

**The will of the Community: Theories of Representation at
the Founding and in Recent Political Practice**

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In this essay, we develop the contrasting perspectives on representation advocated by the opposing sides at Poughkeepsie and the other state ratifying conventions, with some reference to the Philadelphia convention as well.

*The ratification struggle in New York State is emphasized because it produced America's contribution to the classics of western political thought, *The Federalist* and a well-articulated debate between two key protagonists, Alexander Hamilton and Melancton Smith. The continuing relevance of the positions advanced during the ratification debates of 1787 and 1788 can be found in the municipal reform movement at the beginning of the twentieth century, in the "apportionment revolution" of the last generation, and in the redistricting of the New York City Council in 1991.*

The idea that naturally suggests itself to our minds, when we speak of representatives, is, that they resemble those they represent. They should be a true picture of the people, in all their distresses, and be disposed to seek their true interests.

**Melancton Smith
Poughkeepsie, June 21, 1788**

It has been further, by the gentlemen in opposition, observed, that a large representation is necessary to understand the interests of the people . . . The position appears to be made upon the unfounded presumption that all the interests of all parts of the community must be represented. No idea is more erroneous than this.

**Alexander Hamilton
Poughkeepsie, June 21, 1788**

Representation -- "the delegation of the government to a small number of citizens elected by the rest" -- was the paramount political issue confronting the founders of the American republic and the framers of its constitution (Rossiter, 1961, No. 10: p. 82). Indeed, it is representation that explains "the uniqueness of the American politics" of the Founding (Wood, 1972, p. 506).

The central question, according to Gordon Wood, was "whether a professedly popular government should actually be in the hands of, rather than simply derived from, common, ordinary people." (Wood, 1972, p. 516) In the words of Melancton Smith at the 1788 New York ratifying convention at Poughkeepsie, "How was the will of the community to be expressed?" (Elliot, 1836, 2: p. 227)

The founders' answers to Smith's query can be found in embryonic form in the debates in Philadelphia. The subsequent pamphlet literature and the debates at the state ratifying conventions of 1787 and 1788, as well as the early state constitutions, together present a more fully developed body of thought on the nature of representation and the role of the representative. For the "founders" include not only the Philadelphia framers, but also the delegates at the state ratifying conventions, drafters of the early state constitutions, and the Antifederalists. The Constitution "did not finish the task of making the American polity;" American political life has been and continues to be "a dialogue in which Antifederalists concerns and principles still play an important part." (Storing, 1981, p. 3)

Themes evident at Poughkeepsie and the other state ratifying conventions have continued to inform American political thought and practice. In this essay, the crucial New York ratification debate, which centered on representation, is the focus. After discussing the Poughkeepsie debates, we treat manifestations of the debate themes in American political practice such as the municipal reform movement at the turn of the twentieth century and the "apportionment revolution" which commenced in the 1960s. In the conclusion we discuss the contemporary relevance of the Founders' debates over representation, which is vividly underscored by recent developments in New York City, where charter writers and a districting commission have translated the "one person, one vote" standard into a mandate for descriptive representation, a central theme of Melancton Smith and other Antifederalists.

The Concept of Representation

Representation, or the science of indirect government through intermediaries, is a modern concept first explicitly articulated by Hobbes (see Pitkin, 1967, 1989; Mansfield, 1968a, 1971; Mansfield and Scigliano, 1978). Hobbes had an authorization view of representation, holding that "a representative is someone who has been authorized to act . . . given a right to act which he did not have before,

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while the represented has become responsible for the consequences of that action as if he had done it himself. It is a view strongly skewed in favor of the representative." (Pitkin, 1967, pp. 38-39)

Hobbes was a *paradigm creator*, that is, one who breaks with existing tradition and "proposes different rules of inquiry, a different problem-field, as well as different notions of significance and of what constitutes a solution." (Wolin, 1968, p. 138) A paradigm creator defines model problems or "puzzles" within the paradigm which Kuhn calls normal science (Wolin, 1968, pp. 132ff). Hobbes' successors may be thought of as paradigm workers seeking to solve problems related to major concepts such as representation. Hobbes' authorization view was modified through the introduction of elective representation by Locke, Montesquieu and the American founders (Mansfield and Scigliano, 1978, p. 26). The concept of representation came to include the components of accountability and substantive "acting for" constituents (Pitkin, 1967, pp. 55-59; ch. 6).

The Federalist-Antifederalist dialogue is an example of puzzle solving by paradigm workers. Specifically, the concept of representation was given substantive meaning during the ratification process by an elaboration of such attributes as "descriptive representation," and various plebiscitary-type devices to effect it. Related concepts such as republicanism and federalism also underwent conceptual development. However, the puzzle of representation remains to be "solved."

The American founding is often portrayed as a transition from classical republicanism with its stress upon cultural presuppositions of harmony and homogeneity (and the view that civic virtue is the animating principle of a republican regime) to the "new science of politics" (see Diamond, 1959) in which men's passions, interests, and ambitions are channeled through institutional devices and circumstance in the cause of stable and decent government. Thus Wood (1972, p. 606) asserted that the Americans of 1787 "shattered the classical Whig world of 1776." However, rather than a sharp break, there was a fusion of Federalist and Antifederalist positions during the crucial decade of the 1780s especially with respect to representation (see Yarbrough, 1979a). This fusion is in large measure, a result of the presumed antagonists' shared assumptions, despite their rhetorical differences. Both Federalist and Antifederalist views on representation are liberal; they both seek to represent "people who have interests" (Pitkin 1967, ch. 9).

The Federalist/Antifederalist dialogue on representation captures innovations within the social contract-natural rights paradigm. Throughout the *Federalist* Publius extols the "novelty" of American constitutional experimentation and improvements made over ancient and modern political science (Rossiter 1961, Nos. 1, 9, 10, 14, 37). The Founding events at Philadelphia and in the state ratifying conventions provide us with a written record of the evolution of the concept of representation in our early history.

The Philadelphia Convention

The delegates who met in Philadelphia did not develop a theory (or articulate competing theories) of representation. That was left to the pamphleteers, essayists (particularly Publius), and those who considered the new constitution at state ratifying conventions. Scant attention was paid in Philadelphia to the character of the representative or the nature of representation; indeed, no delegate offered an explicit definition of the process over which there was so much debate (Elliot, 1836, 3: p. 199).

The delegates' foremost concern was the pragmatic task of forging a nation, of building a structure of government that would be acceptable to the large and small states, north and south, to commercial and agricultural concerns and to slaveholding and non-slaveholding interests. The framers were concerned with the mechanics of representation, with its nuts and bolts. The paramount issue -- "everything depended on this" -- was whether representation in the new national legislature was to be equal or proportionate (Madison, 1966, p. 103).

The debates in Philadelphia did anticipate the richer theoretical discourse that was to follow. Thus, certain discussions go beyond mechanics and the immediate exigencies of union to the heart of the nature and function of representation and the role of the representative (Madison, 1966, pp. 99-100, 106-107, 263-264, 609, 655).¹

For a full expression of the role and character of the representative we must look at the written and spoken record following Philadelphia. The New York ratifying convention of June and July 1788 and the preceding pamphlet war produced the most articulate expositions of Federalist and Antifederalist perspectives on representation. Embedded in these debates are such themes as: extensiveness, descriptive representation, virtual and actual representation, constituency influence, federalism, and plebiscitary devices.

Extensiveness

The theoretical backdrop to the Poughkeepsie debates on ratification reflected in the contrasting Federalist and Antifederalist perspectives was the issue of the size of republics. Indeed, the American founding "decisively altered the tradition of republican politics." (Hanson, 1988, p. 166) During the pamphlet war in New York, the Antifederalist essayist Brutus (probably Robert Yates) expressed the basic leitmotif of the Constitution's opponents on the issue of size. Brutus maintained, following Montesquieu, that "it is natural to a republic to have only a small territory, otherwise it cannot long subsist." Brutus argued that in a large, extended country it is "impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people." For the confidence of the people in their rulers "arises from knowing them, from their being responsible to them for their conduct, and from the power they have of

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displacing them when they misbehave.” In a republic, “the manners, sentiments, and interests of the people should be similar.” But the number of members proposed for the national legislature was not “sufficiently numerous to be acquainted with the local condition and wants of the different districts.” (Ketcham, 1986, pp. 275, 277, 278, 279) Thus, at the Poughkeepsie Convention Smith expressed doubts concerning the viability of federal republics, implicitly indicating that true republicanism could be maintained only in smaller units (Elliot, 1836, 2: pp. 224, 228).

The Federalists redefined republicanism; they extolled the large republic (Rossiter, 1961, Nos. 10 and 39). To Madison, a republic has “a government in which the scheme of representation takes place” and he further maintained that it was “essential to such a government that it be derived from the great body of society” and “sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people . . .” (Rossiter, 1961, No. 10: p. 81; No. 39: p. 241). Representation permits extensiveness, which in turn provides the countervailing balance solution to the problem of factions, the ostensible theme of *Federalist 10*.

Furthermore, Publius thinks that representation will afford the republic a better quality of governors than direct democracy. The “delegation of the government” to “a chosen body of citizens” will refine and enlarge public views, thereby filtering out “temporary and partial considerations.” The circumstances afforded by large districts make it less likely that “men of factious tempers, of local prejudices, or of sinister designs” will be chosen (Rossiter, 1961, No. 10: p. 82). Publius viewed representation as a refining process “in which higher faculties (that is, motives and abilities) were sorted out, concentrated, and strengthened.” (Howe, 1988, p. 126) Publius would accomplish through the science of politics and circumstance (that is, large districts in a large republic) the selection of “fit” characters to replace a view of republicanism associated with previous theorists, ancient and modern (including the Antifederalists), who held that the character of a citizenry and its rulers was the central feature of a republic.

The Antifederalists’ rhetorical emphasis on character formation and virtue belied their generally pessimistic view of human nature (Storing, 1981). That they were “men of little faith” (Kenyon, 1955) was very much in evidence during the New York ratification debates. There is precious little in the Poughkeepsie debates on character formation and citizenship participation. The New York ratifying convention concentrated instead on the adequacy of representation of the state’s various orders and classes and on mechanisms to achieve it.

Descriptive Representation

The most notable aspect of the Poughkeepsie Convention debates was the Antifederalist articulation of descriptive representation -- when a representative

body is characterized "by an accurate correspondence or resemblance to what it represents, by reflecting without distortion." (Pitkin, 1967, p. 60) Following this perspective, the legislature should be a "mirror" or "true picture of the people": The various social groupings within a society should be accurately reflected in the representative institutions of the society.

The most forceful expression of descriptive representation in American political thought occurred in Melancton Smith's speeches of June 21, 1788 at Poughkeepsie. Smith maintained that "in order to exercise their power discreetly for the happiness of the people," representatives should be "a true picture of the people, possess a knowledge of their circumstances and their wants, sympathize in all their distresses, and be disposed to seek their true interests." (Elliot, 1836, 2: p. 245) In the rhetoric of the Antifederalists, representation is often portrayed as a substitute for the face-to-face meeting of the people. However, direct participation is not a dominant concern. Rather the object is representation of orders and classes. Thus, the legislature should be an exact miniature of the people, containing spokesmen for all classes, all groups, all interests, all opinion in the community. (In "Letters from a Federal Farmer," the author, believed by some to be Smith, argued that a "full and equal representation of the people in the legislature" was an "essential part" of a "free and good government." Full and equal representation is "that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled." A fair representation entails "that every order of men in the community . . . can have a share in it . . . Professional men, merchants, traders, farmers, mechanics, etc." must be allowed "to bring a just proportion of their best informed men respectively into the legislature." In order for this group representation to take place, "the representation must be considerably numerous" (Ketcham, 1986, pp. 264-265).

Actual vs. Virtual Representation

Representation, for Smith, the Federal Farmer, and those of like mind, was to be "actual." The Antifederalists rejected the assumption that there was a public interest that transcended special or local interests and so they also rejected the concept of "virtual representation." The most celebrated formulation of virtual representation was by Edmund Burke to his Bristol constituents: Parliament was a "*deliberative* assembly of *one* nation, with one interest, that of the whole; where, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole." Virtual representation rested on "a communion of interests and a sympathy of feeling and desires between those who act in the name of any description of people and the people in whose name they act, though the trustees are not actually chosen by them." (Birch, 1971, p. 39; Pitkin, 1969, p. 169) Burke "almost never speaks of an individual's interest, or the interest of a group," says Pitkin (1967, p. 174). However, group interests and

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class divisions were very evident in the debates over ratification, especially in New York.

The fear of domination of the "better sort," the well born, etc. was expressed throughout the debates over the Constitution. The Pennsylvania minority, for example, believed that under the new government "men of the most elevated rank in life, will alone be chosen. The other orders in the society, such as farmers, traders, and mechanics, who all ought to have competent number of their best informed men in the legislature, will be totally unrepresented." (Ketcham, 1986, pp. 235, 248)

The advocacy of actual class representation is perhaps most strikingly expressed in Smith's paean to the yeomanry during the New York debates. Smith and other Antifederalists believed that the "middling" classes would safeguard the republican principles of the new American regime and insure the liberty of the entire community.

Those in middling circumstances have less temptation; they are inclined by habit, and the company with whom they associate, to set bounds to their passions and appetites. If this is not sufficient, the want of means to gratify them will be a restraint: they are obliged to employ their time in their respective callings; hence the substantial yeomanry of the country are more temperate, of better morals, and less ambition, than the great. The latter do not feel for the poor and middling class; the reasons are obvious -- they are not obliged to use the same pains and labor to procure property as the other. They feel not the inconveniences arising from the payment of small sums. (Elliot, 1836, 2: p. 247)

Here are the central Antifederalist themes: the necessity of civic virtue, frugality, the enervation of manners and morals that wealth entails, the association of the sturdy man with a stake in society (but unspoiled by riches) as the proper steward of the public trust and treasury. These ideas had formed the core of republican political thinking for a century.

A similar class analysis is present in pro-Constitution advocates as well. Charles Pinckney at the South Carolina ratification convention offers an encomium to the yeomanry almost equal to that of Smith in New York. Pinckney sees three classes in "the people of the Union": commercial men, professional men, and the mechanical and landed interests. Of men of commerce, Pinckney recommends having nothing to do with their politics and as little as possible with their commerce. Of the professional men, Pinckney states that "from their education and pursuits, [they] must have a considerable influence, while your government retains the republican principle, and its affairs are agitated in the

assemblies of the people.” The mechanical and landed interest -- “the owners and cultivators of the soil” -- are the men “attached to the truest interests of their country from those motives which always bind and secure the affections of the nation.” It is in these men that “consists the great body of the people,” to Pinckney, “and rests, I hope ever will continue, all the authority of the government.” (Elliot, 1836, 4: pp. 321-322)

In modern terms, the analysis offered by Smith, the Pennsylvania minority and Pinckney can be seen as an interest group analysis based on social class. To Smith, “Every society naturally divides itself into classes” (Elliot, 1836, 2: p. 246), and he wants the legislature to reflect this division.

Society was already too fragmented in the large heterogeneous republic to make the idea of the legislature as a mirror of society tenable. What Smith argued for “is not an actual representation of all the different interests or ‘a true picture of the people,’ but an increase in middle class representation.” (Yarbrough, 1979b, p. 86)² The middle class as an interest acts as a balance between rich and poor, as well as serving its own legitimate class interests. Smith’s arguments, if carried to their logical end, would require a proportional representation of group interests built into the electoral process (Yarbrough, 1979b, p. 87). Neither Smith nor other Antifederalists took this next logical step, as later constitution designers and charter writers would do. In Yarbrough’s (1979b, 88) view, “the intellectual heirs of the Antifederalists are the proponents of interest group representation, who stress the reflection of group interest as a means of securing individual rights.”

Hamilton, responding to Smith, presented an outline theory of representation which contrasted sharply with the Antifederalist’s rhetorical espousal of the legislature as a mirror of the populace. Smith’s premise was wrong, Hamilton argued: “the presumption that all the interests of all parts of the community must be represented is unfounded.” No idea, indeed, is “more erroneous than this.” It was Hamilton’s position that when representatives mirror the opinions of their constituents, representative government is likely to suffer the same defects as pure democracy whose “very character was tyranny; their figure, deformity.” (Elliot, 1836, 2: p. 253) In place of reflecting the wishes of the people, the theory of representation in *The Federalist Papers* rested on the *refinement* of public wishes and opinions.

The purpose of representatives, to Publius, is to sift and weigh the wishes of their constituents; representation should do more than approximate pure democracy. A large republic with a small legislature was the instrument which would achieve the refinement of public opinion by passing it “through the medium of a chosen body of citizens.” (Rossiter, 1961, No. 10: p. 82)

Hamilton then proceeded to challenge Smith’s encomium to the yeomanry. After urging his fellow delegates to “[l]ook through the rich and poor of the Community; the learned and the ignorant,” he asked “Where does virtue predominate?” The differences between the wealthy and other classes that

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Hamilton saw lay “not in the quantity, but kind, of vices which are incident to various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the state than those of the indigent and partake less of moral depravity.” (Elliot, 1836, 2: p. 257) To Hamilton the vices of the prosperous are socially useful, but they must be properly channeled.

Perhaps the best exposition of the counter to Smith’s advocacy of descriptive representation is the sociology of representation found in Hamilton’s *Federalist* 35. Hamilton’s legislator is no ordinary man. He is a person who is best able to determine and act for the interests of the community. In his examination of the process of coalition building and representation, Hamilton explains why the merchant is a logical choice to represent the interests of mechanics and manufacturers.

The idea of actual representation of all classes of the people by persons of each class is altogether visionary. Unless it were expressly provided in the Constitution that each different occupation should send one or more members, the thing would never take place in practice. Mechanics and manufacturers will always be inclined, with few exceptions, to give their votes to merchants in preference to persons of their own profession or trades . . . They are sensible that their habits in life have not been such as to give them those acquired endowments, without which in a deliberative assembly the greatest natural abilities are for the most part useless; and that the influence and weight and superior acquirements of merchants render them more equal to a contest with any spirit which might happen to infuse itself into the public councils, unfriendly to the manufacturing and trading interests. (Rossiter, 1961, No. 35: pp. 214-215)

To Hamilton, individuals can be adequately represented if their interests, here chiefly economic, are addressed by the representatives who in all likelihood will be of higher social standing, but still dependent on the electorate for reelection.

But the businessman was not Hamilton’s exemplar of the representative. Rather, it was members of the learned professions, notably lawyers like himself. Such persons would (and should) be chosen, since “they form no distinct interest in society, and according to their situation and talents, will be indiscriminately the objects of the confidence and choice of each other and of other parts of the community.” (Rossiter, 1961, No. 35: p. 215)

Smith’s espousal of descriptive representation drew the ire of Federalists at Poughkeepsie. Robert Livingston castigated Smith for “observ[ing] that ambition is peculiarly the vice of the wealthy. But have not all classes of men,”

including the poor and the ignorant, "their objects of ambition." Livingston asks, if the rich and the wise are not to be the representatives, "Whom then?" His sardonic response: "Why those who are not virtuous, those who are not wise; those who are not learned: these are the men to whom alone we can trust our liberties." Where would Smith find the "other classes" of men that the Antifederalists wanted in the legislature? "Why he must go out into the highways and pick up the rogue and the robber; he must go to the hedges and ditches and bring in the poor, the blind and the lame." (Elliot, 1836, 2: pp. 276-277)

Smith grew irritated during the debates by what he felt were deliberate misstatements of his position by the Federalists. He declared that he did not consider the members of the first class to be "destitute of morality and virtue," nor was he an "enemy of the rich." Rather he maintained that the rich "could not feel sympathetically the wants of the people." Their conditions and circumstance, Smith averred, "exposed them to those temptations which rank and power hold out to view: that they were more luxurious and intemperate, because they had more fully the means of enjoyment; that they were more ambitious, because more in the hope of success." (Elliot, 1836, 2: pp. 260, 280) Smith, like Madison, expected representatives to be "advocates and parties to the causes which they determine." (Rossiter, 1961, No. 10: p. 79) He merely wanted the yeomanry to have sufficient representation to adequately advance their class or group interests.

The Antifederalists' advocacy of descriptive representation relates to the issue of the relationship of the representative to the constituency. Put in classic Burkean formulation, should the representative act on behalf of collective interests of the nation (trustee role) or according to constituency wishes (delegate role)?

Constituency Influence: Trustee v. Delegate

Empirical research on constituency influence has demonstrated that American legislators assume trustee and delegate roles depending on issue salience, areal focus, and competitiveness. Legislators make considerable efforts to develop a "homestyle" so as to convey a sense of "sympathy" (to use the words of the Poughkeepsie debaters) to their constituents (Eulau et al, 1959; Miller and Stokes, 1963; Fenno, 1978). The issue was not broached in such conceptual terms at Poughkeepsie. However, the New York ratification struggle demonstrates that the delegate/trustee dichotomy masks something more fundamental, namely that both sides shared common assumptions which were far different than Burke's in his depiction of the trustee.

American legislators, in the view of Federalists, Antifederalists, and contemporary political scientists, were to represent particular interests. While Antifederalist insistence upon descriptive or actual representation perhaps most readily fits the delegate role where representatives must stay "in synchrony with the distribution of voters' preferences" (Schwartz, 1988, p. 30) and the Federalist

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advocacy of representation as a means of refining public opinion to filter out disruptive passions might be viewed as a trusteeship conception, both perspectives share the assumption of a society of fragmented interests.

Pitkin's (1967, pp. 197, 192) contrast between Burke and Madison applies to the Antifederalists as well.

Unlike the Burkean representative . . . Madison's representative does not know his constituents' interest better than they do themselves; if anything, he is in this respect roughly their equal. His furtherance of their interests is conceived as fairly responsive; and when, in time, an enlarged and rational view prevails, it prevails both in the legislature and in the minds of the people. Politics is not a realm of knowledge and reason for Madison as it is for Burke. It is much more a realm of pressures and opinion. . . A man's interest is what he thinks it is, just as his opinion is what he thinks. . . they are subjective, personal, shifting, unreliable, and usually antagonistic to the real welfare of the nation.

Inherent in both Federalist and Antifederalist conceptions of representation is what Schwartz (1988, p. 131) calls a "transmission belt" theory which "sees society as made up of individuals "distrustful of one another." The Madisonian system relies on a plurality of shifting interests whereas the Antifederalist rhetoric seems to suggest more or less permanent group interests, but both view the legislator instrumentally, that is, he is to represent localized and particular interests as Madison explains in the "parties and advocates" passage in Number 10. To Publius, to Smith, and to their counterparts in other states, the representative is a transmitter of interests. It matters little if this transmission occurs because of the representative's intimate sympathy with the people or through plebiscitary-type devices. The remainder of the Poughkeepsie debate centered on how best to achieve representation of interests in a fragmented community.

Federalism

At the Poughkeepsie debates the Federalists were able to use their articulation of a "new federalism," re-defining the term "federal" from a league of states to the exposition of a compound republic of "a partly national, partly federal" regime.³ They used this new definition to support relatively small national legislative bodies with relatively long durations. The standard Antifederalist refrain that states were better as depositaries to legislate for the people's interest was delivered by Governor Clinton, who played a surprisingly reserved role in the convention proceedings given the unquestioned leadership of the Antifederalists in his state. He contrasted the "acquaintance with the public wants" that

characterized state legislators chosen "from the minute districts of the state" with a Congress that would (because of the size of the districts and the small number of representatives) be "totally unacquainted with all those local circumstances of any particular state." (Elliot, 1836, 2: pp. 261-262) Only small districts could provide the legislator with the intimate knowledge of his constituents' conditions and opinions.

Hamilton, in reply to Clinton and Smith, distinguished between the representation offered in the state legislatures with that to be provided by the new Congress. "The powers of the new government were general and calculated to embrace the aggregate interests of the Union, to the whole." On the other hand, in the state governments "as the laws regard the interests of the people, in all their various minute divisions, it is necessary that the smallest interests should be represented." (Elliot, 1836, 2: p. 265)

Hamilton's was a "layer cake" conception of federalism and he clearly distinguished the sharply differing objects of the general and the state governments. The general government would tend to "[c]ommerce, finance, negotiation and war." The states would retain responsibility for all other governmental functions including the "administration of criminal and civil justice" which for Hamilton was the "great cement of society." The state encompassed a "variety of more minute interests;" state legislators, therefore, would be closer to and "immediately under the observation of the mass of citizens." (Rossiter, 1961, No. 17: pp. 118, 119, 120) Parallel arguments were also made in the Pennsylvania, Massachusetts and North Carolina ratifying conventions.

Plebiscitary Devices

Throughout the ratification process, the Antifederalists advocated a number of plebiscitary-type techniques to keep representatives accountable to the populace. The emphasis on such techniques as small districts, frequent elections, and recall and rotation has earned the Antifederalists a populist or democratic label. American political history demonstrates that these techniques have been utilized by those desiring to foster democratic accountability.

Small Districts. The call for small districts, or numerous representation, appeared in many ratifying conventions and was a prominent theme at Poughkeepsie. Governor Clinton, in Cato's letters, advocated numerous representation to introduce knowledge and sympathy between representatives and constituents. At Poughkeepsie, the debate over representation began when Melancton Smith raised objections to Article I, Section 2, Clause 3.

One of Smith's objections, that the number of House members proposed for the new legislature was inadequate, goes to the heart of the Antifederalist perspective on representation. The central question for Smith was "How was the will of the community to be expressed?" Since it would "not be possible" for the

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people "to come together" because of the multitude would be too great," the "scheme of representation had been adopted, by which the people deputed others to represent them. Individuals entering into society became one body, and that body ought to be animated by one mind. . . . The representative," Smith continued, "should be chosen from small districts." Otherwise, he would not "be possessed of the requisite information to make happy the great number of souls that were spread over this extensive territory." (Elliot, 1836, 2: pp. 227-228)

This belief in small districts (and concomitantly, large representative bodies) was forcefully argued by the minority delegates in Pennsylvania. The House and the Senate were "inadequate because the sense and views of 3 or 4 millions of people diffused over so extensive a territory comprising such various climates, products, habits, interests, and opinions, cannot be collected in so small a body." (Ketcham, 1986, p. 248) The belief that republican government was possible only for a relatively small and homogeneous population was "at the center of the theoretical expression of the Antifederalist opposition." (Kenyon, 1985, p. xxxix)

Hamilton confronted Smith's view that "numerous representation" was necessary to obtain the confidence of the people; instead, the confidence of the people "will easily be gained by a good administration." (Elliot, 1836, 2: p. 254) Hamilton drew upon arguments Madison had previously made. Representation should do more than approximate pure democracy. The representative who is to "refine and enlarge public views" must be elected in a large electoral district (Rossiter, 1961, No. 10: p. 82; Elliot, 1836, 2: pp. 256-257).

The tempering function, Hamilton believed, works best in the large district because "the corruption of the electors is much more difficult; combinations for the purposes of intrigue are less easily formed; factions and cabals are little known. In a small district, wealth will have a more complete influence, because the people in the vicinity of a great man are more immediately his dependants, and because this influence has fewer objects to act upon" (Elliot, 1836, 2: pp. 256-257)

The large district in a nation of heterogeneous interests would be a bulwark against the dominance of any specific interest. It will "encourage the people . . . to elect men who are not spokesmen for any social and economic issue and who possess the impartiality and comprehensiveness of vision to transcend the domain of interest group politics and to pursue particular interests common to the whole." (Yarbrough, 1979c, p. 79) This is the antidote for the unbridled majoritarianism to which small districts and republics, as well as pure democracies, are prone. The majority has the right to rule, but its excesses must be curbed. And if the fragmentation and competition provided by large districts were insufficient, Publius lists other filters and checks, such as indirect election, separation of powers, and checks and balances.

The Antifederalists fretted that the legislature would not only become too

remote because of large districts but also through at-large elections. In order to avert his, Smith attempted to insert an amendment providing that states be required to district instead of using an at-large electoral system. Smith explained that,

As the Constitution stood, the whole state might be a single district for election. This would be improper. The state should be divided into as many districts as it sends representatives. The whole number of representatives might otherwise be taken from a small part of the state, and the bulk of the people, therefore, might not be fully represented. (Elliot, 1836, 2: p. 327)

Frequent Elections. A standard Antifederalist refrain, tied to the remoteness of the legislature, was the need for frequent elections, specifically annual ones. Americans of that period held as a tenet of their political faith that “where annual election ends, slavery begins.” (McDonald, 1985, p. 160) Annual elections were among the chief mechanisms for achieving “actual” representation. Provisions for annual elections had been incorporated into virtually all of the early state constitutions. The biennial elections proposed for the House of Representatives and the six year term for the Senate sparked much controversy in the state ratifying conventions.

Governor Clinton, citing such sources as Sydney and Montesquieu, criticized the proposal of biennial elections to the House as “a sharp departure from the safe democratical principles of annual ones” that lay at the core of republican theory (Ketcham, 1986, p. 319). At Poughkeepsie, Smith also pressed for annual election of representatives, such as was provided for Congress under the Articles of Confederation, in order to bind the representative to constituents. “What more powerful check” on the representative existed, he asked (Elliot, 1836, 2: p. 281). General William Heath at the Massachusetts convention quoted Montesquieu: “The greatness of power must be compensated by the brevity of the duration; most legislators have fixed it to a year; a longer space would be dangerous.” (Elliot, 1836, 2: p. 13)

Fisher Ames countered this view by stating that “annual elections may be highly fit for a state legislature” but imprudent for a national legislature. “Will any man say that national business can be understood in one year?” (Elliot, 1836, 2: p. 10) Ames’ argument was repeated by such supporters of the Constitution as Thomas McKean in Pennsylvania and Archibald Maclaine in North Carolina (Elliot, 1836, 2: pp. 532-533; 4: pp. 28-29; see also *Federalist* 53).

Recall and Rotation. Rotation of executive (and to a lesser extent, legislative) office was a cardinal principle of American republican political thought as reflected by the state constitutions. For example, provisions for rotation of the chief executive had been incorporated in seven of the ten new constitutions drafted in 1776-1787. The Maryland constitution termed rotation “one of the best

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securities of permanent freedom.” (Wood, 1972, p. 140)

The Antifederalists at Poughkeepsie proposed to incorporate what they conceived of as republican checks into the Constitution. The plebiscitary devices that surfaced were those for recall and rotation of legislators. Gilbert Livingston offered an amendment limiting the terms of Senators, “lest that body be perpetual and lose sympathy with the people.”

That no person shall be eligible as a senator for more than six years in any term of twelve years, and that it shall be in the power of the legislatures of the several states to recall their senators, or either of them, and to elect others in their stead, to serve for remainder of the time for which such senator or senators, so recalled, were appointed. (Elliot, 1836, 2: p. 289)

The limited eligibility and provision for recall (later to be identified with populist elements in American history) were defended by the Antifederalists as salutary checks on the abuse of power, but they were more than that. Representatives were obliged “to return, at certain periods to their fellow citizens,” for it was only by “mingling with the people that they may recover that knowledge of their interests, and revive that sympathy with their feelings.” (Elliot, 1836, 2: p. 293)

Smith defended Livingston’s amendment by calling “*rotation* in the government . . . a very important and truly republican institution,” arguing that “it will have a tendency to diffuse a more general spirit of emulation and bring into office the genius and abilities of the continent.” It was dangerous to have only a few men capable of “discharging the duty of a senator.” (Elliot, 1836, 2: pp. 310, 311) Smith argued that many talented and qualified men ought to be encouraged to aspire to that office.

Both Robert Livingston and Hamilton responded to the Antifederalists. Their argument was that the provisions for recall and limited duration would make the Senators too parochially tied to local interests, thus compromising that chamber’s potential contribution to energy and stability in government (Elliot, 1836, 2: pp. 291-293; 300-307). In Hamilton’s words, “Is he [the Senator] simply an agent of the state? No. He is the agent for the Union, and he is bound to perform services necessary to the good of the whole, though his state should condemn them.” (Elliot, 1836, 2: p. 320) Livingston called rotation “an absurd species of ostracism --a mode of proscribing eminent merit, and banishing from stations of trust those who have filled them with the greatest faithfulness.” (Elliot, 1836, 2: p. 293)

The Poughkeepsie Themes in Subsequent American Political Practice

Following extensive debate the Constitution was ratified in New York without condition by a vote of 30 to 27; eleven Antifederalists, led by Smith, joined the nineteen Federalists to secure ratification.⁵ However, the answers presented by Hamilton and Smith and their associates at Poughkeepsie to the questions concerning the proper function of representation and the representative have echoed through American political history. The Antifederalist tradition has been "cast in the role of perpetual opposition in American political history, sometimes in religious form from the Right, and sometimes in secular form from the Left." (Lutz, 1980, p. 171) More generally, Antifederalist thinking has tended to inform the more populist, democratic, and majoritarian elements in the American political tradition as opposed to the refinements, filters and barriers to majority rule advocated in the *Federalist*. The reverberations of the ratification debates can be heard, for example, in the progressive municipal reform movement of the late nineteenth and early twentieth centuries, and in the reapportionment revolution of the last generation.

Municipal Reform. The conflict between progressive municipal reformers and supporters of the machine during the late nineteenth and early twentieth centuries was, at its root, a debate over representation -- both over the method of representation and who should be represented (Hays, 1980, pp. 53-72). The clash has its philosophical explanation in the positions articulated by Hamilton and Smith.

At the end of the last century, machine-controlled American cities had large councils elected by ward. Reformers, in their assault on the machines, successfully advocated smaller councils to weaken the power of the lower and working class neighborhood interests, the cornerstone of the machine. Their arguments can be read as re-statements of the Federalist position at the Founding: a smaller council drawn from larger districts would be more efficient and effective; small councils were also more likely to attract better⁶ candidates and public officials; these officials would be more powerful, independent and effective; finally, small councils were seen as less expensive.

Another key change effected by the municipal reform movement was the at-large election of city legislators. In an at-large system, all councilmembers theoretically have the same constituency: the entire city. The reformers held that if a councilmember had to seek votes from the city as a whole, s/he would take a city-wide perspective on issues and policy decisions. To the reformers the "petty politics of favor-giving and of neighborhood and ethnic advantage" would be eliminated "striking a mortal blow at the machine." The reformers wanted the municipal legislature to be free from the "direct control of spatially ordered interests." (Banfield and Wilson, 1963, pp. 94-95) The small, at-large city council reflects the Federalists' filtering notion.

The reformers were vigorously opposed by locally-based lower and working (and to a large extent middle) class groups who held that neighborhood,

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or geographic, and group interests ought not be sacrificed. Local ward leaders, overwhelmingly drawn from the same classes and communities as their constituents, spoke for their local areas, the economic interests of their inhabitants, their residential concerns, their educational, recreational, and religious interests--those aspects of community life which mattered most to those they represented (Hays, 1980, p. 64). Thus, these proponents of locally based urban politics with their emphasis on large city councils elected from relatively small wards echoed Melancton Smith's conviction favoring "descriptive representation," where the legislators seek to resemble their constituents as closely as possible.

Reapportionment. The clearest current manifestations of the, as yet, unresolved tensions which were revealed at Poughkeepsie are found in the "thicket" of legislative apportionment. Justice Frankfurter, in his dissent from the majority decision in *Baker v. Carr*, recognized that "what is actually asked by the Court in this case is to choose among competing bases of representation... ultimately, really, among competing theories of political philosophy..." (*Baker v. Carr*, 1962, p. 300) *Baker*, together with *Gray v. Sanders* (1963), *Reynolds v. Sims* (1964), and *Wesberry v. Sanders* (1964) have usually been viewed as a victory for the more populist, democratic elements in America (Mansfield, 1968b, pp. 109-110; Rossum, 1981, pp. 426-427).⁷

Until the "apportionment revolution" of the 1960s, American constitutional theory and practice had, as Justice Harlan explained in his dissent in *Reynolds* (1964, p. 622), allowed "a State to give effective consideration" to such criteria as history, economic and other group interests, geography, and sectional balance. Thus, the states were free to experiment and distort in order to ensure representation of interests that might be stifled by strict numerical equality. In the words of the majority in *Wells v. Rockefeller* (1969, p. 546), such schemes permitted "districts with defined interest orientations to be overrepresented at the expense of districts with different interest orientations." The first wave of decisions after *Reynolds* mandated an increasingly more exact numerical equality of districts.

Chief Justice Warren's famous dictum in the *Reynolds* case has historical echoes: "Legislators represent people not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." (1964, p. 562) This position is rooted in the Antifederalist theory of representation, something which is very much a part of contemporary American jurisprudence and practice. The Antifederalists recognized that they were operating in a new world of fragmented and competing interests, however much they articulated a more direct conception of democracy. They recognized that interests were important and were concerned that the yeomanry not be given short shrift.

In coming to terms with the criterion of group interests made explicit in Justice Harlan's dissent in *Reynolds* and implicitly by Melancton Smith two hundred years ago in Poughkeepsie, the Court, in such decisions as *United Jewish*

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Organizations v. Carey (1977), *Brown v. Thomson* (1983), and *Davis v. Bandemer* (1986) has implicitly begun to recognize the legitimacy of group interests. This is a position hinted at by Smith and his cohorts at Poughkeepsie.

There has been a "shift from an individualist theory of the Warren Court to a pluralist group theory of representation" in more recent apportionment cases (Saffell, 1987, p. 16). In *Brown v. Thomas* (1983, p. 846), the Court upheld a districting plan in Wyoming that had population differences as large as 89 percent, noting that "nonpopulation criteria must be considered along with the size of population disparities in determining whether a state legislative apportionment plan contravenes the Equal Protection Clause." While the majority of the Court has explicitly refused to adopt the validity of group representation, a number of decisions by the Court clearly point in that direction. In *Davis v. Bandemer* (1986, p. 167), which held that a political gerrymander in Indiana was justiciable while upholding the state's districting plan, Justice Powell in his dissent recognized the legitimacy of group representation: "The concept of 'representation' necessarily applies to groups: groups of voters elect representatives, individual voters do not." And indeed, the Court recognized "political fairness" as a valid objective in legislative apportionment when it upheld a Connecticut reapportionment plan designed to reflect the relative strength of major political parties (*Gaffney v. Cummings*, 1973, p. 735).

However, it is with respect to race that the Court has been most explicit in its recognition of group rights. In *United Jewish Organizations v. Carey* (1977), the "Court broke new ground." (Saffell, 1987, p. 25) Previously, when ruling on group representation in the apportionment arena, the Court had primarily concerned itself with determining whether there had been invidious discrimination against racial and ethnic groups.⁸ But in the 1977 case the Court ruled that the explicit use of racial criteria by New York State in a 1974 state legislative districting plan in its attempt to comply with Section 5 of the Voting Rights Act did not violate the Fourteenth or Fifteenth Amendment.

At issue was the claim of the Hasidic community in Williamsburg that the value of the Hasidic voter would be diluted by splitting the community into two state senatorial and assembly districts. This was done to augment the nonwhite population in these districts to 65 percent,⁹ so as to enhance the chances of minority representation in the two assembly and senatorial districts. Justice Brennan, in his concurring opinion, maintained that "benign racial classification" was "permissible because it is cast in a remedial context with respect to disadvantaged class rather than a setting that aims to demean or insult any racial group." (*United Jewish Organizations v. Carey*, 1977, pp. 174, 170) And Justice White, writing for the majority, used the concept of virtual representation with respect to white (i.e., Hasidic) voters:

In individual districts where nonwhite majorities were increased

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to approximately 65%, it became more likely, given racial bloc voting, that black candidates would be elected instead of their white opponents, and it became less likely that white voters would be represented by members of their own race; but as long as whites in Kings County, as a group, were provided with fair representation, we cannot conclude that there was a cognizable discrimination against whites or an abridgment of their right to vote on the grounds of race. (*United Jewish Organizations v. Carey*, 1977, p. 166)

Ronald Rogowski (1981, p. 424) pushes White's reasoning to its logical and, from Rogowski's perspective, absurd conclusion:

On this premise, one supposes, blacks in rural Georgia who were denied the vote before 1965 should have been consoled by the thought that 'their kin' could vote in Atlanta, and minority black voters fenced out of effective power elsewhere should have considered themselves mystically 'represented' by those few districts in Detroit and Chicago in which blacks formed the majority. . . . What Burke would have thought of the notion that black construction workers and black bank executives, or white Hassidim and white Irish Catholics, belong to the same interest merely by virtue of their shared coloration, I leave to the amused speculations of others.

While the Court has flirted with group representation or at least compensatory group representation, the effect of the Voting Rights Act of 1965 (amended in 1982) has been to push jurisdictions into creating legislatures that are the Antifederalists' "mirrors" or "true pictures" of the population. The Voting Rights Act not only bans overt barriers to registration, such as literacy and language tests, but also forbids the use of electoral arrangements that "dilute" the votes of members of protected minority groups -- blacks, Latinos, Asians and "language minorities." Although the Act does not endorse proportional representation of groups, interpretations by the Justice Department noted below have moved in that direction. Justice has appeared to operate on the assumption that the law requires a maximum number of "safe" districts for protected groups, premised on a purely descriptive notion of representation -- that blacks, Latinos and other protected minorities are not, and can never be, adequately represented except by members of their own group, a view akin to Smith's brief for the election of the yeomanry.

The Court's acceptance of "benign racial classification" for remedial purposes in *United Jewish Organizations* and the interpretation of Section 5 of the Voting Rights Act by the Justice Department has set a pattern for redistricting

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efforts which attempt to provide for proportional representation of racial and ethnic groups. Recent developments in New York City provide an illustration of this point and the consequences it has for community fragmentation.

The Supreme Court, in *Board of Estimate of the City of New York v Morris* (1989), declared unconstitutional one of New York City's legislative bodies, the Board of Estimate, for violating "one person, one vote." Subsequently, in November 1989, New York City voters approved charter revisions which included expansion of its other legislative body, the City Council, from 35 to 51 members. The goal of expanding the Council was to make it "more representative of the city's multi-racial, multi-ethnic population." The City Charter, echoing the Voting Rights Act and *Reynolds v Sims* (1964), explicitly called for "fair and effective" representation of the various elements of the city's population. To insure that racial, ethnic and language minorities were to be "fairly" represented (that is, close to their proportion of the population), a fifteen member districting commission was selected to irror the city's divisions. It was comprised of four blacks, three Latinos, one Asian, and seven whites; (the city's 1990 population was 25% black, 24% Latino, 7% Asian, and 43% white). The commission was also "balanced" by geography and party.

The districting process which began in July 1990 and was completed more than a year later was rife with racial, ethnic, and political conflict, with groups pitted against each other, jockeying for "safe" districts. The result was a complicated racial gerrymander that was able to command the support of eleven of the fifteen commissioners. However, the plan failed to satisfy the Justice Department which had to "pre-clear" the proposal for the boroughs of Brooklyn, Manhattan and the Bronx. The Department rejected the plan because it did not create enough districts where Latino voters could dictate the outcome.

Assistant Attorney General John R. Dunne, in a letter to the districting commission setting forth his reasons for rejecting the plan, repeatedly said that districting had to afford minority communities "opportunity to elect candidates of their own choice to office." (*New York Times*, 1991b, p. 23) The context of the letter clearly shows that what Dunne meant was that districts were to be drawn so as to ensure that the "choice" of minority voters would be members of their own racial, ethnic, or language group. The obvious premise was that a white candidate would be incapable of truly representing blacks, Latino, or Asian citizens, blacks are incapable of representing non-blacks, and so forth. Elected officials must "mirror" or be a "true picture" in a literal sense of the race of ethnicity of their constituents. What the Justice Department has done in its interpretation of the Voting Rights Act (legitimized by such rulings as *United Jewish Organizations v. Carey*) is to create the conditions for descriptive representation that approximates proportional representation of the city's various ethnic and racial groups without establishing a formal system of proportional representation.

The current New York experience with councilmanic districting under-

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scores Storing's (1981, p. 3) assertion that the founding was a joint product of Federalist and Antifederalist perspectives which have continued to inform the American policy to the present. The ideas articulated by the presumed "losers" in the struggle, the Antifederalists, loom large in contemporary political practice. Antifederalist calls for what is now termed descriptive representation are at the heart of the New York debate. It is particularly ironic that Antifederalist ideas should find their way into contemporary discourse, for they assumed a relatively homogeneous society, quite the contrary of contemporary America.

Following the adoption of the districting commission's plan, New York newspapers headlined: "Where Minorities Rub: It's 'Us' Against 'Them'" (New York Times, 1991c, p. 22); "As Population grows, Hispanic Power Lags" (New York Times, 1991a, p. B4); "Creating New City Council Districts: Minority Concerns v. Incumbency" (New York Times, 1991d, p. B3). The increasingly vocal and divisive "turf war" between blacks and Hispanics and between blacks and white incumbents is not surprising. Students of proportional representation have long noted that "PR, in redressing the majoritarian bias of plurality winner-take-all systems, gives too much power to minority groups (whether partisan, religious, racial/ethnic, and so on), leading to factionalism and instability." (Benjamin and Muzzio, 1988, ch. VIII: pp. 11-12; see also Pitkin, 1967, p. 64).

A core Antifederalist conception, descriptive representation without the concern for character formation and civic education, has been grafted onto an increasingly heterogeneous and fragmented community. The problem of factionalism, which gave rise to the most celebrated statement in American political thought with its images of inflamed passions, conflicts of rival parties, and instability, has appeared in a new guise.

NOTES

1. For example, the dialogue over the term of office for members of the House of Representatives on June 12 and the July 10 debates over the number of representatives in the House, Franklin's observations on June 11, Hamilton's arguments on September 10, and Washington's remarks on the convention's last day.
2. Smith did acknowledge that "a complete representation would make the legislature too numerous." (Elliot, 1836, 2: p. 281)
3. This theme was more fully explicated in Federalist Nos. 39 and 51.
4. The Antifederalist advocacy of rotation finds contemporary manifestation in the recent movement for term limitations. In the 1990 elections, voters in three states (Colorado, California, and Oklahoma) approved referenda for term limitations for state legislators; the Colorado measure applied to federal lawmakers as well, raising the issue of constitutionality (*Congressional Quarterly Weekly Report*, 1990a, pp. 3144-3146; 1990b,

- p. 3798). Critics of these proposals present arguments reminiscent of those advanced by Publius and the Federalist delegates at Poughkeepsie. For example, compare Becker (1990, p. 18) with arguments made in Federalist 53 and 72 on duration and rotation.
5. For details of this struggle see De Pauw (1966).
 6. In the reformers' eyes "better" meant people like themselves.
 7. Paradoxically, as we have seen, the Antifederalists can also be credited with advancing a group theory of representation.
 8. See, for example, *Whitcomb v. Chavis* (1971); *White v. Regester* (1973); *City of Richmond v. US* (1975); *Beer v US* (1976).
 9. Sixty-five percent was a figure that the Justice Department would presumably approve, given minority registration rates in Kings County.

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