

January 1997

Of Pitcairn's Island and American Constitutional Theory

Dan T. Coenen

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [Constitutional Law Commons](#)

Repository Citation

Dan T. Coenen, *Of Pitcairn's Island and American Constitutional Theory*, 38 Wm. & Mary L. Rev. 649 (1997), <https://scholarship.law.wm.edu/wmlr/vol38/iss2/6>

Copyright c 1997 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

ESSAY

OF PITCAIRN'S ISLAND AND AMERICAN CONSTITUTIONAL THEORY

DAN T. COENEN*

Few tales from human experience are more compelling than that of the mutiny on the *Bounty* and its extraordinary aftermath. On April 28, 1789, crew members of the *Bounty*, led by Fletcher Christian, seized the ship and its commanding officer, William Bligh.¹ After being set adrift with eighteen sympathizers in the *Bounty's* launch, Bligh navigated to landfall across 3600 miles of ocean in "the greatest open-boat voyage in the history of the sea."² Christian, in the meantime, recognized that only the gallows awaited him in England and so laid plans to start a new and hidden life in the South Pacific.³ After briefly returning to Tahiti, Christian set sail for the most untraceable of destinations: the uncharted and uninhabited Pitcairn's Is-

* Professor, University of Georgia Law School. B.S., 1974, University of Wisconsin; J.D., 1978, Cornell Law School. The author thanks Philip and Madeline VanDyck for introducing him to the tale of Pitcairn's Island. He also appreciates the useful research and cite-checking assistance provided by Jennifer Ann Taylor and J. Michael Wiggins.

1. See CHARLES NORDHOFF & JAMES N. HALL, PITCAIRN'S ISLAND 4 (1934) [hereinafter NORDHOFF & HALL, PITCAIRN'S ISLAND]. The full tale of the mutiny, Bligh's open-boat voyage, and the mutineers' later experiences is presented, in historical-novel form, in a trilogy by Nordhoff and Hall. The first volume in the series, *Mutiny on the Bounty*, originally published in 1932, tells of the mutiny. CHARLES NORDHOFF & JAMES N. HALL, MUTINY ON THE BOUNTY (1932) [hereinafter NORDHOFF & HALL, MUTINY ON THE BOUNTY]. The second volume, *Men Against the Sea*, published in 1934, recounts Bligh's famous voyage. CHARLES NORDHOFF & JAMES N. HALL, MEN AGAINST THE SEA (1934). The third volume, *Pitcairn's Island*, *supra*, also published in 1934, describes the fate of Christian and those who accompanied him following the mutiny.

2. NORDHOFF & HALL, PITCAIRN'S ISLAND, *supra* note 1, at 240.

3. See *id.* at 32-33.

land.⁴ On this island, Christian's coterie of nine English sailors, six Tahitian men, and twelve Tahitian women established a society disconnected from the rest of the world.⁵ According to the best-known account of these settlers' experiences—Charles Nordhoff's and James N. Hall's *Pitcairn's Island*—Christian also established a government for the colony based on the principle of pure democracy.⁶

It is a curiosity of history that the mutiny aboard the *Bounty* occurred in the same year—some might even say the same week—that the national government organized under the Constitution of the United States came into being.⁷ The republican form of government established by that Constitution now has endured more than two centuries, while the polity established on Pitcairn's Island lasted, according to Nordhoff and Hall, no more than four brief years.⁸ These contrasting histories invite the question whether the failed experiment in democracy on Pitcairn's Island offers insight into the durability of our own constitutional regime.

To hold out the account provided by Nordhoff and Hall as an accurate touchstone for true comparative legal analysis would be emphatically wrong. Their tale, after all, is more a novel than a history⁹ and, even in its broad outlines, rests largely on inference and surmise.¹⁰ Additionally, even if Nordhoff and Hall's account were accurate in every detail, greatly differing social conditions would render treacherous any fruitful comparison of the government of America and that of Pitcairn's Island. None-

4. See *id.* at 4-7.

5. See *id.* at 4-5, 60-64.

6. See *id.* at 35.

7. The first National Congress convened on March 4, 1789. See *ENCYCLOPEDIA OF AMERICAN HISTORY* 145 (Richard B. Morris ed., 6th ed. 1982). George Washington was inaugurated as President on April 30, 1789. See *THE WORLD ALMANAC AND BOOK OF FACTS* 498 (1996). The mutiny on the *Bounty* occurred on April 28, 1789. See NORDHOFF & HALL, *PITCAIRN'S ISLAND*, *supra* note 1, at 4.

8. See NORDHOFF & HALL, *PITCAIRN'S ISLAND*, *supra* note 1, at vii, 244.

9. See generally *id. passim*. The Nordhoff and Hall account is related primarily as a present-tense drama.

10. See *id.* at vii (acknowledging that the authors, after studying various accounts of the events on Pitcairn's Island, "adopted a chronology and selected a sequence of events which seem to them to render more plausible" the story that unfolded on the island).

theless, the tale of Pitcairn's Island provides a useful allegory for reflecting on the American constitutional experiment.¹¹ In particular, the stark simplicity of the Pitcairners' tale pushes into bold relief our own Constitution's complex organizing principles: fear of majority faction, the preference for checked and divided powers, and the evolutionary inclusion in the political process of all persons affected by it.¹² The story of the settlers of Pitcairn's Island suggests the wisdom of these key elements of American constitutional theory, while a study of American constitutional theory raises the question whether those same settlers, in those same circumstances, would have met a different fate had they opted for a different set of governmental structures.

I. THE TALE OF PITCAIRN'S ISLAND

After "careful study of every existing account,"¹³ Charles Nordhoff and James N. Hall published *Pitcairn's Island* in 1934.¹⁴ According to the authors, "discrepancies and improbabilities" marked earlier chronicles of the island's settlement.¹⁵ As a result, the authors "selected a sequence of events which seem[ed] to them to render more plausible the play of cause and effect."¹⁶ Although little is known with certainty about what happened on Pitcairn's Island, the broad outlines of the Nordhoff

11. Cf. THE FEDERALIST NO. 63, at 416 (James Madison) (Benjamin Fletcher Wright ed., 1961) (noting that differences between America and the Greek city-states "render extreme circumspection necessary, in reasoning from one case to the other," but that "after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention").

12. See *infra* Part II.

13. NORDHOFF & HALL, PITCAIRN'S ISLAND, *supra* note 1, at vii.

14. See *supra* note 1.

15. NORDHOFF & HALL, PITCAIRN'S ISLAND, *supra* note 1, at vii.

16. *Id.*

and Hall chronology seem inherently plausible.¹⁷ Their tale may be summarized as follows.

In late December 1789, Fletcher Christian and his Tahitian wife, Maimiti, first set foot on Pitcairn's Island.¹⁸ With Christian were eight other Englishmen and their eight Tahitian wives, three Tahitian noblemen and their three wives, and three unmarried Tahitian men.¹⁹ After salvaging all that was of value from the *Bounty*, Christian set the ship ablaze.²⁰ The settlers were on Pitcairn's Island to stay.

Before leaving the vessel, Christian had called a meeting of the Englishmen to discuss the governance of the colony. At this meeting, Christian proposed, and the Englishmen agreed, that each of them would have an equal vote in the settlement's affairs.²¹ Christian opted for a system of pure democratic rule despite the misgivings voiced by his chief assistant and closest confidant, Edwin Young.²² Although Young found trustworthy

17. Later treatments of the settlement of Pitcairn's Island are based largely on the report of Captain Beechy, who visited the island in 1825, and whose account purports to contain quotations from the diary of the settler Edwin Young. See HARRY L. SHAPIRO, *THE HERITAGE OF THE BOUNTY* 58 (1936). The Beechy account generally corresponds with the Nordhoff and Hall chronology, although it does not suggest (for example) that the land-division scheme discussed in detail *infra* directly contributed to the cataclysmic attempt of the Tahitian settlers to kill off their English companions. Instead, according to the Beechy account, the plan to kill the Englishmen resulted from the generalized and continuing ill-treatment of the natives, particularly by Matthew Quintal and William McCoy. See *id.* at 61.

Consistent with the Nordhoff and Hall version, however, the Beechy account reports that all but four of the Englishmen were killed in the immediate wake of an uprising instigated by the islanders. See *id.* at 64. Several authors have suggested that a division of the land, solely among the Englishmen, occurred immediately upon settlement of the island. See IAN M. BALL, *PITCAIRN: CHILDREN OF MUTINY* 104-11 (1973); SIR JOHN BARROW, *A DESCRIPTION OF PITCAIRN'S ISLAND AND ITS INHABITANTS* 261 (New York, J. & J. Harper 1833); LADY BELCHER, *THE MUTINEERS OF THE BOUNTY AND THEIR DESCENDANTS IN PITCAIRN AND NORFOLK ISLANDS* 156-60 (New York, Harper & Bros. 1871); ROBERT B. NICOLSON, *THE PITCAIRNERS* 36-53 (1965); SHAPIRO, *supra* at 59-65. The discrepancy in accounts, of course, reinforces the importance of viewing the Nordhoff and Hall account as providing useful insight into American constitutionalism solely by way of literary allegory, rather than historical comparison. See *supra* notes 9-10 and accompanying text.

18. See NORDHOFF & HALL, *PITCAIRN'S ISLAND*, *supra* note 1, at 3-4, 8, 17-18.

19. See *id.* at 2, 62.

20. See *id.* at 37-59.

21. See *id.* at 35.

22. See *id.* at 35-36.

two of the mutineers—sailor Alexander Smith and the *Bounty's* assistant botanist, Edwin Brown—he knew that the other five Englishmen—Isaac Martin, William McCoy, John Mills, Matthew Quintal, and John Williams—were rough seamen who might lapse into unwise judgment.²³ Christian responded that justice demanded an equal vote for all whom he had induced to join him in his venture.²⁴ He also expressed the hope that he and Young could “direct” the men “to wise decisions” by providing them with sound counsel.²⁵

At first, things went well. The island covered only four square miles, but it offered all that was necessary for a good life: fresh water, rich soil, fruit-bearing trees, and fish and game for the catching.²⁶ The settlers successfully divided tasks among themselves and worked hard at constructing shelters and cultivating yams and breadfruit.²⁷ All shared the island's produce, and this communal economy provided amply for seamen and islanders alike.²⁸ Although the Englishmen were not religious,²⁹ they accommodated the islanders' own traditional religious practices.³⁰ There was no illness,³¹ and within a year Maimiti gave birth to the island's first child.³²

As time passed, however, the five Englishmen of whom Young had given warning became increasingly insensitive toward the Tahitians. Williams initiated an adulterous relationship with Hutia, the wife of Tararu, and came to blows with the Tahitian leader, Minarii, over this insult to Minarii's family.³³ Martin

23. See *id.* at 30, 35-36, 64.

24. See *id.* at 36.

25. *Id.*

26. See *id.* at 18-20.

27. See *id.* at 63-75.

28. See *id.* at 117.

29. See *id.* at 64.

30. See *id.* at 64, 86-90.

31. See *id.* at 154.

32. See *id.* at 109-10.

33. See *id.* at 140-43. Williams's wife, Fasto, met a bloody end, perhaps by suicide, after learning of her husband's infidelity. See *id.* at 82-84. Thereafter, Williams proposed that he be able to take Hutia as his wife openly. By a vote of six to three the proposal was rejected. See *id.* at 95. The vote followed a speech made by Christian in which he warned that “[d]ifferences over women are dangerous at all times, and in a small community like ours they may have fatal consequences.” See *id.*

earned the enmity of the islanders by treating both his wife and the other Polynesians with scorn.³⁴ After the ship's rations of grog were exhausted, McCoy set up a secret distillery to feed his alcoholic needs.³⁵ Then, after two years of working side-by-side with the islanders, "certain of the white men took to loafing in the shade, while they forced the humbler natives to perform the daily tasks too heavy for womenfolk."³⁶

Relations between the races grew strained. The lower-caste Tahitian, Hu, a favorite victim of the white men's beatings, tried unsuccessfully to push Martin from a cliff to his death.³⁷ Tararu failed in his attempt to murder Williams, who by that time had taken away Hutia to live with him.³⁸ Hutia apparently undertook to poison Tararu in retaliation and, in so doing, killed both Tararu and Hu.³⁹ Meanwhile, Quintal and McCoy essentially enslaved the unmarried islander Te Moa, while Martin and Mills subjected the other lower-caste islander, Nihau, to similar degradation.⁴⁰ "The natives resented their new status deeply, but so far had not broken out in open revolt."⁴¹ Perhaps this peace prevailed because the Tahitian noblemen, Minarii and Tetahiti, continued to lead lives of substantial independence and dignity.⁴²

As embitterment grew between Englishmen and islanders, however, McCoy came up with an idea that spelled doom for the colony: he decided that the useable acreage of the island should be divided among the Englishmen, with the Tahitians excluded

Christian also cautioned that "[t]o stir up racial strife would be the ruin of us all." *See id.* Following the vote, Williams's loneliness caused him to flee the island in the *Bounty's* cutter. Christian overtook him in the colony's canoe and returned him to the island. *See id.* at 97-98. Thereafter, Williams took to cohabiting openly with Hutia, *see id.* at 139, 142-43, and it was this action that led to his fight with Minarii. *See id.* at 140-43.

34. *See id.* at 68, 132.

35. *See id.* at 128-31.

36. *Id.* at 127.

37. *See id.* at 138.

38. *See id.* at 149-50.

39. *See id.* at 151, 154-55.

40. *See id.* at 156-57.

41. *Id.* at 157.

42. *See id.* at 157-63.

from this allotment.⁴³ After secretly soliciting acceptance of his plan from Martin, Mills, Quintal, and Williams, McCoy put forward his proposal at a meeting of the English settlers.⁴⁴ Christian was stunned.⁴⁵ He reminded the mutineers that Minarii and Tetahiti had been chiefs on Tahiti, where landless men were deemed outcasts.⁴⁶ He described the land-division plan as "madness" and "charged with fatal consequences."⁴⁷ McCoy's proposal nonetheless carried by a vote of five to four, although Christian insisted that the action was so consequential that it required reconsideration at the group's next meeting.⁴⁸

Word of the vote was leaked to Tetahiti through Martin's wife, Susannah.⁴⁹ When Tetahiti approached Christian and demanded to know if the whites indeed intended to make the islanders into landless serfs, Christian offered an equivocal response.⁵⁰ Tetahiti then set off to find Minarii at the site where he was building a house. Tetahiti discovered Minarii standing near a pile of smoldering ashes.⁵¹ Quintal had torched the chieftain's new home.⁵²

A bloodbath followed.⁵³ At dawn on September 22, 1793,⁵⁴ the four surviving Tahitian men launched a sneak attack on the Englishmen with the intention of killing all of them.⁵⁵ Within hours Martin and Mills were beheaded, Williams and Brown were shot dead, and Christian received a mortal wound.⁵⁶ A counterattack engineered by three of the Englishmen's wives

43. *See id.* at 159.

44. *See id.* at 159-62.

45. *See id.* at 162.

46. *See id.*

47. *Id.* at 162-63.

48. *See id.* at 163. Also, before the men left the meeting, Christian required each of them to promise not to divulge the vote to the Tahitians. *See id.*

49. *See id.* at 167.

50. *See id.* at 170.

51. *See id.* at 172.

52. *See id.*

53. *See id.* at 180-90.

54. *See id.* at 244.

55. *See id.* at 173-80.

56. *See id.* at 187-90.

took the lives of Tetahiti, Te Moa, and Niuha.⁵⁷ Minarii was killed in a violent battle with Quintal.⁵⁸

There followed on Pitcairn's Island a time of darkness and debauchery.⁵⁹ The only surviving males—McCoy, Quintal, Smith, and Young—fell into a perverse and persistent drunkenness nourished by McCoy's still.⁶⁰ The men so mercilessly beat and humiliated the Tahitian women that they tried to escape the island with their children in a small boat, avoiding certain death only because it capsized within rescue distance of the island.⁶¹ The shock of the escape attempt only briefly halted the men's routine of sloth and abuse.⁶² After giving the men countless opportunities to change their ways, the women separated themselves from the men entirely, gathered together both the island's children and its firearms, and ordered the men to keep away.⁶³ More bloody encounters ensued when the men ignored these commands.⁶⁴ McCoy and Quintal eventually were driven to madness and death by drink, abandonment, and guilt.⁶⁵ In time, however, Young and Smith sought forgiveness from the women and joined them in reestablishing a peaceful community devoted to the nurture of the children.⁶⁶ Within a few years Young died, but not before teaching Smith how to read the Bible that Christian had salvaged from the *Bounty*.⁶⁷

In 1808, the American vessel *Topaz* came upon the settlement at Pitcairn's Island.⁶⁸ Spiritually reborn, Alexander Smith now oversaw a community, including more than twenty children, tutored in an adapted form of Biblical Christianity.⁶⁹ As Nordhoff and Hall describe it: "All who were fortunate enough to

57. *See id.* at 214-16.

58. *See id.* at 211-12.

59. *See id.* at 254-65.

60. *See id.* at 257.

61. *See id.* at 257-62.

62. *See id.* at 263.

63. *See id.* at 263-69.

64. *See id.* at 273-77, 282.

65. *See id.* at 291, 302-08.

66. *See id.* at 298.

67. *See id.* at 314-18.

68. *See id.* at viii, 328.

69. *See id.* at 234, 237, 323-24.

visit the Pitcairn colony during the first quarter of the nineteenth century agree that it presented a veritable picture of the Golden Age.⁷⁰

II. THE LESSONS OF PITCAIRN'S ISLAND

The tale of Pitcairn's Island provides food for reflection on almost all that is most troublesome about the human condition: the proclivity for violence; the drive to racism, sexual dominance, and other forms of class-based oppression; the destructive force of intoxicants; the stresses of extreme dislocation and change; and the recurring urge to selfishness even in the face of plenty. The tale also invites thought on some of the most basic social issues: the role of religion in society; the proper regulation of marriage and the sexual impulses; the prospects for communal utopianism; and the challenge of understanding divisions among social groups, particularly between men and women. The tale of Pitcairn's Island, however, is also one of a political state. In particular, it is the story of a people that adopted a form of government that induced, or at least failed to avert, societal catastrophe.

The tale of the failed democratic experiment on Pitcairn's Island highlights three key features of the American constitutional order: a focus on the problem of majority faction; the chosen solution of divided and checked government; and the insistent tendency throughout American constitutional history toward political inclusion.⁷¹ According to the Nordhoff and Hall account, each of these constitutional ingredients was missing in the society formed on Pitcairn's Island, which in short order endured a bloody end.⁷² A closer look at the unfolding of that cataclysm highlights the critical role these organizing concepts play in our own constitutional order.

70. *Id.* at viii.

71. *See infra* Part II.A-C.

72. *See* NORDHOFF & HALL, PITCAIRN'S ISLAND, *supra* note 1, at 138-308.

A. *Fear of Faction*

James Madison opened his *Federalist* No. 10 by explaining: "Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction."⁷³ Madison went on to explain that:

By a faction, I understand 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.⁷⁴

Madison emphasized that the greatest danger of oppression inhered in the emergence of a *majority* faction.⁷⁵ As he put it:

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. . . . When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens.⁷⁶

The tendency to faction, Madison explained, was "sown in the nature of man" and thus destined to exert itself in any political community founded on democratic principles.⁷⁷ Autocracy, Madison recognized, provided an unacceptable alternative to popular rule because it posed too grave a risk of despotic or idiosyncratic policymaking.⁷⁸ It thus was "the great object" of Madison's constitutional document "[t]o secure the public good and private rights against the danger of . . . faction, and at the same time to preserve the spirit of and the form of popular government."⁷⁹ The opponents of the Constitution, so-called "antifederalists,"

73. THE FEDERALIST NO. 10, at 129 (James Madison) (Benjamin Fletcher Wright ed., 1961).

74. *Id.* at 130.

75. *See id.* at 132-33; *see also* 1 THE COMPLETE ANTI-FEDERALIST 48 (Herbert J. Storing ed., 1981).

76. THE FEDERALIST NO. 10, *supra* note 73, at 132.

77. *Id.* at 131.

78. *See id.* NO. 51, at 358.

79. *Id.* NO. 10, *supra* note 73, at 132.

were "typically . . . less likely to see majority faction as the most dangerous and likely evil of popular government."⁸⁰

The story of Pitcairn's Island deeply resonates with Madison's focus on the dangers of factional abuse. The faction that emerged on the island consisted of five sailors who had drifted together by reason of common temperament, close quarters, and a perception of shared self-interest.⁸¹ That their shortsighted legislative plan was one of "oppression" and "injustice"⁸² is beyond question. They sought to gain land through enactment, rather than effort, and then to enslave the Tahitian male population to work that land for them.⁸³ "For the framers, the problem of faction lay partly in the danger that a self-interested group would obtain governmental power in order to put rights of property at risk."⁸⁴ Moreover, Madison saw clearly the heightened vulnerability of identifiable minorities outside the political and social mainstream to the misdeeds of majority factions.⁸⁵

Most prophetically, Madison saw that the risk of factional oppression was maximized by the sort of governmental structure that existed on Pitcairn's Island. As he explained:

[I]t may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious indi-

80. 1 THE COMPLETE ANTI-FEDERALIST *supra* note 75, at 40; see also *id.* at 39 (discussing antifederalists' views of majority faction and concluding that it "typically occupied a less conspicuous place in their catalogue of dangers than in that of the Federalists").

81. See NORDHOFF & HALL, PITCAIRN'S ISLAND, *supra* note 1, at 127, 159-64.

82. See THE FEDERALIST NO. 10, *supra* note 73, at 135. The plan's shortsightedness is significant, for a recurring theme of the Federalist Papers was the need to counter the majority's "immediate interest." *Id.* at 132.

83. See NORDHOFF & HALL, PITCAIRN'S ISLAND, *supra* note 1, at 157-63.

84. GEOFFREY R. STONE ET AL., CONSTITUTIONAL LAW 18 (2d ed. 1991).

85. See THE FEDERALIST NO. 10, *supra* note 73, at 132 (citing potential for self-interested legislation by "the most numerous party, or, in other words, the most powerful faction" and the "opportunity and temptation . . . given to a predominant party to trample on the rules of justice").

vidual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.⁸⁶

Madison's broader point was that the strengthened national government proposed by the Constitution was greatly preferable to the atomistic dispersal of powers to the states effected by the Articles of Confederation.⁸⁷ This reform, in Madison's view, provided a potent safeguard against the emergence of oppressive factions. As Madison explained, one of the key points of difference between the representative republican form of government and the purely democratic form of government was "the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government."⁸⁸ According to Madisonian theory:

[I]t is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the dis-

86. *Id.* at 133; see also *id.* NO. 9, at 124 (Alexander Hamilton) ("It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust. . . ."); *id.* NO. 14, at 151 (James Madison) (noting "the turbulent democracies of ancient Greece and modern Italy"); *id.* NO. 63, *supra* note 11, at 415 (urging that Athenians often experienced "bitter anguish" because they succumbed to "the tyranny of their own passions").

87.

In a free government the security for civil rights must be the same as that for religious rights. . . . The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States, oppressive combinations of a majority will be facilitated

Id. NO. 51, *supra* note 78, at 358; see also *id.* NO. 10, *supra* note 73, at 129-30 (noting widespread complaints that within existing states "measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority").

88. *Id.* NO. 10, *supra* note 73, at 135.

inct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the most easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it.⁸⁹

Madison's antifederalist opponents argued that he had things backwards. In their view, local democratic control provided the

89. *Id.*; see 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 136 (Max Farrand ed., 1937); see also THE FEDERALIST NO. 63, *supra* note 11, at 415 (noting that one of the principal recommendations of a confederated republic is "that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions, or to the danger of combining in pursuit of unjust measures"). Federalists also believed that representative government helped to counter the emergence of factions because "the people collectively play no part [in such a government, so that] the danger of popular excesses is thereby reduced." 1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 43. Federalists further contended that an extended republic mitigated the risk of factional excesses by offering the best chance of attracting the finest political talent to serve as government representatives. See THE FEDERALIST NO. 10, *supra* note 73, at 134 (arguing that in a national government "it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and [that government] will be more likely to centre in men who possess the most attractive merit"); see also 1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 45 ("For the Federalists, then, representation is a mode of selecting for rulers the best men, or at least men better than average; and the large districts of the large republic increases the chance of securing such men."). For a critical appraisal of Madison's *The Federalist* No. 10, see Richard A. Epstein, *The Federalist Papers: From Practical Politics to High Principle*, 16 HARV. J.L. & PUB. POL'Y 13, 18-20 (1993).

best form of governance because it induced active, hands-on participation in the operation of the state and a resulting "civic virtue—the willingness of citizens to subordinate their private interests to the general good."⁹⁰ Thus, for many antifederalists, "[t]he model for government *was* the town meeting."⁹¹ Representative government was tolerable to antifederalists only because it was a necessity; pure democracy, at least in the legislative department, was the political ideal.⁹²

The tale of Pitcairn's Island suggests that the Madisonians possessed a sounder understanding of the interplay of human nature and popular, local self-rule. For two separate reasons, however, antifederalists might say that the tale of Pitcairn's Island provides an ill-fitting allegory for assessing their argument for small-scale democratic governance.

First, the antifederalist might observe that the prospect of enlightened self-rule springs from the existence of a community of

90. STONE ET AL., *supra* note 84, at 5. Thus, for antifederalists, "[i]t was thought to have been demonstrated, historically and theoretically, that free, republican governments could extend only over a relatively small territory with a homogeneous population." 1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 15. The root of this thinking was that "the small republic . . . reminds each man of the benefits derived from and the duties owed to his little community." *Id.* at 20. In addition:

Only a small republic can enjoy a voluntary attachment of the people to the government and a voluntary obedience to the laws. Only a small republic can secure a genuine responsibility of the government to the people. Only a small republic can form the kind of citizens who will maintain republican government.

Id. at 16.

91. STONE ET AL., *supra* note 84, at 5 (emphasis added).

92. See 1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 43 ("In the main, the Anti-Federalists accepted representation reluctantly, as a necessary device in a community where the people cannot assemble to do their common business. The representative body is seen in consequence as a *substitute* for an assembly of all the citizens . . .") (emphasis added); see generally *id.* at 17 (noting that most antifederalists "admitted the need . . . for a system of representation as a substitute for the meeting together of all the citizens"). It followed that, for the antifederalists, the problem with representative government was the difficulty of keeping representatives directly answerable to their constituents. See *id.* As a result, antifederalists advocated short legislative terms, frequent rotation of representatives, and the election of numerous representatives to facilitate a closer connection with each constituent. See *id.* at 17 & n.15. For example, the antifederalist Malacton Smith argued that representatives should be "a true picture of the people" and feared that the federal legislature would become a "natural aristocracy," *id.* at 17, unrepresentative of the "middling classes." *Id.* at 18.

ordinary citizens.⁹³ The English settlers of Pitcairn's Island, the antifederalist quickly would add, were hardly the brand of men to be trusted with self-governance. Rather, they were mutineers who came to the island only because they had committed a string of capital offenses.⁹⁴ In addition, five of the nine remaining mutineers were ordinary seamen⁹⁵ who from all appearances lacked the sort of education that conduces to forming a reflective and enlightened electorate.⁹⁶ The antifederalist would conclude that in such a setting the opportunistic abuse reflected in the catastrophic land division plan could be expected to manifest itself.

Although evaluating this argument entails a calculus of imponderables, much can be said against it. As to the character of the island's settlers, painting them as a hopeless lot of bizarre and incurable criminals may well be too extreme. By their own account, the men mutinied only in response to the barbarous treatment they had received at the hands of the notorious Captain Bligh.⁹⁷ On the island itself, all of the settlers worked industriously and cooperatively together in the early years.⁹⁸ Nordhoff and Hall saw even the least refined of the English settlers as being "no better and no worse than the run of English seamen."⁹⁹ Although the sailors probably lacked formal education, the same was true of many, if not most, ordinary citizens of eighteenth-century America.¹⁰⁰ Antifederalist theory envisioned that education would come in large measure through participation in the democratic process,¹⁰¹ yet the faction that emerged on Pitcairn's Island learned through their own participation in that process only how to exploit it, rather than how to use it for

93. *See id.*, at 16-17.

94. *See supra* notes 1-3 and accompanying text.

95. *See* NORDHOFF & HALL, *MUTINY ON THE BOUNTY*, *supra* note 1, at 162-63.

96. *See* 1 *THE COMPLETE ANTI-FEDERALIST*, *supra* note 75, at 21.

97. *See* NORDHOFF & HALL, *PITCAIRN'S ISLAND*, *supra* note 1, at 13, 29.

98. *See supra* notes 26-32 and accompanying text.

99. NORDHOFF & HALL, *PITCAIRN'S ISLAND*, *supra* note 1, at 164.

100. Alexis de Tocqueville, commenting on education in early-19th-century America, observed that there were "few learned individuals." 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 52 (Phillips Bradley ed., Alfred A. Knopf, Inc. 1956) (1835).

101. 1 *THE COMPLETE ANTI-FEDERALIST*, *supra* note 75, at 21 (noting that to antifederalists "[t]he small republic was seen as a school of citizenship as much as a scheme for government").

the public good.¹⁰² The antifederalist emphasis on education, Madisonians would say, overestimates its potential to alter basic tendencies of human nature, as evidenced by the corruption, throughout human history, of innumerable leaders who had no dearth of formal training.¹⁰³ In sum, the community of voters on Pitcairn's Island may be seen as not radically different from the communities of voters the antifederalists were prepared to empower in the towns and villages of America. If this is so, the story of the Pitcairners casts a long shadow over the antifederalist idealization of small-scale governments directly run by citizens themselves.

A second ground exists upon which antifederalists could distance their optimistic theories of localized self-rule from the disastrous experiment of Pitcairn's Island: they might say that unlike the residents of eighteenth-century American communities, the inhabitants of Pitcairn's Island were marked by extremes of heterogeneity from which they had no chance to flee.¹⁰⁴

To Madison, as we have seen, a central safeguard against the danger of majority faction was to expand the political community to create "a greater variety of parties" so that "any one party" would become unable "to outnumber and oppress the rest."¹⁰⁵ The antifederalists, in contrast, argued that security lay in breaking up the nation into small political communities marked by a singularity of outlook. "In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other."¹⁰⁶ The existence of many autonomous political units held another advantage: it afforded citizens

102. See *supra* notes 25-59 and accompanying text.

103. For example, Joseph Stalin received formal education, including four years at a theological seminary, until the age of twenty. See *Stalin*, 28 THE NEW ENCYCLOPEDIA BRITANNICA 181 (15th ed. 1993).

104. See *supra* notes 19-20 and accompanying text.

105. THE FEDERALIST NO. 10, *supra* note 73, at 135.

106. 2 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 369 (quoting an antifederalist commentator identified as "Brutus").

unhappy with their political lot the ready option of leaving it behind by voting with their feet.¹⁰⁷

This ready opportunity to relocate simply was not available on Pitcairn's Island. Two ill-fated attempts to escape the island,¹⁰⁸ antifederalists would say, highlighted the importance of the opportunity to relocate. Antifederalists also would claim that the availability of this option was of particular importance on Pitcairn's Island due to the extraordinary heterogeneity of its people. Thrown together upon four square miles of land were the offspring of two cultures literally a world apart. It is not surprising, antifederalists would say, that in circumstances so uniquely fraught with the potential for factional division an experiment in democratic self-rule would fail. At the least, the antifederalist might note, the catastrophe that befell Pitcairn's Island teaches nothing about the prospects of their own model of democratic self-rule in the profoundly different circumstances that prevailed on the American continent.

One difficulty with this effort to distance antifederalist theory from Pitcairn's Island is that it oversells the value of jurisdiction-fleeing as an antidote to faction. This is so because voting with one's feet itself may result from the most egregious forms of factional overreaching. What if, for example, the settlers on Pitcairn's Island had not burned the *Bounty* so that the Tahitians could have sailed for another island? Would this option have made the land-seizure plan launched by Martin, McCoy, Mills, Quintal, and Williams any less blameworthy, any less oppressive, or any less the result of factional excess? Even assuming the existence of an escape route, the islanders could have taken it only at the cost of abandoning their homes, their temple, and the land they had worked for years to make life-sustaining. Such an injustice more properly is seen as the result of factional oppression than as an answer to it.

Antifederalists might respond that the existence of the escape option could have nipped factional oppression in the bud. On this view, the land-division plan never would have surfaced as a serious proposal if an opportunity to escape the island had exist-

107. STONE ET AL., *supra* note 84, at 18.

108. See *supra* notes 33, 61 and accompanying text.

ed. Why? Because driving the Tahitians away would not have been in the English sailors' self-interest; rather, it was in their interest to keep the Tahitians nearby so that they could help work the land. The difficulty with this argument is that it rests on an implausible sense of the seamen's incentives; it is no less likely that those seamen would have welcomed the chance to drive the "barbarians" in their midst from a well-established and increasingly crowded island. No less problematically, the outcome that this argument posits—that is, the retention of the Tahitian males on Pitcairn's Island—seems inconsistent with the basic antifederalist premise that smaller, homogeneous communities are preferable to larger, more heterogeneous ones.¹⁰⁹

In short, the American Constitution rests on the premise that the overarching danger to any political community organized around the popular will is the tyranny of majority faction. The events on Pitcairn's Island, as reported by Nordhoff and Hall, bear out this insight in blood.

B. Checked and Divided Government

Having identified the risk of factional oppression as the central danger confronting a popular government, America's Constitution-makers sought to forge a political structure to neutralize this problem. Already we have seen one way in which the Madisonians acted to advance this objective: by channelling increased power to a far-flung multijurisdictional national government, so as to complicate efforts by the many groups that make up the political community to form a majority faction.¹¹⁰ The framers' efforts to counter the operation of faction, however, hardly stopped here.

It is ironic that many readers of *Pitcairn's Island* instinctively view Christian's establishment of a highly democratic government as compatible with American political theory. The irony exists because, as the preceding discussion has revealed, the town-meeting form of rule chosen by Christian was exactly the sort of government structure most roundly condemned by Madi-

109. See 1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 15.

110. See *supra* notes 87-89 and accompanying text.

son.¹¹¹ In addition, although Madison recognized the need for popular government, he also argued that it was in and through the popular assembly, the arm of government closest to and most representative of the people themselves, that factional tyranny was most likely to surface.¹¹² "In republican government," Madison wrote, "the legislative authority necessarily predominates."¹¹³ Thus, "it is against the enterprising ambition of [the legislative] department that the people ought to indulge all their jealousy and exhaust all their precautions."¹¹⁴ In short, for Madison, an essential element of any constitutional plan was to put checks on the legislative power.¹¹⁵

In the scheme that emerged from the constitutional convention these checks were numerous and sophisticated.¹¹⁶ Powers were divided between competing layers of government at the state and federal levels.¹¹⁷ At the national level, joint action of two separate legislative houses was required to take any action,¹¹⁸ thus

111. See *supra* note 86 and accompanying text.

112. See THE FEDERALIST NO. 48, at 343 (James Madison) (Benjamin Fletcher Wright ed., 1961) ("The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."); *id.* NO. 49, at 350 ("We have seen that the tendency of republican governments is to an aggrandizement of the legislative at the expense of the other departments."); *id.* NO. 71, at 460 (Alexander Hamilton) (citing the "tendency of the legislative authority to absorb every other").

113. *Id.* NO. 51, *supra* note 78, at 356.

114. *Id.* NO. 48, *supra* note 112, at 344.

115. See generally *INS v. Chadha*, 462 U.S. 919, 944-51 (1983) (noting the "profound convictions of the Framers that the powers conferred on Congress were the powers to be most carefully circumscribed").

116. As stated in *The Federalist* No. 9:

The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior [and] the representation of the people in the legislature by deputies of their own election serve [as] means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided.

THE FEDERALIST NO. 9, *supra* note 86, at 125; see generally *id.* NO. 51, *supra* note 78 (noting security provided by competing state and federal governments, division of the legislature into different branches, provision for different modes of election, and creation of the veto power).

117. See U.S. CONST. art. I, § 8 (limiting the power of the Congress through enumeration of its powers); see also *id.* amend. X (reserving powers not delegated to the federal government to the states).

118. See *id.* art. I, § 7, cl. 2 (requiring concurrence of both houses before present-

forcing any faction bent on pursuing an oppressive agenda to capture two assemblies, rather than only one.¹¹⁹ The framers further reduced the risk of factional capture of the legislature by assigning members of the Senate and House differing constituencies, differing terms, and differing modes of selection.¹²⁰ A free-standing executive branch was vested with the veto¹²¹ and other great powers¹²² for the purpose of providing a counterweight to legislative excesses.¹²³ A judicial branch was established as well and given ample means by the constitutional document—particularly after ratification of the Bill of Rights—to impede legislative overreaching.¹²⁴ In sum, the framers re-

ing a bill to the President).

119. As stated in *THE FEDERALIST* NO. 51, *supra* note 78, at 356-57:

In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on society will admit.

120. Compare U.S. CONST. art. I, § 2, with *id.* art. I, § 3 (defining the composition, terms, and selection of the Senate and the House of Representatives). See, e.g., *THE FEDERALIST* NO. 63, *supra* note 11, at 415 (advocating establishment of the Senate "as a defence to the people against their own temporary errors and delusions"). Indeed, Madison defended establishment of the Senate in terms that speak hauntingly to the events on Pitcairn's Island:

[T]here are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind?

Id.

121. See U.S. CONST. art. I, § 7, cl. 2.

122. See, e.g., *id.* art. II, § 2 (providing that the President shall be commander-in-chief of the armed forces, granting the President the power to make treaties with the advice and consent of the Senate, and granting the President the power to appoint justices of the Supreme Court and other officers of the government).

123. See *THE FEDERALIST* NO. 51, *supra* note 78; see also *id.* NO. 73, at 469 (Alexander Hamilton) (stating that the veto power "establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body").

124. See U.S. CONST. art. III (establishing the judicial branch and providing that

sponded to the danger of legislative tyranny by dispersing and checking legislative powers in a way that favored government inaction whenever factional abuse was threatened.¹²⁵

No similar checks on the legislative power existed on Pitcairn's Island, even though structures for checking legislative excesses could have been put in place. Christian, for example, could have retained a veto power over legislative action.¹²⁶ Indeed, if an executive veto patterned on the American model had been in place, the vote that ultimately doomed the colony would have been without legal effect: Christian would have vetoed the

federal judges would hold office during good behavior and that their salaries could not be diminished while they held office). The Federalists clearly viewed the judiciary as a means of preventing legislative overreaching. See THE FEDERALIST NO. 78, at 490, 494 (Alexander Hamilton) (describing the judiciary as an "excellent barrier to the encroachments and oppressions of the representative body" and an institution designed to guard against "serious oppressions of the minor party in the community").

125. See THE FEDERALIST NO. 73, *supra* note 123, at 470 ("It is far less probable, that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object, than that they should by turns govern and mislead every one of them."). Notably, as this discussion suggests, the so-called "gridlock" that frustrates many voters today may be seen as an intended consequence of the federalists' decision to impose significant checks on legislative powers. In contrast:

While accepting the need for a separation of functions . . . the Anti-Federalists became uneasy as concern shifted to what we have called a separation and balancing of power. They conceded only reluctantly the insufficiency of simple popular government and they were likely to judge constitutional arrangements according to how well they secured popular responsibility

1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 62.

126. Indeed, the Nordhoff and Hall chronicle implies that Christian may have planned to assert such a power, albeit in contravention of the original compact that provided for pure popular rule, if there persisted a five to four majority vote to divide the land to the exclusion of the Tahitians. See NORDHOFF & HALL, PITCAIRN'S ISLAND, *supra* note 1, at 164. In particular, after the vote on the land-division plan, Christian and Young discussed what should be done to save the community. In reply to Young's statement that the seamen would "make slaves" of the Tahitians, Christian said, "Make a slave of Minarii? Or of Tetahiti? For their own sakes I hope they attempt nothing so mad!" *Id.* at 163. It was in reply to this statement that Young ventured that the men were no worse than "the run of English seamen," but that a "life like ours seems to bring out all that is bad in them." *Id.* at 164. Christian responded that unless the men led by McCoy changed their minds he would be forced to take "stern measures, for [McCoy's] own good." *Id.* Young then stated: "Aye, we are facing a crisis. I fear it was a mistake to give them the vote. You'll have to play the captain once more, to save them from their own folly!" *Id.*

action, a two-thirds override would not have materialized¹²⁷ (because there were only five of nine votes favoring the land-division scheme), and Christian need not have given an equivocal answer when Tetahiti asked whether the Tahitians were soon to become landless serfs. No less significantly, if a veto power had existed on Pitcairn's Island, the sailors might never even have launched their ill-conceived proposal, given the likelihood that it ultimately would have met with failure.¹²⁸

Other faction-thwarting structures also were available to the constitution-makers of Pitcairn's Island. Christian and his followers, for example, might have put in place a bicameral decision-making process, requiring the consent of a majority both of the "officers" (Christian, Young, and Brown) and of the six "nonofficer" seamen. Alternatively, Christian might have opted for a government that gave a veto to a majority of the officers subject to override by a supermajority of six or seven votes. Either of these systems would have been much more akin to the American model than the pure democracy that Christian put in place. Either of these systems also would have rendered insufficient the bare five to four majority vote in favor of the catastrophic land-division plan.

Would the sailors have stood for a constitutional structure that frustrated the will of the majority? It seems likely that they would have. Such structures, after all, long have been accepted by even the world's most democratic societies. And sailors accustomed to the ironhanded rule of sea captains may well have been particularly willing to vest in Christian a greater measure of power than a single, equal vote.

No one can know how the story of Pitcairn's Island would have unfolded had its settlers established some structure for checking the legislative majority's powers. Perhaps the excesses of the sailors would have triggered civil war with the islanders in any event. Perhaps in time the five seamen would have

127. See U.S. CONST. art. I, § 7, cl. 2.

128. See THE FEDERALIST NO. 73, *supra* note 123, at 472 ("When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared.").

gained support sufficient to push through their land-division scheme or some equally destructive government program. Perhaps the smallness and heterogeneity of the society rendered it so predestined to calamity that even the most carefully constructed government structure could not have averted disaster. One matter, however, seems beyond dispute: if some meaningful brake on majority action had been established when the island was settled in 1789, there would have been less likelihood in 1793 that a short-sighted political plan would have precipitated a bloodbath in the colony.

C. Constitutional Inclusion

Every thought in the preceding discussion proceeds from the same assumption made by Christian as he approached Pitcairn's Island: that only Englishmen were to play a part in the new society's governance. By way of this assumption, Christian excluded altogether from participating in his "democracy" two-thirds of the island's inhabitants, for eighteen of the twenty-seven settlers were Tahitian men and women. Perhaps this choice was inevitable, given the Eurocentric world view of eighteenth-century English sailors. Perhaps it was inevitable because the notion of egalitarian popular rule would have been too unfamiliar to Tahitians of that day. Perhaps it was inevitable because in 1789 the islanders and Englishmen were too far removed from each other in language, customs, and world-view to attempt to cooperate in this manner. Yet the choice to exclude the Tahitians from the island's governance surely was a fateful one, for it paved the way for "majority" approval by the colony's "legislature" of McCoy's catastrophic program.

It may seem odd that Christian purported to establish a democracy on Pitcairn's Island, even while excluding from the franchise more than half the island's population. It seems less odd when one recalls that the framers of the American Constitution did exactly the same thing. The story of the Constitution's initial adoption is one of far-reaching exclusion, for the original constitutional document countenanced a franchise limited essentially to white and moneyed men.¹²⁹ The story of the

129. See Thurgood Marshall, *Reflections on the Bicentennial of the United States*

Constitution's *development*, however, is, in striking contrast, one of ever-increasing inclusion.

Study of the constitutional amendments typically focuses on the protections of liberty and equality built into the Bill of Rights¹³⁰ and the Civil War Amendments.¹³¹ Similarly, when one thinks of the structural components of our government, one typically focuses on the original, pre-amendment Constitution, for it is there that the framers treated the issues of nationalism, federalism, and the separation of powers.¹³² In reality, however, the constitutional amendments expansively treat the most basic element of governmental structure—the definition and powers of the national electorate. The Fifteenth Amendment,¹³³ for example, bars denial of the vote on the basis of race or color. The Nineteenth Amendment¹³⁴ outlaws discrimination in granting the vote on the basis of sex. The Twenty-Fourth Amendment enfranchised the poor by precluding poll taxes for national elections.¹³⁵ The Fourteenth Amendment,¹³⁶ as interpreted by the Supreme Court, further expanded the franchise and broadly guarded against its dilution in state and local elections.¹³⁷ The Twenty-Sixth Amendment¹³⁸ extended the vote to young adults by enfranchising all Americans eighteen years of age or older. This string of amendments, together with a bevy of court rulings that broadly have expanded and given meaning to the right to vote,¹³⁹ make clear that a key aspect of our constitutional order has been the strong movement toward facilitating the participation by all citizens in the processes of government.

Constitution, 101 HARV. L. REV. 1, 2 (1987).

130. U.S. CONST. amends. I-X.

131. *Id.* amends. XIII-XV.

132. *See supra* Part II.

133. U.S. CONST. amend. XV.

134. *Id.* amend. XIX.

135. *Id.* amend. XXIV.

136. *Id.* amend. XIV.

137. *See, e.g.,* *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621 (1969); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); *Reynolds v. Sims*, 377 U.S. 533 (1964).

138. U.S. CONST. amend. XVI.

139. *See cases cited supra* note 137.

This tendency undoubtedly reflects an evolutionary honing of the American sense of human dignity and equality. It also reflects, however, a logical extension of the Madisonian remedy for faction. Shifting power from a panoply of smaller political units to a single larger one, after all, is not the only way of "comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable."¹⁴⁰ Broadly extending the franchise to many and varying "descriptions of citizens" also stifles the emergence of an oppressive majority faction.

How would the tale of Pitcairn's Island have turned out if Christian in some way had involved the Tahitians as partners in the colony's governance? First, even a minimal inclusion of the islanders—for example, by allowing only Minarii to vote—would have blocked the emergence of a legislative majority supportive of McCoy's fateful land-division scheme. Second, representation of the Tahitians on the island's legislative council would have made even the proposal of McCoy's plan most difficult, for if the Tahitians had been represented, maintaining secrecy in proposing and adopting the plan would have been impossible.¹⁴¹ Finally, an initial inclusion of the islanders in the governance of the colony would have brought the Englishmen and the islanders together in a way that might have begun to neutralize the underlying prejudices that spawned McCoy's plan in the first place. Inclusion in the electorate of any group serves an educative function by communicating to even the most intolerant members of society the propriety of that group's claim to respect and acceptance in the community. In addition, the forced interaction of differing groups that necessarily comes with the joint handling of government affairs holds the potential to heighten understanding and tolerance, so as to weave people together.

In all of these ways, constitutional inclusion of the Tahitians in the island's governance could have altered the history of the Pitcairn colony. It might well, in particular, have neutralized the

140. THE FEDERALIST NO. 51, *supra* note 78, at 358.

141. *See id.*, NO. 10, *supra* note 73, at 135 (noting "that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary").

emergence of a majority faction whose pursuit of short-sighted self-interest ultimately consumed the society.

III. AN AFTERWORD ON THE ANTIFEDERALIST UTOPIA

The real message from Pitcairn's Island, antifederalists might assert, does not lie in the bloodbath that decimated the original colony. Rather, antifederalists might claim that their vision of self-government was *vindicated* on Pitcairn's Island by the thriving community formed in the wake of the settlement's time of violence and debauchery. According to this argument, the cohesive community discovered by the crew of the *Topaz* in 1808 presents the very picture of the antifederalist utopia: the small, homogeneous, and smoothly running society devoted to public-spirited goals, transcending selfish individual pursuits.¹⁴²

The predicate of this argument seems well founded, for a remarkably well-functioning community was discovered on Pitcairn's Island when outsiders finally arrived there. For three separate reasons, however, the emergence of an idealized state on Pitcairn's Island falls far short of confirming the antifederalist vision of the proper governance of America.

First, the society discovered on Pitcairn's Island in 1808 was not, in reality, a society at all. The island instead was peopled by a single *family*, headed by the island's sole surviving male and knit together by an extraordinary closeness in all aspects of life. That a utopian tranquility could emerge in such a rarified communal setting hardly suggests that anything similar was reproducible in the cities and towns of eighteenth-century America. It suggests even less about the desirability of largely autonomous local government in an era when most citizens live in great metropolitan centers.

Second, even if the island community discovered in 1808 were viewed more as a society than as a family, it surely was not a *democratic* society. Rather, the society was governed by a single, albeit benevolent, leader. Such a political system hardly reflects the antifederalist conception of an actively self-governing community.

142. See *supra* notes 90-108 and accompanying text.

Finally, the utopian community that emerged on Pitcairn's Island was gained only at a terrible price. In keeping with the antifederalist vision, the homogeneity that existed on Pitcairn's Island in 1808 produced a high degree of cohesiveness and harmony. That homogeneity emerged, however, only through the death, in most cases by murder, of the island's more "heterogeneous" members.

IV. CONCLUSION

The central critique of the political theory advanced by the antifederalists is that it was unworkable. Even in 1787, American locales were sufficiently vibrant, populous, and intertwined that there simply "was no possibility of instituting the small republic."¹⁴³ The fate of Pitcairn's Island, however, suggests a more fundamental flaw in antifederalist thought. On the island, a small republic was feasible, was put in place, and was, in the end, a catastrophic failure. The implication is that the antifederalists' main error, and the fatal error of Fletcher Christian in constructing his own society's constitution, lay in embracing a form of government ultimately "dependent for its goodness and trustworthiness on the everyday goodness and trustworthiness of the people."¹⁴⁴

Such a government, Madison foresaw, was destined to collapse into the tyranny of majority faction. Building on this Madisonian premise, the architects of our Constitution framed what Fletcher Christian failed to provide to his colony: a governmental structure that was sensitive to the danger of faction, that negated this danger through checked and divided government, and that over time evolved to embrace all citizens affected by the political process as eligible participants in it. The government established on Pitcairn's Island was, to paraphrase Madison, "as short in life" as it was "violent in death."¹⁴⁵ The American constitutional experiment has been, in contrast, "remarkably, if not gloriously, successful."¹⁴⁶

143. See 1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 71.

144. *Id.* at 72.

145. See THE FEDERALIST NO. 10, *supra* note 73, at 133.

146. 1 THE COMPLETE ANTI-FEDERALIST, *supra* note 75, at 72.