

Yet Madison's theory, again,⁵⁶³ presupposed the existence of a body politic possessed of civic virtue. It is the personal ambition only of officeholders *who are chosen by a virtuous electorate* that can be expected to translate into institutional ambition. It is legislators *so chosen*, Madison believed, who could be counted upon to resist encroachments on, say, Congress's power to approve war or treaties because a diminution of Congress's power implied a diminution of their own individual power. Absent a virtuous electorate, personal ambition and institutional ambition no longer are coextensive. Members' principal ambition⁵⁶⁴ then becomes political survival, which means accepting, not resisting, Trumanite encroachments on congressional power. The Trumanites' principal ambition, meanwhile, remains the same: to broaden their ever-insufficient "flexibility" to deal with unforeseen threats—that is, to enhance their own power. The net effect is imbalance, not balance.

This imbalance has suffused the development of U.S. counter-terrorism policy. Trumanites express concerns about convergence, about potentially dangerous link-ups among narco-terrorists, cyber-criminals, human traffickers, weapons traders, and hostile governments.⁵⁶⁵ Yet their concerns focus largely, if not entirely, on only one side of Madison's ledger—the government's need to protect the people from threats—and little, if at all, on the other side: the need to protect the people from the government. As a result, the discourse, dominated as it is by the Trumanites, emphasizes potential threats and deemphasizes tradeoffs that must be accepted to meet those threats. The Madisonians themselves are not troubled about new linkages forged among the newly-created components of military, intelligence, homeland security, and law enforcement agencies—linkages that together threaten civil liberties and personal freedom in ways never before seen in the United States. The earlier "stovepiping" of those agencies was seen as contributing to the unpreparedness that led to the September 11 attacks,⁵⁶⁶ and after the wearying creation of the Department of Homeland

⁵⁶³ See *supra* text at notes 346–49.

⁵⁶⁴ Ambitions may shift slightly as seniority increases; more senior members of Congress who have risen in seniority to chair a committee may be able to curry favor with the Executive in the hopes of securing high-level appointment.

⁵⁶⁵ James Stavridis, *The Dark Side of Globalization*, WASH. POST, May 31, 2013, http://www.washingtonpost.com/opinions/how-terrorists-can-exploit-globalization/2013/05/31/a91b8f64-c93a-11e2-9245-773c0123c027_story.html, [<http://perma.cc/HL4G-XMXT>].

⁵⁶⁶ 9/11 COMMISSION REPORT, *supra* note 173, at 403, 418.

Security and related reorganizations, the Madisonians have little stomach for re-drawing box charts yet again. And so the cogs of the national security apparatus continue to tighten while the scaffolding of the Madisonian institutions continues to erode.

It is no answer to insist that, whatever the system's faults, the Madisonian accountability mechanisms have at least generated a political consensus.⁵⁶⁷ Even if consensus exists among the Madisonians themselves, the existence of a public consensus on national security policy is at best doubtful.⁵⁶⁸ Further, if the application of Bagehot's theory to U.S. national security policy is correct, whatever consensus does exist at the political level is synthetic in that it derives not from contestation among the three branches of the federal government but from efforts of the Madisonian institutions to remain in sync with the Trumanite network. That network is the moving force behind any consensus. It has forged the policies that the consensus supports; it has orchestrated Madisonian support. Finally, even if real, the existence of a Madisonian/Trumanite consensus says nothing about the *content* of the consensus—nothing about whether Madison's second great goal of protecting the people from the government has been vindicated or defeated. Autocracy can be consensus-based. The notion of a benign modern-day consensus on national security policy is, indeed, reminiscent of the observation of Richard Betts and Leslie Gelb who, reviewing agreements that emerged from national security deliberations during the Johnson Administration, concluded that “the system worked.”⁵⁶⁹ Well, perhaps; the result was Vietnam.

The second difficulty with legal and public-opinion based checks on the Trumanite network is the assumption in Madison's theory that the

⁵⁶⁷ For the argument that the United States' “harmonious system” has produced a “general consensus” that would have made “the father of the Constitution . . . smile,” see GOLDSMITH, *supra* note 38, at 210, 243.

⁵⁶⁸ Pew Center polling in July 2013 indicated that the public is split over the wisdom of U.S. counterterrorism policies. “Nearly half of Americans (47%) say their greater concern about government anti-terrorism policies is that they have gone too far in restricting the average person's civil liberties; 35% say their greater concern is that they have not gone far enough to adequately protect the country.” *Few See Adequate Limits on NSA Surveillance Program*, PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS (July 31, 2013), <http://www.people-press.org/2013/07/26/few-see-adequate-limits-on-nsa-surveillance-program/>, [<http://perma.cc/8RUA-H55L>].

⁵⁶⁹ LESLIE GELB & RICHARD BETTS, *THE IRONY OF VIETNAM: THE SYSTEM WORKED* (1979).

three competing branches act independently. “[I]t is evident that each department should have a will of its own,” says *The Federalist*.⁵⁷⁰ This is achieved by ensuring that each is “so constituted that the members of each should have as little agency as possible in the appointment of the members of the others.”⁵⁷¹ Different policy preferences will obtain because the three Madisonian branches will act upon different motives. But when it counts, the branches do not. Each branch has the same ultimate incentive: to bring its public posture into sync with the private posture of the Trumanites.⁵⁷² The net effect is “balance,” after a fashion, in the sense that the end result is outward harmony of a sort easily mistaken for Madisonian-induced equipoise. But the balance is not an equilibrium that results from competition for power among three branches struggling “for the privilege of conducting American foreign policy,” as Edward S. Corwin memorably put it.⁵⁷³ The “system” that produces this ersatz consensus is a symbiotic tripartite co-dependence in which the three Madisonian branches fall over themselves to keep up with the Trumanites. The ostensible balance is artificial; it reflects a juridical legerdemain created and nurtured by the Trumanite network, which shares, defends, and begins with the same static assumptions. Bagehot relates the confidential advice of Lord Melbourne to the English Cabinet: “It is not much matter which we say, but mind, we must all say *the same*.”⁵⁷⁴ The Madisonian institutions and the Trumanite network honor the same counsel.

There is a third, more fundamental, more worrisome reason why the Madisonian institutions have been eclipsed, as noted earlier in this Article.⁵⁷⁵ It is the same reason that repairs of the sort enumerated above likely will not endure. And it is not a reason that can be entirely laid at the feet of the Trumanites. It is a reason that goes to the heartbeat of democratic institutions. The reason is that Madisonian institutions rest upon a

⁵⁷⁰ THE FEDERALIST NO. 51 (James Madison).

⁵⁷¹ *Id.*

⁵⁷² “Obama, like all presidents, wanted harmony. If there was anything other than that, it would get out that there had been a knockdown, drag-out fight in the Situation Room and the president would look like he had lost control of his team.” WOODWARD, *supra* note 150, at 289.

⁵⁷³ EDWARD S. CORWIN, THE PRESIDENT 1787–1984, at 201 (Randall Bland et al. eds., 5th ed. 1984).

⁵⁷⁴ Bagehot, *supra* note 40, at 68 n.1.

⁵⁷⁵ See *supra* text at notes 57–79.

foundation that has proven unreliable: a general public possessed of civic virtue.

Civic virtue, in Madison's view, required acting for the public interest rather than one's private interest.⁵⁷⁶ Madison, realist that he was, recognized that deal-making and self-interest would permeate government; this could be kept in check *in part* by clever institutional design, with "ambition . . . to counteract ambition"⁵⁷⁷ among governmental actors to maintain a power equilibrium. But no such institutional backup is available if the general public itself lacks civic virtue—meaning the capacity to participate intelligently in self-government and to elect officials who are themselves virtuous.⁵⁷⁸ Indeed, civic virtue is thus even more important,⁵⁷⁹ Madison believed, for the public at large than for public officials; institutional checks are necessary but not sufficient. Ultimately, the most important check on public officials is, as Madison put it, "virtue and intelligence in the community"⁵⁸⁰ Institutional constraints are necessary but not sufficient for the survival of liberty, Madison believed; they cannot be relied upon absent a body politic possessed of civic virtue.⁵⁸¹

Madison was not alone in this belief, though other leading political theorists have since put it differently. Minimal levels of economic well-being, education, and political intelligence,⁵⁸² Bagehot believed, are

⁵⁷⁶ THE FEDERALIST No. 51 (James Madison).

⁵⁷⁷ *Id.*

⁵⁷⁸ THE FEDERALIST No. 55 (James Madison).

⁵⁷⁹ See THE FEDERALIST NO. 55 (James Madison); Cass Sunstein, *Beyond the Republican Revival* 97 YALE L. J. 1539, 1561 (1988).

⁵⁸⁰ Madison's view was laid out in remarks to the Virginia Ratifying Convention:

I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks, no form of government, can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men; so that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.

J. ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION VOL. III 536–37 (1836).

⁵⁸¹ THE FEDERALIST No. 55 (James Madison).

⁵⁸² BAGEHOT, *supra* note 40, at 245.

essential conditions for the universal franchise and “ultra-democracy,” as he called it, that has come to exist in the United States.⁵⁸³ Lord Bryce observed that “[t]he student of institutions as well as the lawyer is apt to overrate the effect of mechanical contrivances in politics.”⁵⁸⁴ The various repairs that have been proposed—and, ultimately, the very Madisonian institutions themselves—are in the end mechanical contrivances. Whatever their elegance, these “parchment barriers,” as Madison described laws that stand alone,⁵⁸⁵ cannot compensate for a want of civic virtue. Bagehot concurred: “No polity can get out of a nation more than there is in the nation” “[W]e must first improve the English nation,” he believed, if we expect to improve Parliament’s handiwork.⁵⁸⁶ This insight was widely shared among 19th-century English constitutionalists. John Stuart Mill (whose work on the English Constitution was published shortly before Bagehot’s) shared Bagehot’s and Bryce’s doubts about the ultimate impotence of free-standing legal rules. “In politics as in mechanics,” Mill wrote, “the power which is to keep the engine going must be sought for outside the machinery; and if it is not forthcoming, or is insufficient to surmount the obstacles which may reasonably be expected, the confidence will fail.”⁵⁸⁷

The force of these insights was not lost on prominent American jurists. Learned Hand wrote that “[l]iberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.”⁵⁸⁸ A virtuous electorate, on the other hand, would in Bagehot’s view be governed well whatever the structure of its constitution.⁵⁸⁹ But the tendency in modern societies, Bagehot believed, was “to raise the average and to lower—comparatively, and perhaps absolutely to lower—the summit”⁵⁹⁰—a

⁵⁸³ *Id.* at 215.

⁵⁸⁴ VISCOUNT JAMES BRYCE, *THE AMERICAN COMMONWEALTH* VOL. 1 357 (The MacMillan & Co. 1912) (1893).

⁵⁸⁵ *THE FEDERALIST* No. 48 (James Madison).

⁵⁸⁶ BAGEHOT, *supra* note 40, at 113, 142.

⁵⁸⁷ JOHN STUART MILL, *REPRESENTATIVE GOVERNMENT* 212–13 (1861).

⁵⁸⁸ LEARNED HAND, *THE SPIRIT OF LIBERTY* 190 (Irving Dilliard ed., 3d ed. 1960).

⁵⁸⁹ Bagehot was particularly taken with America’s New England states in this regard. “[I]f they were a separate community,” he wrote, they “would have an education, a political capacity and an intelligence such as the numerical majority of no people, equally numerous, ever possessed.” BAGEHOT, *supra* note 40, at 245. “[T]he men of Massachusetts could, I believe, work *any* Constitution.” *Id.* at 220.

⁵⁹⁰ *Id.* at 124.

forecast ominously elaborated sixty years later by Jose Ortega y Gasset in *The Revolt of the Masses*.⁵⁹¹

B. Government Cultivation of Civic Virtue

In light of these realities, should the United States, as a matter of governmental policy, actively cultivate civic virtue of the sort that permits a robust, single institutional structure of government?

It is barely possible to touch upon the main themes in this recurring debate, but the question does bear directly upon the amenability of double government to reform. The case for inculcating at least some elements of civic virtue—for attempting to foster, in Robert Dahl’s term, the “adequate citizen”⁵⁹²—is an argument from principles of civic republicanism, from the notion that individual fulfillment depends upon liberty, liberty upon self-government, and self-government upon collective deliberation concerning the common good.⁵⁹³ On this view, effective deliberation—participation in the public sphere—requires civic virtue. Civic virtue gives citizens the *capacity* to participate. One of government’s responsibilities is to help them acquire that capacity. Individuals cannot fully develop absent a supportive public sphere. Participation in self-government, and the exercise of judgment, discernment, and the responsibility that active participation entails, is not only a means to the good life but also an end in itself, an indispensable part of human social interaction and self-expression that promotes feelings of community and empathy. The net result is a public sphere in which the individual thrives.

However much republican⁵⁹⁴ principles may actually have influenced the Framers—a question on which scholarly opinion is

⁵⁹¹ JOSE ORTEGA Y GASSET, *THE REVOLT OF THE MASSES* (1932); see Michael Walzer, *Civility and Civic Virtue in Contemporary America*, 41 *SOCIAL RESEARCH* 593 (1974).

⁵⁹² Robert Dahl, *Participation and the Problem of Civic Understanding*, in *RIGHTS AND THE COMMON GOOD: A COMMUNITARIAN PERSPECTIVE* 261 (Amitai Entzoni ed., 1995).

⁵⁹³ See generally ANDREW PETERSON, *CIVIC REPUBLICANISM AND CIVIC EDUCATION: THE EDUCATION OF CITIZENS* (2011); MICHAEL SANDEL, *DEMOCRACY’S DISCONTENT* (1996); J.G.A. POCOCK, *THE MACHIAVELLIAN MOMENT* (1975); GORDON WOOD, *THE CREATION OF THE AMERICAN CONSTITUTION 1776–1787*, at 46–90, 430–67 (1969); BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967).

⁵⁹⁴ The terms “liberal” and “republican” are used here in the classic philosophical sense, not the contemporary political sense.

divided⁵⁹⁵—there can be little doubt that in the years following the Constitution’s adoption, a competing liberal tradition has dominated American political thought. Though not all strands of liberalism and republicanism are incompatible, core principles of each are hard to reconcile. Liberalism places few demands on citizens.⁵⁹⁶ It suggests that government ought to take no position on what constitutes the good life. It sees individuals as free and independent, capable of deciding for themselves what ends to seek. No reason exists, liberals argue, to think that government knows better than the individual what character, disposition, or habits of mind are preferable. Government’s role is to respect people’s right to choose their own ends, not to interfere with their choices; unfettered individual development and fulfillment requires not governmental meddling but governmental neutrality. People acting in their own self-interest will create an aggregate order that maximizes individual satisfaction and creates a political equilibrium that is self-correcting.⁵⁹⁷ Governmental interference—governmental preference-shaping—would open the door to tyranny. No minimal knowledge of government or public affairs is required to vote; indeed, voting itself and all other forms of political participation are optional.

Liberalism’s conflicting commands, however, create a paradox for those interested in diffusing concentrated Trumanite power. On the one hand, the liberal tradition counsels alarm at the rise of unaccountable power—yet on the other hand, liberal principles also counsel alarm at the image of government propagandizing citizens to adopt *the government’s* ideas about what constitutes good government. The same liberalism that recoils at the specter of undifferentiated mass surveillance also breeds fear and loathing of local school boards and state textbook review committees spelling out a politically correct answer to what constitutes virtuous participation in accountable governance. Can the threat of concentrated governmental power be repulsed by further concentrating governmental power to address that threat? It is one thing to recognize the essentiality of

⁵⁹⁵ See Cass Sunstein, *Beyond the Republican Revival*, 97 YALE L. J. 1539, 1566 (1988).

⁵⁹⁶ See generally MICHAEL SANDEL, *LIBERALISM AND ITS CRITICS* (1984); Isaac Kramnick, *Republican Revisionism Revisited*, 87 AM. HIST. REV. 629 (1982).

⁵⁹⁷ For the classic statement of this view, see BERNARD MANDEVILLE, *THE FABLE OF THE BEES: OR, PRIVATE VICES, PUBLIC BENEFITS* (1714).

civic virtue but quite another to believe that government is responsible for sustaining it.

Moreover, as a practical matter, it would be difficult to overcome voter ignorance that is in important respects entirely rational. Consider more closely three of the prerequisites for intelligent participation in governance: minimal intellectual acumen, sound judgment concerning policy alternatives, and an adequate informational base. The first two elements are in many respects already widely present. The fact is that “Joe Six-Pack” is neither unintelligent nor irrational. No one familiar with the rules of American football—surely among the most complicated sports in the world—can doubt the raw intelligence of anyone able to weigh the pros and cons of the nickel defense. Its moral dimensions notwithstanding, the decision whether to run a play-action fake on third-and-two is not a *conceptually* more difficult question than the decision whether to strike a high-value target located in a car in Yemen with four unidentified companions. Different types of research obviously are required, but neither matter is beyond the intellectual grasp of a person of common intelligence. The moral implications are also, of course, different, but what reason is there to believe that the Trumanites have any greater moral expertise than the average voter? It is often said that the public lacks access to the requisite information. The reality, however, is that all the material needed to make an informed judgment on the wisdom of drone strikes as a general policy—as well as 95% of the other issues the Trumanites confront—is readily available to anyone who can access the internet. One reason that the public does not do so is that, given competing demands on its time, there is no obvious reason to become more informed. National security policy remains the same from one president to the next, whomever one votes for, and even in the most politically accountable of worlds, the public still would necessarily be excluded from sensitive national security deliberations. Why waste time learning about things one cannot affect?⁵⁹⁸ A single vote, in any event, has an infinitesimally small chance of determining the outcome of an election.

⁵⁹⁸ See generally SOMIN, *supra* note 80, at 20; Ilya Somin, *When Ignorance Isn't Bliss: How Political Ignorance Threatens Democracy* 525 POL'Y ANALYSIS (2004).

American voters may not have read Voltaire, but they know that there are gardens to be tended.⁵⁹⁹ Theirs is, in key respects, rational ignorance.⁶⁰⁰

This is the nub of the negative feedback loop in which the United States is now locked. Resuscitating the Madisonian institutions requires an informed, engaged electorate, but voters have little reason to be informed or engaged if their efforts are for naught—and as they become more uninformed and unengaged, they have all the more reason to continue on that path. The Madisonian institutions thus continue to atrophy, the power of the Trumanite network continues to grow, and the public continues to disengage.

VI. Conclusion

U.S. national security policy has scarcely changed from the Bush to the Obama Administration. The theory of Walter Bagehot explains why. Bagehot described the emergence in 19th-century Britain of a “disguised republic” consisting of officials who actually exercised governmental power but remained unnoticed by the public, which continued to believe that visible, formal institutions exercised legal authority.⁶⁰¹ Dual institutions of governance, one public and the other concealed, were referred to by Bagehot as “double government.”⁶⁰² A similar process of bifurcated institutional evolution has occurred in the United States, but in reverse: a network has emerged within the federal government that exercises predominant power with respect to national security matters. It has evolved in response to structural incentives rather than invidious intent, and it consists of the several hundred executive officials who manage the military, intelligence, diplomatic, and law enforcement agencies responsible for protecting the nation’s security. These officials are as little disposed to stake out new policies as they are to abandon old ones. They define security more in military and intelligence terms rather than in political or diplomatic ones.

⁵⁹⁹ VOLTAIRE, *CANDIDE, OR OPTIMISM* (Burton Raffel trans., Yale Univ. Press 2005) (1759).

⁶⁰⁰ For one of the earliest discussions, see ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957).

⁶⁰¹ BAGEHOT, *supra* note 40, at 262.

⁶⁰² *Id.* at 263.

Enough examples exist to persuade the public that the network is subject to judicial, legislative, and executive constraints. This appearance is important to its operation, for the network derives legitimacy from the ostensible authority of the public, constitutional branches of the government. The appearance of accountability is, however, largely an illusion fostered by those institutions' pedigree, ritual, intelligibility, mystery, and superficial harmony with the network's ambitions. The courts, Congress, and even the presidency in reality impose little constraint. Judicial review is negligible; congressional oversight dysfunctional; and presidential control nominal. Past efforts to revive these institutions have thus fallen flat. Future reform efforts are no more likely to succeed, relying as they must upon those same institutions to restore power to themselves by exercising the very power that they lack. External constraints—public opinion and the press—are insufficient to check it. Both are manipulable, and their vitality depends heavily upon the vigor of constitutionally established institutions, which would not have withered had those external constraints had real force. Nor is it likely that any such constraints can be restored through governmental efforts to inculcate greater civic virtue, which would ultimately concentrate power even further. Institutional restoration can come only from an energized body politic. The prevailing incentive structure, however, encourages the public to become less, not more, informed and engaged.

To many, inculcated in the hagiography of Madisonian checks and balances and oblivious of the reach of Trumanite power, the response to these realizations will be denial. The image of a double national security government will be shocking. It cannot be right. It sounds of conspiracy, “a state within,” and other variations on that theme. “The old notion that our Government is an extrinsic agency,” Bagehot wrote, “still rules our imaginations.”⁶⁰³ That the Trumanite network could have emerged in full public view and without invidious intent makes its presence all the more implausible. Its existence challenges all we have been taught.

There is, however, little room for shock. The pillars of America's double government have long stood in plain view for all to see. We *have* learned about significant aspects of what Bagehot described—from some eminent thinkers. Max Weber's work on bureaucracies showed that, left

⁶⁰³ *Id.* at 263.

unchecked, the inexorability of bureaucratization can lead to a “polar night of icy darkness” in which humanitarian values are sacrificed for abstract organizational ends.⁶⁰⁴ Friedrich Hayek’s work on political organization led him to conclude that “the greatest danger to liberty today comes from the men who are most needed and most powerful in government, namely, the efficient expert administrators exclusively concerned with what they regard as the public good.”⁶⁰⁵ Eric Fromm’s work on social psychology showed how people unconsciously adopt societal norms as their own to avoid anxiety-producing choices, so as to “escape from freedom.”⁶⁰⁶ Irving Janis’s work on group dynamics showed that the greater a group’s *esprit de corps*, “the greater the danger that independent critical thinking will be replaced by groupthink, which is likely to result in irrational and dehumanizing actions directed against out-groups.”⁶⁰⁷ Michael Reisman’s work on jurisprudence has shown how de facto operational codes can quietly arise behind publicly-embraced myth systems, allowing for governmental conduct that is not approved openly by the law.⁶⁰⁸ Mills’ 1956 work on power elites showed that the centralization of authority among officials who hold a common world view and operate in secrecy can produce a “military metaphysic” directed at maintaining a “permanent war economy.”⁶⁰⁹ One person familiar with Mills’ work was political scientist Malcolm Moos, the presidential speechwriter who five years later wrote President Eisenhower’s prophetic warning.⁶¹⁰ “In the councils of government,” Eisenhower said, “we must guard against the acquisition of unwarranted influence, whether sought or

⁶⁰⁴ Max Weber, *Politics as a Vocation*, in FROM MAX WEBER, *ESSAYS IN SOCIOLOGY* 77, 128 (Hans Gerth & Charles Mills eds. & trans., Galaxy Books 2009).

⁶⁰⁵ FRIEDRICH A. HAYEK, *THE CONSTITUTION OF LIBERTY* 262 (1960).

⁶⁰⁶ ERIC FROMM, *ESCAPE FROM FREEDOM* viii, 185–86, 206 (1941).

⁶⁰⁷ IRVING L. JANIS, *GROUPTHINK* 13 (2d ed. 1982).

⁶⁰⁸ See generally Michael Reisman, *Representation and Power in International Organization: The Operational Constitution and Its Critics*, 103 AM. J. INT’L L. 209 (2009).

⁶⁰⁹ MILLS, *supra* note 139, at 215, 223.

⁶¹⁰ Moos was Eisenhower’s Chief Speechwriter. See, e.g., Walter Pincus, *Eisenhower’s Farewell Speech Has Wise Words on Split Government and Militarism*, WASH. POST, Dec. 13, 2013, <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/13/AR2010121304986.html>, [<http://perma.law.harvard.edu/0KgZdfMLYLG>].

unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.”⁶¹¹

Bagehot anticipated these risks. Bureaucracy, he wrote, is “the most unimproving and shallow form of government,”⁶¹² and the executive that commands it “the most dangerous.”⁶¹³ “If it is left to itself,” he observed, “without a mixture of special and non-special minds,” decisional authority “will become technical, self-absorbed, self-multiplying.”⁶¹⁴ The net result is responsibility that is neither fixed nor ascertainable but diffused and hidden,⁶¹⁵ with implications that are beyond historical dispute. “The most disastrous decisions in the twentieth century,” in Robert Dahl’s words, “turned out to be those made by authoritarian leaders freed from democratic restraints.”⁶¹⁶

The benefits derived by the United States from double government—enhanced technical expertise, institutional memory and experience, quick-footedness, opaqueness in confronting adversaries, policy stability, and insulation from popular political oscillation and decisional idiosyncrasy—need hardly be recounted. Those benefits, however, have not been cost-free. The price lies in well-known risks flowing from centralized power, unaccountability, and the short-circuiting of power equilibria. Indeed, in this regard the Framers thought less in terms of risk than certainty. John Adams spoke for many: “The nation which will not adopt an equilibrium of power must adopt a despotism. There is no other alternative.”⁶¹⁷

The trivial risk of sudden despotism, of an abrupt turn to a police state or dictatorship installed with coup-like surprise, has created a false

⁶¹¹ President Dwight D. Eisenhower, Farewell Address (Jan. 17, 1961), *available at* <http://www.ourdocuments.gov/doc.php?flash=true&doc=90&page=transcript>, [<http://perma.law.harvard.edu/ORBcuRkpTny>]. “Eisenhower had been in the military long enough to become deeply suspicious of how it sought to manipulate his decisions. Obama discovered the same thing, six decades later . . .” SANGER, *supra* note 23, at 420. Mark Mazzetti has described the transformation of the military-industrial complex into a “military-intelligence complex.” MAZZETTI, *supra* note 22, at 5.

⁶¹² Bagehot, *supra* note 40, at 196.

⁶¹³ *Id.* at 135.

⁶¹⁴ *Id.* at 190.

⁶¹⁵ See ANDREW J. BACEVICH, WASHINGTON RULES: AMERICAS’ PATH TO PERMANENT WAR 29 (2010).

⁶¹⁶ ROBERT A. DAHL, ON DEMOCRACY 186 (1998).

⁶¹⁷ JOHN ADAMS, THE POLITICAL WRITINGS OF JOHN ADAMS 361 (George W. Carey ed., 2000).

sense of security in the United States.⁶¹⁸ That a strongman of the sort easily visible in history could suddenly burst forth is not a real risk. The risk, rather, is the risk of slowly tightening centralized power, growing and evolving organically beyond public view, increasingly unresponsive to Madisonian checks and balances. Madison wrote, “There are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.”⁶¹⁹ Recent history bears out his insight. Dahl has pointed out that in the 20th century—the century of democracy’s great triumph—some seventy democracies collapsed and quietly gave way to authoritarian regimes.⁶²⁰ That risk correlates with voter ignorance; the term *Orwellian* has little meaning to a people who have never known anything different, who have scant knowledge of history, civics, or public affairs, and who in any event have likely never heard of George Orwell. “If a nation expects to be ignorant and free, in a state of civilization,” Thomas Jefferson wrote, “it expects what never was and never will be.”⁶²¹ What form of government ultimately will emerge from the United States’ experiment with double government is uncertain. The risk is considerable, however, that it will not be a democracy.

⁶¹⁸ Max Boot, responding to concerns generated by the NSA surveillance leaks, has written that “[a]lmost all dictatorships throughout history have arisen when a strongman has seized power by force from a weak and illegitimate regime.” Max Boot, *What the Snowden Acolytes Won't Tell You*, WALL ST. J., July 2, 2013, <http://online.wsj.com/article/SB10001424127887324436104578579150065765928.html>, [<http://perma.cc/0bAMpZrxNCp>].

⁶¹⁹ James Madison, Address at the Virginia Convention to Ratify the U.S. Constitution (June 6, 1788), CONST. SOC’Y, available at http://www.constitution.org/rc/rat_va_05.htm, [<http://perma.law.harvard.edu/0SaCmRgdSDc>].

⁶²⁰ DAHL, *supra* note 616, at 145.

⁶²¹ Thomas Jefferson, Letter to William Charles Jarvis, Sept. 28, 1820, in THE WRITINGS OF THOMAS JEFFERSON 160, 161 (Paul L. Ford, ed. 1899).

