the most desirable trait of the utopian America is that of stability –which is the direct offspring of equality. And this egalitarian setting –according to Bellamy– is the result of the unfolding of the democratic principles embedded in the American Constitution, in a long process that combines institutional evolution and violent class struggle. But here we are not to delve at length into the nature of unrest, faction, or social division in general; in the following pages we intend, primarily, to outline some thoughts regarding the views on stability by two of the most important American political thinkers: James Madison, drafter of the Constitution, and John Rawls, undoubtedly one of the most influential egalitarian political philosophers in recent decades.

It is well known the heated debate between Federalists and Anti-Federalists in the run-up to the ratification of the Constitution. To be

sure, James Madison's *Federalist Paper Number 10* can be counted as one of the paramount pieces of modern constitutionalism.<sup>4</sup> So, after some contextual considerations, I will firstly single out and comment on some of the main ideas in *Federalist 10*, in order to see, in a second moment, how a contemporary philosopher like Rawls fits into the broad tradition of American political thought, combining liberal, republican, egalitarian, and utopian elements. In short, we will see that Madison's piece is an exploration of the causes, effects, and feasible remedies for the problem of factions in a new market society. In other words, it is an interrogation into the nature of instability and the means to avoid or overcome it by institutional procedures. Rawls's theory takes up this tradition and pushes it into new grounds, combining freedom and equality as the basis of a society that can be stable when (and if) a wide consensus is built upon fair principles of justice.

### **The Republican Solution**

Before looking specifically into *Federalist 10*, it is worth considering Madison's credentials as both a republican thinker and a democratic advocate. As Robert Dahl has pointed out, in the late eighteenth century, terms such as republic and democracy were not sufficiently fixed in political terminology. A clear example is Madison's decision to name his party Republican-Democratic. It is also clear that Madison's views changed over time, moving

<sup>2</sup> Edward Bellamy. *Looking Backward. 2000-1887*, Oxford, Oxford University Press, 2007 [1888].

<sup>3</sup> Edward Bellamy. *Equality*. Appleton, New York, 1897.

<sup>4</sup> James Madison. "Federalist Number 10. The same subject continued", in David Wootton (ed.) *The Essential Federalist and Anti-Federalist Papers*, Indianapolis, Hackett Publishing Company, 2003 [1787].

from a strict republican and anti-majoritarian position to a stance more lenient toward democratic procedures. Dahl stresses that “by his creative leadership at the American Constitutional Convention in 1787 and his persuasive contributions to *The Federalist* immediately thereafter, he helped to inaugurate one of the most fundamental changes in democratic ideas and practices that has occurred over the entire history of this ancient form of government”.<sup>5</sup> Madison’s writings, closely interlocked with the turbulent political circumstances, can be divided into two or three main stages. Dahl identifies a first period encompassing the Convention and *The Federalist* years when Madison chose to designate the new government a republic, and a second moment, when he became deeply involved in party politics and adopted more democratic positions. Therefore, it is possible to “think of the views he presented at the convention and in *The Federalist* as composing his constitutional theory of 1787, while his later views expressed his post-1787 constitutional theory”.<sup>6</sup> Key to this shift in his perspective is the fact that he came to realize, in the post-constitutional years, that “the greatest threat in the new American republic came from a minority, not the majority” of “white male citizens”.<sup>7</sup>

Alan Gibson, in turn, depicts three stages in Madison’s theoretical itinerary: his role as “constitutional reformer (1785-1790), his writings on public opinion for the *National*

*Gazette* (1791-1792), and his insights into and efforts to arouse public opinion during his years as an opposition leader (1792-1800”.<sup>8</sup> This Madisonian path is similar to the one Rawls treaded: from a strictly formal theory of justice in the 1970s to a political conception, closer to the real dynamics of pluralist democratic societies, in the mid-1990s. Gibson emphasizes that in conceiving the Constitution, Madison took pains to distance federal institutions from popular pressure in order “to enhance the stability, energy, and authority of that government”.<sup>9</sup> But in the third stage, when he was immersed in party struggles, he “evoked public opinion as a ‘censorial power’”.<sup>10</sup> Thus, “far from viewing statescraft as soulcraft, Madison contributed to a developing libertarian tradition of political thought in America based upon a broad-based conception of freedom of speech and on the belief that political truths best emerge from the free flow of ideas”.<sup>11</sup>

The *Federalist 10*, written by Madison under the pen name of *Publius*, and published on November 22<sup>nd</sup> 1787, begins with a praise of an extended Union –i.e. a large Republic both in terms of geography and population– for its capacity “to break and control the violence of faction”. In fact, the whole point of this argument is to show that the Republic created by the new Constitution is the best “safeguard against faction and insurrection”, as it is unequivocally stated in the title of the paper. Indeed, factional violence is, to Madison’s mind, a “dangerous vice” that needs to be

<sup>5</sup> Robert Dahl. “James Madison: Republican or Democrat?”, *Perspectives on Politics*, American Political Science Association, 2005, 3: 3, p. 439.

<sup>6</sup> *Idem*, p. 440.

<sup>7</sup> *Ibidem*, p. 443.

<sup>8</sup> Alan Gibson. “Veneration and Vigilance: James Madison and Public Opinion, 1785-1800”, *The Review of Politics*, Cambridge University Press, 2005, 67: 1, p. 8.

<sup>9</sup> *Idem*, p. 9.

<sup>10</sup> *Ibidem*, p. 9.

<sup>11</sup> *Ibidem*, p. 9.

cured; if not, popular governments will inexorably perish, for factions inevitably cause “*instability, injustice, and confusion*”<sup>12</sup> and this leads to the collapse of popular governments.

The American constitutional experience has demonstrated –so Madison holds– that factional disputes are hard to do away with and proof of that failure are the complaints of virtuous citizens who openly endorse liberty, both public and private, “that *our governments are too unstable*, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority”.<sup>13</sup> So, no matter how virtuous citizens may be; regardless of the existence of just and efficient institutions, and recognized rights; if factional violence is not curtailed, society cannot live up to its formal promises. Fredric Jameson makes a great point when he argues that, quite unlike writers of utopias, authors of Constitutions aim at managing some historical trends. In his own words: “[constitutions] were devised to forestall certain kinds of political and historical events and catastrophes: most notably revolutions, but also more limited types or power seizure and power imbalance”.<sup>14</sup> Therefore, whereas a Utopian text is normally conceived “to preclude

history altogether”, constitutions are thought of as a device for “the management of history”. Sketching the contours of a republic is a Promethean task; quite another is the colossal challenge of turning plans into reality and making sure not only that they work, but mainly that they work from one generation to the next.

Madison maintains that governments should not be blamed for all the troubles in society, as long as the causes of factional unrest are left unsolved. In this context, he offers his classic definition of a faction, as follows: “[b]y a faction, I understand a number of citizens, whether amounting to a majority or a 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”.<sup>15</sup> In this sentence, Madison packs together factions, passions, and interests, on the one hand; and rights and the “aggregate interests of community”, on the other. Here, the liberal-republican conception of rights stands side by side –and rather awkwardly– with a utilitarian appeal to the aggregate interest. But I will not pursue this train of argument in depth. Instead, I will return to Madison’s account of the causes of factional strife.<sup>16</sup>

A man of action and careful reflection, Madison quickly tells the causes and the effects of factions apart. So, the task at hand is

<sup>12</sup> James Madison. “Federalist Number 10...”, op. cit. p. 167.

<sup>13</sup> Idem, pp. 167-168; emphasis added.

<sup>14</sup> Fredric Jameson. *Archaeologies of the Future. The Desire Called Utopia and Other Science Fictions*; London, Verso, 2005, p. 36.

<sup>15</sup> James Madison. “Federalist Number 10...”, op. cit. p. 168.

<sup>16</sup> Madison had carefully read David Hume’s work on human nature. In the constitutional period, according to Dahl, he abandoned Hume’s emphasis on passions and embraced a more rationalistic or Kantian approach, something which is still puzzling given his unchanging views on the also Humean recommendation to reduce factional disputes. Dahl, “James Madison...”, op. cit., p. 442.

to find a way to either remove the causes of division or control its effects. As for the causes, Madison first rules out the alternative of destroying liberty, for it would be simply “folly” and “unwise”; and secondly, he discards the idea of making everyone agree on the same opinions, same interests, and same passions. And the reason for not attempting at unifying opinions, interests, and passions is based on a sort of skepticism coupled with some reasonable belief in the limitations of knowledge. Giving –or imposing– the same opinions on everyone is “impracticable”, because

[a]s long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other [...]. *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.*<sup>17</sup>

The liberal tradition of John Locke surfaces in Madison's words. Just as early utilitarianism leaves its mark in the Madisonian prose regarding the discussion of reasons, passions, and self-love, Locke supplies the cornerstone

of liberal theory: the principle of self-ownership, from which all property, rights, and social inequalities originate. The unspoken right, deeply embedded in Madison's argument, says that each individual is an absolute owner of himself; and from this self-ownership, all other rights are derived – especially the right of property over the natural world as long as it is mixed with human labor. So, private property emerges from self-ownership, and social and economic inequalities become the result of “different and unequal faculties of acquiring property”, insofar as these faculties are protected by the government. Concrete material inequalities, then, give rise to opinions that correspond to different “degrees and kinds” of property, and, in turn, these opinions are supported by passions, leading to the result of conflicting interests and parties.

Philosopher G. A. Cohen –when discussing the feasibility of socialist egalitarian and communitarian principles– drew a crucial distinction between the limits of human nature and the limits of social technology.<sup>18</sup> The human nature objection holds that humans are inherently selfish and because of that fact egalitarian and fraternal arrangements are impossible. The driving moral sentiments derived from selfishness, greed, and fear, are part and parcel of humanity, be it by nature itself or due to a combination of such in-built traits with an institutional path that has historically reinforced such tendencies. The argument focused on social or organizational technology holds that social institutions can

<sup>17</sup> *Idem*, pp. 168-169; emphasis added.

<sup>18</sup> G. A. Cohen. *Why Not Socialism?* Princeton, Princeton University Press, 2009, pp. 53-58.

shape and funnel human nature to the desired goal so that, whatever the core dispositions of humans may be, the right institutions will finally prevail. Capitalism, for instance, has been tremendously successful in building a society based on self-regarding interests; whereas socialism has proven so far unable to construct institutions that reflect its egalitarian and communitarian principles, moved by generosity and non-instrumental reciprocity. So, Madison presents us with a double rationale. In line with the social technology argument, he finds the source of economic inequalities in the unequal talents of each individual and the protection they get from institutional schemes. It would make sense, then, to eliminate or reform these protections for inequalities not to emerge and for factions not to have soil to thrive on. At the same time, since equality does not count among his primary concerns, he holds that "[t]he latent causes of faction are thus sown in the nature of man"<sup>19</sup>, and not on flawed institutions. According to Madison, there is a vast array of modes of factional struggle, ranging from disagreements over religion, government, leadership, and so on; and even petty differences have moved people to oppress one another instead of cooperating for the advancement of common interests. Madison is ready to address without much ado the practical core of the matter. He remarks:

*the most common and durable source of factions has been the various and unequal distribution of property.* Those who hold and those who are without property have ever formed distinct interests in society [...] A

landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. *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 the government.*<sup>20</sup>

Clearly, Madison was not far from saying that a constant feature of society, and especially of capitalist society, is the struggle between classes and within classes themselves. Classes are defined by their relationship to property and this is exactly Madison's contention. So entrenched are these features that they appear as the "most common and durable source of factions", and the unavoidable consequence of life in "civilized nations". The task of government –and institutions in a broader sense– is precisely to *regulate* this conflict and so bring stability to an inherently unequal and turbulent social order.

Madison does not hesitate to admit the fact that, being factions inevitable, it is also likely that the most powerful ones will end up imposing their views and this will eventually be enacted into the law. As the Ancient wisdom had it, might is right, and this is especially true of the might of majorities, which are, in Madison's words, willing "to trample on the rules of justice" when opportunities arise. So, in the face of these facts, Madison believes that neither wise and enlightened statesmen, nor perfectly

<sup>19</sup> James Madison. "Federalist Number 10...", op. cit., p. 169.

<sup>20</sup> *Ibidem*, p. 169; emphasis added.

designed rules will be able to achieve the feat of destroying factional clashes because immediate interests will tend to prevail over the prudence of government and “remote considerations” on which reasonable arrangements can be made. One is tempted to pick up Madison’s soft skepticism and assert that first principles such as those advanced by Rawls seem too far-flung to be even considered as a guide to politics. So, Madison’s bold conclusion is that “the *causes* of faction cannot be removed, and that relief is only to be sought in the means of controlling its *effects*”.<sup>21</sup>

So, the man who would become America’s fourth president goes on to dismiss the troubles caused by a minority faction because the republican majority principle can easily avoid the worst effects of that form of faction; that is, it masks its misdoings under the cloak of the Constitution. But when dealing with a majority faction, the rights of citizens and the public good risk being sacrificed for the sake of the interests and passions of that ruling faction. Therefore, Madison’s main concern – in this stage as a constitutional reformer, as Gibson puts it– consists in forestalling the formation of majority factions and such feat can be attained either by curbing the possibility that a faction ends up sharing the same interest or by preventing it from becoming capable of realizing its plans for oppressing the minorities. Checks on such majorities, Madison admits, cannot come from morals, religion, or individual choices alone. The solution must come from an ingenious institutional mechanism.

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<sup>21</sup> *Ibidem*, p. 170.

One possible remedy could be a direct democracy, but for the author of the Constitution that would be a mistake. Direct democracies –so Madison believed in those days– cannot solve the problem of factions, and history proves that this form of government is tremendously unstable. Democracies have been prone to “spectacles of turbulence and contention”; they have been “incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths”. In an evident critique of advocates of direct democracy –of the likes of Jean-Jacques Rousseau–, Madison emphasizes that “[t]heoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions”.<sup>22</sup> Again, being a perfect bourgeois thinker, Madison does not fall prey to the equivocation of the French revolutionaries, who thought that political equality would be enough for the emancipation of men as citizens. Madison, it must be said, does not embrace the mystifications of politics as the egalitarian heaven where all other inequalities are dissolved. He believes that equal political citizenship is perfectly compatible with large inequalities in the realm of civil society.

Thus, having rejected democracy as a viable political system, unfit to prevent factional struggles, Madison argues for his favorite form: an extended Republic, based on

<sup>22</sup> *Ibidem*, p. 171.



representative government. Delegation of power onto the hands of a few, and a large citizenry in a large country are the key features of the Union Madison endorses. A “chosen body of citizens” appears capable of making decisions according to the “public good”, and of avoiding factional interests to prevail. Still, factions can make their way even in representative schemes, and here it is the extension of the Union that does the job of minimizing the negative impact of some factions on the whole. So, “as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters”.<sup>23</sup> Besides, federalism as it is included in the Constitution permits the general interest to be expressed by the central government whereas the particular interests are dealt with at the State level by State Legislatures. But the cornerstone of the institutional architecture to overcome factional war resides in “the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government”, because “it is this circumstance principally which renders factious combinations less to be dreaded”.<sup>24</sup> In Madison’s view, the extended Union and the federal system would accomplish the task of eliminating the likelihood of a faction

oppressing the rest of the people. So adamant was the drafter of the Constitution that he famously wrote:

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 a 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 division of property, or 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 a malady is more likely to taint a particular county or district, than an entire State.*<sup>25</sup>

Of course, Madison’s concern about stability is not encapsulated in *Federalist 10*. Jeremy Bailey takes up the Madisonian argument in *Federalist 49* about the need to make the Constitution an object of veneration, challenging the Jeffersonian advocacy for a flexible design. Madison was not totally happy with the compromise struck in the Convention –since he saw the Constitution as a document “filled with fundamental errors”–<sup>26</sup> and feared that a new deliberative process would trigger further factional disputes. A crucial point in connection to stability in Madisonian constitutionalism is that “institutions should mediate the will of the people, and constitutional change should be

<sup>23</sup> Ibidem, p. 172.

<sup>24</sup> Ibidem, p. 172-173.

<sup>25</sup> Ibidem, p. 169; emphasis added.

<sup>26</sup> Jeremy Bailey. “Should We Venerate That Which We Cannot Love? James Madison on Constitutional Imperfection”, *Political Research Quarterly*, University of Utah, 2012, 65: 4, p. 741.

relatively infrequent because people need a constitution they can ‘venerate’ and tinkering with it every generation would undermine this requirement of government”.<sup>27</sup>

In a nutshell, being so confident about the remedy found in the extended republican union, Madison puts in the same basket all sorts of possible forms of factional turmoil for he is sure the system will deliver as planned. He certainly could not imagine at that point that a Civil War was an inbuilt possibility, and he put on a par religious sectarianism with “rages” over economic issues. One needs not to be very clever to see that what troubles Madison are conflicts arising from certain egalitarian impulses. He does not flinch at saying that asking for a more egalitarian distribution of money, the elimination of debts, and the outcry for an equal distribution of property are “improper or wicked” projects. He does not think that political equality will bring economic equality, nor does he see any reasons why equality of condition should be achieved as a foundation for equal citizenship. Stability of the republic to ensure the liberties associated with self-ownership is the main and almost sole purpose of a republican government. Stability, once again, will be a key concern of contemporary philosopher John Rawls, but now, two and a half centuries later, equality and fairness come together with freedom as core liberal ideals.

## The Liberal-Egalitarian Project

In Madison's days, the struggle against feudal bonds made political freedom and political equality chief ideas of the emerging class: the bourgeoisie. It is commonly argued that American liberalism –unencumbered with feudal burdens– was born under almost ideal conditions, such as those imagined by philosophers like John Locke. Even though Thomas Jefferson asserted that “all men are created equal”, this was not intended as a normative claim in those early times, and it was (bourgeois) freedom and not equality that came to occupy the center of the debates leading to the making and ratification of the Constitution. However, as it has been pointed out by Étienne Balibar<sup>28</sup>, the principle of freedom in modern times is inextricably linked to that of equality. Every historical step in the direction of freedom has encompassed wider claims for equality. So, even though Lockean liberalism plays a key role in the framing of American political tradition, the egalitarian trend is also present, though in a seminal stage, from the very beginning. As already noted, this view was by and large upheld by Edward Bellamy –wrongfully regarded as a mere fiction writer– when he stated, during the Gilded Age, that the imagined egalitarian society of the Year 2000 had turned into reality the promises contained in the American Constitution.<sup>29</sup>

Nevertheless, as it is evident in Madison’s discourse, early economic and political liberalism embraces some of the main tenets

<sup>27</sup> Idem, p. 732.

<sup>28</sup> Étienne Balibar. *Equaliberty. Political Essays*; Durham, Duke University Press, 2014, pp. 35-65.

<sup>29</sup> See Fernando Lizárraga. “Equality, Liberty, and Fraternity: The Relevance of Edward Bellamy’s Utopia for Contemporary Political Theory”, *Utopian Studies*, Penn State University Press, 2020, 31: 3, pp. 512-531.

of utilitarianism. A utility-based conception of human nature echoes in Madison's views on passions, reasons, and interests. The idea of a public good which consists of the aggregate interest of individuals and the moral disregard of economic inequalities (which are only taken into consideration because of the unrest they are likely to cause) also shows the presence of the utilitarian trend, that was already gaining momentum as the preferred philosophy of the bourgeoisie. It is worth noting in passing, following Norberto Bobbio's forceful insight, that it was utilitarianism and not Hegelianism the core of bourgeois moral philosophy in its heyday and well beyond that point<sup>30</sup>, until John Rawls came up with an alternative at the end of the twentieth century.

Indeed, John Rawls's theory of justice as fairness represents a turning point in contemporary political philosophy, for it sets out to find principles of distributive justice for a well-ordered democratic society and tries to break away from both utilitarianism and intuitionism. Kantian by inspiration and method, Rawls remains both a liberal and a republican; an advocate of liberties and equality. In a somewhat Madisonian way, which is also Kant's way, Rawls believes that politics is about designing rules and institutions and not about prescribing and enforcing a conception of the good upon everyone. Thus, "justice is the first virtue of social institutions"; and no matter how efficient and well-arranged institutions may be, if they are unjust they must be "abolished or reformed".<sup>31</sup> At the time of publishing *A*

*Theory of Justice* in 1971, Rawls was mainly concerned with offering an alternative to the predominance of utilitarianism in moral and political philosophy. His deepest intuition was that utilitarianism was unable to determine distributive portions, and, as with every consequentialist doctrine, was quite prepared to sacrifice individuals or groups for the sake of the common good, defined as the maximum aggregate welfare or the sum of happiness. It is important to highlight this point: in Madison's account, there seems to be an undecided tension between the common good and individual rights. If the large and extended republic aims at the common good as a comprehensive goal, then it has to sacrifice some particular interests; and if its first aim is to protect the faculties that allow people to acquire property –as Madison contends– then the common good must be set aside on behalf of protecting the inviolability of individuals.

John Rawls, then, masterfully comes across with a new approach that goes beyond the dilemma between individual rights and a thick conception of the good (such as that of utilitarianism). Drawing on the tradition of the social contract, and pushing it to its maximum possibilities of generalization, Rawls elicits two principles of social justice, to be applied to what he calls the basic structure, that is, society's most important and pervasive institutions. Rawls's principles of justice as fairness are the following:

First principle: each person is to have an equal right to the most extensive system of equal

<sup>30</sup> Norberto Bobbio. "¿Existe una ciencia política marxista?". In Norberto Bobbio *et al.* *Il Marxismo e lo Stato*, Roma, Mondoperaio, 1976.

<sup>31</sup> Rawls, John. *A Theory of Justice*. Cambridge, Harvard University Press, 1971, p. 3.

basic liberties compatible with a similar system for all. Second principle: Social and economic inequalities are to be arranged so they are both: a. to the greatest benefit of the least advantaged [...], and b. attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>32</sup>

To put it briefly, Rawls believes that a just society secures equal liberties for all and, even though it permits some social and economic inequalities, it is mandated that these differences work for the benefit of the least advantaged, all of this in a framework of fair equality of opportunity. Rawls's sophisticated and systematic theory, which renewed liberalism to the point of creating a new strand known as liberal egalitarianism,<sup>33</sup> bears some traits that can be compared to Madison's early concerns. Indeed, Rawls seems to bring together Madison's realism and a pinch of Bellamy's utopianism. Both trends, which belong to the American tradition of political thought, are merged in Rawls's definition of political philosophy as a "realistic utopia" that seeks to explore the limits of practicable possibilities. In fact, Rawls combines a theory that offers principles so profound as to become constitutional essentials and a more practical device for securing stability known as overlapping consensus.

Katrina Forrester traces Rawls's interest in stability to his early writings dealing with

game theory. In the 1950s, Rawls believed that "stability relied not on altruism but on associations playing the game, which meant, by definition, acting in their own interest".<sup>34</sup> In keeping with his unflinching commitment to initial material equality, Rawls thought that "stability requires guaranteeing that people have enough of an equal start that they want to play" the social game<sup>35</sup> and that such leveled starting point called for a wide distribution of property to avoid the disruptive concentration of wealth and power. This stance runs all through his writings from *A Theory of Justice* and into the 1980s, but the publication of *Political Liberalism* marks a change from the centrality of distributive principles to an overriding interest in sustainable arrangements. As Ed Wingenbach puts it, "when Rawls shifts the theory to contextual foundations, however, these principles are rearranged, and the importance of stability is given priority".<sup>36</sup> In a review of *Political Liberalism*, Brian Barry emphasizes the need to "rechristen the problem of stability as the problem of order" and "to recognize it as a central focus of political philosophy in all periods".<sup>37</sup> In contrast with the Hobbesian way of dealing with social unrest, Rawls joins a "more egalitarian strand, running through Rousseau and Durkheim, according to which the solution of the problem lies in some sort of normative consensus among the members of

<sup>32</sup> John Rawls. *A Theory...*, op. cit. p. 302.

<sup>33</sup> See, Katrina Forrester. *In the Shadow of Justice. Postwar Liberalism*; Princeton, Princeton University Press, 2019, passim.

<sup>34</sup> Idem, p. 11

<sup>35</sup> Ibidem, p. 16.

<sup>36</sup> Ed Wingenbach. "Unjust Context: The Priority of Stability in Rawls's Contextualized Theory of Justice", *American Journal of Political Science*, Midwest Political Science Association, 1999, 43:1, p. 219.

<sup>37</sup> Brian Barry. "John Rawls and the Search for Stability", *Ethics*, The University of Chicago Press, 1995, 105: 4, p. 880.

a society”.<sup>38</sup> To be precise, Rawlsian stability, so Barry insists, “is not merely a matter of general compliance with the rules; it has to be compliance for the right reasons”.<sup>39</sup>

In his elaboration of a liberal conception of justice as fairness, Rawls makes a crucial distinction between a deep agreement or consensus based on the intellectual, moral, and philosophical resources of each reasonable and comprehensive doctrine in a framework of public reason and a mere *modus vivendi*, that is, a fragile equilibrium point that makes coexistence possible but can be disrupted as soon as the balance of power is somewhat altered. In other words, a *modus vivendi* rests mainly on the principle of tolerance –which is necessarily bound to be toppled by shifts in the schemes of power-, whereas an overlapping consensus tends to be stable, given the fact that each doctrine – each faction, in Madison’s parlance– finds within itself the reasons to respect and support the constitutional essentials that are derived from the principles of justice, and the principles themselves.

One key feature upon which Rawls builds his idea of an overlapping consensus is that of a democratic society characterized by the fact of “reasonable pluralism”. Just like Madison and every other prudent political thinker, Rawls is aware of the fact that societies are normally ventures of cooperation and competition, unity and conflict. In Rawls’s words, “the problem of stability is fundamental to political philosophy”;

therefore, the question posed to political liberalism is: “how is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines? Put it another way: How is it possible that deeply opposed through reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime?”.<sup>40</sup> Even though Rawls does not even entertain the idea of sketching a constitution, he openly admits the influence of the American experience on his argument about how first principles can be transformed into concrete institutions.<sup>41</sup> He imagines a four-stage sequence that goes from the original position, moves across a constitutional convention and a legislative stage, and culminates in the administrative and judiciary institutions. However, he also posits a caveat saying that such sequence “is part of a moral theory, and does not belong to an account of the working of actual constitutions, except insofar as political agents are influenced by the conception of justice in question”.<sup>42</sup> Moreover, he remarks that “the aim [of his argument] is to characterize a just constitution and not to ascertain which sort of constitution would be adopted, or acquiesced in, under more or less realistic (though simplified) assumptions about political life”.<sup>43</sup>

Social stability demands, crucially, what Rawls calls “the reasonable”, an “element in social cooperation” which expresses the fair terms of such interaction, that is, terms of

<sup>38</sup> Idem, p. 880.

<sup>39</sup> Idem, p. 882.

<sup>40</sup> Rawls, John. *Political Liberalism*. New York, Columbia University Press, 1996, p. xx.

<sup>41</sup> John Rawls. *A Theory...*, op. cit. p. 196, n. 1.

<sup>42</sup> Idem, p. 197, n. 2.

<sup>43</sup> Ibidem, p. 197, n. 2.

reciprocity and mutuality for the distribution of burdens and benefits.<sup>44</sup> If reasonable cooperation is not achieved, then, Rawls fears that there will be no other alternative than “unwilling and resentful compliance, or resistance and civil war”.<sup>45</sup> Thus, in *Political Liberalism*, Rawls goes deeper into constitutional thinking when building the argument that ends up in the overlapping consensus. To prove that such a consensus is not utopian, he offers a detailed account of how it can be achieved. The first move is to attain a constitutional consensus that “satisfies certain liberal principles of political justice”, and “these principles are accepted simply as principles and not as grounded in certain ideas of society and person of a political conception, much less in a shared public conception”.<sup>46</sup> This constitutional consensus –that is not deep– can actually moderate but scarcely eliminate political rivalries, not only those involving social classes but also those related to competing views over the contents, scope, and boundaries of some agreed liberal principles. It comes about in particular historical circumstances when rival groups or factions converge on certain basic principles as a *modus vivendi*, that is to say, when they accept such equilibrium point “reluctantly, but nevertheless as providing the only workable alternative to endless and destructive civil strife”.<sup>47</sup> According to Rawls,

at the first stage of constitutional consensus the liberal principles of justice, initially accepted reluctantly as a *modus vivendi* and adopted into a constitution, tend to shift

citizens' comprehensive doctrines so that they at least accept the principles of a liberal constitution. These principles guarantee certain basic political rights and liberties and establish democratic procedures for moderating political rivalry, and for determining issues of social policy. To this extent citizens' comprehensive views are reasonable if they were not so before: simple pluralism moves toward reasonable pluralism and constitutional consensus is achieved.<sup>48</sup>

Henceforth, political groups need to move away from their narrow interests and embrace a public political conception that can find support from within each comprehensive doctrine in a framework of public reason. Once the constitutional consensus is in place and working, people can find “independent allegiance [...] to act with evident intention in accordance with constitutional arrangements, since they have reasonable assurance (based on past experience) that others will also comply. Gradually, as the success of political cooperation continues, citizens gain increasing trust and confidence in one another”.<sup>49</sup> Convinced that his proposal is not utopian, Rawls defines “the idea of an overlapping consensus of reasonable comprehensive doctrines”. In this type of consensus, “the reasonable doctrines endorse the political conception, each from its own point of view” and “stability is possible when the doctrines making up the consensus are affirmed by society’s politically active citizens and the requirements of justice are not too much in conflict with citizens’ essential

<sup>44</sup> Rawls, *Political Liberalism*, op. cit., p. 279.

<sup>45</sup> Idem, p. 280.

<sup>46</sup> Ibidem, p. 158.

<sup>47</sup> Ibidem, p. 159.

<sup>48</sup> Ibidem, p. 163.

<sup>49</sup> Ibidem, p. 168.

interests as formed and encouraged by their social arrangements”.<sup>50</sup>

In Madison’s epoch, factions were taken as a fact of social life; the task of governments and lawmakers was to make wise arrangements to keep factional violence at bay. Some insufficient rules, poorly crafted legislation, and not so many virtuous citizens made it impossible to secure stability. But let us recall that Madison said that governments could not be singled out as the cause of factionalism, since, in his view, factions were ingrained in human nature. Basically, he disregarded the idea of making everyone share the same views because that would be “impracticable” under conditions of liberty and self-ownership. So, for Madison, inequalities of faculties derived into inequality of property and this, in turn, caused divisions, and the emergence of parties in society. We have noted that Madison’s view was in close keeping with Locke’s conception of property of the self. And here lies the great divide between the utilitarian and Lockean perspectives of Madison, and the anti-utilitarian approach of Rawls. For Rawls does not believe in self-ownership and supports public arrangements to collect taxes in order to benefit the worst off, he is emphatically committed to the idea that in the Original Position –the thought-experiment that functions as the state of nature does in social contract theories– self-interested individuals would find it rational not to endorse absolute self-ownership, because, if one anticipates ending up at the worst position in society, one would expect others to have a duty to lend some help. So, Rawls believes that the

distribution of talents across society must be considered as a “common asset” and, therefore, the worst off should hold legitimate claims on the wealth the more talented produce by using their powers.

It is rather easy to see here a stark contrast between Rawls and Madison. The upshot of self-ownership, in Madison’s account, is inequality of wealth, and the government is meant to protect that distribution, whatever form it may take. As long as self-ownership and property rights are not interfered with, any distribution turns out to be legitimate and the government is expected to secure those rights. Inequalities, in short, are the natural consequence of mixing different faculties and nature; so, as we already pointed out, Madison thought that “the latent causes of faction are [...] sown in the nature of man”. This entails that the mission of government, being inequalities in the distribution of wealth unavoidable, is to “regulate” the interests arising from these material conditions. Rawls, on the other hand, would not be so quick to accept social and economic inequalities, because his general conception unambiguously maintains that equality is to be preferred unless some inequality improves the lot of all, especially of the worst off. In Rawls’s words: “all social values –liberty and opportunity, income and wealth and the bases of self-respect– are to be distributed equally unless an unequal distribution of any, or all, of these values is to the advantage of the least favored.”<sup>51</sup>

Even though Madison thinks of stability for a very unequal society coming out of a long war

<sup>50</sup> Ibidem, p. 134.

<sup>51</sup> John Rawls. *A Theory...*, op. cit. p. 303.

of Independence and just emerging as a nation, and Rawls thinks in terms of achieving an almost perfectly egalitarian society –or a fair society, to say the least–, *there is the common concern about how to render those institutions lasting in time, and how to secure constitutional essentials*. Writing in the final decades of the twentieth century, before and after the fall of the Berlin Wall, Rawls wants to find a workable scheme to deal with the fact of reasonable pluralism. Like Madison, Rawls does not think it could be possible –let alone correct– to try to get everyone to agree on every matter. Bringing all persons to hold the same opinions would be a hideous idea and a despicable reality, if ever feasible. So, in modern society, and especially in a society based on democratic institutions and informed by a democratic culture, there will normally be a variety of reasonable comprehensive doctrines that hold different conceptions of the good. So, Rawls wonders if and how could be possible to bring these doctrines to support a conception of justice as fairness without imposing a particular view on the good. His proposal, as already explained, is the overlapping consensus. In contrast, Madison’s solution to factional struggle and instability, it must be recalled, consisted in setting up an institutional structure so that, in an extended republic – with proper checks and balances, a separation between the federal and the state levels, and a representative system– factional impulses would be neutralized by such devices. The inevitable divisive forces would be blocked by a clever constitutional mechanism.

Rawls’s egalitarian solution is not only the overlapping consensus but also a previous scheme involving fair opportunities and decent material conditions for everyone. In fact, Rawls does not believe that justice and stable institutions can endure in the face of deep economic inequality and bitter class divisions. In his own words:

measures are required to assure that the basic needs of all citizens can be met so that they can take part in political and social life [...] the idea is not that of satisfying needs as opposed to mere desires and wants; nor is it that of redistribution in favor of greater equality. The constitutional essential here is rather that below a certain level of material and social well-being, and of training and education, people simply cannot take part in society as citizens, much less as equal citizens.<sup>52</sup>

Indeed, Rawls foresees that in the presence of profound class divisions, consensus becomes impossible. To be sure: “if the liberal conceptions correctly framed from fundamental ideas of a democratic public culture are supported by and encourage deeply conflicting political and economic interests, and if there be no way of designing a constitutional regime so as to overcome that, a full overlapping consensus cannot, it seems, be achieved”.<sup>53</sup> Even though Rawls does not support a radical view on egalitarianism –because he is committed to finding a way to justify some inequalities if, and only if, they work for the benefit of the worst off–, he also believes that a social minimum is needed if justice is to be attained and, thus, if stability can be anything but a

<sup>52</sup> John Rawls. *Political Liberalism*, op. cit., p. 166.

<sup>53</sup> Idem, p. 168.



mirage. Rawls considers that an egalitarian social minimum –a threshold of needs satisfaction– is a constitutional essential that must be socially guaranteed. This is a typical socialist concern and is closely connected to the ideal of stability. William Edmundson contends that in “Fairness to Goodness,” Rawls “gives his first indication that *their relative stability* is the key determination to be made in choosing between liberal socialism and property-owning democracy”, the latter being the system he envisions following James Meade’s economic theory.<sup>54</sup> Moreover, Edmundson quotes Rawls stating that “the principles of justice do not exclude certain forms of socialism and would in fact require them if the stability of a well-ordered society could be achieved in no other way”, a categorical remark that shows that Rawls “sees the question of socialism as relevant to the seemingly unrelated question of stabilizing a well-ordered society”.<sup>55</sup> In his 2001 *Restatement*, Rawls acknowledges that property-owning democracy might not be the best social regime and that “a liberal socialist regime would stand the better chance of stably realizing justice as fairness”.<sup>56</sup> The chief concern about stability pushes Rawls closer to socialism, just like, in the previous century, John Stuart Mill came to believe that liberal ideals were attainable only under socialist institutions.<sup>57</sup>

## Final Remarks

Given all the above, we can make some final remarks to drive our argument home, namely, that John Rawls takes up the republican and constitutional traditions of the United States and makes a leap forward to a freer and more egalitarian society, and, what is most important here, a society stable enough to be a fair system of cooperation over time. To begin with, it is to be noted that neither Madison nor Rawls go to great lengths to assert a dense conception of the good, though Madison comes closer to the idea of happiness or aggregate satisfaction as the goal of society, given his sympathy towards some early utilitarian views. At the same time, both thinkers find that inequalities and differences of various kinds are inevitable facts of modern industrial societies, based on liberal constitutional arrangements. And they both believe that one main goal –if not the most important one– of social institutions is to provide the basis of stability so that society can endure over time and overcome the tendency to factional struggle. And, last but not least, Rawls and Madison are on the same page in the belief that people must be ruled by institutions and not by other people; that is, the rule of law should override the rule of a whimsical monarch, or of a multitude unrestrained by the law.

Being both a liberal and an egalitarian, Rawls brings the main ideas of the Constitution

<sup>54</sup> William Edmundson. *John Rawls. Reticent Socialist*; Cambridge, Cambridge University Press, Formato Kindle, 2017, p. 118.

<sup>55</sup> *Idem*, p. 119.

<sup>56</sup> *Ibidem*, p. 119.

<sup>57</sup> As McCabe holds, “we might conceptually regard Mill as a ‘liberal socialist’ in Rawls’s terminology” for he

“does see socialism as maximizing freedom and achieving social and distributive justice. He also sees it as securing fraternity (alongside security, progress, and – ultimately – happiness)”. Helen McCabe. *John Stuart Mill, Socialist*; Montreal & Kingston, McGill-Queen’s University Press, 2021, pp. 225, 12.

closer to their realization and their philosophical specification. Whereas Madison believes that constitutional arrangements can make coexistence possible in the presence of deep social and economic inequalities, Rawls is convinced that below a certain social minimum there is no way to make everyone a fully cooperating member of society; that is, a citizen. Inspired by Lockean ideas about self-ownership, Madison makes little attempts to find a cure to social inequalities because that would mean an unjustified interference with individual rights. Rawls, on the other hand, is not committed to self-ownership and, because of that, his institutions are designed to ameliorate social inequalities to the point where no injustice persists. All in all, the main difference we can identify is that Madison, drawing on the early liberalism that helped to achieve stability in times of religious conflict, believes that given the fact that factions are built into human nature, the best that can be accomplished is to keep them apart, checked, and unable to impose their will on others. This is precisely what Rawls would call a *modus vivendi*. So, instead of keeping factions at bay and separated, Rawls makes the best theoretical effort to bring comprehensive and conflicting doctrines together, as he hopes that an overlapping consensus is feasible. If a just and fair egalitarian society is possible, then, Rawls holds, stability is possible. His utopian realism, here, parts ways with the Madisonian approach and comes closer to some strands of American egalitarianism, such as that of Edward Bellamy. So, again, Rawls makes the most of liberalism and egalitarianism, of realism and utopia.

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