

NOTES & COMMENTS

A CRITIQUE OF THE MADISONIAN THEORY OF DEMOCRACY⁺

*Shailendra Vikram Singh**

Attributing all instability, injustice and confusion in democratic society to factionalism, Madison sets forth to offer cures for this malady. He gives his own definition of a faction : a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the Community. It is disputable if a faction can be in majority at any given time; for 'faction' is according to dictionary meaning, 'a group or clique within a larger group, party, government, organization or the like.' It conveys dissent and therefore, a faction has to be in a minority. So it seems redundant to talk of controlling a majority faction, if it cannot exist.

But even if we grant Madison, in keeping with his definition that a majority faction can exist, it seems so futile to control it even if it is capable of control, at all. If there is a majority faction, it denotes the will or the spirit of the people - the *VOLKSGEIST*, as Von Savigny would have called it—and it should be the criteria for social and legal conduct and as such should not be curbed. How can it be adverse to the rights of other citizens or to the permanent and aggregate interests of the community? How could that majority faction have come to power if their ways were detrimental to general interest? If most people want a thing how can it be tyrannical or oppressive or bad? What is the definition of good and bad? Is it not a relative principle? It cannot be absolute. If the majority want to pursue a particular line of action, they have every right to do so and the minority is under a duty to toe themselves or fall in line, with them. That is an essential principle of democracy or majority rule.

Madison believes that the principle of Republicanism takes care of the minority faction but to control the majority faction, he prefers a Republican Representation to a Pure Democracy. How will transforming a pure democracy into republican representation improve matters? If 90 people out of 100 (in a pure democracy) can be tyrannical, what is the guarantee that 9000 people out of 10,000 (in a republican representation) shall not be tyrannical? The ratio, percentage and probability remains the same. By increasing the number, it is not clear, how he fancies to control majority tyranny for the process of

representation *viz.* election remains the same in both the cases.

Reliance on numbers and more territory, is placed due to two reasons : firstly, there can be no concert and secondly, factionalism cannot spread from one area to others, so easily. Both these Madisonian reasons have become irrelevant now, in view of the great scientific and technological progress, for communication is no problem, now. So it will serve no purpose to increase numbers except as he himself admits, the electorate shall be too little acquainted with the representatives and this will cause confusion.

According to Madison, the most common and durable source of factions is the 'various and unequal distribution of property'. He surprisingly does not attempt to suggest any treatment for this disease. If this inequality and variance in relation to rights of property can be tackled, may be, we can get rid of the major source of factionalism. It is not to be suggested that a communistic pattern of society without any rights to acquire property, shall be advisable, to do away with the malady of factions. But it is certainly possible to regulate laws relating to property (without affecting any other liberties or freedoms) so as to bridge the gap between the variance and inequality in regard to property and thence curb factionalism. It is submitted that such a Republic can and does exist.

It is very ambiguous that Madison believes that frequent popular elections shall not check tyranny. Why not? The advocacy for separation of powers of the executive, legislative and judicial organs which he puts forth for avoiding tyranny is not being disputed. But time and again, history has shown that in a republican nation popular elections are the biggest external check on tyranny. The ouster of the Congress regime in India, through the medium of popular general election in 1977, when it was acting arbitrarily and despotically, more than proves the point. So in a democracy, the decisive significance and value of elections cannot be denied or underrated.

Then Madison did not take into account another way of curbing factionalism, that is through judicial review. Of course, there is a possibility that the tyrannical majority faction may take away the power of reviewing its legislative actions from the judiciary, but then, it is a factual question depending on the Constitution, its rigidity, its process of amendment and its basic structure. But if the majority faction is so corrupt and arbitrary, the people also would not mind their tyranny, for although it may sound a little cynical, but they are there through their approval and have no ground to complain.

Lastly, Madison has been rightly criticized by Diamond for ignoring the value of virtue, from his entire thesis. Why should he start on the premise that people will be self-servingly ambitious or shall have selfishly interfering interests? He has been even charged with magnifying and multiplying, 'the

selfish, the interested, the narrow, the vulgar and the crassly economic' interests in society. However, the concept of virtues or 'better motives' or 'finer values' and 'higher sentiments' is conspicuous by its absence, in his scheme of things. In older days, it was not too remote or unusual to find even Kings and Emperors who were very benevolent, sacrificing and did things for the betterment of their governed, unselfishly. This element of compassion, kindness and moral values should not be completely divorced from a democratic theory, for it is human to have these traits too, side by side, with the disease of factionalism.

NOTES AND REFERENCES

- * Reader, Faculty of Law, University of Lucknow, Lucknow.
- + The author owes this paper to his stay at the Yale Law School as a Visiting Scholar where he audited Prof. Bruce A. Ackerman's Course on Constitutional Theory. The article revolves around the Central Theme of Madisonian Theory of Democracy with reference to the American State and the U.S. Constitution.
- 1. Madison, FEDERALIST 10.
- 2. Martin Diamond, ETHICS AND POLITICS : THE AMERICAN WAY (THE MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC).
- 3. Madison, FEDERALIST 51.
- 4. Gordon S. Wood, THE CREATION OF THE AMERICAN REPUBLIC 1776-1787.
- 5. Bruce A. Ackerman, PRIVATE PROPERTY AND THE CONSTITUTION.
- 6. Robert A. Dahl, A PREFACE TO DEMOCRATIC THEORY.
- 7. Alexander M. Bickel, THE LEAST DANGEROUS BRANCH, THE SUPREME COURT AT THE BAR OF POLITICS.
- 8. David R. Mayhew, CONGRESS : THE ELECTORAL CONNECTION.