

*Beyond Publius:*

*Montesquieu, liberal republicanism, and the small-republic thesis*<sup>1</sup>

ABSTRACT: The thesis that republicanism was only suited for small states was given its decisive eighteenth-century formulation by Montesquieu, who emphasized not only republics' need for homogeneity and virtue but also the difficulty of constraining military and executive power in large republics. Hume and Publius famously replaced small republics' virtue and homogeneity with large republics' plurality of contending factions. Even those who shared this turn to modern liberty, commerce, and the accompanying heterogeneity of interests, however, did not all agree with or know about Publius' institutional responses to the problems of executive and military power. Throughout the late eighteenth and early nineteenth centuries, and on both sides of the Atlantic, it remained a live question whether large states could be stable moderate republics, with responses ranging from embraces of Montesquieuan limited monarchy, to denials that there was any real large-republic problem at all, with a variety of institutional solutions in between for those who thought there was a real but soluble large-republic problem.

I.

In the decades leading up to the American and French Revolutions, European political thinkers generally considered republicanism unsuited to large states. Not only were the extant republics of the era—San Marino, the Netherlands, Geneva, Switzerland, and

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<sup>1</sup> Assistant Professor of Political Science, University of Chicago; jtlevy@uchicago.edu . I thank Emily Nacol for tireless and exceptionally acute research assistance on this project. I also thank Etienne Hoffman, the Institut Benjamin Constant, and the associated Constant archives at the Bibliotheque Cantonale et Universitaire, Lausanne-Dorigny, Département des manuscrits, for a very productive opportunity to consult the archives in December 2003; Bernard Yack, Philip Pettit, and Steven Pincus, and a very careful anonymous reader for this journal for comments; and audiences at the May 2004 annual meeting of the New England Political Science Association, the September 2004 Annual Meeting of the American Political Science Association, and the Modern France Workshop and the Law School Works-in-Progress workshop at the University of Chicago. I gratefully acknowledge fellowship support and funding for the consultation of the Constant archives from the Earhart Foundation.

Venice—very small compared with powers such as France and Britain; the two that were larger than city-states, the Netherlands and Switzerland, were actually confederations of even smaller republics. To this empirical observation was added the weight of theoretical argument, and the authority of the midcentury's most influential writer on political sociology and political science, Montesquieu.

As elaborated in *Grandeur and Decadence of the Romans*<sup>2</sup> and *The Spirit of the Laws*<sup>3</sup>, Montesquieu's argument about the size of republics includes three major steps. The first is that size corresponds to a diminution in republican virtue. Large states necessarily have a plurality of interests in them and come to have substantial material inequality as well. This means that citizens develop private interests that diverge from each other sufficiently to increase the gap between private and common interest, which diminishes their willingness to uphold the latter against the former. As a result, the civic virtue that is the animating principle of republics becomes more difficult to sustain. 'When that virtue ceases, ambition enters those hearts that can admit it, and avarice enters them all.'<sup>4</sup> And that avarice drives further growth in the fortunes of the rich, reducing equality still further and entrenching the cycle.

Second, and closely related, is the difficulty in a large republic in *perceiving* the general good even if one wanted to. The common good is not only 'better felt' but also

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<sup>2</sup> Montesquieu, *Considerations on the causes of the greatness of the Romans and their decline*, David Lowenthal trans. (Indianapolis, 1999 [1734]).

<sup>3</sup> Montesquieu, *The Spirit of the Laws*, Cohler *et. al.* trans. (Cambridge, 1989 [1748]), henceforth *SL*. There are important differences between the *Considerations* and *SL* in their account of Rome and republicanism; but they share the views described herein about the incompatibility of republican liberty or virtue with greatness of territory or conquest, and about the risk of military subversion of republican government.

<sup>4</sup> *SL* VIII.16, p. 23.

'better known' in a small than in a large republic.<sup>5</sup> Where the first argument concerns motivational problems for civic virtue, this argument suggests that large republics face informational or epistemic problems. Even the genuinely public-spirited citizen will not be able to comprehend all the variety of facts and conditions that yield a public good in a state that contains commerce and agriculture, great urban ports and remote mountain villages, rich and poor. Even the virtuous will tend to mistake the interest of their own regions for the interest of the whole, or simply be overwhelmed by the attempt to understand the whole. The informational argument suggests but does not depend on an ontological one: that a large and diverse state really doesn't *have* a common interest for the virtuous citizen to pursue, because there are too few interests genuinely held in common. Montesquieu might have thought this, but he does not quite say it.

The third argument is less-often remembered today; it centers not on virtue or homogeneity but on institutional mechanisms and power. It involves executive and military power. For Montesquieu as for other political thinkers of his era, it could not escape notice that the most important large republic in history, Rome, and the most recent, the English Commonwealth, both ended in one form or another of military dictatorship. Comparisons between Cromwell and Caesar abound in political works of the era in general and in Montesquieu's *oeuvre* in particular.<sup>6</sup> The relationship between the military successes of

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<sup>5</sup> *Ibid.*, VIII.16, p. 23.

<sup>6</sup> Peter Baehr and Melvin Richter, eds., *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism* (Cambridge, 2004), studies the nineteenth-century analysis of populist-military subversions of republican rule. Some thought that Bonapartism represented something radically new; others reached back to Caesar and saw Bonaparte as the latest instance of something old. The volume seems to me to create a misleading picture of the latter group; it omits the degree to which they put Bonaparte into a pre-existing eighteenth-century category that included Sulla, Caesar, and Cromwell.

republican Rome and its eventual civic failure is a major theme of Montesquieu's *Considerations*.

When the domination of Rome was limited to Italy, the republic could easily maintain itself. A soldier was equally a citizen. [...] Since the number of troops was not excessive, care was taken to admit into the militia only people who had enough property to have an interest in preserving the city. Finally, the senate was able to observe the conduct of the generals and removed any thought they might have of violating their duty. But when the legions crossed the Alps and the sea, the warriors, who had to be left in the countries they were subjugating for the duration of several campaigns, gradually lost their citizen spirit. And the generals, who disposed of armies and kingdoms, sensed their own strength and could obey no longer. The soldiers began to recognize no one but their general, to base all their hopes on him, and to feel more remote from the city. They were no longer the soldiers of the republic but those of Sulla, Marius, Pompey, and Caesar. Rome could no longer know whether the man at the head of an army in a province was its general or its enemy.<sup>7</sup>

Given that a large state must have large armed forces, it necessarily tends toward strong executive power concentrated at a single point. A monarch is able to fulfill the need for such a concentration of power. But if there is no monarch, a general is likely to step into the vacuum. If the large state was entirely under one unitary republican form of government, then that government would simply be militarily subverted at the center. If the large state consisted of a republican metropole ruling over subject territories not incorporated into the metropole, then the military rulers of the provinces would become the real powers in the state.

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<sup>7</sup> *Considerations*, p.91

Republics face dangers in both smallness and greatness. ‘If a republic is small, it is destroyed by a foreign force; if it is large, it is destroyed by an internal vice.’<sup>8</sup> Republics small enough to defend themselves against the internal threat of military rule are likely too small to protect themselves against external military threat. That is what drives republics, like all states, to try to become larger in the first place. The problem of military overreach isn’t unique to republics; monarchies need to remain medium-sized rather than becoming truly vast to avoid succumbing to internal despotism.<sup>9</sup> But the problem of scale is particularly acute for republics; there is likely to be no ‘just right’ size between the republics too small to defend themselves and those too large to remain republican.

The three problems are mutually-reinforcing. An unequal state in which genuine underlying private interests diverge *eo ipso* also becomes a state in which it is more difficult to *perceive* the common interest. Republics without civic virtue are all the more ripe for military takeover. And military expansion is corrupting in its own right.

Great successes, especially those to which the people contribute much, make them so arrogant that it is no longer possible to guide them [...] In this way the victory at Salamis over the Persians corrupted the republic of Athens; in this way the defeat of the Athenians ruined the republic of Syracuse.<sup>10</sup>

Two very different adaptations of republicanism are presented as offering some hope of a solution. One is exemplified by eighteenth-century Switzerland: the confederate republic, or rather the confederacy *of* republics. This allows the constituent states to remain small and potentially virtuous republics while joining together their external military power. The other model is Britain: a state that has the spirit of a republic clothed in the form of a

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<sup>8</sup> *SL IX.1*, p. 131.

<sup>9</sup> *Ibid.*, VIII.17, IX.6-7, X.9, 13; Montesquieu, *Réflexions sur la monarchie universelle en Europe*, Michel Porret ed. (Geneva, 2000[1734]).

<sup>10</sup> *SL I.4*, p. 115

monarchy. Contrary to how Montesquieu has sometimes been read, he makes clear that this ‘form’ matters for Britain's effectiveness. He does not simply characterize Britain as a republic, and he does not suggest that Britain would be better off as a formal republic.

It was a fine spectacle in the last century to see the impotent attempts of the English to establish democracy among themselves. As those who took part in public affairs had no virtue at all, as their ambition was excited by the success of the most audacious one [FN: ‘Cromwell’] and the spirit of one faction was repressed only by the spirit of another, the government was constantly changing; the people, stunned, sought democracy and found it nowhere.<sup>11</sup>

Britain is not disproof of the small-republic thesis. It is in a way the ultimate confirmation. Even that nation whose spirit is most dedicated to liberty itself proved incapable of strictly republican government. The moderated and restrained monarchical form allows a large state to remain dedicated to the spirit of liberty. Moreover, the normative thrust of *SL* in general makes clear Montesquieu's preference for the British over the Swiss solution. British liberty is modern, commercial and moderate, compatible with refinement and progress. The liberty of a confederacy of small republics is so tied up with a rigorous virtue as to become quasi-monastic.<sup>12</sup> The confederate solution does *not* eliminate the incompatibility of republicanism with commerce. It maintains the constituent republics as small and virtuous— and, hence, non-commercial. Where commerce and the *form* of republicanism were joined, as in the Netherlands and Venice, Montesquieu saw corruption and decline, not the spirit of liberty.<sup>13</sup>

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<sup>11</sup> *Ibid.*, III.3, p. 22.

<sup>12</sup> *Ibid.*, V.2, pp. 42-3.

<sup>13</sup> See W.R.E. Velema, ‘Republican Readings of Montesquieu: *The Spirit of the Laws* in the Dutch Republic,’ XVIII(1) *History of Political Thought* 43-63, 1997; David W. Carrithers, ‘Not So Virtuous Republics: Montesquieu, Venice, and the Theory of Aristocratic Republicanism,’ 52(2) *Journal of the History of Ideas* 245-68, 1991.

The doctrine that republics must be small did not originate with Montesquieu,<sup>14</sup> but he gave it a definitive and transformative articulation and re-emphasis. In this as in much that concerns the idea of republican government, Montesquieu both assimilated and altered the civic traditions, and his account became the standard point of reference for decades to come. He ‘did for the latter half of the eighteenth century what Machiavelli had done for his century; he set the terms in which republicanism was to be discussed.’<sup>15</sup> By setting the central Machiavellian values of republican liberty and greatness in direct opposition to each other, he made the direct appropriation of Machiavelli’s republicanism much more difficult. By aligning republicanism with anti-commercial virtue and moderate monarchy with commerce, he unsettled any tendency to see the Netherlands and Venice as sustainable modern models of republicanism. And by reestablishing classical republicanism as the paradigmatic case, he perhaps obscured some movement that had already been made in republican thought away from classical civic virtue and toward an embrace of size and diversity of interests.<sup>16</sup> Montesquieu’s understanding of republicanism became sufficiently

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<sup>14</sup> See David Armitage’s survey, ‘Empire and Liberty: A Republican Dilemma,’ in Martin van Gelderen and Quentin Skinner, eds., *Republicanism: A Shared European Heritage*, vol. II: *The Values of Republicanism in Early Modern Europe* (Cambridge, 2002), pp. 29-46. Armitage suggests (p. 46) that ‘federalism offered the distinctly modern solution to the ancient dilemma of liberty and empire, but only for an appropriately extended commercial republic under the rule of law.’ Armitage’s narrative ends more or less where mine begins; it comes to a close with *The Federalist*.

<sup>15</sup>Judith Shklar, ‘Montesquieu and the New Republicanism,’ in Bock *et. al.* eds., *Machiavelli and Republicanism*, (Cambridge, 1990), pp. 265-79, p. 265. The present piece is much indebted to this article and takes it as something of a point of departure.

<sup>16</sup> David Wooton, for example, argues that James Harrington, Pocock’s paradigmatic Atlantic Machiavellian, had already turned away from virtue and smallness, and toward institutional design and largeness, in his understanding of republicanism. ‘Introduction,’ in Wooton, ed., *Republicanism, Liberty, and Commercial Society, 1649-1776* (Stanford, 1994), pp. 1-41. Similarly, recent scholarship on Trenchard and Gordon emphasizes their synthesis of what we now think of as liberal and republican

orthodox that the *Encyclopedie's* main entry on 'République' consisted largely of excerpts from *SL*, including almost the entirety of the chapter on the size of republics;<sup>17</sup> and the sub-entry on 'République fédérative' consists almost entirely of an abridgement of *SL's* three chapters on the subject.<sup>18</sup> It remained orthodox political science in the early stages of American political thought. Anti-Federalists relied on it— not only the idea that republics should be small, homogenous, and virtuous, but also the specific worry that large republics required and were acutely vulnerable to standing armies, the worry about a general 'with the spirit of a Julius Caesar or a Cromwell.'<sup>19</sup> Montesquieu's version of the small-republic thesis retained the status of a default position to be engaged with or argued against until Tocqueville's own reinterpretation and transformation of the large-republic question in *Democracy in America*—a transformation that took many of Montesquieu's ideas on board,

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themes, in contrast to the overwhelmingly republican image developed in and since J.G.A. Pocock, *The Machiavellian Moment* (Princeton, 1975), e.g. pp. 467-77. Vickie B. Sullivan, *Machiavelli, Hobbes, and the Formation of a Liberal Republicanism in England* (Cambridge, 2004), ch. 7; Annie Mitchell, 'A Liberal Republican 'Cato,' 48(3) *American Journal of Political Science* 48(3): 588-603, 2004. Compare Paul Rahe, 'Antiquity Surpassed: The Repudiation of Classical Republicanism,' in *Republicanism, Liberty, and Commercial Society*, pp. 233-69.

<sup>17</sup> *SL* VIII.16, 'Distinctive properties of the republic;' in Denis Diderot, ed., *Encyclopédie ou Dictionnaire Raisonné des Sciences, des Arts, et des Métiers* (Paris, 1766), vol. 14 p. 151. The 'Republic' article was compiled, and the subsections on Athens and Rome were written, by M. le Chevalier de Jaucourt, a prolific contributor of articles on political and legal topics to the *Encyclopédie*.

<sup>18</sup> *SL* IX.1-3, pp. 131-33; in the *Encyclopédie*, vol. 14, pp. 158-59

<sup>19</sup> Brutus, Letter I, in Terence Ball, ed., *The Federalist, With Letters of 'Brutus'* (Cambridge, 2003), p. 496. Page references for both Brutus and *The Federalist* are to this edition. For Brutus on the general need for republics to be small and homogenous, see Letters I and III, specifically pp. 444-6 and 456-8. For Brutus on the path from a large republic to a standing army to concentration of military power in the executive to military rule, see Letters I and VIII-X, p. 446 and pp. 485-501.

but that emphasized the importance of mores and sociable habits over either institutional design or classical civic virtue.

Montesquieu's argument in sum constituted a direct challenge to neo-Roman and Machiavellian republicanism. He certainly denied that liberty was to be found only in republics. A constitution-bound monarchy in a large state could provide individual liberty and security, religious toleration, the rule of law, commercial prosperity, and progress in arts, sciences, and manners. Republics were either doomed to irrelevance and impotence as small states, or destined to corrupt and destroy themselves as they grew. As Judith Shklar summarized the burden of proof Montesquieu placed onto those who hearkened back to Spartan or Roman models:

The differences between then and now were numerous, but they could be summed up in one word, size. The modern state was large, its culture diffuse, while the ancient republic had to be small and governed by a shared civic ethos. If a republic tried to expand, it simply lost its soul and decayed as Rome had. That meant that if the republican past was not to become irrelevant it would have to be imaginatively recreated or explicitly replaced by a new expansive republicanism to fit the modern political world.<sup>20</sup>

It is with that 'imaginative recreation or replacement,' over the decades between *SL* and *Democracy in America*, that I am concerned in this article.

## II.

Three responses to Montesquieu have endured as canonical. One is to be found throughout Rousseau's later political writings. Rousseau accepted that there is a tight relationship among republican forms, civic virtue, personal service to the state, patriotism, smallness, and the avoidance of commerce and partial private interests. Rousseau insisted

that governments need not assume republican forms in order to be republics at the level of justification. But large states that are republics-by-justification will be aristocratic or monarchical in form, for Montesquieuian reasons about the need for greater executive power in large states. Indeed, the account in Book III of *The Social Contract*, and in particular the memorable arithmetic positing that government (that is, executive power) must grow more powerful and more concentrated as the population grows larger, represents a formalization of Montesquieu's argument. Rousseau even endorsed as a commonplace the idea that a monarchy must have intermediate bodies in order to protect against despotism. Of course, Rousseau drew *normative* lessons quite different from Montesquieu's; on the desirability of virtuous republics he was Machiavelli's rather than Montesquieu's heir. But on the conditions that made such republics possible, on the social science of state size and regime type, he clarified but did not contradict Montesquieu's teachings. One way to understand the positive political project of *The Social Contract*, *Political Economy*, *Corsica*, and especially *Government of Poland*, as distinct from the critical project of the early discourses, is as an attempt to recover and make suitable for the eighteenth-century the civically-virtuous republicanism that Montesquieu considered anachronistic.<sup>21</sup>

Unsurprisingly, Hume's engagement with Montesquieu differed markedly from Rousseau's. Hume might have been expected to sympathize with the thrust of Montesquieu's argument; certainly, he believed in the improving force of commerce and modernity, and had little love for the Puritan attempt to turn a large constitutional monarchy into a virtuous republic. Hume was not always impressed with the quality of social analysis in *The Spirit of the Laws*, but (like the other writers of the Scottish Enlightenment) was much influenced by it and in broad agreement with its normative direction.

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<sup>20</sup> Shklar, 'Montesquieu,' pp. 266-7.

<sup>21</sup> The argument that civic republicanism was anachronistic for an age of commerce is most associated with Benjamin Constant. But here as in much else Constant built on Montesquieu— in this case both on Montesquieu directly and on Montesquieu filtered through Smith and Hume.

But when Hume turned to the question of the size of republics, he broke decisively with Montesquieu and the civic tradition. Hume's insight was that a republic— no longer a *civic* republic-- might be *more* stable and durable in a large state than in a small, because the large state would have a plurality of interests that might balance each other. In 'The Idea of a Perfect Commonwealth' he sharply rejects the assumption that republics depend on virtuous public-interestedness, *or* on homogeneity, or (related to both) on the absence of commerce or politesse.

Hume's refutation of the small-republic thesis is somewhat less devastating and less severe than it is sometimes reputed to be. It concedes much to Montesquieu's view. Hume did say it was "more difficult to form a republican government in an extensive country than in a city," he objected only that "there is more facility, once when it is formed, of preserving it steady and uniform, without tumult and faction." The affinity between cities and republican governments, deriving from social equality and the mutual sympathy of neighbors, was so strong that "even under absolute princes, the subordinate government of cities is commonly republican," whereas large states were likely to combine only in their

esteem and reverence for a single person, who, by means of this popular favour, may seize the power, and [...] establish a monarchical government

But questions of transition differ from questions of maintenance. The very nearness of habitation that makes democracy seem so natural in cities "will always make the force of popular tides and currents very sensible," and so increase the turbulence of government and "render their constitution more frail and uncertain." By contrast,

In a large government, which is modeled with masterly skill, there is compass and room enough to refine the democracy, from the lower people, who may be admitted into the first elections or first concoction of the commonwealth, to the higher magistrates, who direct all the movements. At the same time, the parts are so distant

and remote, that it is very difficult, either by intrigue, prejudice, or passion, to hurry them into any measures against the public interest.<sup>22</sup>

This does not exhaust Hume's considerations on republicanism, and the concern he articulated in 'Perfect Commonwealth' about the difficulty of attaining a good republican constitution in the first place was a recurring one. Elsewhere he suggested that any republic actually *likely* to arise in Britain would be a very bad one, descending either into unicameral absolutism or into Cromwell-style dictatorship.

The question is not concerning any fine imaginary republic, of which a man may form a plan in a closet. There is no doubt, but a popular government may be imagined more perfect than absolute monarchy, or even than our present constitution. But what reason have we to expect that any such government will ever be established in Great Britain, upon the dissolution of our monarchy?<sup>23</sup>

Moreover, Hume often reiterated the Montesquieuan ideas that republics were particularly despotic imperial rulers, that expansion via conquest posed a mortal threat to republican constitutions, and that the Roman experience confirmed these concerns. These represent another kind of transition worry; while a large republic created from scratch might be a very stable and desirable kind of free government, a republic that *expands* would not be. Since Hume was no more likely than Montesquieu to recommend institutional design stripped out of historical and societal context, his overall position is more Montesquieuan than has been apparent to some readers of 'Perfect Commonwealth.'

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<sup>22</sup> David Hume, 'The Idea of a Perfect Commonwealth,' in Eugene Miller, ed., *Essays Moral, Political, and Literary*, (Indianapolis, 1987[1754]), all quotations from pp. 527-8.

<sup>23</sup> 'Whether the British Government Inclines More to Absolute Monarchy or to a Republic,' in *Essays*, p. 52

Hume's argument, of course, helped to shape the most renowned response to Montesquieu: Publius' defense of the extended republic. Against the Anti-Federalists' invocations of Montesquieu and complaints that the Philadelphia Constitution attempted to create a large republic that must either degenerate into monarchy or collapse, Publius<sup>24</sup> mounted a complex critique of the small-republic thesis.

*The Federalist's* advocacy of large republics includes several steps. First, Publius argues that a wholesale embrace of the principle of representation transformed the republican arithmetic. Against opponents who agreed on the desirability of representation but who nonetheless seemed to appeal to direct participation, Publius holds that representation changes things more radically than had been noticed. In a representative republic, bigger districts were actually *better* than smaller ones, because they afforded a wider pool of persons from whom the most capable representatives could be drawn. The higher the ratio of constituents to representatives, the greater the likelihood that there would be men of sufficient ability and character in each constituency, and the better the chance that those able men would be the ones actually chosen, because it is harder to distinguish oneself in a large population, and easier to deceive a small one.

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<sup>24</sup> I refer to 'Publius' rather than to the authors of the individual numbers of the *Federalist*, for two reasons. The first is that Hamilton and Madison deliberately sought to make their respective arguments on this point dovetail with one another, and each explicitly built on the other's statements. (None of the pieces by Jay figure into this paper.) Numbers 9 (Hamilton) and 10 (Madison) are the heart of the response to the small republic thesis. The second is that we know that the public arguments of the Federalist Papers did not correspond in all relevant particulars to the private views of Hamilton and Madison. At the time they were writing, both Hamilton and Madison supported a greater centralization of power than was actually envisioned in the Philadelphia Constitution that Publius defended. Where Publius argues that the Constitution got the balance of power between states and union just about right, both Madison and Hamilton feared that it left the balance tilted too far toward the states.

The second step, of course, is the Federalist #10 argument regarding the advantages of a multitude of competing factions, so utterly contrary to Rousseauian views on civic unity. Small republics are not actually homogenous, as classical theory demands. They are just homogenous enough to allow for local majority tyranny. The more extended the republic, the greater the difficulty of assembling a tyrannical majority faction, because the plurality of interests increases with the size of the population. The multiplication of interested factions can lead to a balance that simulates the effects of disinterestedness, whereas smaller republics are prone to domination by an interested, passionate local majority. We have compelling reason to think that this account was in part borrowed from Hume.<sup>25</sup> Publius did not claim that the reframed logic of faction *eliminated* the need for virtue on the part of either citizens or officials. Nonetheless, the argument of #10 radically alters the traditional inference from virtue to homogeneity to smallness.

Third, drawing directly on but subtly distorting Montesquieu, Publius maintains that federation alters the calculus of size and military force. In an important rhetorical twist, the images of Caesar and Cromwell are displaced from the leadership of the central state's army to the leadership of populist revolts such as Shay's Rebellion.<sup>26</sup> But the real arguments come later, and depend upon the thought that a federal republic will have a single army at the center instead of thirteen or more separate armies. Echoing the theme of local passionate tyrannies from #10, Publius observes that

In any contest between the foederal head and one of its members, the people will be most apt to unite with their local government: If in addition to this immense advantage, the ambition of the members should be stimulated by the separate and independent possession of military forces, it would afford too strong a temptation... On the other hand, the liberty of the people would be less safe in this state of things, than in that

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<sup>25</sup> Douglas Adair, "That Politics May Be Reduced to a Science: David Hume, James Madison, and the Tenth Federalist," 20 *Huntington Library Quarterly* 343-60, 1957.

<sup>26</sup> Federalist #21, p. 95.

which left the national forces in the hands of the national government. As far as an army be considered a dangerous weapon of power, it had better be in those hands, of which the people are most likely to be jealous, than in those of whom they are least likely to be jealous. For it is a truth which the experience of all ages has attested, that the people are always in the most danger, when the means of injuring their rights are in the possession of those of whom they entertain the least suspicion.<sup>27</sup>

This is a frequent but subtle theme in *The Federalist*, sometimes overlooked in the urge to read it as a strictly nationalist document. At several points, Publius' argument *depends* upon the greater affection or sympathy the people will naturally feel for the states than for the federal government. Far from being a simple call to shift loyalties from the states to the center, *The Federalist* builds loyalty to the states into the constitutional structure. The power granted to the federal government will balance out the natural advantages of the states; the natural popular affection for the states will balance out concentrations or abuses of power by the center.<sup>28</sup> Either small or unitary large republics would lack that balance.

But this does not yet complete Publius' response to the worry about the military in a large republic. He first suggests that there is little to be feared, because the Constitution demands biennial appropriations for the army initiated by a biennially elected House; but this is inadequate, because of course the fear is that such constitutional niceties could be done away with by a standing army.<sup>29</sup> Publius must say something about the likelihood of this

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<sup>27</sup> #25, p. 116

<sup>28</sup> See, *inter alia*, #17, pp. 76-77; #45, pp. 225-6.

<sup>29</sup> See Brutus #9, p. 489, quoting Pulteney: 'If an army be so numerous as to have it in their power to overawe the parliament, they will be submissive as long as the parliament does nothing to dislodge their favourite general; but when that case happens, I am afraid, that in place of the parliament's dismissing the army, the army will dismiss the parliament.'

taking place, and what he says is this:<sup>30</sup> If a large standing army is being raised, there either is or is not a genuine external security threat that justifies it. If there is not, then the people can stop the buildup via elections, as an army cannot be built up all at once. If there *is* a real threat, if a standing army is genuinely necessary, then in some sense there is nothing to be done. There is a real dilemma: openness to foreign conquest versus raising an army that might upset domestic liberties. But—and this is the decisive thought—the federal government of united states will not need proportionately as large an army as would separate states trying to protect themselves against both external threats and their neighbors. A union's greater concentration of power means that *fewer* armed men are actually called for. The combined strength of the union will make both internal and external threats less formidable, allowing for a proportionately smaller standing army than the several states would require.

There are at least two elements of sleight-of-hand in Publius' use of Montesquieu here. The first is that, if the states were already too large to qualify as homogenous republics, then Montesquieu's analysis of republican federation is of doubtful relevance at best. That analysis depended on the component republics being virtuous, civic, and small. The second is that Montesquieu means by 'federation' something much more like a defensive alliance than like the Philadelphian compound republic. The contemporary examples he offered of federal constitutions were the Netherlands, the Holy Roman Empire, and the Swiss leagues, all polities that we would today characterize as confederal rather than federal, and all examples that Publius explicitly rejects in Nos. 19-20. Montesquieu mentions mere alliances among Greek cities, and treats 'associations of towns' as an interchangeable term with 'federal republic.' He treats the act of federation as a temporary one, revocable if (for example) one of the component units ceases to be a republic. He thinks it prudent to forbid the component units to enter into foreign treaties; but this is not treated as a prerequisite for

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<sup>30</sup> #26, p. 124

qualifying as federated. Rather than a loose confederation of small homogenous republics, Publius offers a moderately tight federation of already large and diverse ones, which places his account more in opposition to than in direct descent from Montesquieu's.

Rousseau, Hume, and Publius offer the best-remembered but not the only engagements with Montesquieu and the small-republic thesis. Within a half-century of the publication of *SL*, a new republic had come into being in North America that was one of the geographically largest states in the world; the most populous state in Europe had become a republic and was on the verge of falling to military rule; and Europe's other dominant power had seen a resurgence of republicanism allied to radical Protestant dissent. Three countries on two continents faced urgent questions about whether, and how, large modern states could be stably governed as republics. Rousseau offered no way to make republicanism suitable for such states, though some of his self-proclaimed followers tried valiantly to force a large hexagonal peg into a small Spartan hole. *The Federalist Papers* were not particularly well-known in France or Britain during the 1790s and the first three decades or so of the nineteenth century. John Adams' *Defense of the Constitutions*<sup>31</sup> was widely read and cited for at least some of that time, and Franklin, Adams, Jefferson, and later Paine were famous in French intellectual circles. Publius, however, did not make the same kind of impact. And the American experience was thought inapplicable to the situations of European great powers with inevitable standing armies.

Throughout the decades following the American Revolution, republican theory underwent a steady transformation from civic to liberal, to use an imprecise shorthand. Not only in Publius but throughout anglophone and francophone political theory, the understanding of faction and private interest, virtue and corruption, shifted dramatically over the course of forty years or so. What Wood has called 'the end of classical politics'<sup>32</sup> was a

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<sup>31</sup> John Adams, *A Defense of the Constitutions of the United States of America*, in George Carey ed. *The Political Writings of John Adams* (Washington, 2000[1787]).

<sup>32</sup> Gordon S. Wood, *The Creation of the American Republic 1776-87* (New York, 1972) p. 606.

trans-Atlantic phenomenon, not simply an American one. But the widely-shared commitment to a diversity of interests— sometimes treated by Americans as Publius’ most distinctive contribution— was accompanied by a tremendous range of institutional ideas, particularly in response to the executive-military problem. The small-republic thesis did not depend only on virtue and homogeneity, and its rejection could not rest entirely on the new logic of faction or on the embrace of commerce and modern liberty.

### III.

Not all engagements with the small republic thesis, even by those we think of as having both liberal and republican attachments, *rejected* that thesis. Adam Ferguson's comment that ‘when I recollect what the President Montesquieu has written, I am at a loss to tell, why I should treat of human affairs’<sup>33</sup> understates both his originality and his disagreements with Montesquieu. Ferguson was much more sympathetic to virtuous republicanism, and somewhat more ambivalent about commercial society, than Montesquieu. On the question of republics in large countries, however, they agreed. ‘Monarchies are generally found, where the state is enlarged in population and territory, beyond the numbers and dimensions that are consistent with republican government.’<sup>34</sup> In greater detail, Adam Smith restated the executive thesis and joined it to a Montesquieian argument about the greater freedom possible in moderate monarchies than in republics. A standing army is necessary for the defense of a modern state, but Cromwell and Caesar showed the danger a standing army posed to a republic. When

the sovereign is himself the general, and the principal nobility and gentry of the country the chief officers of the army; where the military force is placed under the command of those who have the greatest interest in the support of the civil authority, because they

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<sup>33</sup> Adam Ferguson, *An Essay on the History of Civil Society*, Fania Oz-Salzberger ed., (Cambridge, 1996[1767]), p. 66

<sup>34</sup> *Ibid.*, p. 69.

have themselves the greatest share of that authority, a standing army can never be dangerous to liberty. On the contrary, it may be favorable to liberty. The security which it gives to the sovereign renders unnecessary that troublesome jealousy, which, in some modern republics, seems to watch over the minutest actions, and to be at all times ready to disturb the peace of every citizen.<sup>35</sup>

As mentioned above, some general presumption in favor of the small-republic thesis outlived Hume and Publius, and remained widespread at least up to and including Tocqueville's endorsement-but-transformation of it, even among those who were favorably disposed toward commerce and a diversity of factional interests. Some therefore continued to endorse a constitutionally-restrained monarchy as offering the greatest likelihood of stable moderate government; subscribing to the small-republic thesis made them large-state monarchists.

This presumption was neither dispositive nor universal, however. At the other extreme, some liberal republicans denied that there was *any* genuine large-republic problem at all. They thought that the alleged difficulty was dissolved by the embrace of commerce and a diversity of interests, or the introduction of representation, or a combination of these. Those who thought that there was a large-republic problem that was not so easily dissolved, but did not think it irresolvable, offered a range of institutional remedies. The remainder of this article examines representatives of all these clusters— constitutional monarchists, those who denied that there was any large-republic problem at all, and those who sought institutional solutions for it— on both sides of the Atlantic and across several decades.<sup>36</sup>

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<sup>35</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Campbell *et. al.*, eds. (Indianapolis, 1981[1776]), Book V ch. 1.a, pp. 706-7.

<sup>36</sup>Beyond the works of political theory discussed here, there are many writings in these decades on the English and Roman republics and their fates. Many political theorists wrote histories of one or both, and some other historians worked out theoretically interesting understandings of republicanism in their discussions of Rome or England. While there is a great deal in these literatures relevant to eighteenth-

#### IV.

Most of those who rejected the small-republic thesis agreed that the introduction of representation eliminated *some* of the classical concerns about large republics, beginning with the straightforward logistical concern with assembling ever-increasing numbers of persons in one place. Some seem to have thought that representation, alone or combined with the new argument from faction, solved the Montesquieuan problem entirely. This is a striking view, demonstrating a wholesale and usually unselfconscious rejection of the classical understanding of what republics *were*, what republicanism *meant*. To Rousseau, replacing the virtuous, deliberate pursuit of the common good with the multiplication of self-interested factions, and direct participation with representation, would not have meant *saving* republicanism but rather abandoning it.

For Paine, by contrast, the equation of republicanism with small states arose out of a mere confusion: the equation of representative republics with direct democracies.

Those who have said that a republic is not a *form* of government calculated for countries of great extent mistook, in the first place, the *business* of a government for a *form* of government; for the *res-publica* equally appertains to every extent of territory and population. And in the second place, if they meant anything with respect to *form*, it was the simple democratical form, such as was the mode of government in the ancient democracies, in which there was no representation. The case, therefore, is not that a republic cannot be extensive, but that it cannot be extensive on the simple

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and nineteenth-century thought about large republics, they lie beyond the scope of this paper. On the Roman literature, see J.G.A. Pocock's three (so far) volumes on Gibbon's *Rise and Fall* and its intellectual background: *Barbarism and Religion*, vol. 1, 2, and 3 (Cambridge, 1999, 2001, 2004).

democratic form[...] It is incapable of extension, not from its principle, but from the inconvenience of its form[...]<sup>37</sup>

Publius had initiated this theme:

The error which limits Republican Government to a narrow district[...] seems to owe its rise and prevalence, chiefly to the confounding of a republic with a democracy [...I]n a democracy, the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents. A democracy consequently will be confined to a small spot. A republic may be extended over a large region.<sup>38</sup>

But this is an off-handed remark, not part of Publius' central argument for the advantages of 'a large over a small Republic.'<sup>39</sup> For Paine, however, this idea all but exhausts the response to the small-republic thesis; he thought that there really was no large-republic problem. If anything, he suggested, it is *monarchies* that can only function in small states, states with sufficiently finite and simple concerns that one individual might comprehend them all successfully. This neatly inverts one of Montesquieu's arguments. The epistemic difficulties facing the public-spirited citizen of a large republic who desires the general good but cannot identify it are shared by the monarch of a large kingdom. Fortunately, the individual republican citizen need not gather all the information or make all the decisions himself; a representative assembly can collectively bring more knowledge to bear on political problems than can a single king. 'It is the representative republican system only, that can collect into

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<sup>37</sup> Thomas Paine, *The Rights of Man, Part II*, in Bruce Kuklick, ed., *Political Writings* (Cambridge, 2000[1792]), pp. 178, 179.

<sup>38</sup> *Federalist* #14, p. 60.

<sup>39</sup> #10, p. 46

the government the quantity of knowledge necessary to govern to the best national advantage.’<sup>40</sup> ‘It is impossible,’ he wrote, ‘to conceive a system capable of acting over such an extent of territory, and such a circle of interests, as is produced by the operation of representation.’<sup>41</sup>

Paine refers to the small-republic thesis as

one of the most vulgar and absurd *sayings* or dogmas that ever yet imposed itself upon the world[...] Ask those who say this for their reasons and they can give none.[...] Montesquieu, who was strongly inclined to republican government, sheltered himself under this absurd dogma; for he had always the Bastille before his eyes when he was speaking of republics, and therefore *pretended* not to write for France.<sup>42</sup>

This passage, and a similar but explicit one in *Rights of Man*, summarizes Paine’s view: the small-republic thesis is such nonsense that, if a writer as clever as Montesquieu seemed to endorse it, he must have been dissembling to avoid censorship. Paine did not engage any of Montesquieu’s substantive arguments, or quote from any of the relevant passages. Always more brilliant than learned, he may not have actually read *SL*. Elections and representation were certainly not unknown to Montesquieu. He knew perfectly well that the House of Commons and provincial or national Third Estate assemblies were representatives of and not the whole body of the Commons or the Third Estate. And the difficulty of assembling the people all in one room was not among his arguments against large republics. But, as far as Paine was concerned, the thesis was decisively refuted by the discovery of representation.

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<sup>40</sup> ‘The Eighteenth Fructidor: To the People of France and the French Armies,’ in Philip Foner, ed., *The Complete Writings of Thomas Paine* (New York, 1945[1797]), pp. 598. Compare Jeremy Waldron, ‘The Wisdom of the Multitude: Some Reflections on Book 3, Chapter 11 of Aristotle’s *Politics*,’ 23 *Political Theory* 563-84, 1995.

<sup>41</sup> Paine, *Rights of Man, Part II*, p. 180.

<sup>42</sup> Paine, ‘Eighteenth Fructidor,’ pp. 598-99.

Indeed, his rejection of it did not even depend on the re-understanding of interest. Paine combined liberal and civic attitudes quite freely and loosely; for instance, *Common Sense* simultaneously embraces the traditional civic claim that commerce enervates virtue and engenders corruption, and a view that America has a glorious future as a peaceful commercial republic, peaceful *because* commercial. He never quite confronted the conflict between the traditional and the new understanding of virtue and interest. He insisted that ‘by republicanism, I do not understand what the name signifies in Holland, and in some parts of Italy. I understand simply a government by representation,’<sup>43</sup> and maintained that republicanism so understood was the only coherent system of government *regardless* of the moral character of the people; but he also freely made use of the conventional virtue/corruption rhetoric.

His rejection of the small-republic thesis also did not depend on federalism or confederalism; France could safely become a representative republic without introducing either Dutch or Swiss-style confederalism or the complex order of the American compound republic. In America, Paine had been an early proponent of ‘electing a Continental convention, for the purpose of forming a Continental constitution,’<sup>44</sup> of ‘consolidating the States into a Federal Republic.’<sup>45</sup> (He opposed what he took to be the aristocratic elements of the Philadelphia Constitution, but *not* its centralization of power.) In France, too, he was among the first to call for the overthrow of the monarchy after the King’s flight, and he appears to have been the primary influence in bringing Condorcet around to the view that there was no difficulty in creating a France-sized republic; in neither his influential

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<sup>43</sup> Paine, ‘To the Abbé Sieyès,’ 1791, in *Complete Writings*, p. 520.

<sup>44</sup> Paine, *Public Good*, 1780, in *Complete Writings* p. 332.

<sup>45</sup> Paine, *Letter to George Washington, July 30, 1796*, in *Complete Writings*, p. 692. See also letter to Robert Morris, 20 November 1782, pp. 1213-15; ‘Six Letters to Rhode Island,’ pp. 333-66.

‘Republican Manifesto’ nor his rejoinder to Sieyès’ response to it<sup>46</sup> did he so much as mention the distinction between a unitary and a federal republic.

V.

The English liberal utilitarian William Paley, on the other hand, wrote in 1785 that

much of the objection [to large republics] seems to be done away by the contrivance of a *federal* republic, which, distributing the country into districts of a commodious extent, and leaving to each district its internal legislation, reserves to a convention of the states the adjustment of their relative claims; the levying, direction, and government, of the common force of the confederacy; the requisition of subsidies for the support of this force; the making of peace and war; the entering into treaties; the regulation of foreign commerce; the equalisation of duties upon imports[...].<sup>47</sup>

Paley expresses some doubt as to the ‘limits [to which] such a republic might, without inconveniency, enlarge its dominions, by assuming neighboring provinces into the confederation’ and notes that the ‘experiment is about to be tried in America upon a large scale.’ His account of a well-constituted federal republic involves somewhat more power at the center than was then the case under the Articles of Confederation but looks much more like the government of the Articles, or like the Netherlands or Switzerland, than like the

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<sup>46</sup> ‘A Republican Manifesto,’ in *Complete Writings*, pp.517-519; ‘To the Abbé Sieyès,’ *Complete Writings* pp. 519-21. For the Paine- Sieyès debate, and the republicanism debate in Revolutionary France generally, see Ruth Scurr, “Pierre-Louis Roederer and the Debate on Forms of Government in Revolutionary France,” *52 Political Studies* 251-68, 2004.

<sup>47</sup> William Paley, *The Principles of Moral and Political Philosophy* (Indianapolis, 2002 [1785]), p. 325.

Philadelphian constitution. In the institutional shape of a federated republic, Paley largely echoed Montesquieu.

His understanding of the difficulties facing large republics, however, diverges tellingly from Montesquieu's; federalism is the solution to a different set of problems from those described in *SL*. The problems involve neither corruption nor commerce nor inequality. Paley's account focuses on the arithmetical rather than the moral side of things: the ratio of representatives to constituents. Excessively large electoral districts mean that the representatives will be effectively unconstrainable, that the link between representatives and constituents will be broken, and that elites will be able to manipulate elections. He does not mention the loss of homogeneity of interests among the constituents, only this loss of an identity of interests between constituents and officials. *Contra* Paine, representation is itself part of the large-republic problem. Concerns about virtue are completely absent; it is assumed that electors and elected will both tend to act according to heterogeneous private interests rather than homogenous public interest. Already, before the *Federalist Papers*, the kind of republicanism Montesquieu critiqued and Rousseau celebrated is absent from view, its key assumptions already being regarded too alien to even mention in the course of rejecting them.

The only diagnosis Paley shared with Montesquieu concerned military power, the worry that 'in a democratic constitution the mechanism is too complicated, and the motions too slow, for the operation of a great empire; whose defence and government require execution and despatch; in proportion to the magnitude, extent, and variety of its concerns.'<sup>48</sup> Paley neither proposed a solution for this difficulty nor followed the thought through to the conclusion that the need for 'execution and despatch' might leave a republican constitution vulnerable.

Jefferson— like Paley and Publius, and unlike Paine— relied on federalism along with representation and the rejection of the classical model of virtue and interest to defend the

large republic. Echoing Paine, he held that ‘a government by representation is capable of extension over a greater surface of country than one of any other form;’<sup>49</sup> and he embraced the logic of the multiplication of interests in the extended republic.

I suspect that the doctrine, that small States alone are fitted to be republics, will be exploded by experience, with some other brilliant fallacies accredited by Montesquieu and other political writers. Perhaps it will be found that to obtain a just republic (and it is to secure our just rights that we resort to government at all) it must be so extensive as that local egoisms may never reach its greater part; that on every particular question a majority may be found in its councils free from particular interests and giving, therefore, a uniform prevalence to the principles of justice. The smaller the societies, the more violent and more convulsive their schisms.<sup>50</sup>

Finding points of agreement between Jefferson and Madison is not a great surprise in itself, but Jefferson is commonly thought of as the more sympathetic to local democracy and civic virtue. Moreover, Jefferson wrote this after his resignation from the Washington administration, during one of his bouts of alienated retirement to Monticello—that is, at one of the times that we might have expected him to be the least enamored of the extended republic. Over the decades he would many times reiterate the theme that small republics are prone to convulsions whereas large republics are stable.<sup>51</sup>

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<sup>48</sup> *Ibid.*, p. 325.

<sup>49</sup> Thomas Jefferson to P.S. Dupont de Nemours, 24 April 1816, in Merrill Peterson, ed., *Writings* (New York, 1984), pp. 1384-88, p. 1387.

<sup>50</sup> Jefferson to Francois d'Ivernois, 6 February 1795, in *Writings*, pp. 1022-5, p. 1024.

<sup>51</sup> Jefferson to Nathaniel Niles, 22 March 1801, in *The Writings of Thomas Jefferson (Memorial Edition)*, eds. Lipscomb and Bergh (Washington, 1903-4), Vol. 10, p. 232; Jefferson to Robert Williams, 1 November 1807, in *Memorial Edition*, vol. 8, p. 390; Jefferson to Francois de Marbois, 14 June 1817, in *Writings* pp. 1409-1411.

But federalism was necessary component for a successful extended republic. One of the essential principles of our Government, and consequently [one of] those which ought to shape its administration [...] the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies.<sup>52</sup>

Long after the Kentucky and Virginia Resolutions, Jefferson continued to warn of the dangers of ‘consolidated’ government, seeing federalism as intellectually akin to the separation of powers—the question in each case was whether to concentrate or disperse authority.

When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated.<sup>53</sup>

Despite Jefferson’s sympathies for the views of Paine and Franklin (and his Parisian *philosophe* friends such as Condorcet, about whom more below) on democratic decision-making, and his skepticism about Montesquieu and the British constitution, he consistently defended the complexities of the compound republic. He maintained that a large republic could better protect freedom than a small one, but only if, and in part *because*, it was organized with both a separation of powers and federalism. From his attack on ‘elective despotism’ and his defense of powers being ‘divided and balanced among general bodies of magistracy’ in the 1782 *Notes on the State of Virginia* through his fear of ‘the giving to the federal member of the government, by unlimited constructions of the Constitution, a control over all the functions of the States, and the concentration of all power ultimately at

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<sup>52</sup> Jefferson, First Inaugural, 1801, in *Writings* pp. 492-6, pp. 494-5.

<sup>53</sup> Jefferson to Charles Hammond, 1821, in *The Writings of Thomas Jefferson*, Vol. 15, p. 332.

Washington’<sup>54</sup> expressed the year before his death, he joined a worry about centralization undermining federalism to his sense that republicanism was indeed well-suited to states of ‘great extent.’

## VI.

These Anglo-American debates shared an intellectual context, and often shared participants, with French disputes about large republics that gained urgency at about the time the Philadelphia constitution was being ratified and implemented. During the Revolution, after the failure of the attempt to create a Jacobin civic republic, and after the republic followed its British and Roman predecessors into rule by a military strongman, French theorists and statesmen struggled to understand whether and how non-monarchical politics could be made safe for a large state.

The generation of French intellectuals who witnessed and celebrated the American Revolution were generally unsympathetic to Montesquieu. They were highly rationalist in orientation, rejecting his pluralism and deference to custom; they were enthusiastic about deliberately designed and highly transparent institutions, and critical of the obscurantist doctrines of French or British constitutionalism. The *parlements* of which Montesquieu had been so enamored appeared to them primarily as defenders of aristocratic privilege, barriers to the rationalization and centralization attempted by Turgot and Necker.

Accordingly, they thought it a great mistake on the part of the new American republics to emulate either the gothic machinery of the British constitution or Montesquieu’s image of it. When the state constitutions were published in France it was only Pennsylvania’s—highly democratic, with a supreme unicameral legislature and a decidedly subordinate executive—that met with their approval. It was known that this constitution had Franklin’s fingerprints on it, which only increased the esteem in which he was held in Parisian circles. In turn Franklin, who did much to shape elite French views on America in

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<sup>54</sup> Jefferson to William Short, 1825, in *The Writings of Thomas Jefferson*, Vol. 16, p. 95.

the 1770s and 80s, did not dissuade his French friends from rating Pennsylvania's constitution over those of the other states.

Condorcet, Turgot, and Mably all wrote on the state constitutions, enthusiastically welcoming American republican independence but bemoaning the Americans' attachment to bicameralism and complicated legislative-executive machinery.<sup>55</sup>

I confess that I am not satisfied with the Constitutions which have hitherto been formed by the different States of America.[...] I observe that by most of them the customs of England are imitated, without any particular motive. Instead of collecting all authority into one center, that of the nation, they have established different bodies; a body of representatives, a council, and a Governor[...] They endeavour to balance these different powers, as if this equilibrium, which in England may be a necessary check on the enormous influence of royalty, could be of any use in Republics founded upon the equality of all citizens[.]<sup>56</sup>

People talk of 'opposing forces,' 'counterweights,' and 'balances,' and the less people understand these words, the more influence they have[... I]t is in the interest of professional politicians to protect everything that is complicated[...T]he more

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<sup>55</sup>Condorcet, 'Letters from a Freeman of New Haven to a Citizen of Virginia on the Futility of Dividing the Legislative Power Among Several Bodies,' in Iain McLean and Fiona Hewitt, trans. and eds., *Condorcet: Foundations of Social Choice and Political Theory* (London, 1994[1787]), pp. 292-334, and see the discussion of the 'Letters' history at pp. 64-9; Turgot, 'Letter to Dr. Price, Paris, 22<sup>nd</sup> March, 1778,' published in French and English as an appendix to Richard Price, *Observations on the Importance of the American Revolution* (London, 1785); Abbé Mably, *Observations sur le Gouvernement et les Lois des États-Unis d'Amérique* (Dublin, 1785[1783]).

<sup>56</sup> Turgot, pp. 113-4.

complicated a constitution, the greater the potential influence of intrigue and sophistry.<sup>57</sup>

One might say that American laws are based on the laws of England[...]; I grant it, and wish for the sake of your happiness that I could not. One does see in your laws the spirit of English laws;<sup>58</sup> but I ask you to notice the prodigious difference between your situation and England's. The English government was formed in the midst of feudal barbarism.<sup>59</sup>

These critiques prompted Adams to write his *Defense of the Constitutions of the United States*, a celebration of bicameralism, the separation of powers, and constitutionalism à la Britain and Montesquieu, a work that had a great impact in France, where it continued to be cited for years, but not in America, where its aristocratic sympathies were out of sync with the times.

None of the three (or Adams, for that matter) gave sustained explicit treatment to the question of size; what seemed important to them was simplicity of organization combined with correct principles of individual rights; they complained about slavery, religious establishments, religious test oaths, and the failure to prohibit state regulation of the economy and trade. Of the three, only Mably (under the direct influence of Rousseau) invokes the language of martial and republican virtue or the commercial corruption of the moderns. Mably briefly mentions that it is fortunate that the states have not tried to consolidate and commends confederalism as a way to maintain small virtuous states, but he does not address either questions of federal institutional design or any difficulties with confederalism.

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<sup>57</sup> Condorcet, p. 325.

<sup>58</sup> *l'esprit des lois anglaises*, a wording which I assume is intentional.

<sup>59</sup> Mably, *Observations*, p. 14.

Condorcet, after identifying the defensive virtues of federation, warns that federalism might prove too complex with too many states, and suggests reorganizing them into a smaller number of larger consolidated units. He maintains that military subversion can be prevented by simply embracing *laissez-faire* trade policy and rejecting mercantilism. A free-trading state will have little need for armed forces at all, as it is mercantilism and colonialism that cause wars, and so there are no particular difficulties with a republican executive. Republicanism in these inter-revolutionary works appears as a natural state of affairs, not a difficult constitutional accomplishment. When the distortions of hereditary privileges and the injustices of rights-violating officials are removed, republicanism results. Like Paine, these rationalists doubted that there was any serious large-republic problem at all. For obvious reasons, French republican theory soon became more concerned about problems of institutional design.

## VII.

In the years following 1789, the American precedent, while often referred to as inspirational, was generally thought not to be decisive proof that large-republic problems could be solved. De Maistre was (as usual) an extreme case; he suggested that the problems could not be solved even in America, and openly ‘doubt[ed] the stability of the American government.’<sup>60</sup> Liberal republicans and constitutional monarchists generally disagreed with him about that, but thought that the unique geopolitical position of the United States made it an unsuitable, or at best unreliable, model for any republic in France. In the absence of any local credible military threats, it could afford to keep its armed forces small; this thoroughly altered the balance of legislative and executive power, and protected the American republic from military subversion. Moreover, it was widely (though not universally) agreed among

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<sup>60</sup> Joseph de Maistre, *Considerations on France*, trans. Richard LeBrun (Cambridge, 1994[1797]), p. 61. See also p. 35.

French liberals that federalism itself was a luxury for states without military threats, a luxury France could not afford.

This stage of the large-republic debate took place in theoretical treatises as well as in revolutionary pamphlets and speeches. Three very different works of liberal theory stand out as particularly interesting and important, though today all are almost unread in English and hardly better-known in French: Necker's *Du Pouvoir Exécutif dans les Grands États*,<sup>61</sup> Constant's *Fragments d'un ouvrage abandonné sur la possibilité d'une constitution républicaine dans un grand pays*,<sup>62</sup> and Tracy's *Commentaire sur L'Esprit des Lois de Montesquieu*.<sup>63</sup>

Necker's *Executive Power* was written after Louis XVI's oath under duress to uphold the Constitution of 1791 but before his arrest for treason— that is, sometime between September 1791 and August 1792, when the monarchy existed but with *de jure* limited and *de facto* very little power. The book denounced the Revolution's tendency to attenuate the monarchy and to subordinate executive authority. The Constituent and National Assemblies had consistently failed to understand the imperatives of executive force in a large state. In a very substantial work covering constitutional theory, the separation of powers, and detailed examinations of the British and various American constitutions as well as an indictment of

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<sup>61</sup> Jacques Necker, *Du Pouvoir exécutif dans les grands États* (Paris, 1792). References are to *Essay on the True Principles of Executive Power in Great States*, trans. unknown (London, 1792), henceforth *Executive Power*.

<sup>62</sup> Benjamin Constant, *Fragments d'un ouvrage abandonné sur la possibilité d'une constitution républicaine dans un grand pays*, Henri Grange ed. (Paris, 1991[c. 1802-07]), henceforth *Constitution républicaine*. Translations are my own.

<sup>63</sup> Antoine Claude Destutt de Tracy, *Commentaire Sur L'esprit Des Lois De Montesquieu* (Paris, 1819). References are to *A Commentary and Review of Montesquieu's The Spirit of the Laws*, Thomas Jefferson trans. (New York 1969 [1811]), henceforth *Commentary*. For an explanation of the eight years separating Jefferson's English translation from the original French version, see below.

the course of the Revolution, Necker forcefully restates the small-republic thesis. Montesquieu was right all along; large states demand monarchies. Necker's concern is not with civic virtue, inequality, or commerce, but with the need for executive authority concentrated at a single point, and a monarchy's unique ability to exercise that authority in a non-despotic fashion.

Necker claims that the National Assembly has 'adopt[ed] a maxim of Montesquieu,' also endorsed by Rousseau, that there is a presumption in favor of the people being left to 'do of itself whatever it is competent to do well.' 'But these philosophers,' objects Necker, 'are speaking expressly of democracies[...] [D]emocracies however exist only, and can only exist, in small states[...] [T]o apply the maxim of Montesquieu to a kingdom like France, is one of the greatest faults that a legislator can commit.'<sup>64</sup>

This is centrally because only a monarchy combines the awe and majesty which will induce the army to obey civilian government with the unified decision-making necessary both to command and to protect the executive functions from legislative encroachment.

The discipline of the army is one of the conditions most indispensable to the security of public order and the maintenance of exterior consideration; and, in this point of view, can there be any comparison between the awe-inspiring supremacy of a monarch, and the authority of a collective senate, holding its office for a time and chosen by the people? Every thing, as I have already observed, enforces the necessity of an idea of unity, as essential to an armed force, unity of will, unity of command, united temper, interest, and movement. It is by means of one of the most powerful operations of the imagination, that an armed force submits to the yoke of obedience[...] It would therefore be no common stretch of absurdity, to expect an army to be indifferent to the greatness and authority of the first magistrate.<sup>65</sup>

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<sup>64</sup> *Executive Power*, vol. I, pp. 32-33.

<sup>65</sup> *Ibid.*, III.98-99.

Neither a unitary nor a collective elected republican executive can fill the need. The latter kind of body is prone to jealous competitions of power with the legislature, because legislators will be dissatisfied with the executive's greater prestige.

Competitions are never so active as between men separated from one another by the most trivial distances: every jealous feeling is then awakened, and the first and slightest offense occasions instant irritation and war.[...] *Such assemblies can only exist in small states, where each feels alike the necessity of order.*<sup>66</sup>

An elected unitary executive like the American presidency would lack the prestige necessary to keep the armed forces in check. The presidency might work in America, but only because

the Americans having neither fleets nor armies to maintain, and their national debt being extremely moderate, their expenditure can bear no proportion to the expenditure of France. Beside [sic], situated far from the troubles of Europe and out of the reach of its politics, they are less exposed to those events which produce extraordinary expenses and wants, and may preserve as long as they please the happy independence which they enjoy.<sup>67</sup>

To this the obvious reply was that France was still a monarchy— a constitutional and limited monarchy, but one that did provide for the concentration of executive authority in a single, hereditary and royal, set of hands. Necker maintained that by 1791 France had only the barest form of a monarchy, and was a republic in fact. A state in which the people were constantly called upon to elect 'all the legislators, all the magistrates, all the clergy, all the militia officers of the state,' in which one witnessed

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<sup>66</sup> *Ibid.*, III.93, emphasis added

<sup>67</sup> *Ibid.*, III.13.

the almost daily exercise of the power of the people either by primary assemblies, or assemblies of district, or assemblies of department, or municipal assemblies, or assemblies of section, or political clubs and other associations, presenting petitions, three times a week, to the whole representative body of the nation, and every day, every hour, every moment to all the inferior authorities

resembles nothing so much as ‘a republic, and a republic of the most democratic kind.’<sup>68</sup>

More importantly, the king had been stripped of all real executive power, leaving France under dangerous domination by a legislative assembly. France’s now-symbolic monarchy had *less* executive authority than did the executives of republics (including America and Swiss cantons) with less need of such authority. A large state under military threat *did* need such authority, and France had been denied it. The revolutionary state was left with a dangerously unbalanced constitution: no executive to check the legislature, and no legitimate civilian commander to credibly check the military. Necker’s and similar arguments were to become influential during the Thermidorean Reaction, prompting support for the Directory and its attempts to stave off both the excesses of the Convention and the rising Bonapartist threat. Others were prompted to support the reestablishment of even stronger executive force by the Brumairean coup. One who was influenced by Necker’s work, but who still thought a republic possible and desirable in France, was Necker’s protégé (and his daughter’s sometime-lover) Benjamin Constant.

## VIII.

In exile from Napoleonic rule, Benjamin Constant spent the years 1802-1810 attempting to write a *Spirit of the Laws*- like *magnum opus* on liberty and political theory. The work was meant to consist of two parts, respectively treating ‘political institutions and individual rights, or in other words, the means of guaranteeing, and the principles of, liberty.’

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<sup>68</sup> *Ibid.*, III.88.

<sup>69</sup> Constant ultimately failed to complete this work, and he divided the two parts into mostly-separate projects. The work on individual rights was brought into a more-complete form, and has been published as *Principles of Politics Applicable to All Governments* (1810).

The project on institutions—in part a reply to Necker's work, and to Montesquieu behind it—was not completed, though it is much more of a finished cohesive work than is suggested by the title Constant left on it in his papers ('Fragments of an abandoned work on the possibility of a constitution in a large country') and under which it has been published. *Constitution Républicaine*, like *Principes* (1810) which incorporates a few of its most important chapters, has been published only fairly recently; unlike *Principes* (1810) it has never been translated into English. The two manuscripts together provided early drafts for most of his later-published works of political theory: almost all of *The Spirit of Conquest and Usurpation*<sup>70</sup> and *Principes* (1815)<sup>71</sup>, much of the *Mélanges* and of the *Réflexions sur les Constitutions et les Garanties*<sup>72</sup>, and essentially all of his lecture on ancient and modern liberty,<sup>73</sup> among others. Often the later works are taken word-for-word from one or both of the early manuscripts, lightly edited to take account of recent events.

Naturally we cannot attribute much direct influence to *Constitution Républicaine*, which remained a handwritten manuscript until 1991. But it is a crucial work for

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<sup>69</sup> *Principles of Politics Applicable to All Governments*, Etienne Hoffman ed., Dennis O'Keefe trans., (Indianapolis, 2003 [1810]), henceforth *Principes* (1810) to distinguish it from the similarly-named 1815 work, I.1.

<sup>70</sup> *The Spirit of Conquest and Usurpation and Their Relation to European Civilization*, in Biancamaria Fontana, trans., *Political Writings* (Cambridge, 1988 [1814]).

<sup>71</sup> *Principles of Politics Applicable to all Representative Governments*, in *Political Writings*, henceforth *Principes* (1815).

<sup>72</sup> *Réflexions sur les Constitutions et les Garanties, avec une Equisse de Constitution*, in M. Édouard Laboulaye, ed., *Cours de Politique Constitutionnelle* (Paris, 1872[1814]), pp. 167-381.

<sup>73</sup> 'The Liberty of the Ancients Compared With That of the Moderns,' in *Political Writings*.

understanding Constant's thought; despite its name, it is the later works that are often fragments of it. It is an exceptionally valuable work for understanding the confluence of liberal, constitutionalist, and republican ideas in immediately post-Revolutionary France, and is among the most substantial engagements with the problem of constitutional design in a large republic.<sup>74</sup> Unlike the interrevolutionary republicans, Constant treats that as a real problem, to be taken very seriously.

The organization of large states requires giving the government and its jurisdiction a level of activity and force that is difficult to restrain and that easily degenerates into despotism.<sup>75</sup>

Unlike Necker, and despite the discouraging history of the 1790s, he thinks those difficulties are soluble.

*Constitution républicaine* was written, as far as I can tell, with no reference to or awareness of *The Federalist*. Neither *The Federalist* nor any other work of Madison's or Hamilton's is cited in the text, or in any other work of Constant's that I know of. *The Federalist* does not appear in either of the extant catalogs of his personal library, unlike Adams' *Defense*.<sup>76</sup> He discusses no details of the Philadelphia Constitution, and appears to

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<sup>74</sup> Many of the sections of *Constitution républicaine* discussed here were incorporated with only minor changes into *Principes (1810)*, *Principes (1815)*, and/or *Réflexions sur les Constitutions*, but I use the wording and pagination from the published version of *Constitution républicaine*.

<sup>75</sup> *Constitution Républicaine*, p. 406.

<sup>76</sup> The 1818 and 1822 catalogs are in the Constant archives, Département des manuscrits, Bibliothèque cantonale et universitaire, Lausanne-Dorigny, manuscript numbers CO 4431 and 4377, respectively. Constant had encountered Adams in the summer of 1787, the period when the latter was writing the *Defense*; Dennis Wood, *Benjamin Constant: A Biography* (London, 1993), p. 98; Constant, letter to Isabelle de Charrière, 1 September 1787, in Benjamin Constant, *Correspondance générale, Vol. I, (1774-1792)*, ed. C. P. Courtney and Dennis Wood (Tuebingen, 1993), pp. 93-4.

believe that it marked just another step in the progressive augmentation of the central government's power. In particular, neither the Senate nor the Supreme Court appears where they might be expected to, in his discussion of the 'pouvoir neutre ou préservateur,' even to distinguish them from the kind of institution he has in mind. His discussion of the failings of existing models of federalism shows no awareness of the discontinuity between the Articles of Confederation and the Philadelphia Constitution; the only distinctive feature of the Constitution discussed is the existence of a unitary elected executive. He *does* discuss details of a few *state* constitutions, further suggesting a knowledge of American constitutionalism centered on the state constitutionalism at issue in Adams' *Defense* and the French debates to which the *Defense* was, in part, a response.

Here I differ with Patrice Higonnet<sup>77</sup>, who thinks we can perceive circumstantial evidence that Constant read Madison. That evidence is quite circumstantial indeed, amounting primarily to the fact that *Necker* had read *The Federalist*, that Constant might have had access to the work in Necker's library at Coppet, and that Constant wrote about America and federalism. But most of those writing about large republics after Montesquieu addressed federalism in one way or another, and all those writing in or after the 1780s made *some* reference to America. Certainly Constant, like other liberals and republicans of his generation, was interested in the American experiment and knew of Jefferson, Paine, and Adams. But compared with many of his associates (Necker, Stael, Lafayette, Tracy), predecessors (Turgot, Condorcet), or successors (Tocqueville), Constant showed surprisingly little interest in the United States. He wrote substantial works on Britain and on the new Latin American republics; he paid close attention to constitutional reform in Spain and to the Greek struggle for independence. He never wrote in such a sustained way about the United States. It seems to me that this record, along with the failure of *Constitution républicaine* to mention any of the distinctive institutional contributions or theories of the Philadelphia

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<sup>77</sup> Patrice Higonnet, 'Le fédéralisme américain et le fédéralisme de Benjamin Constant,' 8-9 *Annales Benjamin Constant* 51-62, 1988.

Constitution or of Publius, despite their relevance to the questions at hand, strongly indicates that *Constitution républicaine* was developed independently of *The Federalist*.<sup>78</sup>

If this is so, then it is all the more striking to find in *Constitution républicaine* an account of the pursuit of factional interest simulating, in aggregate, the general interest, an account that parallels that in *The Federalist*. In an extended argument in favor of electing legislators by and from local districts, Constant insists on the legitimacy and desirability of each person, each section, and each region defending their partial interests.

I hope that the representative of a section of the Republic will be the organ of that section, that he will not abandon any of its rights, real or imaginary, without having defended them[... If each [representative] is partial to his electors, the partiality of each, combined, will have all the advantages of the impartiality of all.<sup>79</sup>

Apparent tranquility and unity in a republic mean that liberty has been extinguished. Factions are distinctively ‘useful in a republic,’ ‘when the factions are born out of the ambition of individuals acting with their own strength and natural means.’<sup>80</sup> Constant credits this constellation of faction and liberty, ambition and republicanism, to Montesquieu’s

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<sup>78</sup> See also *Constitution Républicaine* pp. 412-13, where Constant claims that, from the founding of the Continental Congress in the 1770s onward through Confederation, even though Congress could only make recommendations or requests and ‘nothing was coercive on Congress’ part,’ ‘even in those circumstances, it was more faithfully and politely obeyed than any government of Europe has ever been.’ This romanticization seems incompatible with having read Publius’ indictment of the Confederacy or the *Federalist’s* account of Congressional impotence due to its lack of coercive authority.

<sup>79</sup> *Constitution Républicaine* p. 310; see generally pp. 303-15.

<sup>80</sup> *Ibid.*, p. 143. The contrast is with aristocratic hereditary distinctions, which ‘form two permanent and opposed interests in the state, [...] a germ of destruction to which the state always in the end falls victim.’

*Considerations*, a deliberate appeal to Montesquieu *against* the argument of *SL* that factional dispute is a vice and tranquility a virtue in republics.

Notwithstanding Constant's apparent ignorance of Publius, there is an obvious source for his argument on faction: Hume, whose *Essays* Constant both owned and certainly *had* read.<sup>81</sup> While he never cited 'Perfect Commonwealth' in particular, he was exposed to and much influenced by the intellectual currents of the late Scottish Enlightenment during his early study at Edinburgh, and references to Hume and Smith are very common throughout his work. If we have no particular reason to think that Constant ever read Publius, we have every reason short of a direct citation to suspect that he *did* read 'Perfect Commonwealth.'

Constant would later give the decisive formulation of the thesis that ancient liberty and civically-virtuous republics are anachronistic and unsuited to the needs of modern life. Homogeneity and classical virtue are simply unavailable to post-Reformation, post-slavery, wealthy and commercial societies. This thesis is implicit and occasionally explicit in *Constitution Républicaine*; 'the Greek experience is totally inapplicable to large modern states.'<sup>82</sup> Fortunately, republican government does not depend on homogeneity or classical virtue; faction, interest, and universal partiality provide a viable alternative. Thus does Constant reject Montesquieu's first, corruption-based, argument against large republics.

That isn't sufficient to demonstrate 'the possibility of a republican constitution in a large state;' the epistemic and executive worries remain. Constant endorses a version of the epistemic problem. The heterogeneity of interests in a large state is a real difficulty, not so much because *citizens* will not be able to understand some unitary and uniform common good—a concept Constant rejected— as because *officials* will be prone to mistake their interests, or those of the capital, for such a unitary common good, and to disregard wrongs done to the rest of the citizenry. This resembles Paley's concern about the gap between

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<sup>81</sup> See *Principles (1810)*, p. 520, fn.1.

<sup>82</sup> *Constitution Républicaine*, p. 238.

electors and elected, but with the added concern of geography, of the division between provinces and center and the predictable bias of officials toward the latter.

Local injustices never resonate as far as the center of government placed in the capital; the government takes the opinion of its own surroundings and place of residence as that of the entire empire. A local and momentary circumstance becomes a kind of motive for a general law, and the inhabitants of the most distant provinces are suddenly surprised by the most unexpected innovations, by measures more rigorous than is warranted, by the upsetting of the bases of all their calculations and of all the safeguards of their interests, because three hundred leagues away men who would seem completely alien to them believed they foresaw some movement, divined some needs, or perceived some dangers.<sup>83</sup>

Moreover, members of an assembly are all too likely to develop an *esprit de corps*, to become united to each other and isolated from their constituents. One symptom of this will be that they think in terms of ‘general ideas and theories of uniformity... and universal reforms [refoundings],’ that they will become overly concerned with the ‘disorder and uncertainty’ created by local variety, again joining the electors-elected distinction to the theme of differences between the province and the center. Large republics would be diverse states with a range of local interests and customs; governors at the center were likely to forget or ignore that. Heterogeneity in the citizenry, not problematic in itself, aggravated the problem of the inevitable heterogeneity between electors and elected.

Federalism, says Constant,

has seemed like a remedy to these inconveniences; but under the name of federalism have been included a number of institutions very different from one another. We must therefore define what we mean by that word. If we understand under that name an association of governments that have conserved their independence from one another,

and that hold together only for external purposes, governments of the quality of, in short, what federalism has been in Holland and Switzerland, then this institution is singularly vicious. Even the American government, although the best of federated governments, is not exempt from the inconveniences of the genre, and has already needed more than once to add to the authority of congress.

Again, it is unclear whether Constant understood the significance of the break between the Articles and the Constitution; the latter was much more than one in a series of augmentations of Congressional power. His chief objection to federalism as he understands it to have been previously practiced is that it allows local despotisms, that is the central government makes no attempt to guarantee that the provinces will respect freedom internally. He argues for a 'new kind of federalism,' the outlines of which are unclear despite his attempt at detail. It certainly includes the ability of the federation to legislate directly on citizens (as in the Philadelphia Constitution), not merely on the provinces. It also seems to include the ability of the center to intervene to protect citizens *against* the provinces (as was somewhat true for the Philadelphia Constitution but only became a significant part of the American constitutional order after the ratification of the 14<sup>th</sup> Amendment). But it was much more decentralist than the revolutionary/ Napoleonic *département* system. He argued for legislative autonomy on the part of the local units in all internal affairs, within the bounds set by individual rights; for officials locally elected rather than appointed by the center; and, crucially, for independent taxing and spending authority.<sup>84</sup>

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<sup>83</sup> *Ibid.*, pp. 406-7.

<sup>84</sup> Constant quotes Adam Smith, saying the latter 'proves very effectively' the need for local control over the fisc, because 'the abuses which sometimes creep into the local and provincial administration of a local and provincial revenue, how enormous soever they may appear, are in reality, however, almost always very trifling, in comparison of [*sic*] those which commonly take place in the

Even a republic with the ‘new kind of federalism’ might well be vulnerable to the epistemic charge; Constant’s main line of defense against it is that rulers without the discipline of elections have little *incentive* to genuinely promote the common good. Much of *Constitution républicaine* consists of attacks on the absurdity of hereditary offices, Paine-like in their spirit if not their venom. These have the cumulative effect of arguing that most difficulties faced by republics in large states are really just problems of government in large states, and that they are not solved by opting for hereditary over elected rulers.

The exception, the primary case in which Constant does not show the superiority of republicanism mainly by showing the absurdity of alternatives, is the executive problem—the intertwined difficulties of civilian executive command over the military and executive-legislative relations. He takes seriously both the threat of a collapse of executive power and the threat of military takeover; and here he does not so lightly dismiss the monarchist arguments. Constant, like Necker, dismisses the American precedent as being

of no importance to us[...] America has no continental enemies to fight, except for some hordes of savages, and is therefore freed of the dangerous need to resort to a regular standing army.<sup>85</sup>

Outside such exceptional circumstances,

there exists in all states, and especially in large modern states, a force that is not a constitutional power, but which is *de facto* a terrible power: the armed forces.<sup>86</sup>

In a long and at times furious chapter on ‘the organization of the armed forces’ written in part to come to terms with the experiences of Fructidor and Brumaire,<sup>87</sup> Constant

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administration and expenditure of the revenue of a great empire. They are, besides, much more easily corrected.’ *Ibid.*, p. 407, quoting Smith, *Wealth of Nations*, Book V, ch. 1.d, p. 731.

<sup>85</sup> *Ibid.*, p. 181

<sup>86</sup> *Ibid.*, p. 347

again analyzes the danger of an excessive *esprit de corps* creating a separation from the people, and especially the people of unfamiliar provinces— a tendency with even worse consequences in the case of an army than in the case of a legislature.

In all centuries, in all countries, men united for a long time in the armed services separate themselves from the nation.

Even soldiers defending a free society “conceive a sort of respect for the use of force as such[...]and thus acquire mores, ideas, and habits subversive of the cause they defend;” they submit to a “military spirit” that is “proud and conquering,” one that “detests reasoning as the beginning of indiscipline.” And the army often grows impatient with such indiscipline in the government. “No less often” than the armed forces defend their homeland,

we see them deliver the homeland to the military’s leaders. The army takes the glory of nations to new heights; but it also adds their rights to its list of conquests.<sup>88</sup>

Constant goes on to emphasize that this is a distinctive problem of *large* states. “A nation walled up within a single city” can depend on the citizen-soldiers of republican theory. But in a large and diverse state, the citizenry is not a undifferentiated mass; and those who are “citizens in their birthplace,” that is in their native region are “mere soldiers everywhere else” and so can be used as agents of tyranny. Thus in a large republic, even a mass citizen army is no guarantee that the army will be a friend of freedom.

The extent of the French Republic increased the power of those who could dispose of the armed forces, by making it possible to send the inhabitant of Jura to the Pyrennes, and that of Var to Lys; these men submitted to the military discipline that isolated them from their natural homelands, putting them in places no less foreign than if they had

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<sup>87</sup> *Ibid.*, VII.7. *Principes* (1810) expands this chapter into five chapters, with more material on war and peace in an age of liberal commerce, prefiguring the analyses of *Conquest and Usurpation* and *Liberty*. But these chapters are calmer in tone and lack much of the specific discussion of the events of the late 90s.

<sup>88</sup> All quotations in this paragraph from *Constitution Républicaine*, p. 349.

been outside France. They never saw anyone but their commanders, did not know anyone but them, did not obey anything but their orders.<sup>89</sup>

The equivalent passage in *Principes (1810)* says of the republic's citizen-soldiers, 'taken away from their ploughs,' that they not only contributed

to the siege of Lyons, which could not be other than an act of civil war, but also [made] themselves instruments of torture of the Lyonnais, disarmed prisoners, which was an act of implicit obedience and discipline, of precisely that discipline and that obedience from which we believed that the citizen soldiers would always be able to protect themselves.<sup>90</sup>

In a large and diverse republic the necessary standing army was thus an especially serious internal threat, capable of being a passive instrument for atrocities when it was not actively subverting the constitution and putting a general into power.

Constant holds that a strict division between a domestic police force and the regular armed forces (in later versions he allowed a domestic militia for the suppression of rebellion) is necessary to have any hope of protecting republican government from military rule; the army must not be stationed in a country's interior or cities, even on pretext of crime control. Constitutional protections for the legislature's prerogatives are also necessary, as is an understanding of the evils and anachronism of war and military glory. But none of these, or even all of them combined, suffices. If Rubicon-crossings are to be prevented, it cannot simply be by declaring them illegal; and the tight relationship between executive and military cannot be wished away, no matter how much oversight and control the constitution appears to give the legislature. Constant is never scornful or dismissive of parchment barriers. Legal formalities are important for freedom, and formal separations of powers genuinely do interfere with the abuse of authority, not least because members of *different* official bodies

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<sup>89</sup> *Ibid.*, p. 354. Compare the passage from Montesquieu's *Considerations* above, text accompanying fn 7.

<sup>90</sup> *Principes (1810)*, p. 283.

are more likely to compete than to develop an *esprit de corps*. But he also never assumes that parchment barriers will suffice to keep real power in check; an adventurous general planning a coup or an executive determined to use the army against the legislature or the people won't be stopped by the illegality of their actions.

Instead, he places his primary faith in institutions— a plural executive, and a 'neutral or preserving power' to regulate conflicts between the executive and the legislature. The latter has been the focus of considerable attention— and of some confusion, because at different points in his career Constant used the same phrase to refer to somewhat different kinds of institutions.<sup>91</sup> The collective executive has been less-noticed, but is more important for the military problem. Although Constant was later to give the theory of responsible cabinet-ministerial government its fully-developed form (building on ideas from Sieyès, and competing with Guizot's understanding of ministers as responsible to the crown rather than to parliament), he does not here mean a cabinet. He means executive by committee, in which each member is separately elected and therefore independently responsible to the electorate, and the members have staggered terms to prevent sudden upheavals. While the legislature's ambition cannot adequately check the ambition of the executive-military branch, the various members of the executive can check each other, when it is only the committee as a whole that has the authority to command the army. Necker had dismissed this sort of model, both because the military will only follow a unified commander and because of possible friction between the collective executive and the legislature. Such friction is no objection to Constant; the lack of unity he considers preferable to the lack of constraint that comes with one man's command of the army.

## VIII.

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<sup>91</sup>Biancamaria Fontana, *Benjamin Constant and the Post-Revolutionary Mind*, (New Haven, 1991), pp. 63-65.

While Constant was writing *Constitution Républicaine* in his exile from Napoleonic France, one of Bonaparte's leading internal critics, a revolutionary aristocrat turned dissident senator, was in Paris writing another defense of liberal republicanism in large states. Apparently written without any knowledge of each other, the works shared a great deal: a rejection of classical civic virtue; an analysis in terms of individuals pursuing their respective interests; an understanding of republican sovereignty sharply limited by the absolute rights of individuals; support for a plural executive; and a constitutional design that included an upper-house-like body ('preserving' in one case, 'conservative' in the other) mediating between the executive and the legislature. Antoine Claude Destutt de Tracy's *A Commentary and Review of Montesquieu's The Spirit of the Laws*, his most substantial work of political theory, was written in secret in 1806-7, and first published in 1811— in America, anonymously, translated by Jefferson himself. Tracy feared to publish it in French until the Restoration. Rarely read today, it was hailed by Jefferson as 'the most valuable work of the present age,'<sup>92</sup> one that would 'form an epoch in the science of government,' and that he wished 'to see in the hands of every American student, as the elementary and fundamental institute of that important branch of human science.'<sup>93</sup> It was first published in French, anonymously and in an unauthorized French translation of Jefferson's English translation, in 1817; Tracy's own French edition finally appeared in 1819. In both English and French it was joined to a particularly biting commentary on Montesquieu by Condorcet.

Tracy and his fellow *ideologues* (Napoleon's term of derision for their intellectual circle; Tracy referred to his science of human ideas as *ideologie*) clustered around Condorcet during the Revolution until the latter's death. They gathered in the *salon* hosted by Helvetius' widow at Auteil. Whereas the Coppet circle of Necker, Constant, and de Stael built to greater or lesser degrees on Montesquieu, the Scottish Enlightenment, and German

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<sup>92</sup> Letter to Colonel William Duane, 16 September 1810, in *The Writings of Thomas Jefferson*, Vol. 12, p. 413.

<sup>93</sup> Letter to Dr. Thomas Cooper, 16 January 1814, in *The Writings of Thomas Jefferson*, Vol. 14, p. 63.

romanticism, the Auteil circle of *ideologues* took their inspiration from Condillac, the *philosophes*, and the *physiocrats*; they bridged the gap from the Enlightenment to the nineteenth-century French classical economists including Say (a later one of their number) and Bastiat.<sup>94</sup>

Tracy was a radical rationalist, republican, and libertarian; he endorsed a *laissez-faire* minimal state as well as a purely representative political system, purged of any hereditary or aristocratic elements. Unlike his economic, educational, and epistemological theories, argued for in freestanding works, his political theory was laid out in the course of a detailed, sometimes chapter-by-chapter, argument with *SL*, disputing at every point Montesquieu's ancient constitutionalism, his intellectual method, and his suspicion of deliberately-enacted social change. Along with the writings of his sometime friend Constant, Tracy's book was one of the most influential statements of liberal theory in continental Europe and Latin America in the first half of the nineteenth century.<sup>95</sup>

And, crucially, he denies that there is any real large-republic problem to be solved. Like Paine, he maintains that the small-republic thesis gained most of its apparent plausibility from a confusion between direct democracy and representative republics. 'It is true that

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<sup>94</sup> Much work remains to be done on the three-cornered relationships among the *idéologues*, the *doctrinaires*, and the Coppet circle—the three major camps of French liberals in the generation before Tocqueville. On the *idéologues* and the Coppet group see the special issue of *Revue française d'histoire des idées politiques*, no. 18, 2003, *Les idéologues et le Groupe de Coppet*.

<sup>95</sup> Constant and Tracy were members of overlapping *salons* and social circles in Paris in the 1790s; Constant frequented the so-called Auteil *salon* of the *ideologues* as well as that of the Coppet circle. Constant and the group around de Stael went into exile from Napoleonic rule while Tracy and most of the *ideologues* remained in opposition inside France. During this period, when both *Constitution Républicaine* and *Commentary* were being composed, Constant and Tracy had, as far as I can tell, no contact. After Constant returned to Paris in 1814 he and Tracy became frequent dinner companions;

democracy can exist only in a small compass, or within a single town; and even strictly taken, it is impracticable every where for any length of time,'<sup>96</sup> but 'the representative system[...has] the property of being applicable to all political societies from the smallest to the greatest.'<sup>97</sup> Because republics derive 'their authority from every part of the state,' they are even 'better calculated to execute the laws over a vast extent of territory' than aristocracies or monarchies.<sup>98</sup>

Montesquieu had suggested that a constitutional monarchy like Britain could combine adequate military force with domestic liberty, because the military would be subject to a lawful unitary decision-maker. Like Paine, Tracy mocks the British constitution and casts doubt on its stability. He suggests that Britain has remained free only because of the possibility of deposing kings, a possibility that persists because the island nation has no credible reason for maintaining a large standing army.<sup>99</sup> Sailors do not march on the capital; naval forces 'can never take part in civil disorders, nor alarm interior liberty,' meaning that island nations have a decisive advantage in the attempt to preserve their freedom.<sup>100</sup> But, crucially, he deploys this as an argument *in favor of state expansion* out to a country's 'natural' and defensible limits. Expanding to fill an entire landmass renders a country *safer* from the internal military threat. If that is not possible, expanding to easily-defensible mountain ranges are a good second-best, because such boundaries can be defended with a smaller army than river or flatland borders. The military part of the small-republic thesis is

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they were later part of an informal parliamentary caucus and co-founders (along with Lafayette) of a formal society for the support of freedom of the press.

<sup>96</sup> Tracy, *Commentary*, pp. 75-6.

<sup>97</sup> *Ibid.*, p. 77.

<sup>98</sup> *Ibid.*, p. 77.

<sup>99</sup> *Ibid.*, pp. 105-6.

<sup>100</sup> *Ibid.*, p. 79.

turned on its head; it is a large, easily-defensible state that has the least to fear from a man on a white horse.

Tracy rejects Montesquieu's classification of systems of government in its entirety, and specifically rejects the allocation of one 'principle' to each form. More specifically, he entirely denies the equation of republicanism with civic virtue by denying the desirability or coherence of the civic ideal. He insists that 'no human being is so constituted by nature' as to endure 'voluntary privations' or 'self-denials,' so that 'it is impossible to found any general or even rational principles thereupon, because we cannot renounce our nature, but momentarily or through fanaticism.'<sup>101</sup> This 'self denial and renunciation of all natural sentiments,' this use of 'the rules of the monastic orders' as models of virtue, rests on 'the greatest respect for all that is ancient.'<sup>102</sup> But for his own part, Tracy says,

I frankly acknowledge, that I do not admire Sparta[...] any more than the rules of St. Benedict. It does not accord with my conceptions, that in order to live in society, a man must render violence to himself and to nature[...] This, in my opinion, never was nor ever can be the purpose of society. Man requires cloathing, not hair cloth; his dress ought to protect and comfort him, without causing pain, unless for some useful and necessary end: the same principles apply to education and government.<sup>103</sup>

To a far more radical degree than Publius, and some years before Constant published any version of his argument about ancient and modern liberty, Tracy announced the utter irrelevance of self-abnegating virtue, and the centrality of interest, to republicanism.

Since there is no real large-republic problem to be solved, there is no question to which federalism is a necessary answer. And Tracy maintains that federalism necessarily weakens a state's military prowess, making it a pointless but affordable luxury in America

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<sup>101</sup> *Ibid.*, p. 20.

<sup>102</sup> *Ibid.*, p. 35.

<sup>103</sup> *Ibid.*, p. 24.

but utterly unacceptable for a state like France, which needs the strength offered by unity.<sup>104</sup> Tracy does acknowledge that confederation might ‘render the usurpation of the sovereign power, more difficult than a consolidated government,’ but he notes that it did not ‘prevent Holland from subjection to the House of Orange.’<sup>105</sup> Like Constant, though more briefly and with less theoretical weight put on the point, Tracy notes the advantages of ‘a kind of local patriotism, independently of the general one.’ ‘[N]otwithstanding these excellent qualities,’ however, ‘confederations[...] must be considered as mere essays or experiments, of men who had not yet conceived true ideas of a representative system, and who sought to ensure, at the same time [...] liberty, tranquility, and power, which unquestionably can be united by that form of government alone.’

There are real problems of constitutional design to be solved for *any* republic, large or small. Given the premise that individuals including state officials will not tend to act like monks, we are left with

the great problem[...] of the distribution of powers of society, so that neither of them [willing or acting, legislative or executing] may trespass on the authority of the other, or the limits assigned them by the general interests; and that it may always be easy to keep them within bounds, or to bring them back by peaceable and legal means[...]<sup>106</sup>

The traditional problems of the abuse of executive power are, Tracy maintains, best solved by a multimember executive.<sup>107</sup> The disadvantages of dissension and slowness in

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<sup>104</sup> *Ibid.*, pp. 82-3.

<sup>105</sup> *Ibid.*, p. 83.

<sup>106</sup> *Ibid.*, p. 197.

<sup>107</sup> Jefferson disagreed vigorously. ‘I think history furnishes as many examples of a single usurper arising out of a government by a plurality, as of temporary trusts of power in a single hand rendered permanent by usurpation. I do not believe, therefore, that this danger is lessened in the hands of a plural executive. Perhaps it is greatly increased, by the state of inefficiency to which they are liable

executive action are more than outweighed by the disadvantages of thoughtless, hasty, or power-hungry action on the part of a unitary executive, along with the costs of dissension in society at large when electing a unitary president or monarch. (Hereditary monarchy is ruled out as absurd.) ‘The authority of a single person is[...] essentially progressive; when confined to a limited number of years, it advances to possession for life, and from thence to hereditary power.’<sup>108</sup> Executive by committee will prevent descent into either monarchy or military rule.

A plural executive doesn’t entirely solve the problems of executive-legislative relations. A government made up of an elected legislative assembly and an elected executive committee ‘already has a body for willing, and a body for executing that will; it yet requires a preserving power, that is to facilitate and regulate the powers of the other two; and in this conservative body, we shall find all that is requisite to complete the organization of society.’<sup>109</sup> The ‘conservative body’ isn’t strictly an upper house of the legislature, as it has no voice in legislative matters. It is more like a combination of constitutional court, set apart from the ordinary courts of appeals, and an electoral college. It judges the validity of elections to the legislature; nominates or elects, as well as impeaching, members of the executive; nominates judges; declares laws or executive acts unconstitutional; and calls constitutional conventions. Its members are appointed for life. The core idea behind it much resembles Constant’s recurrent attempts to describe an independent or balancing power in a constitution, one that combined traits and powers of the House of Lords, the U.S. Senate and Supreme Court, and the *parlements* without fully resembling any of these.

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from feuds and divisions among themselves.’ Jefferson also disagreed with the critique of federalism. Jefferson to Tracy, 26 January, 1811, in the *Portable Thomas Jefferson*, ed. Merrill D. Peterson (New York, 1975), pp. 520-524.

<sup>108</sup> Tracy, *Commentary*, p. 131.

<sup>109</sup> *Ibid.*, p. 136.

IX.

Just as Montesquieu absorbed but transformed the civic republican intellectual inheritance on state size, forms of government, and executive power, so did Alexis de Tocqueville absorb but transform the arguments of Montesquieu and his successors. With its analysis of the by-then well-established American republic, and its characterization of the United States as representing Europe's democratic future rather than (as had been customary) its primitive past, *Democracy in America* might usefully be said to bring the Montesquieuian debate about the possibility of large republics to a close. In place of old worries about faction, corruption, and inequality, military subversion and executive power, Tocqueville introduced new ones about social homogenization and leveling, about conformism and servility to a stably republican state. While Tocqueville was a careful student of Montesquieu and wrote *Democracy in America* much under the latter's influence,<sup>110</sup> he was prone to treat culture and *mores* as causes, political forms as effects, whereas Montesquieu had done the reverse and many of the thinkers who came between them disdained talk of *mores* at all. Tocqueville's worries were not, finally, about whether large states could be democratic republics but about what life in such large democratic republics would be like

Volume I, Book 1, chapter 8 of *Democracy in America* endorses and incorporates much had what come before on the questions of large republics, federalism, and the military.

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<sup>110</sup> For Tocqueville's engagement with Montesquieu on the large-republic question, see Melvin Richter, "The Uses of Theory: Tocqueville's Adaptation of Montesquieu," in Richter, ed., *Essays in Theory and History: An Approach to the Social Sciences* (Cambridge, 1970), pp. 74-102.

Tocqueville did hold that federalism was an important part of the “Anglo-Americans” ability to sustain a large republic as long as they had. He denied that we could be too sure of the *impossibility* of a large republic;

I think it very imprudent for man, who is commonly deceived in actual and immediate everyday affairs and who is constantly surprised by the unexpected in things most familiar, to seek to limit the possible and judge the future.

But he recognized that

at all times small nations have been the cradle of political liberty[...] World history provides no example of a large nation long remaining a republic [Tocqueville’s footnote: “I do not speak here of a confederation of small republics, but of a great consolidated republic.”][...] What can be said with certainty is that the existence of a great republic will always be more exposed than that of a small one.

Moreover, Tocqueville closely followed Montesquieu’s analysis of *why* republicanism had proven best-suited for small states.

All passions fatal to a republic grow with the increase of its territory, but the virtues which should support it do not grow at the same rate. The ambition of individuals grows with the power of the state; the strength of parties grows with the aim proposed; but love of country is no stronger in a vast republic than in a small one. It is even easy to demonstrate that it is less developed and less strong there. Great wealth and dire poverty, huge cities, depraved morals, individual egoism, and complication of interests are so many perils which almost always arise from the large size of a state. Several of these things are no threat to the existence of a monarchy, and some of them may even

help it to endure.[...] It is therefore permissible to say in general terms that nothing is more inimical to human prosperity and freedom than great empires.<sup>111</sup>

But small states cannot defend themselves against large ones, and so there is necessarily a tendency for them to either get swallowed up by such empires or to expand or combine into larger states themselves. Expansion, as Montesquieu said, is hazardous; “most [small states] have lost this liberty in growing larger.”<sup>112</sup> It is combination and federation that can “combine the various advantages of large and small size for nations. A glance at the United States of America will show all the advantages derived from adopting that system;”<sup>113</sup> the “Union is free and happy like a small nation glorious and strong like a great one.”<sup>114</sup>

That said, Tocqueville did not think that federalism was necessarily a wise or sustainable solution to the large-republic problem. Like many of his French predecessors, he thought federations necessarily militarily weaker than unitary states. He suggested that federalism left even the American republic at internal and external risk. When push came to shove, he thought, the federal government would be unable to impose its will on recalcitrant states, and the division of power between center and the states might leave the center too feeble to hold off foreign threats. He suggests that this nearly happened during the War of 1812, and that a fatal standoff between some states and the center could probably not be held off forever even by the relative homogeneity of Anglo-American society.<sup>115</sup>

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<sup>111</sup> *Ibid.*, p. 159, 160

<sup>112</sup> *Ibid.*, p. 159

<sup>113</sup> *Ibid.*, p. 161

<sup>114</sup> *Ibid.*, p. 163.

<sup>115</sup> *Democracy in America*, pp. 168-9.

More importantly, Tocqueville did not think that constitutional structures and mechanisms deserved primary credit for the ability of the Anglo-Americans to create and sustain a large republic. Political structures and balances were not, on his account, the real explanations for political and social phenomena. He famously held that the Anglo-Americans' mores, norms, religion, and feudalism-free history were what allowed their democratic republic to survive. When the same constitutional structures were transplanted to a society without those mores or that history, they will likely not take root.

The Constitution of the United States is like one of those beautiful creations of human diligence which give their inventors glory but remain sterile in other hands.[...] The Mexicans, wishing to establish a federal system, took the federal Constitution of their Anglo-American neighbors as a model and copied it almost completely. But when they borrowed the letter of the law, *they could not at the same time transfer the spirit that gave it life.*<sup>116</sup>

And so, less than halfway through the first volume of *Democracy in America*, Tocqueville put aside the analysis of the American Constitution and of the formal political structures of the United States, and turned to the analysis of the “spirit that gave it life.” This was Tocqueville’s transformation of the French constitutional debates of the previous half-century: an emphasis on mores, norms, and habits at the expense of institutional forms and structures, a turn from political science to sociology.

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<sup>116</sup> *Ibid.*, p. 165, italics added.

The various attempts to understand the relationships among state size, federalism, republicanism, and liberal freedom or modern liberty provide an instance-- a centrally important instance— of the eighteenth and nineteenth-century struggles to understand the threats to freedom from, on the one hand, thick local communities and, on the other, rationalistic central states.<sup>117</sup> Most broadly, we see three institutional views of the social and constitutional structures that make freedom possible. The small-civic-republicans (e.g. Brutus) saw freedom as protected by the people themselves, a local and homogenous body, if they are governed in a way that allows them to act effectively and decisively on their government. This view was widely rejected in the 1780s and succeeding decades, replaced by an understanding of republicanism that did not depend on self-abnegating civic virtue, homogeneity, or material equality. It was rejected alike by those who supported unitary or centralized republics and those who supported federalism or confederalism. Unitary large-state republicans (Tracy, Paine, Turgot) considered freedom best protected by weakening the power of local and particularistic communities or intermediate bodies such as the aristocracy or the church. Rational reform and legislation was to come from the center in a large, diverse liberal commercial republic. Federalists— Publius, Jefferson, Constant— took neither tack. They worried about institutional unity and concentrations of power, and opted for complexity. They preferred neither the nearby nor the distant as such, neither the thick and local nor the rationalist and central. The small republics, if unconstrained, were prone to enthusiastic and passionate majority factions that could tyrannize over minorities. A unitary republic could be worse still, because uncheckable and unconstrainable.

But the large-republic problem was not only an instance of this general dispute over centralization, pluralism, and freedom; federalism was not the only institutional question at stake. The large-republic problem, particularly as articulated and refined by Montesquieu,

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<sup>117</sup> Jacob T. Levy, 'Liberalism's Divide After Socialism— and Before,' 20(1) *Social Philosophy and Policy* 278-297, 2003.

had distinctive institutional peculiarities not shared with the general centralization/ pluralism debate: the problem of constraining both the executive that controls the military and the military itself. During and after the 1780s many theorists on both sides of the Atlantic were united in their rejection of classical politics, of smallness, homogeneity, and civic virtue as constitutive of republicanism— including some who preceded and some who wrote independent of *The Federalist Papers*. They were far less united in their understanding of how to forestall executive dominance or military takeover; in their assessments of whether the means available to forestall the former, like a plural executive, might make the latter more likely by weakening executive control over military leaders; and in their sense of whether the executive/military problems really did pose particular difficulties for republicanism in large states.