Conservatives, Liberals, and the Constitution

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The Constitution of 1787 is still the fundamental document of the American polity, it is still the source of its basic institutions and principles, and the Constitution and its law persistently affect the style and substance of American politics. Both Conservatives and Liberals, who stand at the two poles of contemporary American politics, are obliged to come to terms with the Constitution. How each understands it reveals certain peculiarities of contemporary Conservatism and Liberalism.

I shall give primary attention to the Liberal view, suggesting the Conservative view by way of contrast. The Liberal view deserves the greater attention because it has, for some time, been by far the dominant view in the academy; it is closely linked to basic currents in academic political and social science generally; and it has, on the whole, received far more extensive scholarly formulation than the Conservative view.

For all their differences, Liberals and Conservatives tend surprisingly to agree on the original intention of the Constitution and on the nature of the original institutions it established. Indeed, the more liberal or conservative the writer, the likelier and fuller the agreement. They differ, of course, in that one tends to deplore and the other to applaud, say, separation of powers. But the difference depends on agreement as to the nature of the things deplored or
applauded. The fundamental difference between the Liberal and Conservative views of the Constitution — and what it is they agree about — can be stated in terms of Madison’s famous formulation in *Federalist* 51.

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A *dependence on the people* is, no doubt, the primary control on the government; but experience has taught mankind the necessity of *auxiliary precautions*. (My italics)

Of the two elements in Madison’s scheme, Liberals unqualifiedly prefer “dependence upon the people” and are suspicious of or hostile to the “auxiliary precautions.” On the other hand, Conservatives ambiguously accept the “dependence” but they vastly esteem the “auxiliary precautions.” That is, Liberals are anxious for a certain kind of fulfillment of the popular will which is their understanding of “dependence upon the people,” while Conservatives tend to conceive the Constitution primarily as a set of absolute restraints upon majority rule.

It will be noticed that Liberals and Conservatives thus separate the two elements which, in Madison, form a consistent whole. Why Liberals and Conservatives agree to sunder what Madison joins must be understood in order to understand their respective views of the Constitution. The issue turns on the nature and utility of the “auxiliary precautions.” As to their utility, Liberals tend to deplore them. Conservatives to praise them. But as to their nature, Liberals and Conservatives agree that the auxiliary precautions radically qualify the dependence on the people. This is the decisive point: they both agree that constitutional principles or institutions like separation of powers and federalism hamstring or otherwise prevent majority rule. This agreement forms a peculiar and unacknowledged bond between Liberalism and Conservatism.

I would suggest that in this agreement — by virtue of which they cleave the two elements in Madison’s formulation — both Liberals and Conservatives fundamentally misconstrue the nature of the Constitution. That is, they both err in failing to recognize the truth of what Madison repeatedly claimed — the fundamental compatibility of the Constitution’s restraining devices with a system of majority rule. Because of this error, Liberalism regards the restraining spirit of the Constitution as incompatible with the democratic principle, and seeks ways to short-circuit the constitutional resistances to majority will. And because of the same error, Conservatism unwarrantedly and unwisely seeks constitutional refuges from the democratic principle and from the authority of the government established by the Constitution.

But the attack on the “auxiliary precautions,” which is the defining theme of Liberal writings on the Constitution, is not limited to the question of democracy. Closely related to the charge that the Constitution is antidemocratic is the charge that the precautionary re-
straints which frustrate the majority frustrate also the operation of
government generally, thus threatening fatal deadlock and drift. The
Constitution thus comes to appear both archaically undemocratic and
as rendering government archaically incompetent to deal with modern
problems.

2

The view of the Constitution as decisively undemocratic stems
primarily from the work of J. Allen Smith, Vernon L. Parrington, and
above all from the extraordinarily influential research of Charles
Beard. Understandably outraged by late-nineteenth-century scholar-
ship and statesmanship that tended to convert the Constitution into
a fixed and immutable code enshrining liberty of contract, reformers
began to search about for feet of clay, to show that the Framers were
not disinterested demigods but men rigging a government to protect
their own interests. Debunking the Founding Fathers would eman-
pate the present from the moral claim of the past and open the way
for drastic reform. Beard's An Economic Interpretation of the Con-
stitution became the classic formulation of the debunking attack.

Beard argued that the Framers of the Constitution deliberately
designed an undemocratic system to protect the privileged classes
of which they themselves were members. In recent years Beard's
thesis has been under sharp attack and is open to question on every
vital point. But it is necessary here only to see how the triumph of
Beard's interpretation affected the Liberal view of the Constitution
and in time, ironically, the Conservative view as well. For fifty years,
scholars have seen antidemocracy everywhere in the constitutional
system — because they expected to see it.

Accordingly, for example, James MacGregor Burns' opening
sketch of the "Madisonian model" (the object of his attack in Dead-
lock of Democracy) seems to make familiar and perfect sense.
Madison, Burns says, was almost obsessed with the problem of an
"oppressive majority." Madison's solution of the problem "became
the archpin of the whole constitutional framework . . . the system of
checks and balances." Madison "was calling for barricade after bar-
racade against the thrust of a popular majority." Madison fearfully
and mistakenly believed that it was "necessary to have what he called
'auxiliary precautions' of checks and balances built right into the
frame of government." (My italics: notice the change from oppressive
majority to popular majority. The implication is that what seeks to
block the one blocks the other.)

David Spitz makes very much the same point in Democracy and
the Challenge of Power:
The framers of the American Constitution, while openly disdainful
of the 'common' people, did not think it wise to exclude them alto-
gether from political power . . .
The rule of the people remains, however, but a partial rule.
Madison might . . . say sincerely that 'a dependence on the people
is, no doubt, the primary control on the government'; but he —
and the rest of the framers . . . — was far more impressed by the dangers to a government that is too dependent on them . . . It was necessary, therefore (or so he and the framers insisted), to look to 'auxiliary precautions,' to establish institutional obstacles — e.g., federalism and the separation of powers — that would effectively limit or prevent the majority from having its way.

Richard Hofstadter, in The American Political Tradition, also ascribes an "antidemocratic position" to the Framers. But having "misgivings about turning to the extreme right," they hoped instead for "'balanced government,' an idea at least as old as Aristotle and Polybius . . . A properly designed state . . . would check interest with interest, class with class, faction with faction, and one branch of government with another in a harmonious system of mutual frustration."

A balancing off of aristocracy and democracy in a "mixed regime" — that would be a check indeed upon majority rule. Something like this idea underlies much of the Liberal conception of the Framers' intent. It is amusing to find the view firmly shared by Russell Kirk: "The United States remain, in considerable degree . . . what Aristotle called a 'polity,' a balancing and checking of classes in society." Hofstadter clearly dislikes what the Framers wrought and Kirk likes it, but they are both agreed on what they wrought — a Constitution designed radically to circumvent majority rule. Hofstadter is convinced that the Constitution was rigged against the advancement of democracy, and Kirk cheerfully agrees. Totally ignored in the process is James Madison who, in Federalist 14, insisted that the American regime was "unmixed" and "wholly popular," from which it followed that "auxiliary precautions" were fundamentally compatible with majority rule.

Thus the over-all Liberal view of the Constitution: a thorough skepticism, to say the least, regarding the fundamental principles and institutions of the "frame of government," because they were designed to crib and confine the popular spirit, that is, the spirit which Liberalism seeks to emancipate. And as a kind of positive print of the Liberal negative: the Conservative's emphatic agreement that this was indeed the Framers' intent.

We must now turn to the Liberal bill of particulars regarding the way the constitutional system operates to frustrate majority rule.

Consider this account by Robert Dahl and Charles E. Lindblom, in their well-known book, Politics, Economics, and Welfare: Federalism; the composition and procedures of the Senate; the bicameral legislature; the separation of President and Congress, and the checks and balances between them; differences in their constituencies; fixed and overlapping terms of Representatives, Senators, and the President; constitutional restraints on legislative authority; judicial review; the amending process; a decentralized party system; and the devolution of power to committee chairmen in Congress whose position is automatically derived from seniority — all these provide a variety of narrow defiles where a
skillful and aggressive group may fatally mine the path of any
group of threatening leaders. . . .
The strategic consequence of this arrangement . . . has been that
no unified, cohesive, acknowledged, and legitimate representative
leaders of the 'national majority' exist in the United States. . . . On
a great many policy questions . . . 'the majority' is a fiction. But
even if there were a national majority in the United States, it
could not rule unless it were . . . overwhelmingly large.

In short, for all practical purposes, the entire constitutional sys-
tem is hostile to majority rule. From this view, Dahl and Lindblom
reach a characteristic Liberal conclusion: because of its antimajori-
tarianism the whole constitutional system significantly lessens the
possibility of "rational social action."

Consider, in the same vein, Burns:
States' rights, local elections, restricted franchise, minority rights,
rural over-representation, checks and balances, congressional
power, the danger of majority or 'mass' rule, judicial review (at
least in the old days), powerful committees, the seniority system,
the filibuster — in short, the Madisonian system . . .

Under the spell of Beard, and perhaps out of a Liberal readi-
ness to class as inimical to the popular spirit any kind of legal-govern-
mental restraint, Liberal writers have tended to lump together all
items of the constitutional system as evidence of the undemocratic
and timid intent of the Framers. The Conservative is quite inclined to
agree. He, too, regards the system as all of a piece; he, too, sees all
of its devices as merely variant ways of accomplishing a single end —
the diminution and division of power.

But this is, as we shall see, to lump together radically different
things and to obscure the variety of ends the Preamble announces
that the Constitution was devised to achieve.

1. Separation of powers and bicameralism

Separation of powers is, of course, widely understood as a cen-
tral part of what Hofstadter called the Framers' undemocratic "har-
monious system of mutual frustration." It is, of course, rightly also
understood as intended to provide a general safeguard to liberty from
government. In addition, Conservatives are fond of explaining that
separation of powers was especially inspired by memories of British
royal tyranny and hence that it was primarily devised to protect lib-
erty from the Executive. Liberals usually agree — it makes perfect
sense to them that Congress was designed primarily to harass and
frustrate the Executive; they have only to consult what they believe
to be the evidence of their senses.

No recent writer has been more exercised than Burns over
"Madisonian" separation of powers as a dangerous impediment to
bold executive leadership. And yet he mentions in passing that had
the Framers opted against separation, had they chosen "legisla
tive selection of the executive," the resulting parliamentary system would
probably have been "much more like the 3rd or 4th Republics of
France . . . than Great Britain’s system of strong executive leadership.” But he fails to draw the proper inference from his correct observation, namely, that the aim of separation of powers was, in significant part, to create the strongest executive possible under the circumstances, and that the development of the modern presidency (of which Burns approves) depended upon the separation and the broad powers thus independently granted the office. That is, the leading Framers viewed separation of powers as the best way, in the American democracy, to avoid the kind of weak executive then prevalent in the states (where separation of powers had been minimized), and to prevent the dangerously free play available in a parliamentary system for the centrifugal tendencies of American federalism. It almost suffices to support this view to remember (what is never mentioned) that Alexander Hamilton, the defender of “energetic” government, was no less enthusiastic regarding separation of powers than was Madison.

The most instructive account of what separation was designed to accomplish is, of course, given by Hamilton and Madison speaking together as “Publius” in The Federalist. “Publius” does not justify separation of powers only as a defense of liberty in general against government and of minority rights in particular against majority oppression. He also sees in separation of powers a temporary defense of government from the people (and from the most popular branch, i.e., the legislature) — a defense of the energy, dispatch, and competence of government from popular folly. Recognition of this would discommode Liberals and Conservatives alike. Both invariably portray the Framers as fearful of popular tyranny. They were indeed. But they were equally fearful of popular folly and legislative ineptitude. As much as they sought free government, they sought competent government — not minimum government safely chained down, but government broadly empowered and competent to a broad range of tasks. And separation of powers was vital to the accomplishment, in their view, of powerful as well as free government.

Liberal political scientists have always admired a parliamentary system on the British model. But if Burns and “Publius” are right — that in 1787 parliamentarianism would have enfeebled American government — the question must be raised: to what extent does the worth of the envied British system depend upon its peculiar origins, especially the slow process by which democracy supplanted Britain’s dominant aristocratic institutions? Anglophile American political scientists, who strain to see aristocracy in the American system, have never been much troubled by British balanced government where massively aristocratic institutions long existed. They rarely accuse it of having been a harmonious system of mutual frustration. They simply abstract from it qualities they like — e.g., parliamentary supremacy — and seek means to graft them onto the American system. A reappreciation of the fact that separation of powers was devised to nurture powerful as well as free government would make possible a re-consideration of long-cherished opinions about the respective
merits, in modern democratic conditions, of the American and British systems.

As to bicameralism, its intention was very similar to that of separation of powers. Quite apart from the federal purpose of the second house, it was no doubt desired to create a body that could (like the separate President and judiciary) stay popular tyranny. But again the aim was equally to erect temporary barriers to popular ineptitude. Thus, the main thrust of The Federalist's argument concerns primarily not liberty but the utility of the Senate in providing energy, "system," and "well-connected" — that is, sustained and long-range — measures. Recently, many Liberal writers have begun to remark how much more "progressive" the Senate is than the House, and Conservative writers (again the peculiar parallel) have come to cherish still more the House. From The Federalist's analysis, it could be argued that the Senate was always intended to be the more "progressive" body. This is startling only if it is assumed that the more popular a legislative body, the closer to the great mass of the people, the more likely it is to be progressive. This is a modern assumption (now not so strongly held as it once was) not at all shared by the Framers. They thought that a "temperate and respectable body of citizens," at a little greater remove from the people, would more likely have enlightened views regarding, for example, religion, slavery, science, and foreign policy. Whether it would truly be a gain from the point of view of liberalism itself that America should have a single legislative body is a question. But again it is a question not likely to be considered seriously until the thought of the Framers and the purposes of our constitutional system are seen as neither outmoded, nor undemocratic, nor dedicated solely to liberty.

One last observation. It cannot, of course, be denied that separation of powers was intended as the great "auxiliary precaution" against majority tyranny and majority capriciousness. But the Framers believed that this precautionary check satisfied the democratic requirement because it was only a temporary one. In Tocqueville's terms: separation of powers does not seek to deny "that social power superior to all others must always be placed somewhere." Under the American Constitution, the majority is accorded that superior social power; the effort is only, again to quote Tocqueville, to "retard its course and give it time to moderate its own vehemence." The only way, then, that separation of powers can be viewed as radically undemocratic is to view even a temporary check as inadmissible.

2. Federalism

Convinced that the Framers intended to divide and diminish democratic power (and the power of government generally), Liberals and Conservatives agree in regarding federalism and separation of powers as simply different species of the genus "checks and balances," two similar ways of dividing power. But how radically the two actually differ can best be indicated in the following obvious manner. Federalism is indeed an effort to divide the governing au-
authority and thus diminish the power of the national government. Separation of powers, on the other hand, is quite compatible with a central government of unlimited powers. The main point of the federal principle is to hold national authority to a minimum. Separation of powers has no such purpose whatsoever; it is a mode for the safe exercise, not the diminution of power.

At a minimum, then, lumping federalism and separation of powers together as "Madisonianism" is to blur distinctions of the utmost importance. Moreover, there is something especially ironic in labelling the federal elements of the American system "Madisonian," since in 1787 Madison was a major opponent of their introduction into the Constitution, and the federal elements were imposed upon Madison and his closest colleagues by the opponents of Madison's Virginia Plan.

This fact leads us to one of the great ironies of American politics. Federalism is unquestionably the source of many of the constitutional features that Liberals castigate as undemocratic. For example, the Senate is "malapportioned" because those most insistent upon federalism insisted upon a Senate in which the states would be federally equal. Similarly, the amending procedure was dictated by federal considerations; the "pure federalists" of 1787 insisted upon a mode by virtue of which no one section could impose its will on the rest of the states. In the same way the Electoral College also had a federal basis. And the opinions of the Supreme Court, during the period 1880-1937, that were most offensive to Liberals, were delivered in the name of, among other things, federal restrictions on the national authority.

Now who were the "pure federalists" of 1787, who were responsible for so much in the Constitution that is deemed "antidemocratic"? They were the Patrick Henrys and Richard Henry Lees — those whom most Liberal writers have long viewed as the "truer democrats" of the period. In 1787 the Senate, the amending procedure, the Electoral College, the federal limitations on national authority — these were all conceived in deference to the rule of the people. *The "federal idea" versus the "national idea" is not a conflict in principle of antidemocracy versus democracy, but of one conception of democracy versus another*. The insistence upon the federal features derived from the belief in the inherent virtues of "small republics," and the conviction that popular government would perish in any attempt to create a unitary republic as large as the United States. The profound link of the federal features with the "small republic" conception of democracy helps explain why Conservatives often become ardent believers in direct democracy at the state and local level — that and the conviction that they have a good chance of winning on the substantive issues (e.g., capital punishment, educational policy, etc.) at the local level. But this phenomenon of the "two democracies," this distinctive aspect of American politics, is obscured by both the Liberal and Conservative insistence upon seeing federalism as some kind of external restraint on popular government itself.
3. **Rural overrepresentation, the Congressional committee system, and seniority**

What should be the one most obvious common characteristic of these aspects of the American political system is that they have little or no basis in the original Constitution or in anything that can be deemed the handiwork of James Madison. And yet some Liberal writers persist in giving to these obviously later (and, in part, unanticipated) developments the firmest possible foundation in American affections by insisting that they are part somehow of the original constitutional design.

How explain, for example, the assertion (it is never more) that Congressional rural overrepresentation was the intent of the Framers? Could it have been the intent of Madison, whose Tenth *Federalist* presupposed an advanced commercial society where the states, then "little more than a society of husbandmen," would acquire "a more advanced population" and would make "progress in those branches of industry which give a variety and complexity to the affairs of a nation"? Could it have been the intent of Hamilton and other leading Framers who are so often (when they are not being blamed for rural overrepresentation) stigmatized as the aggressive representatives of urban commercial interests? The determination to place rural overrepresentation in an undifferentiated, original antidemocratic package testifies to the intensity of the sentiment that all the defects of our system of government derive from the original sins of the Framers.

This is not in the least to defend (or to attack) rural overrepresentation. Rather it is simply to disentangle it from other political things with which it has indiscriminately been lumped. Thus disentangled, it may be diagnosed in its true light as a growth upon the system; and thus disentangled, the quarrel as to its merits need not go to the nerve of the constitutional design.

The whole question of seniority and the Congressional committee system, which is closely related to the problem of rural overrepresentation, needs similarly to be disentangled. Perhaps some substantial committee system is necessarily the consequence of a constitutionally separate legislature actively and independently involved in the process of legislation. But the precise form of the system, and especially selection of leadership by seniority, is quite independent of the Constitution and is certainly open to challenge. The question of what should be reformed or preserved cannot well be considered if the committee and seniority system is deemed a necessary consequence of an undemocratic Constitution. Biased by his hostile view of the Constitution, the Liberal attributes all defects to the whole scheme of constitutional "auxiliary precautions," and believes that remedies require as much alteration of the constitutional system as possible.

Liberals thus often attribute to the constitutional design consequences that result primarily or solely from the peculiar character of the South. For example, Burns' hostility to Congress and his whole
theory of the “four-party system” seems to be simply a complicated way of accounting for Southern Democrats. How objectionable would the committee-seniority system, as such, seem if Southern Democrats were less dominant in the committees? That is, would the system be nearly so reprehended if the Congressional Seniors came more randomly from all parts of the country, as would be the case if not for the anomalous condition of Southern politics? Might the committee-seniority system even seem to have some attractive qualities in comparison with the increasingly tame House of Commons of the British system? One must remember that the South’s peculiar situation was wholly unintended by the Framers. They had every hope that the course of Union would bring an end to slavery and the South’s distinctiveness. “The changes of time,” Madison remarked, “on the comparative situation of the different states, will have an assimilating effect.” No section or state, he hoped, would differ from the others as much as did the South, when all states had become integrated into the national, commercial economy that is the premise of the Tenth Federalist.

To the extent, then, that the character of the present congressional system derives from the South’s peculiar situation, it can find little basis in the original constitutional design. The spirit of the Constitution offers no support to any system of minority veto such as Liberals claim to be the practical effect of the present procedures of Congress. Nothing in the Constitution bars an open-minded consideration of the merits of the committee-seniority system.

And yet the Liberal persists in rooting into the Constitution all things of which he disapproves and thus blithely gives to Conservatives an immense advantage — the superior claim to speak in the name of the Founding Fathers. It would seem that he has been simply foolish in doing so. If the Constitution’s “auxiliary precautions” are compatible with democracy, as the Framers themselves declared, then it would appear that the Liberals have erred egregiously, that their hostility to the Constitution is simply unfounded.

There is a sense, however, in which that hostility is very well founded. The real issue turns on the nature of American majorities and the political parties representing them, and on the consequence of these for what Liberals today allege to be, in Burns’ current use of the phrase, “the deadlock of democracy.”

The Liberal argument that the Constitution is radically undemocratic has an important corollary: the antidemocratic restraints which cripple majority rule make any kind of effective government impossible. Henry Steele Commager, for example, believes that the Framers were so fearful of tyranny that they set up not only boundaries to government but impediments in government. Thus they not only made it difficult for government to invade fields denied to it, but they made it difficult for government to operate at all. They created a system where deadlock
would be the normal character of the American government. (My italics.)

Although closely connected with the view that the Constitution is undemocratic, the emphasis on deadlock involves a slight but important shift in the basic argument. The view of the Constitution as undemocratic implies that the real ruling element in the system is oligarchic, in a class sense. When the emphasis is on “deadlock,” the idea of naked oligarchy gives way to a more neutral idea of “minorities rule.” These minorities are sometimes still conceived of as oligarchic but less emphatically and not necessarily so. Rather, the emphasis is on the fragmentation of the demos itself into conflicting and “overlapping” minorities. It is then argued that any substantial popular minority acquires, under the constitutional system, a strategic power to exercise in practice a veto on policies it strongly dislikes. The consequence is held to be deadlock and drift, because a people thus fragmented are unable to form a majority united behind coherent programs. Here the Liberal view indeed approaches American reality and that portion of it which frustrates Liberal hopes.

But does deadlock in fact result — as Liberals contend it does — from the necessity for consensus or extremely broad agreement among the fragmented minorities before government can act in important matters? The American political system does indeed rest upon consensus, if by that is meant the broad agreement of most Americans on the fundamental principles of the regime. The Liberal confusion consists, however, in believing that the constitutional design requires consensus on particular measures, and that national majorities must be “overwhelmingly large” before they can carry the measures they desire.

Now it may or may not be a good idea that time should go by while differences narrow between parties and interests over important measures; and American majorities may or may not be prudent in restraining themselves thus to permit consensus to develop. But it simply is not true that majorities are constitutionally obliged to do so. And it simply is not true that important measures are not regularly undertaken by the ordinary process of majority rule. During the early New Deal, the American people by ordinary majority processes under the Constitution elected a government that enacted immensely important programs for which there was then no consensus, no “mutual consent,” no support in “general opinion,” to use the dictionary definitions of consensus. No extraordinarily large majority was needed when one vote in the House of Representatives saved conscription in 1940 against powerful opposition. Today, under President Johnson, many things are done to which substantial minorities dissent. Important controversial legislation is in fact constantly being passed over the strong opposition of large minorities. All that is required is that something like an ordinary majority actually come to want the thing to be done.

In short, consensus is not required — but majorities are. The Liberal complaint that majorities cannot act has no foundation; the
real complaint is that majorities simply do not act as Liberals want them to act. And that is the central issue: what things do American majorities want and to what things does the constitutional design incline majority opinion?

Without allowing it to affect the rest of his argument, Burns acknowledges the fact that majorities could act boldly if they so desired.

If . . . a swelling, unified proletariat should develop à la Marx, or if, to take Madison's own example, a debtor class should gain majority support in every state and elective district [a gratuitous qualification] – then the debtors would capture control of every decision point in the government and could tyrannize the minority.

Here we at last encounter the extent to which the democratic principle is at the basis of the constitutional system. This is precisely what Madison stated flatly: "When a majority is included in a faction," it will be able "to execute and mask its violence under the forms of the Constitution," because this is the necessary consequence of "the form of popular government."

Against the danger that majority factions would use their authority under the Constitution, Madison and the Framers devised some temporarily retarding "auxiliary precautions," and, perhaps above all, the "large republic" theory of "multiplicity."

In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good.

(My italics)

The Constitution thus generates a political process based upon a majoritarian consensus and not upon an antimajoritarian consensus. What Liberals object to, and rightly from their point of view, is the character of the majorities that result from the constitutionally generated process of majority coalition. Burns, who unwarrantedly complains of antidemocracy and deadlock, in one passage hits his true target:

To act, American leaders have had to gain the concurrence not simply of a majority of the voters, but of majorities of different sets of voters organized around leaders in mutually checking and foot-dragging sectors of government.

This is what produces the "deadlock" of which Burns complains. But Burns does not mean a literal deadlock, that nothing whatsoever is being done. What he really means is that not enough of what the Executive proposes is being done, and that the Executive is not proposing enough. In short, the problem is that coalition majorities do not want what Liberals want.

Now all this is especially exasperating to the Liberal because he is convinced that mankind approaches the apocalyptic moment when there is an "exciting potential for creative statesmanship." But majorities formed by coalition do not support "bold and creative national leaders"; they do not "exploit the enormous possibilities of urban man and world men"; they do not support "fresh and creative ventures in
foreign policy”; instead we seem not to “have advanced much beyond the cave man in the stakes and style of our politics.” (The quotations are all from Burns.)

The majorities generated by the constitutional system reject or insufficiently accept the substantive politics and goals of Liberalism. This is the Liberal’s deepest charge. And it is his most accurate charge.

The task, then, for Liberals is somehow to change the character of American majorities. Believing that majorities cannot of themselves become what Liberals wish them to be, Liberals have fastened upon the party system as the way to make that change. It is a common belief among political scientists that the American political order was once saved by the emergence of political parties. The undemocratic and deadlocked governmental system provided by the Constitution was partially democratized and rendered partially operable only by the development of mass political parties which broke through the Constitution’s barriers toward popular rule and effective government. Beneath an undemocratic and deadlocked legal structure, it is thought, an effective and democratic political reality partially emerged through the parties. (The Conservative, of course, emphatically agrees. He too thinks that the political parties, and the underlying political processes generally, have “subverted” the original constitutional order.) What the political party once saved, the Liberal hopes it can now transform.

For example, while they are dubious that it can be achieved, Robert Dahl and Charles Lindblom believe that the idea of “‘party government’ . . . does at least go to the heart of the problem.” It does so because disciplined parties might develop “a set of unified, cohesive, acknowledged, and ultimately legitimate representative-leaders of the ‘national majority.’” In the same vein, Burns complains that Roosevelt was content to be a Madisonian “mast borer,” and thus failed to build a “coherent party out of a liberal majority.” Our “splintered parties,” Burns argues,

set up barriers between the people and their national government rather than simplifying the alternatives, clarifying competing party doctrines, and allowing the victorious majority to govern.

By means of such parties and such majorities, Liberals would seek to rest the whole political order entirely and directly upon “a dependence on the people.” Now what prevents the development of such parties? Disentangled from all his talk of antidemocracy and deadlock, the passage from Burns quoted above is helpful: the barrier to such parties is the fact that “majorities of different sets of voters [are] organized around leaders in mutually checking and foot-dragging sectors of government.” These “sectors of government” summon up and harden the diversities among the voters, which in turn necessitates coalition majorities, which in turn prevent the Liberal kind of national majority. And whence come these “sectors of government” which thus stand in the way? The answer is: separation of powers, bicameralism, federalism, judicial review, the Congressional system, the Electoral College, the fixed and staggered terms of national office,
etc. In short — the whole array of "auxiliary precautions" that Liberals reject.

The Liberal aim is thus clear. In order to transform the human condition, which is his deepest aim, the Liberal seeks to make the political order fully dependent upon a transformed people. To achieve the transformation, he seeks the right kind of constitutional institutions to produce the right kind of party to produce the right kind of majority. At the very center of Liberalism there is a theory of the truly democratic party — unified and coherent and thus capable of summoning up from the unformed mass the majority acquiescence in the Liberal goals that, the Liberal believes, is the natural inclination of the true majority. To such a party and such a majority, the Constitution and its "auxiliary precautions" does indeed obstruct the way.

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The Liberal rightly rejects the Constitution because, from his point of view, its auxiliary precautions corrupt its popular aspects. The Conservative wrongly thinks that the auxiliary precautions were designed to prevent the majority from doing whatever it is the Conservatives now dislike — that the system is indeed tilted toward antidemocracy and deadlock. The Liberal dislikes the Constitution for what at bottom are correct reasons. The Conservative likes the Constitution for what at bottom are wrong reasons. In a sense the Liberal is the intelligent foe of the Constitution and the Conservative its foolish partisan. Given the dominance of either, the Constitution would perish.

But, fortunately, not everyone is either a Liberal or a Conservative, Gilbert and Sullivan to the contrary notwithstanding. In the vast majority of Americans the tendencies of Liberalism and Conservatism are hopelessly intermixed. This may be wretched from the point of view of clarity, but it is surely indispensable to the political health of the country. The vast majority of Americans believe that the Constitution's democratic principles and its restraints upon majority action are perfectly compatible, and that together they constitute the peculiar American political way. David Spitz finds this puzzling:

In what must be accounted one of the great paradoxes of our time, the majority of the American people do not seem to want a system of majority rule. They do not trust themselves to rule wisely. They welcome formal or institutional restraints on their own powers and desires.

There is no paradox, save on the premise that a majority decision for such self-restraint cannot be truly democratic. But to "Publius" and the Framers, such a premise would itself have been an absurdity. For they knew that, if it were not an absurdity, there would be no possibility of making democratic government acceptable to reasonable men.