

POLITICS & GOVERNMENT

Madison's Futile Argument

"Madison's Audience" by Larry D. Kramer, in *Harvard Law Review* (Jan. 1999), Gannett House, 1511 Massachusetts Ave., Cambridge, Mass. 02138.

Historians and legal scholars seeking to understand the intent of the Framers of the Constitution have long looked to James Madison's *Federalist No. 10*, in which he argued that the "mischief of faction" could be overcome through enlargement of the Republic and the proliferation of interests. They have assumed that his brilliant argument decisively shaped the founding document. But Kramer, a New York University Law School professor, argues that Madison's theory "played essentially *no* role" at all in the making of the Constitution.

The Virginian began to conceive his novel ideas in 1786, the year before the Constitutional Convention. His thinking came in two stages. First, after examining six systems of government, he concluded that all had the same fatal weakness: too little central authority. To prevent encroachments by the states, he decided, the federal government would need independence as well as a veto over all state laws. Then, in April 1787, a month before the convention, he formed the idea of an "extended republic" that would later provide the substance of *Federalist No. 10*: that the very size of the Union would create a Congress of such variety that no faction could dominate, and which could therefore be able, by use of the veto, to dispassionately screen out bad laws produced in states where a factious majority did reign. The national veto was the key to Madison's whole scheme.

Although "the idea that society consists . . . of a multiplicity of competing interests is practically axiomatic today," Kramer notes, it wasn't in the 18th century, when society was usually conceived as "an organic entity" made up of a few "discrete orders or estates." By making faction the basic social force and its regulation "the

principal task'" of government, Madison was performing "an intellectual feat of considerable originality," Kramer notes. It is the idea that led many later observers to conclude that the Framers were taking a bold leap into modernity.

But only George Washington even knew about Madison's theory before the convention, Kramer says. Madison tried to make the case for it in Philadelphia, but he was a poor orator with a weak voice. And his theory "was simply over the heads" of most delegates. "Madison repeatedly presented his theory in the early weeks of the Convention to silence and incomprehension. Thoughtful, vigorous exchanges among the delegates were common, including between Madison and others, but never on [his new ideas], which were simply ignored. . . . With rare exceptions, other notetakers neglected or misrecorded what Madison said in this regard, and other speakers—including Madison's ostensible allies and supporters—continued to make points either uninfluenced by or inconsistent with Madison's theory. . . . Madison lost every proposal he made based on it." He left the convention discouraged.

What the Framers did that summer in Philadelphia, they "did without Madison's theory," Kramer concludes. Nor did *Federalist No. 10* have any significant effect on the ratification of the Constitution. It was not widely read, and its "excessively dry and academic style of writing" further diminished its impact. After ratification, Madison abandoned his argument, and his essay "simply vanished" until 20th-century scholars rediscovered it. They have used it to justify the expansion of federal powers, "usually at the expense of the states," writes Kramer. "If the Constitution embodies Madison's theory it has come to do so only . . . as a reflection of our present intellectual tastes."

Learning from the Christian Right

"Oh, Woe Is Us! Well, Maybe Not" by Paul Starobin, in *National Journal* (Jan. 16, 1999), 1501 M St., N.W., Washington, D.C. 20005.

To hear many pundits and professors tell it, American democracy is ailing, with half the

electorate not even bothering to vote and Big Money's political influence growing ever