

Americans approved new constitutions in most of the states shortly after the Revolution with few untoward effects, but attributes this success to the extraordinary events at that time. These changes took place under wartime conditions “which repressed the passions most unfriendly to order and concord” and created “an enthusiastic confidence of the people in their patriotic leaders.” Since Americans cannot count on perpetuating such extraordinary solidarity, they may wish to observe considerable caution in subjecting constitutional changes to popular approval.

It should be noted that James Madison wrote these words in The Federalist Papers, the very purpose of which was to rally public support for the proposed constitution. Thus, he did not oppose all recourse to the people to endorse constitutional change. His objection was against an excessive use of this procedure.¹¹⁹ The Canadians of 1865 were no strangers to constitutional change. Perhaps James Madison, despite his impeccable republican credentials as author of the first amendment might have understood rather well the confederationists’ reluctance to submit their handiwork to popular appeal as well as their obvious embarrassment in failing to do so. As for the contemporary constitutional crisis, prudence might urge him to modify his doctrine to fit the democratic spirit of our times, but perhaps he would do so cautiously and with considerable misgivings about the possible dangers of frequent referenda in both Quebec and in all of Canada.

Having rejected Jefferson’s recourse to the people as the solution to the problem of how to safeguard the principle of separation of powers against abuse, Madison gives his own solution in the famous Federalist 51. Although the primary safeguard against official abuse must always come from the people themselves, “experience has taught mankind the necessity of auxiliary precautions.” Chief among these is the lawgiver’s need to design the constitution in such a way as to channel the ambition of statesmen along socially constructive lines. This entails “giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others.” This leads Madison to write the best known lines in American political science: